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.

Cross Border Tax Talks

Tune into Cross-border Tax Talks, hosted by Doug McHoney, International Tax Services Global Leader. Various PwC specialists are featured and share insights on key issues impacting the ever-changing international tax landscape.

- Pillar Two: A Japanese perspective (5 April 2023)
- Threading the Needle: Pillar Two and the IRA's Green Energy Credits (19 April 2023)
- Pillar Two: The UK's latest installment (27 April 2023)

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Legislation

Australia

Australia releases draft of intangible payment deduction denial

The Australian Commonwealth Treasury released for submission and comment draft law and explanatory materials (collectively, the proposed new law) on 31 March. The proposed new law includes a measure that would deny deductions for payments relating to intangible assets where the direct or indirect recipient is located in a jurisdiction that has a tax rate less than 15%. This previously announced measure (see our previous Tax Insight), would, if enacted, apply to in-scope payments made or credited, or liabilities incurred, on or after 1 July 2023.

Broadly, under the proposed new law, if an Australian Significant Global Entity (SGE) (broadly, an entity that is a member of a group with global accounting revenue of A$1 billion or more):

- makes a payment, incurs a liability, or credits an amount, directly or indirectly, to an associate;
- in relation to exploiting intangible assets; and
- an associated entity (whether the recipient of the payment or otherwise) derives income from that arrangement or a related arrangement in a low corporate tax jurisdiction;

then the Australian entity would be denied a deduction for that payment. The proposed new law would not be contained within the existing anti-avoidance rules, and does not have any tax avoidance 'purpose' requirement to be satisfied for the measure to apply. There are also no substance-based carve-outs included in the proposed law, nor are there any grandfathering or transitional rules for existing arrangements.

The concept of an intangibles-related payment is broadly construed and could apply to a variety of payments that typically would not be considered royalties (for example, distribution, management, or services payments). The exposure draft legislation is subject to public comment. Submissions are due by 28 April 2023.

For more information see our PwC Insight.

This measure could impact multinational groups with Australian operations that make any form of deductible payments to associates if there is intellectual property held in a low corporate tax rate jurisdiction anywhere in the group. The measure would apply to any payments made from 1 July 2023, with no grandfathering or transitional rules. Multinational groups should consider how these measures apply to their operations and may wish to consider making a submission through the public consultation process.

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Legislation

Canada

Canadian Government releases 2023 federal budget

On 28March 2023, the Canadian Federal Government released the 2023 Budget for the coming year. The 2023 Budget did not contain any proposed changes to Canada's corporate tax rates.

Pillar One

The 2023 Budget notes that Canada is currently working with its international partners to develop model Pillar One rules and a multilateral convention to implement these rules (the OECD has released packages of draft rules for public comment, which were consolidated in progress reports released in July and October 2022).

The 2023 Budget also notes that the government intends to release a revised draft of the Digital Services Tax (DST) legislation; the DST could be imposed as of 1 January 2024 if the multilateral convention has not come into force. The DST would take effect in respect of revenues earned as of 1 January 2022. The 2023 Budget states that the government's hope and underlying assumption is that the timely implementation of the Pillar One rules will make this DST unnecessary.

Pillar Two

The 2023 Budget restates Canada's intention to implement Pillar Two, along with a Domestic Minimum Top-up Tax (which will apply to Canadian entities of MNEs that are within Pillar Two's scope). The IIR and Domestic Minimum Top-up Tax will come into effect for fiscal years of MNEs that begin on or after 31 December 2023; the UTPR will come into effect for fiscal years of MNEs that begin on or after 31 December 2024. For these purposes, an MNE is considered to have the same fiscal year as its Ultimate Parent Entity.

The government intends to release draft legislation for the IIR and Domestic Minimum Top-up Tax for public consultation in the coming months; draft legislation for the UTPR will follow at a later time.

For more information see our PwC Insight.

The 2023 Budget clarified the timing of Pillar Two implementation in Canada. Multinational groups with Canadian operations will need to start preparing for the implementation of Pillar Two and should be prepared to provide comments on the draft legislation once released.

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Legislation

Denmark

Draft bill proposes to update the list of non-cooperative countries subject to defensive measures

The Danish Minister of Taxation presented a bill on 29 March 2023, that would increase the list of non-cooperative countries subject to certain defensive tax measures from 9 to 15 countries.

Tax deductions are generally denied for all intercompany payments to entities resident in a specific listed group of so-called non-cooperative countries. In addition, withholding tax may apply at an increased rate of up to 44% on dividends distributed to entities resident in listed countries. The list of countries changes on an ongoing basis and generally follows the EU blacklisted countries. The new bill therefore, proposes to expand the list of countries to be covered by the Danish defensive measures from 9 to 15 countries due to the recent changes to the EU blacklist.

