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International Tax News

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Launch

pwc

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

Canada

2020 fall economic statement proposes DST, anti-avoidance rule changes

The Canadian federal government, on November 30, presented the 2020 federal fall economic statement for the coming year. The economic statement did not contain any proposed changes to Canadian corporate tax rates.

The government proposed a tax on certain corporations that provide digital services in Canada, effective January 1, 2022. This tax would apply until an acceptable common approach among the international community (led by the OECD) comes into effect. Additional details are expected in the 2021 federal budget.

Furthermore, the government announced plans to modernize Canada's anti-avoidance rules, including the general anti-avoidance rule.

The economic statement does not contain new measures relating to the BEPS project (such as hybrid mismatch rules), or introduce new interest deduction limitations (such as a 30% of EBITDA limitation).

For more details on the 2020 fall economic statement, see our **PwC Insight**.

PwC observation:

The government did not provide details on the proposed digital services tax or the modifications to Canada's anti-avoidance rules. As a result, taxpayers will need to wait for additional guidance or legislation in order to understand how these measures will impact their business.

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Cyprus

Cyprus addresses aggressive tax planning via unilateral measures

The Cyprus Council of Ministers recently approved the 2021 Cyprus draft budget. The draft budget reiterates Cyprus' commitment and willingness to cooperate in all appropriate fora for taxation, with respect to the relevant competencies under its tax treaties and in light of the relevant voting procedures that apply to such matters. In this respect Cyprus announced two unilateral tax measures to address aggressive tax planning.

1. introduction of withholding tax on dividend, interest and royalty payments to countries on Annex I of the EU list of non-cooperative jurisdictions on tax matters (commonly referred to as the EU 'blacklist').
2. introduction of a corporate tax residency test based on incorporation, in addition to the existing 'management and control' test.

PwC observation:

The draft bills for introducing the above measures into the Cyprus tax law are currently with the Cyprus Attorney General office for legal vetting, after which they will be submitted to the Cyprus House of Representatives. Multinational entities should consider whether and how the proposed withholding tax corporate residency test will impact their business operations.

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Spain

DAC6 transposition in process

The Spanish Senate, on December 10, 2020, approved the General Tax Act Bill, which partially transposes Directive 2011/16/EU with respect to mandatory automatic exchange of tax information related to reportable cross-border arrangements ('DAC6'). Publication of the bill in the Spanish Official Gazette is expected soon. Transposition of DAC6 into Spanish law requires amending the General Tax Act and the General Regulation on the steps and procedures of tax management and audit. These amendments currently are in legislative process. As a general rule, the bill follows the European Directive.

PwC observation:

DAC6 transposition has not occurred and is therefore not yet in force in Spain. However, in principle the reporting dates are still those agreed at the European level, i.e., as of January 1, 2021, except for arrangements within the transitory period of June 25, 2018 to December 31, 2019. There the reporting deadline is February 28, 2021. As a result, Spanish entities must begin preparing their DAC6 reporting obligation.

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Spain

Spanish legislative updates

2021 Budget bill

On December 31, Law 11/2020 that approves the 2021 Budget was published in the Spanish Official Gazette. The main amendment in the bill is the reduction of the Spanish participation exemption for dividends and capital gains from 100% to 95%. This would create an effective 1.25% tax rate on those dividends and capital gains.

Draft bill to transpose ATAD2

The draft bill that amends the Spanish Corporate Income Tax Act and the Spanish Non-Resident Income Tax Act in connection with hybrid instruments was published on November 30 for public consultation. The draft bill, which transposes the Directive (EU) 2017/952 of May 29, 2017 (amending Directive (EU) 2016/1164 with regard to hybrid mismatches with third countries), was open to public comment until December 23, 2020.

