International Tax News

December 2023

Start

www.pwc.com/its

Welcome

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

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:

- UK Pillar Two: Painting while the paint dries (Dec 12)
- Pillar Two: Policy, politics and interaction with Pillar One (Dec 7)

PwC's Pillar Two Country Tracker

Our Pillar Two Tracker provides the status of Pillar Two implementation in various countries and regions to help you get #PillarTwoReady

Worldwide Tax Summaries

Our most popular publication tracks current corporate and individual tax rates in every jurisdiction in which you operate. Visit our comprehensive tax guide, updated daily, and explore rates in over 150 countries!

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

In this issue

Legislation

Australia

Further amendments to new thin capitalisation regime

Government amendments to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Bill 2023 - which contains the proposed reforms to limit interest deductions under Australia's thin capitalisation regime - were released in advance of their introduction in the Senate. The amendments include:

- Deferral of the start date for the debt deduction creation rules until income years commencing on or after 1 July 2024 for all arrangements
- Narrowing the scope of arrangements that may fall within scope of the debt deduction creation rules
- Changes to the thin capitalisation fixed ratio test to allow excess 'tax EBITDA' to be passed up to certain companies, partnerships, and managed investment trusts, in addition to unit trusts (as previously proposed); and
- Broadening the thin capitalisation third party debt test.

The bill has been referred to the Senate Economics Legislation Committee for review, which is due to report on the amendments by 5 February 2024

The proposed amendments released provide taxpayers with further clarity on the likely application of the rules and should be considered carefully given that the proposed start date remains unchanged. The Senate will not reconsider the Bill until after this report has been tabled. Accordingly, these measures will not be enacted until at least February 2024.

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

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

Legislation

Bermuda

Bermuda provides clarifying details regarding its proposed corporate income tax

The Government of Bermuda, on 15 November, issued its third public consultation paper (PCP), including draft legislation, proposing a 15% corporate income tax (CIT) applicable to Bermuda tax-resident entities and permanent establishments that are part of multinational enterprise (MNE) groups with annual revenue of at least €750M. The tax would be effective beginning in 2025.

Consistent with the first and second public consultations, one of the primary policy underpinnings associated with the CIT, as reflected in the third PCP, is alignment with the Global Anti-Base Erosion (GloBE) rules and qualification as a Covered Tax. However, Bermuda currently has no proposals to introduce the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR). For more please consult our PwC Insight.

In anticipation of enactment, affected companies should analyze the potential tax accounting implications of the proposed CIT for 2023 year-end financial reporting. The impact of the proposed CIT regime on Bermuda insurance companies' regulatory capital requirements also should be considered, along with the impact on transactions. Additionally, MNEs should monitor the CIT rules and expected guidance over the coming weeks and months as a part of determining whether to elect out of the Economic Transition Adjustment (ETA) and make other available tax elections. The third PCP changes many of the default positions with respect to available elections.

Matthew Lodes
United States
+1 314-724-7117
matthew.j.lodes@pwc.com

Surjya Mitra
United States
+1 703-855-9357
suriya.mitra@pwc.com

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

Legislation

Costa Rica

Costa Rica amendment seeks exclusion from list of non-cooperating countries in fiscal matters of the EU

On 2 October 2023, Costa Rica enacted Law No. 10,381, called "Amendment to Law No. 7092, Income Tax Law of April 21, 1988, to achieve the exclusion of Costa Rica from the list of non-cooperating countries in Fiscal Matters of the European Union." The law was published in the Official Gazette La Gaceta. Through this reform, the concept of territoriality — relevant for the purposes of determining the condition of income from a Costa Rican source — is reinforced, ascribing it to a merely geographical aspect — national territory — and, additionally, extraterritorial passive income is taxed, to the extent that the entity that receives it is part of a multinational group and that the entity is considered 'not qualified.' This means that the entity does not comply with the economic substance requirements established in the legal system.

Likewise, the Regulations to the Income Tax Law were modified through Executive Decree No. 44,262 published in Official Gazette No. 221 of 28 November 2023 to adapt it to the recent reforms introduced by Law 10,381.

In addition, on 30 November 2023, Resolution MH-DGT-RES-0030-2023 was published in the Official Gazette No. 223, which defines the objective parameters to assess the economic substance of a qualified entity and its membership in a multinational group.

The Income Tax Law contains a specific anti-abuse clause so that the Administration can reclassify the status of a non-qualified entity.

Likewise, the reform to the Law modifies the concept of permanent establishment (PE). The modification eliminates the condition that a PE needs to perform the main activity in its entirety, implying that it is now sufficient for the activity to be carried out either totally or partially in order to qualify as a PE.

Marisol Arcia, Territory Senior Partner PwC Interamericas
Panama
+507 206-9200
marisol.arcia@pwc.com

Elena Carazo
Costa Rica
(506) 2224-1555
elena.carazo@pwc.com

Legislation

Croatia

Croatian bill implementing Pillar Two expected to progress

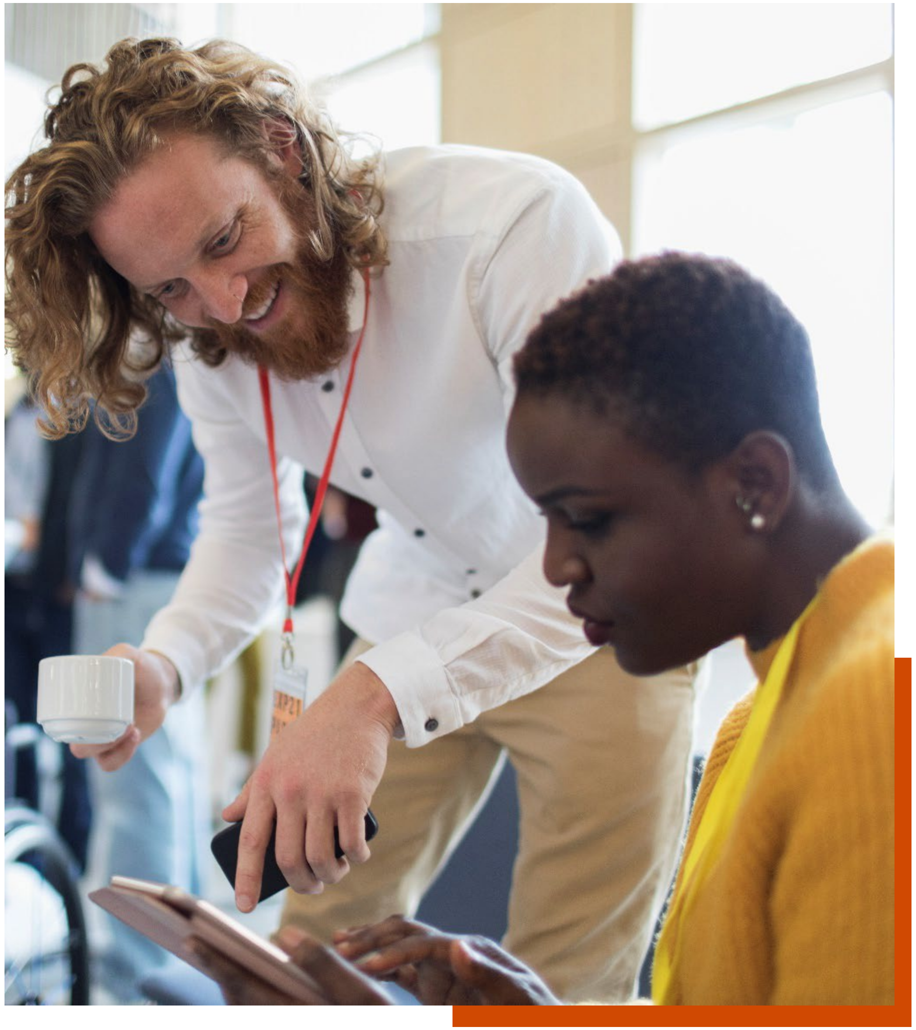
The Croatian draft bill on Minimum Global Tax has been fast-tracked in parliament and is expected to come into effect on 31 December 2023.

