International Tax News

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Start

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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.

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In this issue

Legislation

Argentina

Complementary information regime for international transactions

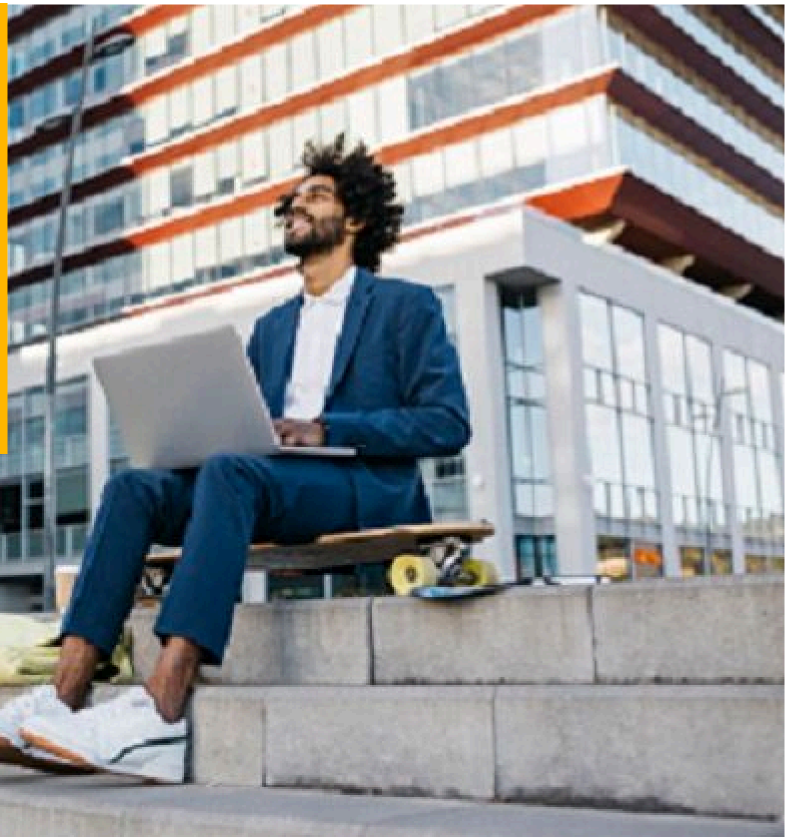
General Resolution RG (AFIP) 5306/2022 was published in the Argentinian Official Gazette on 22 December 2022, repealing General Resolution RG (AFIP) 4838/2020, which regulated the temporarily suspended 'Tax Planning Reporting Regime.' RG 5306/2022 replaced RG 4838/2020's regime with a new regime called 'Complementary Information Regime for International Transactions,' which requires taxpayers to report transactions with foreign related parties and other parties domiciled in non-cooperative countries or countries with low or no taxation. RG 5306 applies to fiscal years ending on or after 1 August 2022.

RG 4838/2020 created an informative regime applicable to domestic and international tax planning strategies requiring taxpayers and their tax advisors to report 'national tax planning,' as well as 'international tax planning.'

After severe questioning, court decisions, and two temporary suspensions (through RG (AFIP) 5254/2022 and 5278/2022), the tax authorities issued RG 5306/2022 repealing RG 4838/2020 and replacing the reporting regime with a new information regime only applicable to certain cross-border transactions. Domestic plannings are not within the scope of the new regime. This new regime does not apply to medium and small-size companies as defined by Resolution 220/2019 (e.g., companies that provide services whose annual sales do not exceed ARS 1,438,900,000, approx. USD 7.8m).

Under the new regime, taxpayers must report transactions entered into with certain related parties located abroad or non-related parties domiciled, organized, or located in non-cooperative jurisdictions or jurisdictions with low or no tax. A non-cooperative and low or no tax jurisdictions' list is published and updated by the tax authorities periodically. Advisors are no longer required to report.

Although the new information regime provides additional clarity regarding the range of potentially reportable operations and the reporting entities, there are still aspects that require further clarification (e.g., whether the indirect transfer of Argentine assets must be disclosed, and which entity must report the transaction). Multinational entities with offshore operations must carefully analyze the new regulations to determine the need to comply with the regime at the time of filing their annual income tax return.



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Legislation

Colombia

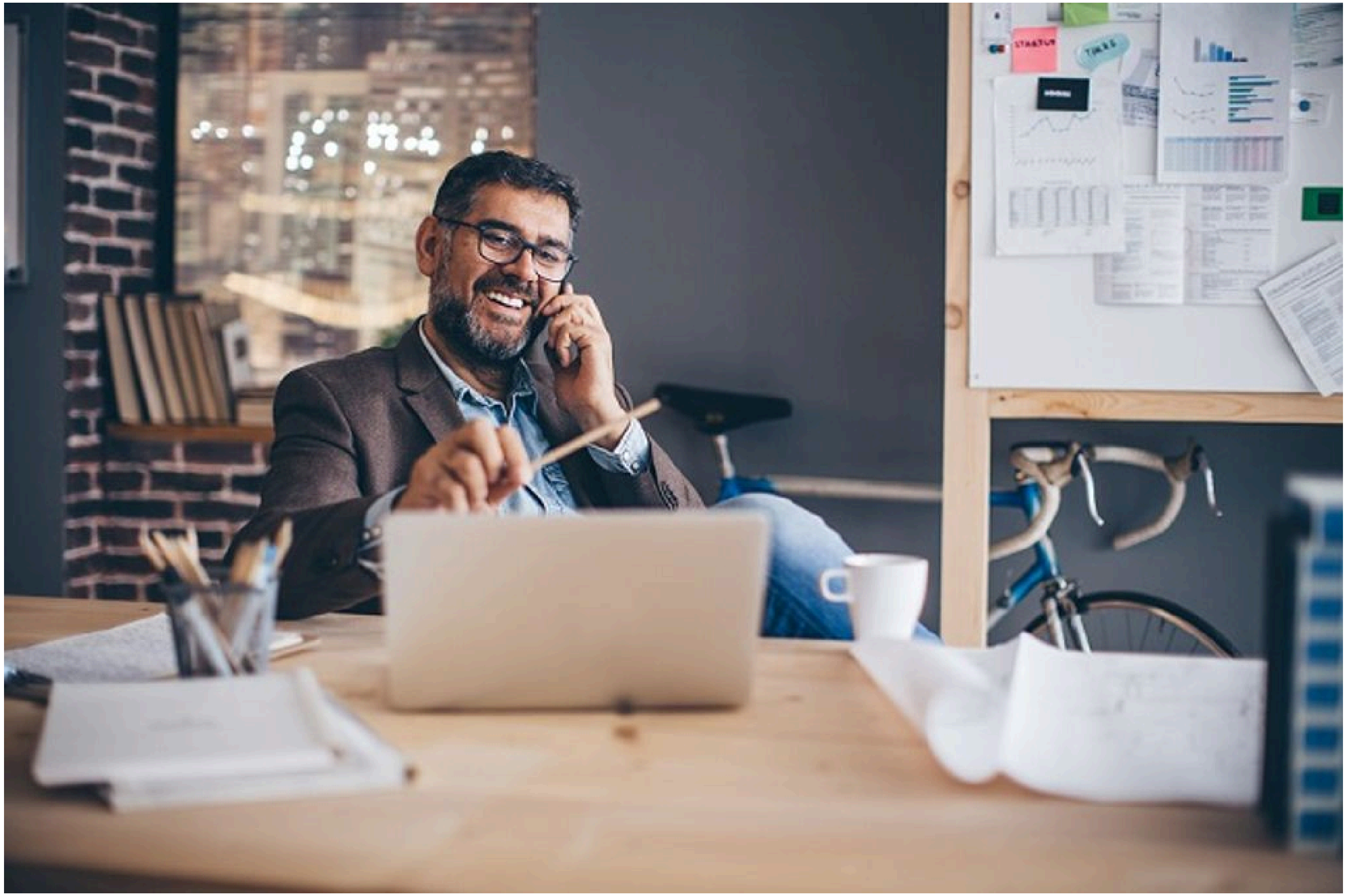
Colombia passes major tax reform effective 1 January