Under the draft bill, the following expenses will not be tax deductible (among other cases):

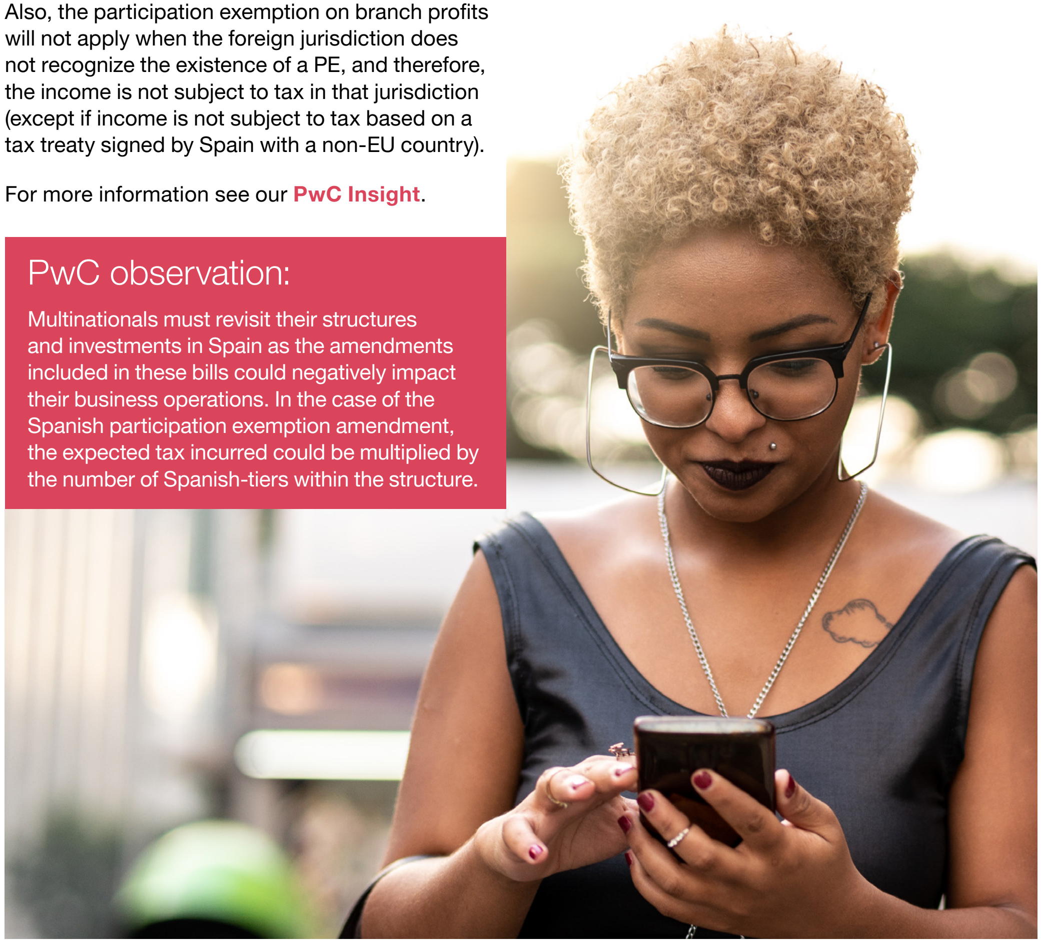
- expenses from transactions with non-resident related parties that, as a consequence of a different characterization of the expense or the transaction, do not generate income in a reasonable time, or generate exempt income or income subject to a tax credit or subject to a nominal tax rate below 10%. ‘Reasonable time’ refers to the fiscal year that starts 12 months before the end of the fiscal year in which the taxpayer generated the expense
- expenses from transactions with non-resident related parties that, as a consequence of a different characterization of the taxpayer in the country of the non-resident party, do not generate income (non-deductible only up to the amount that cannot be offset with income subject to tax in Spain or a different country)
- expenses from transactions with non-resident related parties that, as a consequence of a different characterization of the taxpayer in the country of the non-resident party or in the country of its investor or member, do not generate income
- expenses or losses from transactions with non-resident related parties that, as a consequence of a different characterization, are tax deductible expenses or losses at the level of the related parties (non-deductible only up to the amount that cannot be offset with income subject to tax in Spain or a different country)
- expenses or losses corresponding to transactions executed by a related party’s permanent establishment (PE) when, as a consequence of a different income attribution rule between the PE and its head office, do not generate any income, or generate income exempt or subject to a tax credit

Also, the participation exemption on branch profits will not apply when the foreign jurisdiction does not recognize the existence of a PE, and therefore, the income is not subject to tax in that jurisdiction (except if income is not subject to tax based on a tax treaty signed by Spain with a non-EU country).