This follows a November consultation by the Croatia Ministry of Finance on a draft bill to transpose the EU minimum tax Directive into its domestic law. The bill would introduce the IIR and QDMTT, applicable to fiscal years beginning on or after 31 December 2023, and the UTPR, applicable to fiscal years beginning on or after 31 December 2024.

The Bill provides for a minimum effective tax rate of 15% per jurisdiction for large international enterprises (annual turnover exceeding 750 million euros) and will first apply to financial years starting on or after 31 December 2023. The bill fully aligns the provisions of EU Directive of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (Pillar Two).

The legislation provides that the applicable OECD Model Rules and Commentariy, including transitional Safe Harbour rules existing - or that will be published – will be utilized as a source of 'illustration and interpretation' for application of the Pillar Two Globe Rules in Croatia.

Croatia does not have many MNEs that will fall under the scope of Pillar Two. However as there are many global MNEs that have in-scope entities in Croatia that could be subject to QDMTT (especially if the entities are using tax incentives). Companies should analyze the bill's potential implications on their additional tax expenses.



Hrvoje Jelić
Croatia
+ 385 1 63 28 888
hrvoje.jelic@pwc.com

Lana Brlek
Croatia
+385 98 383 017
lana.brlek@pwc.com

Legislation

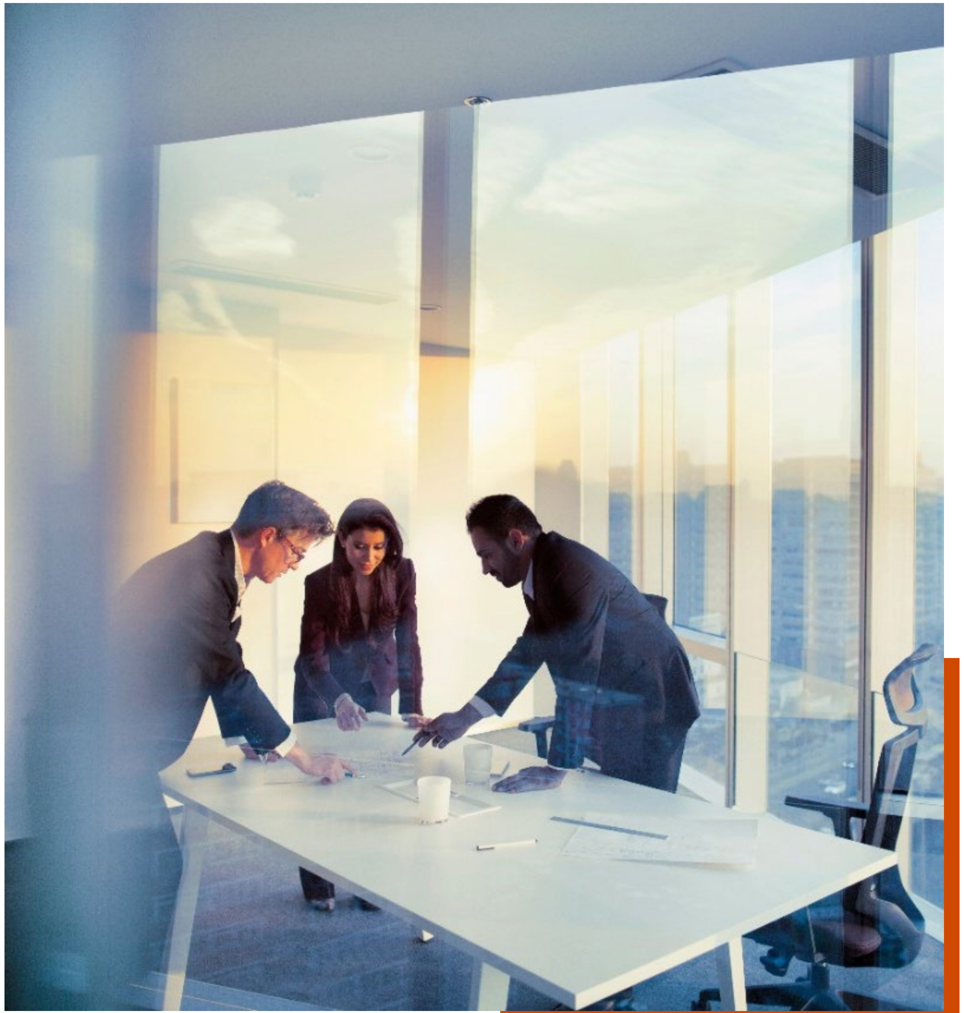
Czech Republic

Czech Republic implements Pillar Two

On 15 December 2023 the President of the Czech Republic signed the Czech law implementing the EU Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups (Pillar Two). Czech law implements the GloBE rules, i.e., the IIR rules (effective 31 December 2023), and the UTPR rules (effective 31 December 2024), Transitional CbCR and UTPR Safe Harbours, and the QDMTT Safe Harbour.

The Czech Republic also used the opportunity to implement the Domestic Minimum Top-up Tax for Czech entities. The new legislation will come into effect on 31 December 2023.

The Pillar Two rules will take effect for large businesses with accounting periods beginning on or after 31 December 2023. As the effective date is here, companies need to take action to ensure readiness for the rules.



Martin Divis
Prague
+420 602 749 934
martin.divis@pwc.com

Lucia Cechova
Prague
+420 731 637 192
lucia.cechova@pwc.com

Legislation

Denmark

Danish Parliament passes bill to implement Pillar Two

Denmark's proposed law to transpose Pillar Two into the Danish tax legislation with effect from 1 January 2024 was finalized and agreed upon during the third reading/discussions in the Danish Parliament on 7 December 2023.

The new law (called the Minimum Tax Act) generally aligns with the Pillar Two Directive and introduces a 15% minimum tax on a jurisdictional basis. It includes implementation of the Income Inclusion Rule (IIR) for income tax years starting 2024 and a later implementation of the Undertaxed Profit Rule (UTPR) in 2025 (with the amendments from the OECD Guidance).

The law also includes a Danish Domestic Minimum Top-up Tax (DMTT) applicable from 1 January 2024 and the Danish Ministry of Taxation has said that they expect it to be a qualified 'Safe Harbour' DMTT.

The Pillar Two legislation effectively introduces a new corporate tax system in addition to the existing company tax framework in a separate legislative act.