The Colombian Executive Branch enacted the 'Tax Reform Law' (Law 2277) on 13 December. The Colombian Congress had passed the legislation in early December. The new law becomes effective 1 January 2023.

The Tax Reform Law includes significant changes to the current tax regime applicable to resident and nonresident companies. While it keeps the general CIT rate at 35%, it also introduces a 15% Minimum Effective Tax Rate (METR) that applies to Colombian-resident corporations (with a few industry-specific exceptions). This new requirement reflects the rate proposed by the OECD's Pillar Two initiative, but when viewed in conjunction with other Tax Reform Law changes appears to have different and, sometimes, broader goals. Subject to a formulaic system, in-scope taxpayers will be required to true-up the METR to 15%.

Read the full Tax Insight here.

Taxpayers, both resident and non-resident with presence in Colombia should evaluate the changes introduced by the reform and assess potential impact to their local operations and repatriation strategies.



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Legislation

Ecuador

Ecuador tax reform

Ecuador published regulatory changes on 10 November 2022. These changes include:

Deductibility limit on related party transactions

Expense deductibility of royalties as well as administrative, technical assistance and consultancy services, incurred with related parties, will be limited to 5% of taxable income. Entities in a preoperative stage will have a deductibility limit of 10% of total assets. Certain exceptions may apply including: i) transactions with local related parties if the same corporate income tax (CIT) rate is applied by both entities; ii) transactions do not exceed approx. USD 226,000 during the year; or iii) the entity only provides technical services to third parties and its operating margin is equal or higher than 7.5%. A higher deductibility limit through an Advanced Pricing Agreement (APA) may be requested of the Ecuador IRS.

Beneficial owners annex expected to enter into force at the end of 2024

In general, beneficial owners will be: i) the individuals who directly or indirectly have at least 10% of the share capital; or ii) individuals that have the power to designate or remove the management or supervisory board, or have power in financial, operational, and/or commercial decisions, or that exercise another form of control of the legal entity.

Foreign CIT credit

The Ecuador IRS published conditions for using a tax credit to offset CIT paid in other jurisdictions in order to eliminate double taxation, notwithstanding the application of any tax agreements between Ecuador and other jursodoctions.

Tax haven list updated

Several countries and preferential tax regimes are removed from the list of tax havens by the Ecuador IRS: Svalbard Archipelago, Gibraltar, Luxembourg, Isle of Man, Channel Island, Liechtenstein, Albania, Cyprus, Malta, San Marino, Ostrava, and Ireland.

Multinationals with Ecuadorian subsidiaries or activites in Ecuador should evaluate how they might be impacted by changes to the deductibility limit, beneficial owner definition, foreign tax credit, and tax haven list.

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Legislation

Italy

Italy approves 2023 Budget Law

Some of the most signifcant tax measures included in the 2023 Italian Budget Law:

- Expenses arising from transactions with entities resident or located in non-cooperative tax jurisdictions are deductible up to their fair market value, provided that the transaction actually occurs. This threshold does not apply if the transaction is executed in the economic interest of the purchaser and actually occurred.
- A temporary optional regime provides for a 9% (or 6%) substitute tax on profits and retained earnings realized until 2021 and not distributed prior to 1 January 2023 by non-Italian-resident entities and permanent establishments subject to the BEX regime. The payment is due by 30 June 2023. Upon election the profits are no longer taxed upon repatriation or, if the profits are not repatriated, the tax basis in the shareholding is stepped up for capital gain computation.
- A land-rich company clause is introduced to tax capital gains derived from the transfer of non-Italian shares if, at any time during the 365 days preceding their sale, they derived more than 50% of their value, directly or indirectly, from immovable properties situated in Italy. This clause does not apply to the transfer of shares listed on a regulated market nor to non-resident investment vehicles classified for Italian tax purposes as Undertakings for Collective Investment.
- Non-Italian residents with no permanent establishment in Italy can opt to pay a 16% substitute tax on the fair market value of the shareholdings and qualifying lands held at least from 1 January 2023. The payment is due 15 November 2023.
- An Investment Management Exemption has been introduced as a safe harbor aimed at providing certainty to foreign investment funds/controlled entities against exposure to permanent establishment risks connected to activities in Italy of asset managers.
- A solidarity contribution in the form is established for Italian taxpayers that produce, import, distribute or sell electricity, natural gas, or petroleum products. The contribution is determined by applying a 50% rate to the windfall profit. The payment is due 30 June 2023.

The Italian Budget Law includes several important measures relevant to multinationals. Italian companies and permanent establishments have to monitor transactions with counterparties resident in non-cooperative jurisdictions. The one-off optional regime can be beneficial for Italian shareholders of entities located in low-tax jurisdictions having profits subject to 24% CIT upon repatriation or in case a capital gain is expected upon disposal of the shareholding. Coordination with the CFC regime is required.