The countries on Denmark's current black list include American Samoa, US Virgin Islands, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago and Vanuatu. If the bill passes, the blacklisted countries would expand to include Anguilla, Bahamas, Costa Rica, British Virgin Islands, Marshall Islands and Turks and Caicos Islands. Even though Russia is also included in the EU blacklist, Russia is not part of the countries in the bill, as Denmark has a tax treaty with Russia.

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Legislation

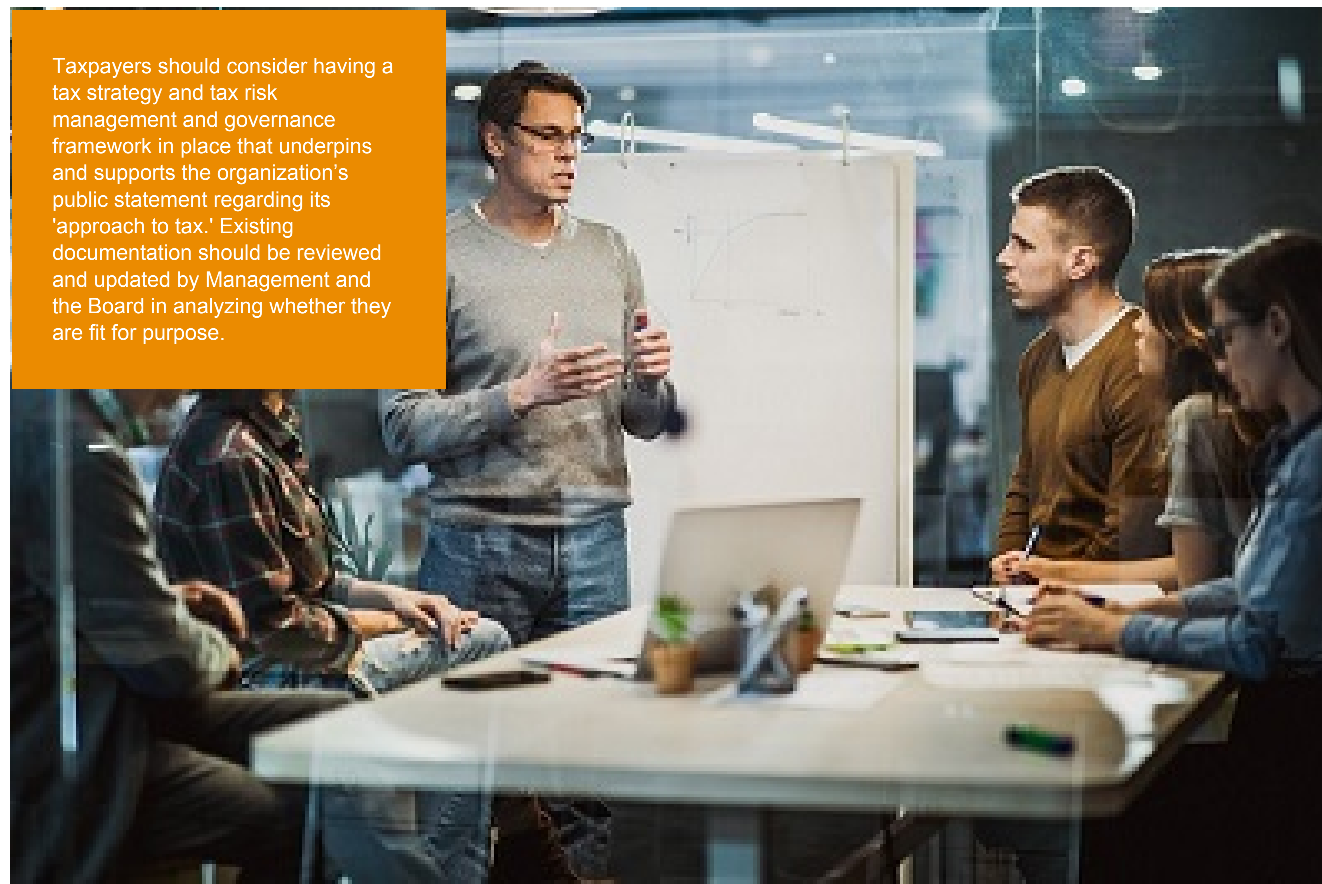
Australia

Exposure draft legislation for public country-by-country reporting

The Australian Government has released draft legislation that would require certain large multinationals (known as Country-by-Country (CbC) reporting parent entities) to publicly disclose the information in their CbC reports broken down by jurisdiction, as well as to publicly disclose other new tax and financial information ('additional information') — also by each jurisdiction — not currently disclosed in confidential CbC reports. If legislated, this would be the first unrestricted worldwide mandated public reporting of all CbC report data combined with additional information by jurisdiction.