Anne Cathrine Primdal Allentoft
Denmark
+45 51 38 47 86
anne.cathrine.primdal.allentoft@pwc.com

Lars Gram Ellegård
Denmark
+45 51 94 51 85
Lars.gram.ellegaard@pwc.com

Lene Munk Rasmussen
Denmark
+45 29 61 33 28
Lene.munk.rasmussen@pwc.com

Legislation

EU

Update on status of EU Member State Pillar Two implementation

The EU minimum tax Directive (Directive), formally adopted in December 2022, provides a mechanism by which the 27 EU Member States would implement the Pillar Two GloBE Model Rules. Importantly, Article 56 of the Directive requires Member States to transpose the Directive into national law by 31 December 2023.

The EU issued a Commission Notice on 12 December 2023, explaining the implementation timeline of the rules by Member States. The Notice included a list of countries that have opted for deferral under Article 50(1).

The chart below reflects status as of our publication deadline. See our PwC Insight on Hungary's recent adoption of the rules.

Enacted	Hungary Belgium* Czech Republic* Denmark* Ireland* Netherlands*
Draft rules in process of being enacted	Austria Bulgaria Croatia Cyprus Finland France Germany Italy Luxembourg Romania Slovenia Sweden
Delayed (either announced or likely)	Greece Luxembourg Poland Portugal Spain
Deferral election*	Latvia Lithuania Malta Estonia Slovakia

Added subsequent to the EU Notice published on 12 December, 2023

Companies operating in the European Union should continue to track developments in individual countries in the region as Member States are operating under different timelines.

Will Morris, Global Tax Policy Leader
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser, Deputy Global Tax Policy Leader
Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

Legislation

Finland

Finland implements Pillar Two into domestic law

The government proposal for the Finnish Pillar Two legislation was approved by the Finnish parliament on 11 December 2023. The proposal implements the Income Inclusion rule (IIR), the Undertaxed Profits Rule (UTPR) and the Qualified Domestic Minimum Top-up Tax (QDMTT). The IIR and QDMTT rules are applicable for financial years starting on or after 31 December 2023, and the UTPR for financial years starting on or after 31 December 2024.

The government proposal closely follows the EU Directive and the GloBE Model Rules. Further, the central role of the OECD's (existing and future) guidance is clearly acknowledged in the proposal as a key to ensure harmonious implementation globally and to avoid differing interpretations across jurisdictions. However, various aspects of the OECD's guidance are not included in the government proposal (e.g. QDMTT Safe Harbour, UTPR Safe Harbour and Marketable Transferrable Tax Credits).

The Finnish constitution requires that a tax law should include a sufficient level of detail to allow taxpayers to calculate their tax liability and leave little room for interpretation. These constitutional restrictions may cause uncertainties with respect to application of specific rules based on the OECD guidance where those differ from the Finnish Pillar Two legislation.

Markus Joensuu
Finland
+358 40 508 7940
markus.joensuu@pwc.com

Iain McCarthy
Finland
+358 400 172 001
iain.mccarthy@pwc.com

Legislation

Hong Kong

Proposed amendments to enhance Hong Kong's aircraft leasing preferential tax regime

Hong Kong introduced the aircraft leasing preferential tax regime (Regime) in 2017 to provide a half rate tax concession to qualifying aircraft lessors and qualifying aircraft leasing managers.

To keep up with market changes and mitigate potential impacts from the introduction of a global minimum tax (the GloBE rules under Pillar Two), the Transport and Logistics Bureau and the Inland Revenue Department (IRD) jointly issued a trade consultation paper last year to gauge the views of stakeholders on an array of measures to enhance the existing Regime.

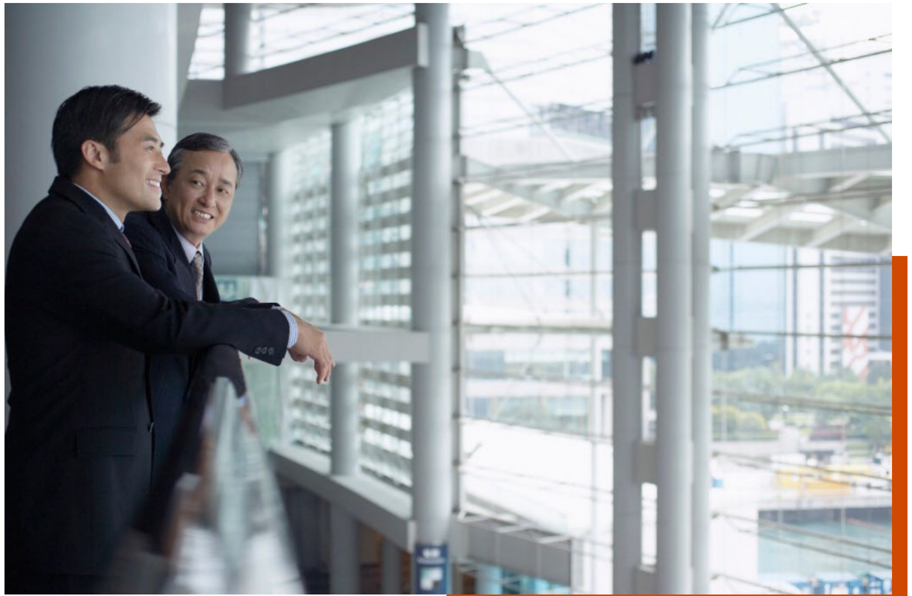
The Aircraft Leasing Tax Concession Bill 2023, which seeks to amend the Inland Revenue Ordinance to implement the enhancement measures, was gazetted on 17 November 2023. The legislative amendments will be retroactive from the year of assessment beginning on or after 1 April 2023 (i.e., year of assessment 2023/24), upon passage of the Bill. Furthermore, the IRD has already acted upon the enhancement measures that could be implemented via administrative means earlier this year.

Gwenda Ho
Hong Kong
+852 2289 3857
gwenda.kw.ho@hk.pwc.com

Please access the PwC Insight for more details.

These enhancements broaden the Regime so that it is not just restricted to commercial aircraft leasing. There should, therefore, be opportunities for private jet lessors and improved accessibility to more capital providers and structures such as aircraft securitizations.

While the government has considered how the GloBE rules could impact existing regime, hopefully, it also will consider other tax incentives in the post-GloBE era. This might include the enhanced tax deduction regime for qualifying R&D expenditures such that it would qualify as a qualified refundable tax credit. Such credits are treated more favourably under the GloBE rules.



Legislation

Ireland

Irish parliament approves Pillar Two legislation with minimal changes

Ireland's Pillar Two implementing legislation was signed into law by Ireland's President on 18 December. Ireland's Pillar Two rules, which closely align with the EU Directive, introduce an IIR and QDMTT effective for accounting periods beginning on or after 31 December 2023. For more on how to get Pillar Two ready, see this PwC Insight.

Ireland's Pillar Two rules will take effect for large businesses with accounting periods beginning on or after 31 December 2023. As the effective date looms ever closer, companies need to take action to ensure readiness for the rules.

Harry Harrison
Ireland
+353 87 372 0
harry.harrison@pwc.com

Chloe Fox
Ireland
+353 (0)87 721 1577
chloe.fox@pwc.com

Legislation

Italy

Anti-hybrid documentation: draft law proposal for penalty protection

A draft Italian law allows, in some circumstances, Italian taxpayers (including Italian subsidiaries of foreign groups) to prepare anti-hybrid documentation in order to obtain penalty protection from potential challenges (similar to what is usually provided for transfer pricing purposes). The final law is expected to be approved shortly and a Ministerial decree should be issued within 60 days of final law approval. Once enacted, the deadline for preparation of the anti-hybrid documentation is expected to be in late 2024.