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Legislation

Japan

Japan's 2023 tax reform proposals include an outline for Pillar Two legislation

Japan's Liberal Democratic Party and Komeito Party released the 2023 tax reform proposals on 16 December 2022. The proposals include a legislative outline (the 'Outline') to implement a global minimum corporate tax based on the Global Anti-Base Erosion Model Rules published by the OECD. The Outline introduces an Income Inclusion Rule (IIR) that broadly aligns with the GloBE Model Rules. The IIR would apply to fiscal years beginning on or after 1 April 2024.

The Outline excludes other features of the GloBE Model Rules, such as the Undertaxed Payments Rule (UTPR) and the Qualified Domestic Minimum Top-up Tax (QDMTT), but they may be included in the 2024 tax reform proposals or later.

Read the full Tax Insight here.

While the IIR in Japan is expected to closely align with the GloBE Model Rules, the Outline does not contain detailed guidance on the calculation of the Global Minimum Corporate Taxable Amount, adjustment items, or the CbCR safe harbour. As the IIR would apply to accounting periods beginning on or after 1 April 2024, there is time before the rules are finalized and the legislation is published. However, taxpayers should start preparing by evaluating the potential impact of the IIR and developing processes and systems to collect the information required to calculate the Top-up Taxes and prepare information returns.

For calendar-year taxpayers, the IIR would first apply in Japan in the fiscal year ending 31 December 2025. However, some jurisdictions could implement legislation based on the GloBE Model Rules for accounting periods beginning on or after 1 January 2024.

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Legislation

Korea (the Democratic People's Republic of)

South Korea becomes first to pass Pillar Two global minimum tax rules in its domestic legislation

South Korea's budget bill for 2023, approved by parliament on 23 December, includes the Korean rules on a global minimum tax (the GloBE Rules). The newly enacted rules are added to the existing Korean Law for the Coordination of International Tax Affairs by establishing new Section 5. This section includes five sub-sections and 27 Articles that correspond closely to the OECD's Pillar Two Model Rules.

The rules include an Income Inclusion Rule (IIR) and 'Supplementary rules for income inclusion' (referred to as the UTPR in the OECD Model Rules). Both rules will be effective for fiscal years beginning on or after 1 January 2024.

For more information see our PwC Insight.

Now that the new rules are in force, South Korea is the first country to have codified the global minimum tax rules in its domestic legislation. Given the short timeline before the new rules become effective, non-Korean MNEs that have a Korean presence are encouraged to assess the impact of the new rules and understand the additional compliance and reporting obligations.

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Legislation

Poland

Poland amends withholding tax provisions

Poland introduced amendments to the withholding tax regime, with the aim of relaxing the pay and refund mechanism and modifying the rules for applying the WHT tax exemption on payments made to related entities.

Beginning in 2022, a new mechanism for collecting WHT obliges tax remitters (Polish companies) to collect tax if the total amount of payments classified as passive (i.e. dividends, interest, license fees) paid in one tax year to one taxpayer exceeds PLN 2 million. In order to apply WHT preferences and exempt payments from pay and refund regime, tax remitters have to submit a specific statement to the tax authorities (so called WH-OSC). There were major concern statement as based on the literal wording of the tax provisions, that the statement could only be applied for three months after its submission and once the validity period was over, the tax remitter was obliged to collect WHT in full.

Certain remedy measures were applied in 2022 to extend the application period of statement. Now, with the new amendments (applicable also retroactively for 2022), the structure of the remitter's statement exempting the pay and refund mechanism became more flexible by extending the time scope. The submission of WH-OSC will allow this mechanism not to apply until the end of the remitter's tax year. The initial deadline to file the remitter statement as well as deadline to file follow-up (year-closing) statement were also extended.
For more information see our PwC Insight.

The amendments introduced a kind of amnesty with regard to the statements submitted in 2022. As a consequence, the validity period of the initial WH-OSC statement has been extended with retroactive effect from 1 January 2022.

Entities making related party payments exceeding the PLN 2 million per year threshold must set up internal procedures in order to apply the WHT relief / reduced rate at the source, in order to meet the due diligence requirements imposed by Polish WHT regime, and to manage the exposure of the management board (particular persons signing the WH-OSC statement) to fiscal penal liability.

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Legislation

Spain

Spain approves tax reform

Spain approves temporary reform of the tax consolidation regime reducing the use of losses to 50% by 2023

The announced temporary draft reform of the tax consolidation regime described in our last publication is now part of the articles of the Spanish Corporate Income Tax Law. For fiscal years beginning in 2023, the tax group's taxable income will not be determined by linearly aggregating the individual taxable income as it was mandatory. Instead, 100% of the positive taxable income and 50% of the negative taxable income will be considered. Consequently, in 2023, only 50% of the tax losses of the entities comprising the tax group will be taken into account.

Spain approves the tax incentive system for the audio-visual industry

Spain published reforms to audiovisual productions incentives (Law 27/2014 of the Corporate Income Tax) in the Spanish Official Gazette (Law 38/2022) on 28 December 2022. The final version of the Law that has been published brings new important aspects of the tax incentives for the investment in audiovisual productions affecting both the deduction limits and the financing contract regulation. The maximum deduction limits for investments in Spanish and foreign film productions and audiovisual series will increase from 10 to 20 million euros. For audiovisual series productions, the deduction will be determined per episode and the limit will be 10 million euros for each episode produced, which seems to be a limit more adapted to the cost of large national and international productions.

Spain adopts taxes on banking and energy sectors

As mentioned in November's publication, on 28 July 2022, the Government of Spain proposed draft legislation for a tax on windfall profits for the banking and energy sectors to come into effect in 2023 and 2024. The bill called for a 4.8% charge on the net interest income and fees of major banks and a 1.2% tax on the revenues of large energy companies, and has received final parliamentary approval with no changes. According to the new legislation, energy companies will be subject to the windfall profits tax if they had at least €1 billion in revenues in 2019. In addition, the bank tax will be payable by financial institutions that had interest and commission income of at least €800 million in 2019.

The tax consolidation reform will be of particular importance for the transfer pricing policy applicable to intra-group transactions, an area that was normally of lesser importance. The audio-video reform configures the financing contract as a simple, safe, and effective mechanism that will contribute to the development of the audiovisual industry, allowing the producer to obtain the necessary financing for the development of productions, and the investor to obtain an attractive and legally secure tax profitability. Both the energy and banking taxes will be effective from 1 January 2023, through 31 December 2024.