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

PwC observation:

Multinationals must revisit their structures and investments in Spain as the amendments included in these bills could negatively impact their business operations. In the case of the Spanish participation exemption amendment, the expected tax incurred could be multiplied by the number of Spanish-tiers within the structure.



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Administrative

Australia

Company losses: ATO comments on COVID-19 impacts on business continuity test

A company seeking to utilize tax losses from a prior year needs to satisfy either the continuity of ownership test (COT) or, failing that, the business continuity test (BCT). The BCT consists of the same business test (SBT) and, for losses generated in income years commencing on or after July 1, 2015, the similar business test (SiBT).

The Australian Taxation Office (ATO) acknowledged that COVID-19 significantly impacted businesses, and, as a result, companies generating losses or making business operational changes that impact their ability to utilize prior year losses. The ATO confirms that a company will not fail the CBT or SiBT merely because it has:

- received JobKeeper payments
- reduced the scale of its business, even if its activities have been reduced to a minimum or are almost entirely suspended, or suspended or temporarily closed its business solely because of temporary adversity, or due to reasons beyond its control and which it intends to overcome.

PwC observation:

Businesses that have reduced the scale of their business, or suspended or temporarily closed due to the pandemic effects will not, without more, fail the CBT or SiBT test. However, generally, a company that has completely closed its business with no intention to resume will fail the BCT.

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Australia

Updated ATO guidance on permanent establishments in Australia due to COVID-19

Earlier this year, the ATO established a ‘safe harbor’ compliance approach with respect to the impact of COVID-19 related travel restrictions in the context of foreign companies and potential permanent establishments (PEs) in Australia.

Under this ATO compliance approach, travel restrictions would not, by and of themselves, result in the company having an Australian PE when it meets certain conditions. The ATO has extended this compliance approach until January 31, 2021 with two additional criteria:

- employees temporarily in Australia will relocate overseas as soon as practicable following the relaxation of international travel restrictions, and
- the entity has not recognized that employees in Australia created a PE or generated Australian-source income in Australia for the purpose of another jurisdiction’s tax laws.

PwC observation:

The impact of COVID-19 should not, by itself, result in a foreign company having an Australian PE. However companies should note the additional criteria and also that the safe harbor has been extended only through January 31, 2021.

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Chile

New Chilean regulations on indirect Chilean asset transfers may increase reporting obligations

Chilean Tax Authorities issued Resolution N°119/2020 on September 29, amending the reporting requirements for indirect transfers of Chilean assets beginning January 1, 2021, including for shares in a Chilean company, movable or immovable property located in Chile, and Chilean permanent establishments (i.e.,1 Form N°1921). The new requirements may increase compliance requirements for companies involved in the underlying transactions.

Resolution N°119/2020, requires that all involved parties (i.e., seller, buyer, and Chilean entity) must report indirect transfers of Chilean assets before the last business day of the month following the month in which the transaction occurs. The former regulations relieved the buyer and underlying Chilean entity from such obligations when the seller filed Form N°1921.

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

PwC observation:

Effective January 1, 2021, all parties that take part in transactions involving an indirect transfer of Chilean assets should consider the more burdensome filing requirements, including the need to obtain a Chilean Tax ID and appoint a representative in Chile.

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Spain

Spain releases draft digital services tax regulations

The Spanish digital services tax (DST) draft regulations were published on the Spanish Tax Authorities' website on December 3, 2020. The document was subject to public comments until December 16. The text contains certain formalities cited by Spanish law, as well as clarifications, including:

- Clarification of the place where the taxable event is deemed to occur. The location of the users' devices can be determined using alternative methods to the IP address, such as geolocation technology.
- Taxpayers are required to maintain, at the disposal of the Spanish Tax Authorities, a register of transactions subject to the DST, as well as a descriptive report. This report must include the processes, methods, algorithms, and technologies used to analyse the DST triggering event, the location of services, the calculation of the income, etc.
- Taxpayers must specifically register themselves before the Spanish Tax Authorities as DST taxpayers.