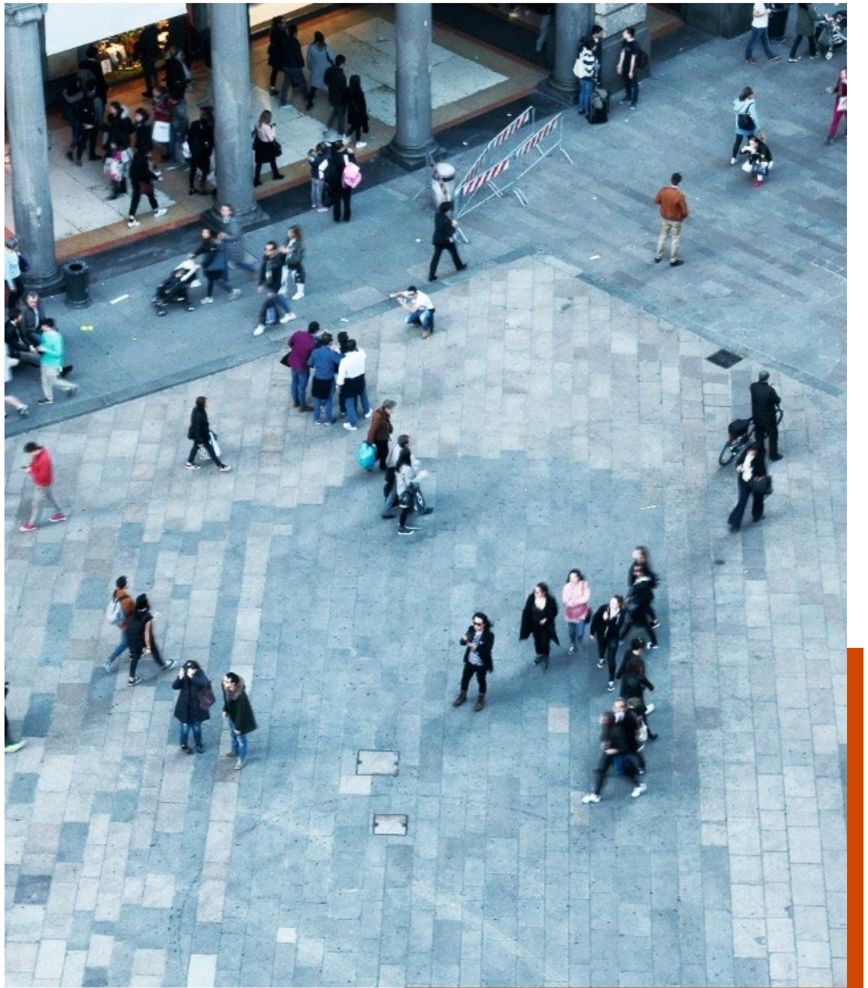
The current draft law has the following key elements:

- Penalty protection is expected to cover both administrative penalties and criminal charges, if any.
- The Anti-hybrid documentation must be prepared before the filing of the income tax return and this must be communicated to the Italian Tax Authorities.
- The documentation must have a certain date (potentially through digital signature with timestamp).
- The Ministry of Finance is vested with the power to issue, within 60 days following approval, the regulation of the structure and contents of the anti-hybrid documentation.

The timing requirements are as follows

- The Anti-hybrid documentation must be prepared by the tax return deadline, or
- If preceding, within six months from publishing the decree by the Ministry of Finance; e.g., if the decree is issued at the beginning of March, the deadline would be September 2024.
- According to the current draft law wording, the 2023 deadline and penalty protection are valid not only for 2023 but also for previous tax periods (i.e., 2020, 2021, and 2022).
- See our PwC Insight for more.

If the provisions of the Ministerial Decree conform with the Italian Tax Authorities' approach (as per Circular letter no. 2/2022), information included in the anti-hybrid documentation will also involve exposure to imported hybrid mismatches, thus requiring the mapping of foreign entities and their intercompany transactions, even if they only have transactions indirectly reaching Italy.



Alessandro Di Stefano
Milan
+39 348 840 8195
alessandro.di.stefano@pwc.com

Dario Sencar
Milan
+39 346 136 8643
dario.sencar@pwc.com

Legislation

Norway

Norway proposes new Pillar Two law

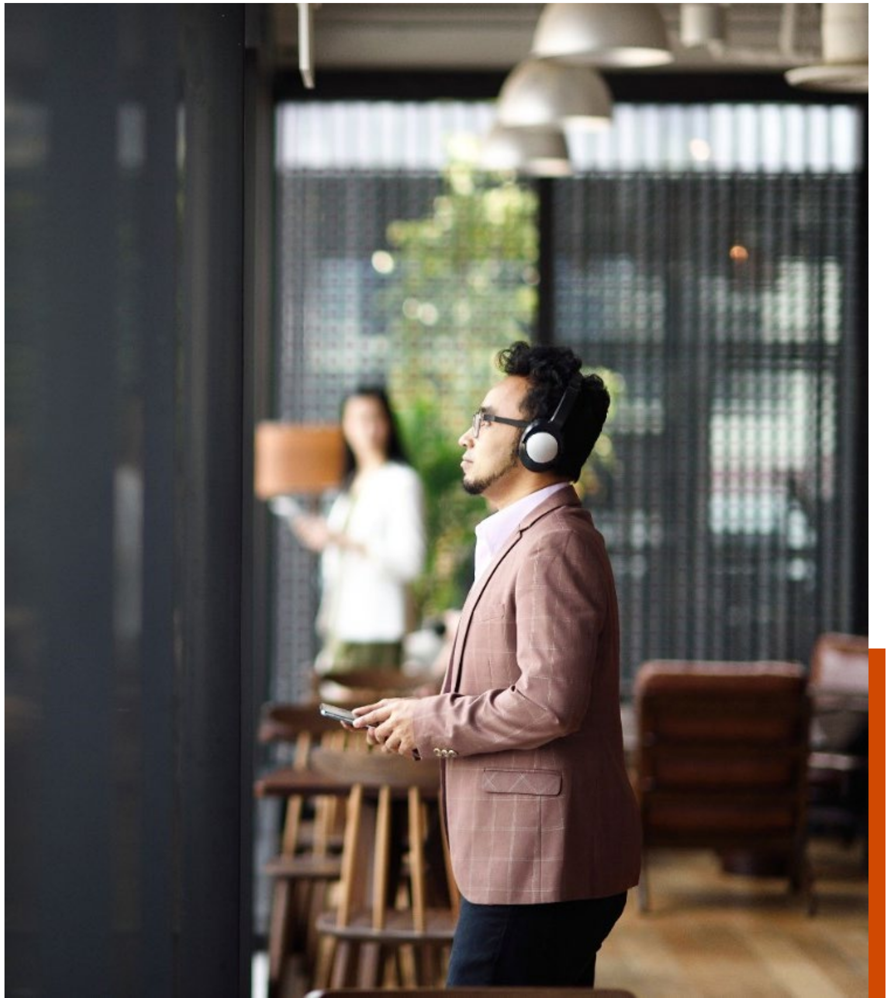
The Norwegian Ministry of Finance on 24 November 2023 proposed a new Norwegian Act ('proposed law') for the Pillar Two Income Inclusion rule (IIR) and Domestic Minimum Top-up Tax (DMTT) titled 'Suppleringsskatteloven.' The act will more or less mirror the OECD Model Rules and will be implemented effective 1 January 2024. In the 6 June 2023 consultation paper, the Norwegian Ministry of Finance proposed to implement the Pillar Two rules in the Norwegian Tax Act, but after a renewed assessment, concluded that the rules should be introduced in a separate act.