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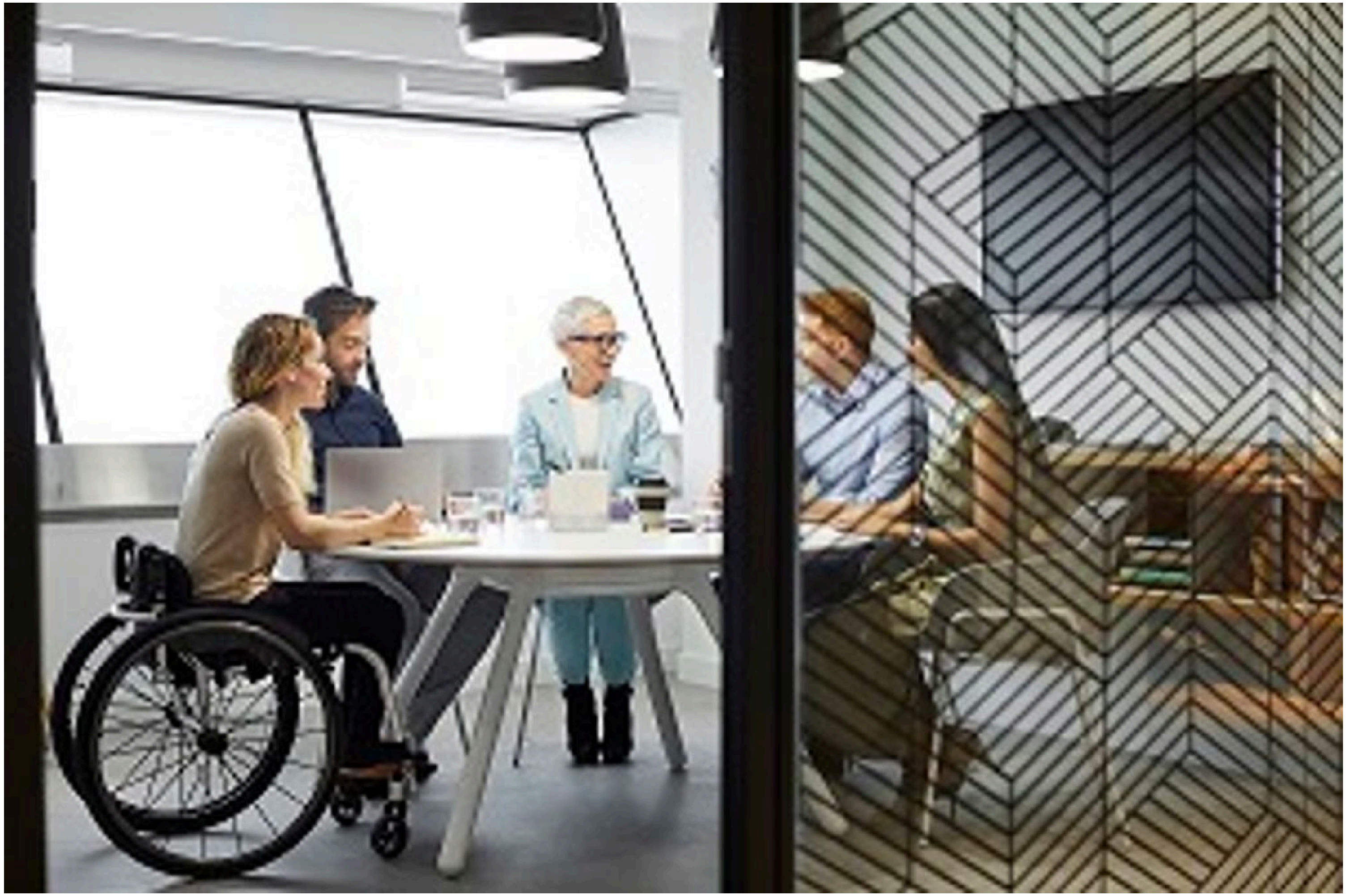
Legislation



Spain

Spain's General State Budget Law 2023 introduces tax reforms

Effective 1 January 2023, the following amendments are introduced in Law 27/2014 of 27 November 2014, on Corporate Income Tax:

- A reduced tax rate of 23% for entities presenting a net turnover in the immediately preceding tax period of less than 1 million euros.
- Investments in certain new vehicles used for economic activities and entering into operation in the tax periods beginning in 2023, 2024 and 2025 may be depreciated based on the coefficient resulting from multiplying by two the maximum straight-line depreciation coefficient established in the officially approved depreciation tables.
- Special tax regime for the Balearic Islands with effect for tax periods beginning between 1 January 2023, and 31 December 2028.

Multinational enterprises with either operations in Spain or with Spanish holding companies should review how the proposed changes could affect their Spanish investments.

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Legislation

Tanzania, United Republic of

Tanzania enacts digital services tax

The Tanzanian Finance Act 2022 enacted legislation that requires non-residents who provide electronic services to resident individuals to register and file Income Tax returns. An 'electronic service' is defined as a service capable of delivery across multiple electronic commerce platforms, i.e., services delivered via the internet, mobile telecommunication networks, and any other electronic commerce infrastructure.