Once the Spanish tax authorities evaluate comments made by different stakeholders, new regulations would, in principle, be included.

The Spanish law (No. 4, dated October 15, 2020), which entered into force January 16, 2021, will subject to tax any revenues received from the supply of certain digital services (i.e., online publicity, online intermediation, and data transfer), with the intervention of a user located in Spain, regardless of whether the user paid consideration for the generation of revenues from those services.

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

PwC observation:

The DST tax returns must be filed on a quarterly basis. Multinationals with operations in Spain should analyse whether any of their operations fall within the definition of digital services and thus, whether the company must comply with the DST's formal obligations and tax liabilities.

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Judicial

France

Ground-breaking court decision regarding permanent establishments

Background

An Irish company entered into a services agreement with a French company for the performance of digital marketing and administrative services. In a March 1, 2018 decision, the Paris administrative court of appeal ruled that the company could not be considered a dependent agent of the Irish company since it was not legally authorized to conclude contracts in the name of the dependent agent.

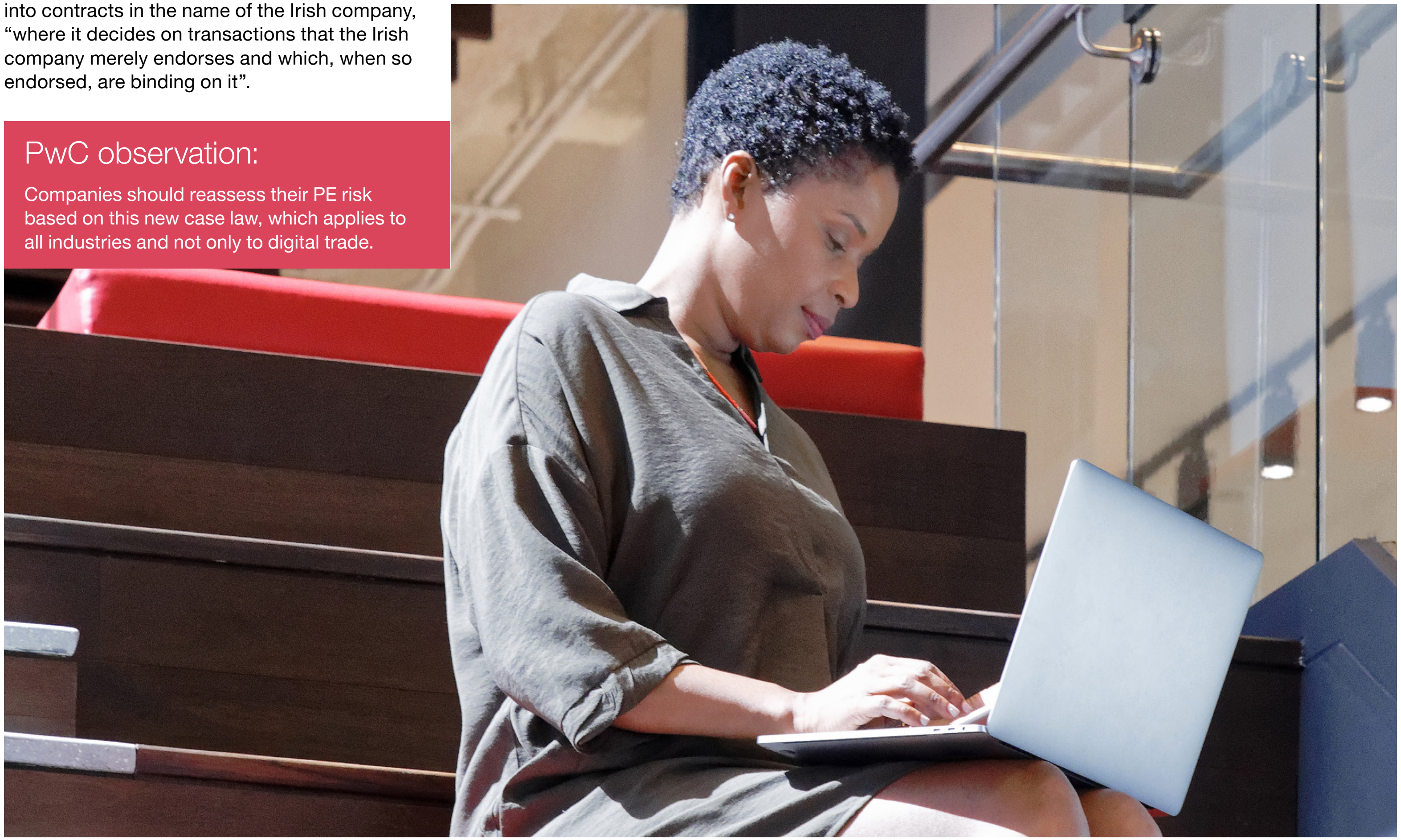
Decision

In a December 11, 2020 decision, the French administrative supreme court overruled the 2019 decision. The Court considered that the 1968 France-Ireland tax treaty, and in particular its provisions regarding the notion of a dependent agent, should be interpreted by reference to the most recent OECD model treaty clause comments. This position is contrary to well-established case law, which only allowed recourse to the comments existing at the signature date of the treaty being interpreted.

The Supreme court reasoned that a permanent establishment can be characterized by a dependent agent habitually exercising in France powers enabling it to enter a commercial relationship. According to the Supreme Court, a French company must be regarded as exercising such powers even if it does not formally enter into contracts in the name of the Irish company, "where it decides on transactions that the Irish company merely endorses and which, when so endorsed, are binding on it".

PwC observation:

Companies should reassess their PE risk based on this new case law, which applies to all industries and not only to digital trade.