The Norwegian Ministry of Finance has proposed:

- using Euro to avoid annually recalculating the NOK thresholds for being in scope of the GloBE rules and adjusting the Norwegian regulations correspondingly. The proposal includes rules for specific currency conversions.
- extending application of the IIR to include intermediate parent companies (which are not controlled by another company subject to an IIR) and partially owned parent companies to achieve equal regulation in Norway and the European Union.
- expanding the DMTT to include joint ventures.
- implementing two safe harbour rules, namely the transitional safe harbour rule and a permanent safe harbour rule relating to the DMTT. The Ministry of Finance aims to obtain approval of the permanent safe harbour rule relating to DMTT in Norway, so that foreign groups with establishments in Norway can invoke the safe harbour rule provided that a DMTT has been calculated in line with the Norwegian rules..

The proposed law does not include the implementation of the Undertaxed Profits Rule (UTPR), but Norway is expected to adopt the rule from 2025.

With respect to the IIR and DMTT components of the proposed law, the Norwegian Ministry of Finance has largely maintained the content of the consultation paper from June 2023.



Hilde Thorstad
Oslo
+47 952 60 548
hilde.thorstad@pwc.com

Jenny Agnethe Mikkelsen
Oslo
+47 948 09 655
jenny.a.mikkelsen@pwc.com

Solveig Østerud
Oslo
+47 904 76 346
solveig.osterud@pwc.com

Legislation

UK

Autumn Statement 2023

The UK's Chancellor of the Exchequer, Jeremy Hunt, delivered his Autumn Statement alongside an updated economic forecast from the Office for Budget responsibility on 22 November 2023. Key tax announcements include:

Corporation tax
No further corporation tax rate changes have been proposed.

Pillar Two
The government will implement the OECD Pillar Two Undertaxed Profits Rule for accounting periods beginning on or after 31 December 2024, alongside the repeal of the Offshore Receipts of Intangible Property rules, as part of the G20-OECD global minimum tax framework.
This provides that multinational enterprises will be subject to a minimum 15% effective tax rate in every jurisdiction in which they operate.

Capital allowances
The 'full expensing' regime, introduced for three years from April 2023, is to be made permanent.

R&D
The existing Research and Development Expenditure Credit (RDEC) and SME schemes will be merged with effect from 1 April 2024.

Investment Zones Programme Extension
The Investment Zones programme in England will be extended from five to ten years and three new zones were announced in Greater Manchester, West Midlands, and East Midlands.

Business rates
The government will introduce a business rates support package worth £4.3bn over the next five years to support small businesses and the retail, hospitality and leisure industry.

For the largest global businesses, the Chancellor has confirmed the UK's commitment to the OECD's global minimum tax, which the Treasury anticipates will raise £1.5bn-plus over the next few years.

For more information visit our dedicated webpage.

The Autumn Statement marks the start of the run-up to the next General Election. The sharp focus on growth, investment and making work pay marks the Chancellor's keen priority to look forward.

Confirmation that the full expensing regime will be made permanent should benefit companies given the increase in the corporation tax rate coupled with the super-deduction relief coming to an end earlier this year. For companies that are investing, this is the equivalent of a significant cut in the effective rate of corporation tax in the year of investment, rather than spreading it over the life of the investment.

Full expensing has typically benefitted capital intensive industries but will provide a longer-term platform for investment decisions. Now, with the longer-term platform secure, this may provide the certainty that many businesses have been seeking before giving the green light to investment. However, there remains uncertainty for businesses focused on R&D activity where there is a need for clarity on what can be claimed.

Merging of the SME and large-company R&D schemes is a welcome simplification, but there is still much uncertainty on who can claim R&D under the new rules.

Matt Ryan (UK Pillar Two Leader)
United Kingdom
+44 7718 981211
matthew.a.ryan@pwc.com

Rachel Moore (Innovation Incentives Partner)
United Kingdom
+44 7841 561935
rachel.moore@pwc.com

Administrative

Australia

ATO releases reportable tax position findings report

The Australian Taxation Office (ATO) has released its fourth Findings report which provides the aggregated disclosures made by large public and multinational companies for the 2018–19 to 2021–22 income years under Category C of the Reportable Tax Position (RTP) Schedule as of 30 June 2023.

RTP Schedule disclosures assist the ATO to understand and assess changes in tax positions and arrangements, including new arrangements that taxpayers enter. The disclosures also allow the ATO to prioritise its assurance activities.

Some key highlights of the Findings report include:

- There was a significant increase in taxpayer disclosures, and an upward trend in low-risk disclosures for large public and multinational entities.
- There has been a 50% increase in the number of schedules lodged and the number of disclosures increased nearly threefold between 2018–19 and 2021–22. This reflects the progressive expansion of the lodgment requirement from the top 100 population to all entities that meet the total business income threshold and ownership criteria. The non-lodgement rate remained stable over the same period.
- Nearly two-thirds of Category C questions in 2021– 22 related to arrangements described in Taxpayer Alerts. A third of questions related to Practical Compliance Guidelines (PCGs), with remaining questions related to other risks. The majority of disclosures, however, relate to PCGs as these generally cover more common arrangements.

The ATO's fourth Findings report reveals a notable increase in disclosures. Despite high levels of voluntary compliance, the ATO identifies room for improvement in reducing errors made by taxpayers on their schedules.

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

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

Administrative

Australia

Recognising Pillar Two liabilities in financial statements

The Australian Accounting Standards Board (AASB) has finalised Accounting Standard AASB 2023–4 Amendments to Australian Accounting Standards – International Tax Reform – Pillar Two Model Rules: Tier 2 Disclosures which amends AASB 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for Profit Tier 2 Entities (March 2020) and AASB 112 Income Taxes (August 2015) in relation to the OECD Pillar Two reforms.

The Standard amends AASB 1060 to require a Tier 2 entity to disclose:

- that it has applied the exception to recognising and disclosing information about deferred tax assets and liabilities related to Pillar Two income taxes (see AASB 112 paragraph 4A); and
- its current tax expense (income) related to Pillar Two income taxes.

This Standard also amends AASB 112 to extend the exemption from complying with the disclosure requirements of AASB 112 for entities that apply AASB 1060 to ensure Tier 2 entities are not required to comply with the new disclosure requirements in AASB 112 when preparing their Tier 2 financial statements.

The Standard applies to annual periods beginning on or after 1 January 2023 that end on or after 30 September 2023, with earlier application permitted, including for the 2022–23 financial year.

AASB 2023–4 introduces amendments to Australian Accounting Standards related to the OECD Pillar Two reforms. These changes primarily impact Tier 2 entities and require them to disclose their application of an exception concerning deferred tax assets and liabilities related to Pillar Two income taxes, as well as their current tax expense or income related to Pillar Two income taxes. The standard is effective for annual periods commencing on or after 1 January 2023, with the option for earlier application, ensuring compliance with these revised standards.