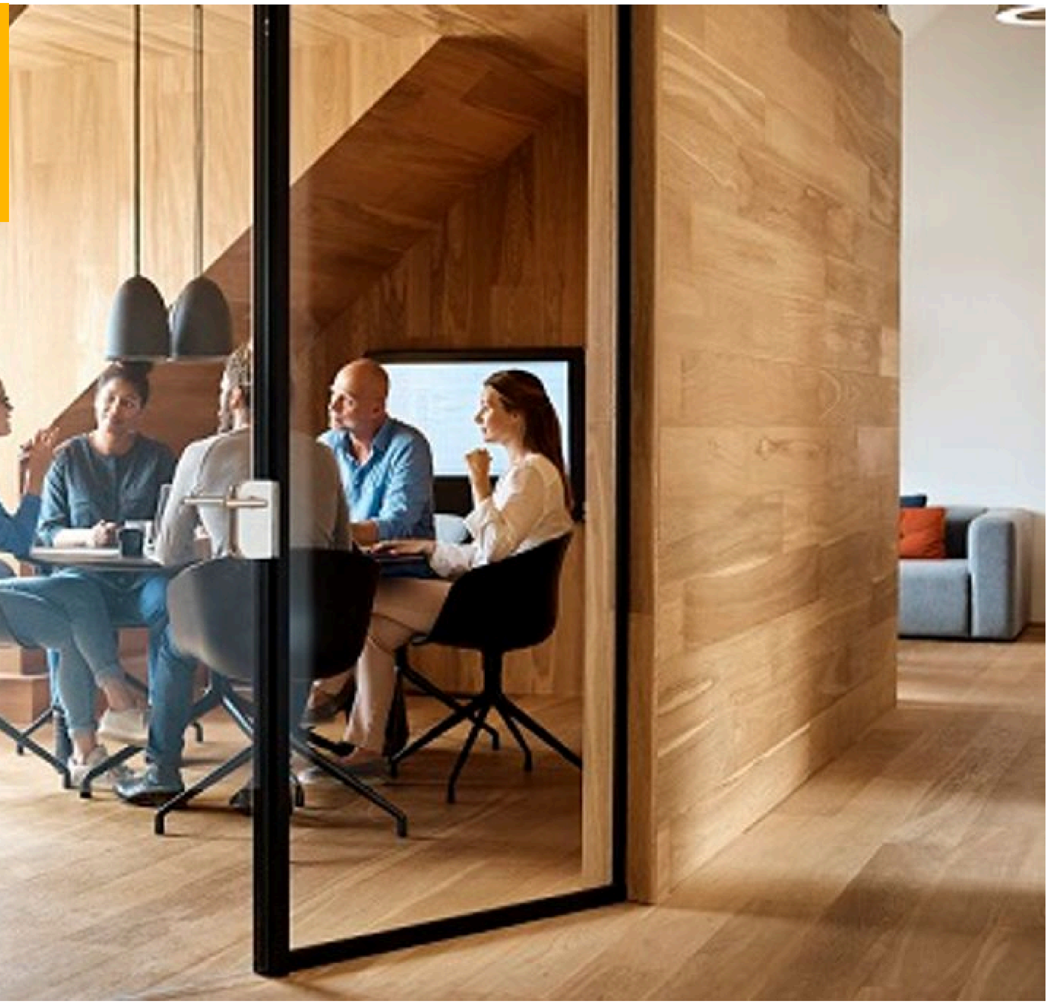
The electronic services that are treated as used in Tanzania are determined by the location of the recipient in Tanzania. This is determined by the:

- payment proxy of the recipient of the electronic services;
- residence proxy of the recipient of the electronic services; and
- access proxy of the recipient of the electronic services.

The digital service tax is 2% of the gross value of the services supplied. Other taxes applicable on such services include Value Added Tax (VAT) at 18%.

For more information see our PwC Alert.

MNEs providing digital services to a Tanzanian resident individual should register for Income Tax and Value Added Tax to avoid non-compliance penalties.



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Legislation

Netherlands (the)

The Netherlands enacts 2023 Tax Plan

The Netherlands enacted Tax Plan 2023 on 27 December 2022. The Tax Plan includes a corporate income tax hike and a temporary solidarity contribution on excess natural gas profits. Most of the measures contained in the Tax Plan will become effective in 2023. More specifically, the bracket to which the lower rate of corporate income tax applies will be lowered from EUR 395,000 to EUR 200,000, while raising the rate from 15% to 19%. The standard rate remains 25.8%. As a result, businesses are more likely to pay the high corporate income tax rate of 25.8%.

Oil & Gas contribution

Furthermore, the Netherlands introduced a temporary solidarity contribution for companies with activities in crude oil, natural gas, coal, and petroleum refining. This contribution is designed in line with the EC Regulation 2022/1854. The contribution will apply at a rate of 33% to any profits earned for the 2022 year that is above 120% of the average profit earned in the preceding four income years (i.e. for the 2022 year, this would be the average profit of the 2018-2021 years).

At-random depreciation for new business assets 2023

An at-random depreciation scheme for new business assets was announced for 2023. Investments in calendar year 2023 can be depreciated in this year up to 50% of the investment amount. The remaining book value must then be depreciated regularly in subsequent years. Not all assets qualify for this scheme, for example buildings and intangible assets are excluded. If a business chooses to use at-random depreciation in 2023, a deferred tax liability will likely need to be included in the annual accounts.

Updates to low-tax jurisdictions

The Dutch Ministry of Finance published a new decree determining the low-tax jurisdictions for 2023. The decree specifies that low-tax jurisdictions for 2023 are jurisdictions that:

- apply a statutory corporate income tax rate of less than 9% (Anguilla, Bahamas, Bahrein, Barbados, Bermuda, British Virgin Islands, Guernsey, Isle of Man, Jersey, Cayman Islands, Turkmenistan, the Turks and Caicos Islands, Vanuatu, and United Arab Emirates) and
- are in the European Union's list of non-cooperative jurisdictions, which now includes Anguilla, Bahamas and the Turks and Caicos Islands.

For more information see our PwC Insight.

Taxpayers in the oil and gas industries are advised to check whether the solidarity contribution and the increase in the special levy applies to them. Additionally, since at-random depreciation advances cost recognition, it provides a cashflow advantage. Taxpayers should consider bringing forward future planned investments to 2023.

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Legislation

United Arab Emirates (the)