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EU/OECD

Cyprus

EU Code of Conduct Group rules Cyprus notional interest deduction is 'not harmful'

The EU Code of Conduct Group (Business Taxation) requires EU Member States to refrain from introducing any new harmful tax measures ('Standstill') and amend any laws or practices deemed to be harmful with respect to the Group's principles ('Rollback'). For purposes of identifying such harmful measures the Group set criteria against which to test any potentially harmful measure.

Since 2018, one of the EU Group's top priorities has been monitoring and reviewing all EU Member States' notional interest deduction (NID) regimes from a harmful tax perspective. As part of the Cyprus NID review, the EU Group recommended certain amendments to the Cyprus NID regime. These recommendations were enacted by Cyprus earlier this year.

The Group published in its November 20, 2020 report to the ECOFIN the Group's 'not harmful' decision on the Cyprus NID as part of its Standstill review process. The ECOFIN approved the Group's report on November 27, 2020.

PwC observation:

This is another positive development for the Cyprus NID regime. Taxpayers should consider whether they may further benefit from the NID regime by introducing additional equity or assets in Cyprus tax-resident companies.

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Treaties

Spain

Update on Spanish tax treaties

Multilateral Instrument

The Spanish Senate, on December 2, 2020 approved for ratification the OECD Multilateral Instrument (MLI), signed by Spain on June 7, 2017. At the time of signature, Spain submitted its provisional list of reservations and notifications. Among other measures, Spain opted to individually activate the treaties that the MLI amends.

Tax treaty between Spain and Azerbaijan

The tax treaty between Spain and Azerbaijan, signed on April 23, 2014, entered into force on January 13, 2021. The most relevant provisions in the new tax treaty include:

- The withholding tax on dividends is capped at (i) 5% if the beneficial owner directly owns at least 25% of the shares of the distributing company and has invested more than 250,000 euros in that company, and (ii) 10% in other cases.
- Interest can be subject to withholding tax, capped at an 8% rate.
- The withholding tax rate on royalties is capped at 10% (5% for software, patent, trademarks or industrial, commercial or scientific experience).
- Capital gains derived from the sale of land-rich entities could be subject to tax in the source state.