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

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

Administrative

Australia

ATO updates practical compliance guidance on central management and control

The ATO has updated its Practical Compliance Guideline (PCG) 2018/9, which provides practical guidance to assist foreign incorporated companies determine whether they are tax resident under the central management and control (CMC) test. The updated PCG follows the end of the ATO's administrative approach which applied to the transitional period that ended on 30 June 2023. The PCG sets out the circumstances in which the Commissioner will not allocate resources to review a company's residency position under the CMC test.

The Commissioner also acknowledges in the updated PCG that for some foreign incorporated companies there may not be much difference in Australian taxation outcomes whether the company is treated as Australian resident under the CMC test or not. This can be the case for public groups with strong established governance practices and internal tax processes.

Specifically, the updated PCG sets out circumstances where there is a very low risk that the Commissioner would seek to treat a foreign-incorporated company as a resident under the CMC test to provide ongoing certainty for public groups.

The PCG also sets out a three-tier risk assessment framework for other companies. Where a company has relied on the risk framework for an income year, the Commissioner may, during ordinary engagement and assurance activities, seek to verify the risk zone that a company has determined it falls within. Where a company's circumstances are not within this framework, this does not mean there is a high risk of the company being a resident of Australia under the CMC test – however, the Commissioner may engage with the company to understand its circumstances.

The updated PCG indicates that the ATO is taking a broad, risk-based approach to dealing with questions of tax residency for foreign-incorporated companies. Companies and groups with well-established governance processes and procedures, including in relation to tax matters that extend beyond those directly relevant to the question of residency, will likely be categorised as lower risk under this approach.

With the ending of the ATO's transitional compliance approach, and no indication as to whether the government intends to progress the Board of Taxation's proposed changes to the definition of resident for companies, all groups (particularly outbound groups) with foreign-incorporated companies in their structure should consider self-assessing their risk level in accordance with the updated framework in this PCG.

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

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

Administrative

Australia

Mid-Year Economic and Fiscal Outlook 2023–24

Affected taxpayers should continue to monitor developments in respect of public CbCR and the intangibles measures.

The federal government released its mid-year budget update on 13 December, highlighting several issues. First, the government has deferred the start date of the 2022–23 October Budget measure Multinational Tax Integrity Package – improved tax transparency related to public CbCR to 1 July 2024, with further consultation on specific parameters, including the appropriate level of disaggregated reporting.

Second, the government will amend the 2022–23 October Budget measure Multinational Tax Integrity Package – denying deductions for payments relating to intangibles held in low-or no-tax jurisdictions to better target the measure.

The amendments apply to payments made from 1 July 2023.

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

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

Administrative

Colombia

Colombia finalizes Significant Economic Presence rule

On 27 November, Colombia's Ministry of Finance issued Decree 2039 (in Spanish) providing final regulations on the new significant economic presence (SEP) rule enacted as part of tax reform in Colombia in 2022 (Law 2277 of 2022 - in Spanish). The new SEP rule — applicable from 1 January 2024 — establishes a new nexus criterion for tax liability in Colombia applicable to nonresident companies if the nonresident is engaged in the sale of goods to Colombian clients and/or the nonresident is engaged in the provision of 'qualified digital services' to Colombian companies

Two draft decrees have previously been published (the first in June 2023; the second in November 2023), seeking comments and recommendations from stakeholders on the proposed regulation of the SEP concept. The final decree consolidates the provisions of the earlier drafts with certain amendments reflecting the feedback received.

An SEP in Colombia will be triggered if the following criteria are met:

- The nonresident entity has 'a deliberate and systematic interaction' with the users or clients in Colombia; and
- Its gross income from transactions with customers in Colombia is higher than 31,300 tax units (approximately $275,000) during the prior year or the current taxable year. .

A nonresident that falls within the scope of the rule's application may elect taxation under one of two mechanisms: 10% withholding on the total amount paid (i.e., gross income) or 3% rate over the gross income declared on a tax return (in this case the 10% withholding tax would not apply).

Fore more, please see our PwC Insight.

Taxpayers should evaluate their transactions with Colombian individuals and entities in light of the SEP regulatory framework. They should consider its potential impact in their SEP analyses, including the potential obligation to register.

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

Carlos Miguel Chaparro
Colombia
+57 (1) 634-0555
carlos.chaparro@pwc.com

Administrative

OECD

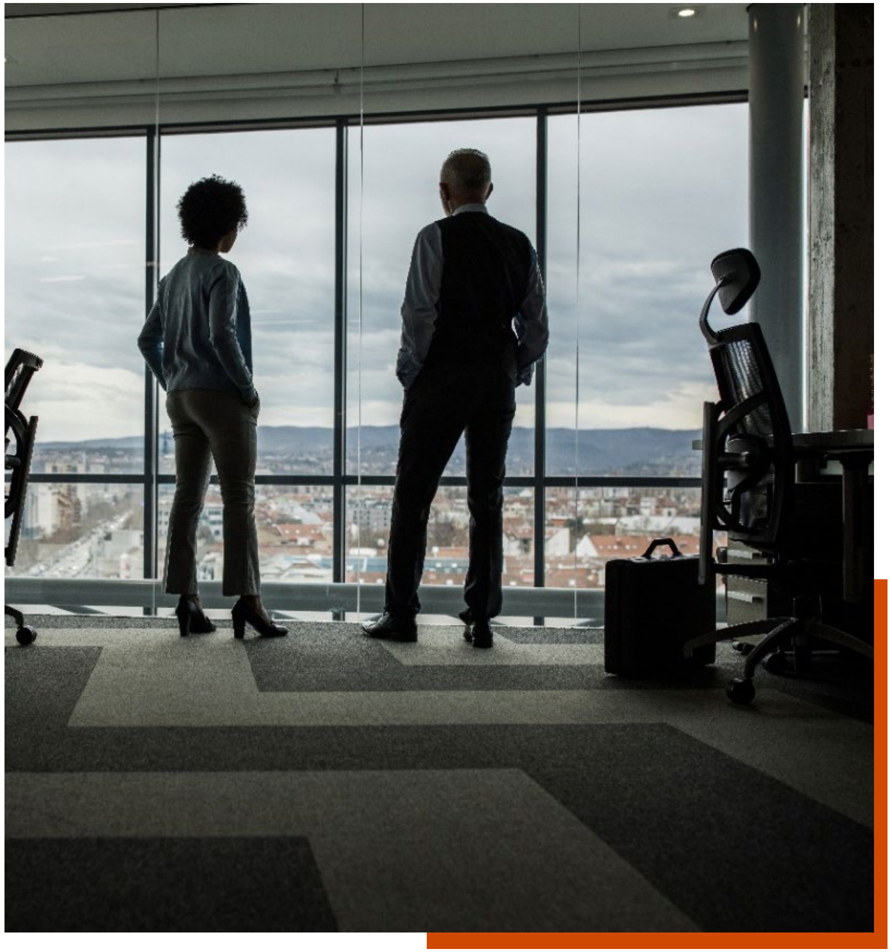
OECD releases further Pillar Two GloBE Administrative Guidance and timeline update for Pillar One

The OECD Secretariat published the latest set of Administrative Guidance on the Global Anti-Base Erosion Model Rules (GloBE rules) of Pillar Two on 18 December 2023 intended to clarify the operation of the GloBE rules. This is the third set of administrative guidance, and along with the guidance released in February and July 2023 it will be incorporated into a revised version of the GloBE Commentary, which, according to the OECD, will be released in 2024. This latest release is the final set of guidance supplementing and clarifying the Pillar Two rules before they come into effect in many countries from 1 January 2024. Further guidance is expected in 2024 across a range of issues.