The UAE publishes its new corporate tax law

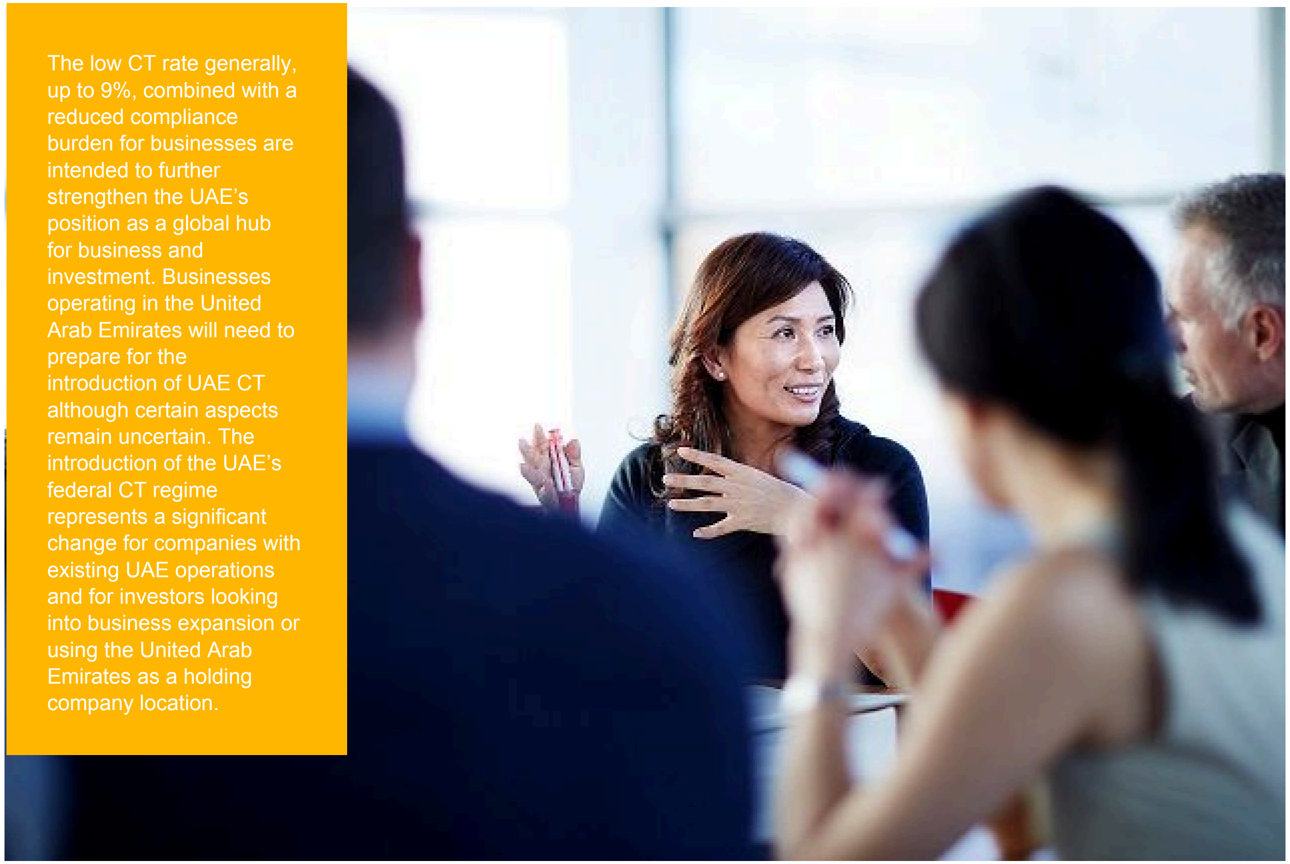
The United Arab Emirates (UAE) on 9 December issued Federal Decree-Law No. (47) of 2022 on the taxation of corporations and businesses ('CT law'). The unofficial translation was released by the UAE Ministry of Finance (MoF) on its website, together with FAQs that provide a number of clarifications.g

The CT law applies for financial years starting on or after 1 June 2023. The CT law will be effective 15 days after publishing in the official gazette.

Following the consultation document (issued in April 2022), the CT law clarifies and expands many key provisions. However, a number of areas remain to be further clarified in subsequent cabinet and ministerial decisions and tax authority guidance.

For more information see our PwC Insight.

The low CT rate generally, up to 9%, combined with a reduced compliance burden for businesses are intended to further strengthen the UAE's position as a global hub for business and investment. Businesses operating in the United Arab Emirates will need to prepare for the introduction of UAE CT although certain aspects remain uncertain. The introduction of the UAE's federal CT regime represents a significant change for companies with existing UAE operations and for investors looking into business expansion or using the United Arab Emirates as a holding company location.



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Judicial

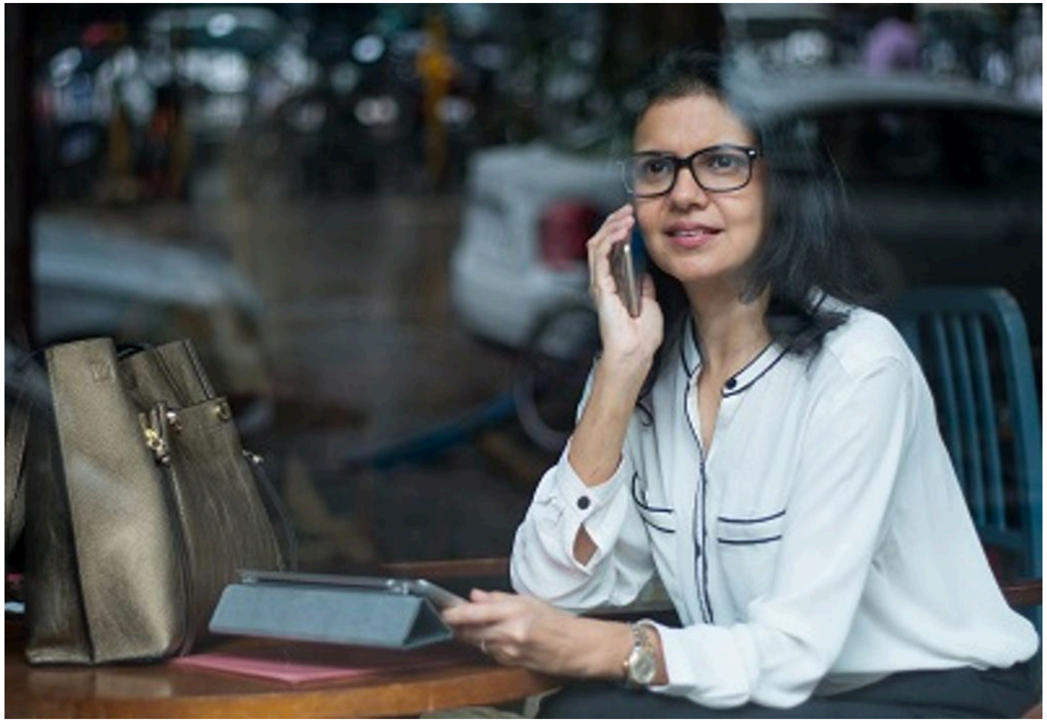
Spain

Tax exemptions granted to port authorities violate EU State aid rules

In its 14 December judgment in Autoridad Portuaria de Bilbao v. European Commission, T-126/20 (GCEU 2022), the General Court dismissed the appeal brought by the Port Authority of Bilbao concluding that the corporate tax exemptions granted by the Spanish Government violate article 107(1) of the Treaty on the Functioning of the European Union.

Under Spanish law, port authorities benefit from Corporate Tax exemptions on profits from port fees, rental or concession agreements, and other income. These selective measures are generally considered illegal EU State aid unless they can be justified by the logic and purposes of the reference tax system, which the General Court said does not apply under these circumstances.

The court said that the Court of Justice of the European Union has consistently held that it isn't justifiable to exclude from the scope of article 107(1) of the TFEU measures implemented to promote various industries or organizations or to preserve international competitiveness. The applicants may appeal the General Court's decision to the CJEU.



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Treaties

Mexico

Tax changes for legal representatives of non-Mexican tax residents

Beginning in 2022, Mexican taxpayers appointed as legal representatives of non-Mexican tax residents for income tax purposes shall file a notice in connection with said designation in terms of the Miscellaneous Tax Regulations (MTR). As part of this notice, the Mexican legal representative shall voluntarily assume the joint liability for the income tax triggered by the foreign resident and guarantee the income tax by providing a list of its seizable assets. For these purposes, the guaranteed income tax shall not exceed 10% of 1) the legal representative's shareholders equity – in the case of Mexican companies, or 2) the legal representative's taxable revenue declared in the most fiscal year – in the case of Mexican individuals.