Tax treaty between Spain and Romania

The tax treaty between Spain and Romania, signed on October 18, 2017, entered into force January 14, 2021. The most important provisions in the new tax treaty, which will replace the tax agreement that was signed in 1979 and has been in effect since January 1, 1980, include:

- No withholding tax on dividends distributed to a pension plan or to a company that holds directly or indirectly, and during more than 12 months, at least 10% of the capital of the distributing entity. Otherwise, the withholding tax rate would be capped at 5%.
- Generally, interest and royalties would be subject to withholding tax rate capped at 3%.
- Capital gains derived from the sale of land-rich entities would be subject to tax in the source state. For such purposes, real estate used for ordinary economic activities are not taken into account.

Tax treaty between Spain and Cape Verde

The first tax treaty between Spain and Cape Verde, signed June 5, 2017, will enter into force January 7, 2021. The tax treaty's main provisions include:

- No withholding tax on dividends if the beneficial owner directly owns at least 25% of the shares of the distributing company. Otherwise, a general rate of 10% would be triggered.
- The withholding tax rate on interests and royalties is capped at 5%.
- Capital gains derived from the sale of land-rich entities would be subject to tax in the source state.

Tax treaty between Spain and Japan

On December 2, 2020, the Spanish Senate approved for ratification, the pending tax treaty between Spain and Japan. This tax treaty was signed in Madrid on October 16, 2018, and will replace the existing agreement, which was signed in Madrid on February 13,1974 and has been effective since 1975. Once ratified, the new tax treaty will enter into force three months after the exchange of ratifications instruments.

The most important provisions in the new tax treaty include:

- 0% withholding tax on dividends distributed to (i) a company, being the beneficial owner, that holds directly or indirectly and during more than 12 months, at least 10% of the voting power of the company or (ii) to a pension plan. In all other cases, the withholding tax is capped to 5%.
- However, if the dividends are deductible in the payer´s state of residence, the tax may not exceed 10%.
- Regarding interests and royalties, as a general rule those are taxable only in the beneficial owner's state of residence.
- Capital gains derived from the sale of land-rich entities would be subject to tax in the source state.

Tax treaty between Spain and China

On December 2, 2020 the Spanish Senate approved for ratification the new tax treaty between Spain and China (signed in November 2018). This treaty will replace the previous tax treaty signed in November 1990 and entered into force in May 1992. Once ratified, the new tax treaty will enter into force three months after the exchange of ratifications instruments.

The most important provisions of the new treaty include:

- 5% withholding tax on dividends distributed to a company that holds directly and during more than 12 months, at least 25% of the shares of the distributing company. In all other cases, the withholding tax is capped at 10%. As an exception, an exemption would apply to dividends distributed to political divisions, Central Banks, or any state-owned entities.
- Generally, interest and royalties would be subject to withholding tax, capped at 10%.
- Capital gains derived from land-rich entities, or from shares in companies in which the seller held, directly or indirectly, at least 25% during the year before the sale, would be subject to tax in the source state. Special rules would apply to capital gains from the sale of shares listed in a stock exchange market.

Tax treaty between Spain and Belarus

The tax treaty signed in June 2017 was approved for ratification on December 2, 2020 by the Spanish Senate. This will replace the tax agreement signed in 1985 between Spain and the former USSR. Once ratified, the treaty would enter into force on the first day of the third month after the exchange of ratification instruments.

The most important provisions in the new tax treaty, include:

- Dividends are exempt for direct holdings of at least 10% if the value of such interest amounts to at least €1 million. A 5% rate would apply if a beneficial owner directly holds at least 10% in the capital of the distributing entity. In other cases, a 10% rate would apply.
- As a general rule, interests and royalties are subject to a 5% withholding tax rate. Certain interest payments could be exempt.
- Capital gains derived from land-rich entities would be subject to tax in the source state.

PwC observation:

Spain has opted to move a number of its tax treaties and protocols toward enforcement. These agreements should further develop international relations and provide more tax certainty for companies interested in investing in Spain.

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Glossary

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

Acronym	Definition
EU	European Union
MNE	Multinational enterprise
NID	notionial interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

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Worldwide Tax Summaries:
Corporate taxes

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