Concerning Amount A of Pillar One, a statement was also published noting that "members of the Inclusive Framework (IF) reaffirm their commitment to achieve a consensus-based solution and to finalise the text of the Multilateral Convention (MLC) by the end of March 2024, with a view to hold a signing ceremony by the end of June 2024." In addition to recognizing that work to resolve the outstanding issues on the text of the MLC will go on into 2024, the IF statement mentions that this includes work to extend the standstill on Digital Services Taxes (DSTs) and other relevant similar measures (which is currently set to expire at the end of this year).

For more information see our PwC Tax Policy Alert.

The key provision in the Guidance relates to new anti-arbitrage rules for the Transitional CbCR Safe Harbour (CbCR Safe Harbour). The new provisions are complex and will require detailed study. However, they appear to contain some significant new restrictions on the use of the safe harbour, which arguably go beyond what is necessary and are likely to impact structures that are commonplace today and not previously considered to be abusive.



Will Morris
Washington, DC
+1 202 213 2372
william.h.morris@pwc.com

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

Administrative

United States

IRS releases CAMT guidance for certain CFC distributions and additional rules for determining an AFS

The IRS on 15 December released Notice 2024-10, providing additional guidance on the application of the corporate alternative minimum tax (CAMT), which is effective for tax years beginning after 31 December 2022.

The Notice provides interim guidance on several issues, including additional rules for determining the adjusted financial statement income (AFSI) of a US Shareholder when a controlled foreign corporation (CFC) pays a dividend to the US Shareholder or another CFC. The Notice also modifies and clarifies the interim guidance provided in Notice 2023-64 regarding the applicable financial statement (AFS) to be used by members of a tax consolidated group.

For more information, please see our PwC Insight.

As the CAMT is effective for tax years beginning after 31 December 2022, taxpayers potentially subject to the CAMT should consider how guidance in the Notice may impact previous positions that may have been taken based on a reasonable interpretation of the statute and prior interim guidance. Treasury and the IRS have indicated an intent to issue proposed regulations in early 2024 consistent with the interim guidance provided in, and modified and clarified by, the Notice.

Comments are due by 15 January 2024. Although this provides a short window, taxpayers should consider submitting comments including whether an exclusion or dividends-received deduction for all CFC earnings should be provided. Comments also could recommend that Treasury and the IRS continue to follow the general approach taken in the Notice of relying on general tax principles (as opposed to a separate, CAMT-specific framework) for purposes of determining when CFC dividends should be included in AFSI.

Nita Asher
Washington, DC
+1 (202) 870-2462
Nita.ashed@pwc.com

Aaron Junge
Washington, DC
+1 (202) 739-1053
Aaron.junge@pwc.com

Administrative

United States

Treasury releases guidance on the GloBE rules and foreign tax credit

Treasury and the IRS on 11 December released Notice 2023-80, announcing their intention to issue proposed regulations to address the application of the foreign tax credit (FTC) and related rules and the dual consolidated loss (DCL) rules to certain types of taxes described in the GloBE Model Rules. The Notice also extends and modifies the temporary relief described in Notice 2023-55 for determining whether a foreign tax is eligible for an FTC under Sections 901 and 903. The Notice addresses the application of the temporary relief with respect to partnerships and their partners.

Comments on the guidance provided on the GloBE Model Rules and the FTC and the GloBE Model Rules and DCLs are due by 9 February 2024.

For more, please see our PwC Tax Insight.

Notice 2023-80 provides that a taxpayer may neither claim an FTC nor a deduction for a 'final Top-Up Tax' if that taxpayer's US federal tax liability would figure into the determination of the final Top-Up Tax liability. This rule was apparently motivated by a desire to avoid recursive calculations under the Pillar Two and US FTC rules, but raises questions about its statutory origins that are unanswered in the Notice.

Wade Sutton
United States
+1 202 657-7461
wade.sutton@pwc.com

David Sotos
United States
+1 (202) 739-1053
david.sotos@pwc.com

Judicial

EU

CJEU rules that the benefit of Art. 8(2) of the Tax Merger Directive cannot be conditional upon additional requirements not laid down in the Directive itself

On 16 November 2023, the Court of Justice of the European Union (CJEU) ruled that the application of Article 8(2) of the Tax Merger Directive (the Directive) could not depend on requirements that do not stem from the Directive (GE Infrastructure Hungary Holding, C-318/22). Article 8(2) of the Directive stipulates that in the case of a partial division that falls within the scope of the Directive, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits, or capital gains of that shareholder. See our PwC EUDTG Alert for more.

If EU Member States do not distinguish between domestic and cross-border situations when they transpose the Tax Merger Directive, then the CJEU can interpret the implementing national rules irrespective of whether the situation falls within the scope of that Directive in order to ensure the consistent application of EU law.

Balint Gombkoto
Hungary
+36 70 370 1675
balint.gombkoto@pwc.com

Gergely Szimler
Hungary
+35 70 685 0031
gergo.szimler@pwc.com

Judicial

France

Non deductibility in France of punitive damages pronounced by a foreign court

In a recent decision, the French Administrative Supreme Court ruled on the question of whether or not punitive damages pronounced by a foreign court in application of a breach of their foreign legal obligation can be deducted from a company's taxable income in France. The Court held that under French rules of tax deductibility, penalties or other sanctions are not deductible from tax profits.

In the case at hand, a US court ordered a French company to pay punitive damages to a former supplier, following a commercial dispute. The French tax authorities challenged the company's deduction of this amount, and an administrative court of appeal upheld the company's position.

Unlike the appellate court, which analyzed these punitive damages as a supplement to the compensation awarded to the victim, the French Administrative Supreme Court viewed the compensation paid as a penalty, as long as the penalty is compatible with the French international order public. The Court ruled that these penalties were intended to deter repeated behavior similar to the actions that caused the damage, As such, the Court considered the payments as an addition to compensatory damages paid to redress the loss suffered. Under this rationale, the Court found that such penalty payments were not deductible for French tax purposes.

This decision underlines the need for companies to ensure that penalties issued by a foreign court for breaching a foreign legal obligation are tax deductible for French tax purposes.