The requirements and conditions that a Mexican tax resident must meet in order to act as legal representative and file this notice did not address whether this notice should be filed when claiming tax treaty benefits.

The MTR, published in the Mexican Official Gazette on 28 December 2022, provides that, when applying treaties to avoid double taxation, the Mexican tax authorities may request extensions to the guaranteed amount when secured by means of a credit letter considering that the foreign resident may not be entitled to the benefits of such treaties. Notwithstanding, the MTR does not expressly provide that the legal representative notice must also be filed when applying the benefits granted by the tax treaties into which Mexico has entered.

While the MTR provides more guidance it still lacks clarity regarding some specific requirements and conditions applicable to the notice. Therefore, before a non-Mexican tax resident appoints a legal representative in Mexico for income tax purposes, a detailed analysis is needed, regardless of tax treaty benefits being claimed, in order to determine if the legal representative has sufficient seizable assets and meets the conditions to act as legal representative under Mexican tax laws and the MTR.

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OECD/EU

OECD

OECD announces Pillar One unilateral measures consultation

The draft MLC provisions focus on Digital Services Taxes (DSTs) and other Relevant Similar Measures (RSMs) and the commitments with respect to removing all existing DSTs and other RSMs and the standstill of such future measures. The consultation document includes two articles: one detailing that DSTs will be withdrawn under Pillar One and the other describing the three characteristics of a DST-like tax which should be withdrawn.

While the OECD Secretariat released preliminary language on DSTs for comment, there are several significant technical issues yet to be agreed. The consultation document notes that stakeholder comments will assist in finalising language that will provide for the withdrawal and standstill of existing DSTs as well as the commitment not to enact future DSTs and other RSMs. Most importantly – given the increasing inventiveness of some countries, and their willingness to operate outside the tax treaty system – is the lack of any detail on what a 'similar measure' might be. We understand that several countries wish to restrict the application of these MLC articles to DSTs.

For more information see our Tax Policy Alert.

According to the document, there is no consensus (yet) among IF members and hence, this document is prepared by the Secretariat. This is no surprise given the lack of support for Pillar One by a significant number of developing countries, and their preference for simpler revenue raisers. The description of DST-like measures to be withdrawn under Pillar One sketches a tax that is levied at destination, is not an income tax covered by tax treaties, and importantly, discriminates against foreign-owned businesses. It is an open question whether this leaves room for governments to introduce a revenue-based tax, e.g., by introducing a measure with a low in-scope threshold so that a substantial number of domestic companies also are caught. An additional open question is whether the consultation document designs a 'blueprint' for DST-like taxes if Pillar One fails. Given the disagreement on this issue between the United States and some other large, developed countries, that could well create further trade tensions and instability.

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OECD/EU

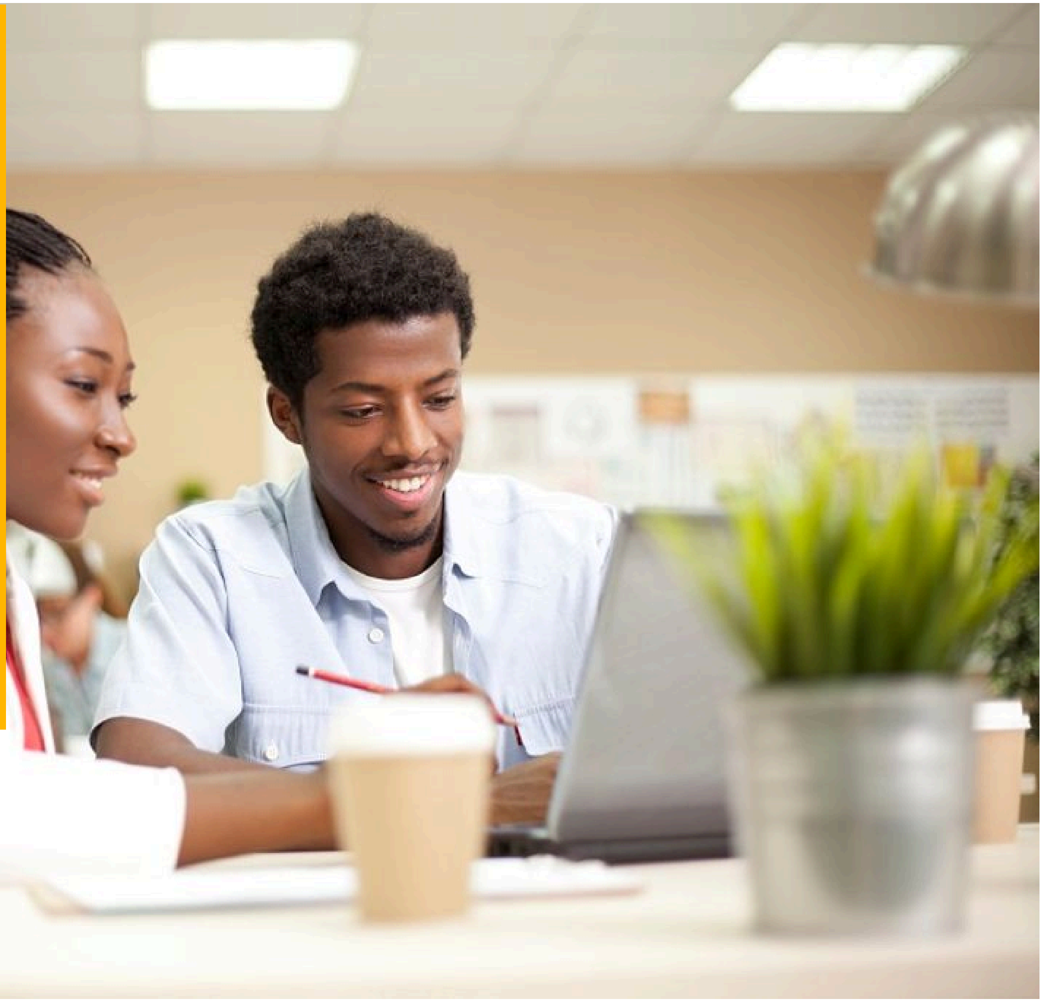
OECD

OECD announces Pillar Two GloBE information return consultation

The GloBE Model Rules (see prior Tax Policy Alert) require MNE groups to file a standardised GloBE information return (GIR) in each relevant jurisdiction that has introduced the GloBE rules. The public consultation document on the GIR indicates that the GIR's ultimate objective is to develop a consistent and transparent set of standards for information collection that preserves consistency and certainty of outcomes for MNE groups, while avoiding a significant increase in taxpayer and tax administrations' compliance burdens.

For more information see our Tax Policy Alert.

The GIR would establish an enormously complex tax return. Complying with its requirements will be extremely difficult, even for sophisticated businesses, and examining the voluminous information provided will likewise be very challenging, even for sophisticated tax authorities. It is clear that tax administrations have tried to include "***all*** *the data points of the MNE Group that it* [the MNE Group] *may need in order to calculate its GloBE tax liability.*" However, that means that the resulting document will not, in any way, ease taxpayer concerns around data collection and reporting burdens. Accordingly, it is critically important that businesses, individually and through trade associations and other groupings, feed in as much practical advice and experience as possible, in an effort to make the GIR more administrable and less burdensome.



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OECD/EU

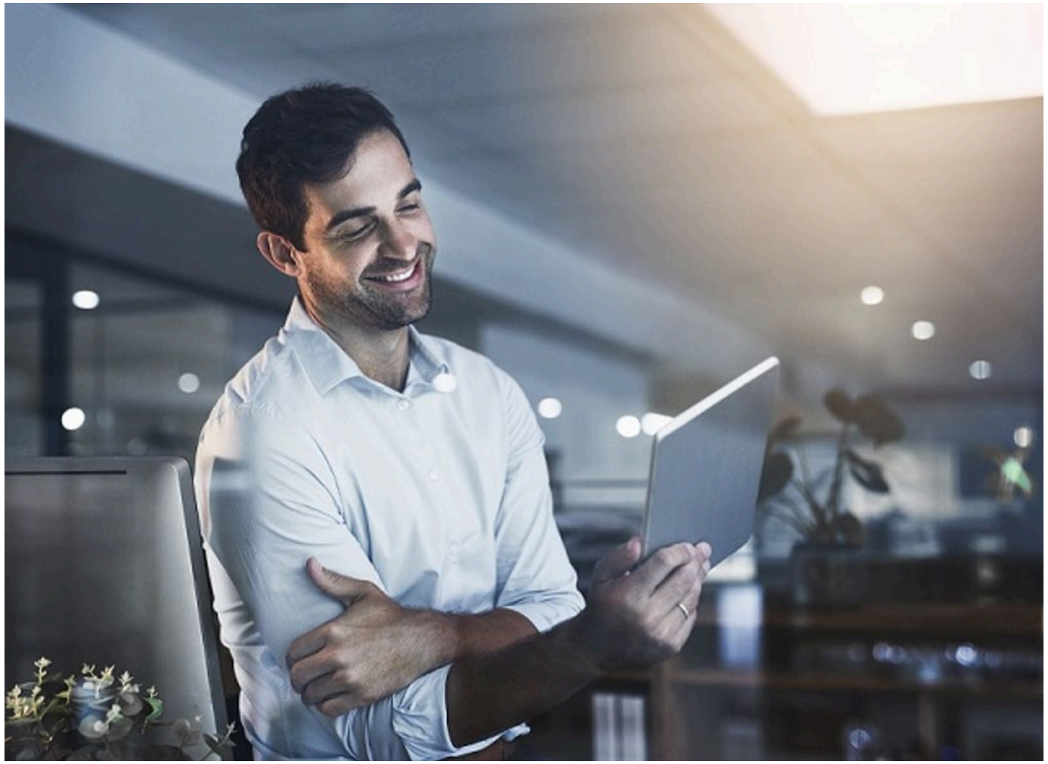
OECD

OECD announces Pillar Two tax certainty framework consultation

Given the complexity of the Pillar Two rules and the differences that could arise in the interpretation or application of the rules among jurisdictions, the OECD started working on exploring mechanisms to provide further tax certainty with respect to the GloBE rules. This public consultation on Pillar Two – Tax Certainty for the GloBE Rules seeks input from stakeholders with respect to the scenarios where differences in interpretation or application of the GloBE rules between two or more jurisdictions may arise. The consultation document describes various mechanisms for achieving tax certainty before (prevention mechanisms) and after (dispute resolution mechanisms) a taxation action has been taken.

For more information see our Tax Policy Alert.

This simplification and tax certainty guidance from the OECD contains some welcome ideas, but the practicality and viability of any of the ideas is still currently quite unclear. The consultation document – for the moment – is not more than a stock taking of the potential avenues to prevent and resolve disputes, and consensus on solutions seems unlikely in the near future.



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OECD/EU

OECD

OECD releases Pillar Two guidance on Safe Harbours and Penalty Relief

The OECD released Inclusive Framework-approved guidance on safe harbours and penalty relief on 15 December 2022. The guidance includes:

A **Transitional Country-by-Country Reporting (CbCR) Safe Harbour**, which effectively excludes from the scope of GloBE an MNE's operations in lower-risk jurisdictions in the initial years, thereby providing relief to MNEs in respect of their GloBE compliance obligations as they implement the rules;

A framework for the development of a permanent **Simplified Calculations Safe Harbour**, which would allow an MNE to either reduce the number of computations and adjustments required under the GloBE rules or perform alternative simplified income, revenue, and tax calculations; and

A **Transitional Penalty Relief Regime**, which recognises that no penalties or sanctions should apply during a transitional period in connection with filing GloBE Information Returns where an MNE has taken reasonable measures to ensure the correct application of the GloBE rules.

For more information see our Tax Policy Alert.

Taxpayers generally will welcome the transitional safe harbour as it mitigates the immediate difficulties associated with complying with the GloBE rules in their initial years of implementation. In these early years, they will be able to use data available from an MNE's qualified CbCR, and jurisdictional revenue and income information contained in qualified financial statements. However, the relative paucity of detail on the permanent safe harbours (and the possibilhity that they could still require considerable detail before the safe harbour kicks in) is a concern.

An open question is whether the transitional CbCR safe harbour will incentivise systematic scrutiny by authorities of an MNE's CbCR. Although, at various points IF members tried to reassure stakeholders, the CbCR will receive much more attention going forward, as it will be at the core of calculating whether a top-up tax is due in a jurisdiction.

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Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	notionial interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

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Worldwide Tax Summaries

If you're operating globally, are you aware of changes to the myriad tax rates in all the jurisdictions where you operate?

If not, we can help - visit our comprehensive tax guide, or explore rates in over 150 countries using our online tools, updated daily.