Guilhem Calzas
Paris
+33 (0)1 56 57 15 40
guilhem.calzas@avocats.pwc.com

Léonie Rouxel
Paris
+35 70 685 0031
leonie.rouxel@avocats.pwc.com

Judicial

EU/Luxembourg

CJEU annuls EC decision that certain Luxembourg tax rulings were State aid

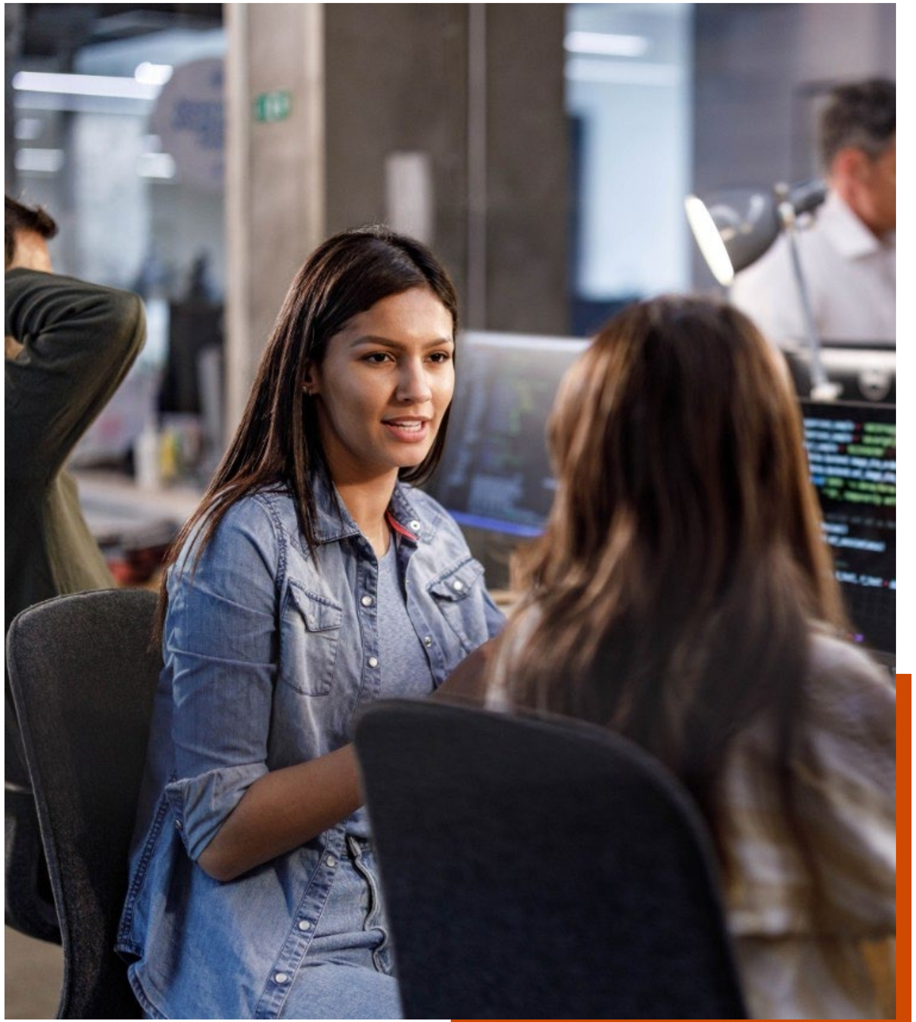
The Court of Justice of the European Union (CJEU) on December 5 ruled that Luxembourg did not grant State aid to Engie, a French company. Luxembourg and Engie had appealed the 12 May 2021 decision of the General Court of the European Union (GC), which had concluded that Luxembourg had granted State aid to Engie. The CJEU ruled that the European Commission (EC) had erred in its State aid analysis of the tax rulings granted to the Engie group.

In addition, the CJEU ruled that both the GC and the EC erred in considering that the administrative practice of the Luxembourg tax authorities with regard to the abuse of law provision was not to be taken into account, and that the Luxembourg tax authorities therefore were entitled to not apply the abuse of law provisions in this case in accordance with their own administrative practice.

The CJEU judgment reiterates that the foundational aspect of a selectivity examination under EU State aid rules is the national law as defined by the respective Member State. The EC is not permitted to introduce general principles into that examination.

For more informaion please see the recent PwC Insight.

While CJEU judgments are final, this is an individual case directly impacting only this taxpayer. Nevertheless, State aid remains dynamic, and judgments in other cases should be expected. Companies should track these judgments and analyze the impact on their current or planned operations.



Alina Macovei
Luxembourg
+352 49 48 48 3122
alina.macovei@pwc.lu

Lilia Samaï
Luxembourg
+352 49 48 48 3408
lilia.samai@pwc.lu

Judicial

Luxembourg

EU Court of Justice rules that Luxembourg did not grant State aid to Amazon

The Court of Justice of the European Union (CJEU) on 14 December rendered its judgment in the European Commission's (EC's) appeal against the 12 May 2021 General Court of the European Union (GC) judgment in Luxembourg and Amazon v Commission . In sum, the CJEU upheld the GC judgment despite finding errors in the GC's reasoning. According to the CJEU, the European Commission's (EC) decision had to be annulled in any event because of the incorrect determination of the reference system, rather than for the reasons given by the GC.

The present CJEU judgment reiterates that the foundational aspect of any selectivity examination under EU State aid rules is the national law as defined by the respective EU Member State. Consequently, the EC is not permitted to introduce external elements or general principles into the selectivity analysis. In this regard, the judgment aligns with the earlier Grand Chamber judgment of the CJEU on the Engie and FIAT cases.

For more information, read our PwC Insight

While CJEU judgments are final, this is an individual case directly impacting only this taxpayer. Nevertheless, State aid remains dynamic, and judgments in other cases should be expected. Companies should track these judgments and analyze the impact on their current or planned operations.

Alina Macovei
Luxembourg
+352 49 48 48 3122
alina.macovei@pwc.lu

Fabien Hautier
Luxembourg
+352 49 48 48 3004
fabien.hautier@pwc.lu

Treaties

Australia

Australia-Iceland tax treaty in force

The new tax treaty between Australia and Iceland is now in force. The treaty, which came into effect on 8 November 2023, will apply in Australia for withholding tax purposes on the relevant Australian income earned from 1 January 2024, fringe benefits provided from 1 April and to any other Australian taxes on income earned from 1 July 2024. In Iceland, all aspects of the treaty will take effect from 1 January 2024.

The tax treaty will make it easier for Australian companies to access capital and export to Iceland through reduced withholding tax rates. The treaty will also provide more certainty and reduced compliance costs for Australians and Australian businesses who earn income in Australia and in Iceland.

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

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

Treaties

Mexico

Technical Assistance

Based on recent jurisprudence and other isolated decrees issued by the Mexican Tax Court, technical assistance payments could entail a withholding tax when paid by Mexican entities to Dutch entities and entities in other foreign jurisdictions, including the United States.

The Court issued an opinion in June 2023, holding that technical assistance payments made from Mexican entities to Netherland entities should not be considered business profits according to the tax treaty signed between Mexico and the Netherlands, and therefore a withholding tax should apply, as royalties, based on domestic law.

The Court analyzed article 7 and concluded that technical assistance is not included in the article. If the Mexican payor does not withhold tax, the expense is nondeductible for income tax purposes.

This treatment also would in fact apply to technical assistance payments made from Mexican entities to other jurisdictions, including US entities since most of the treaties signed by Mexico includes similar language to article 7 in the Netherlands Treaty.

This interpretation has not been confirmed by upper judicial courts; therefore, it still is possible — from a legal and constitutional perspective — to sustain that technical assistance falls within the meaning and context of article 7. Moreover, the mutual agreement process provided in tax treaties could be opened proactively or reactively (derived from an audit), to challenge the interpretation laid out in the jurisprudence.

Companies should consider analyzing technical assistance payments to strengthen their position and to develop a robust defense file. The Mexican tax authorities may likely reject deductions and claim taxes based upon the above interpretation.

Fernando Lorenzo Salazar
Mexico
+52 55 39661817
fernando.lorenzo@pwc.com

Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	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

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

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

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

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with over 276,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.