Public CbC reporting would apply to any large multinational enterprise (MNE) doing business in Australia through an Australian resident entity or Australian permanent establishment, regardless of whether its group parent is an Australian or foreign entity. If enacted, public CbC reporting would be required for the 2023-24 and later income years, in addition to the current confidential CbC report provided to the Australian Taxation Office and/or foreign tax authorities.

For more information see our PwC Insight.



Taxpayers should consider having a tax strategy and tax risk management and governance framework in place that underpins and supports the organization's public statement regarding its 'approach to tax.' Existing documentation should be reviewed and updated by Management and the Board in analyzing whether they are fit for purpose.

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Legislation

Hong Kong

Hong Kong launched consultation on providing upfront certainty of non-taxation of onshore equity disposal gains

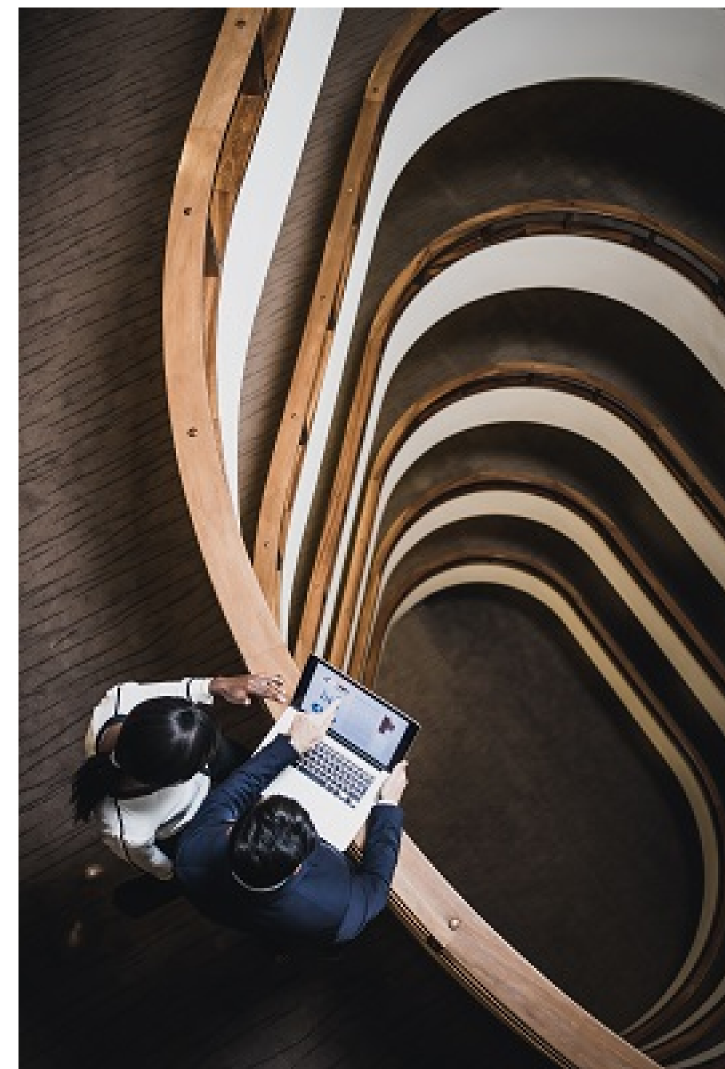
While an onshore disposal gain on capital account is not subject to tax in Hong Kong, the determination of whether such gain is revenue or capital in nature is essentially a fact-specific exercise based on a 'badges of trade' analysis. To provide greater certainty of non-taxation to taxpayers, the Hong Kong SAR Government released a consultation paper, *Enhancing Tax Certainty of Onshore Gains on Disposal of Equity Interests* (the Consultation Paper) on 23 March 2023 for a two-month trade consultation.

The Consultation Paper proposes introducing a set of clear and objective eligibility criteria for the tax certainty enhancement scheme. Under the enhancement scheme, onshore equity disposal gains that satisfy all of the specified criteria would be regarded as non-taxable and there would be no need to conduct a 'badges of trade' analysis.

Subject to certain exclusions, the enhancement scheme would apply to onshore equity disposal gains where an eligible investor entity has held at least 15% of the equity interests in the investee entity for a continuous period of at least 24 months immediately prior to the date of disposal of such interest. Notably, the disposal of non-listed equity interests in an investee entity that engages in property-related business is excluded from the scope of the enhancement scheme.

For more information see our PwC Insight.

> The enhancement scheme, together with the recent budget announcement that the government plans to introduce a mechanism to facilitate companies domiciled overseas to re-domicile to Hong Kong, will help further consolidate Hong Kong's position as a international investment and business hub.



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Legislation

India

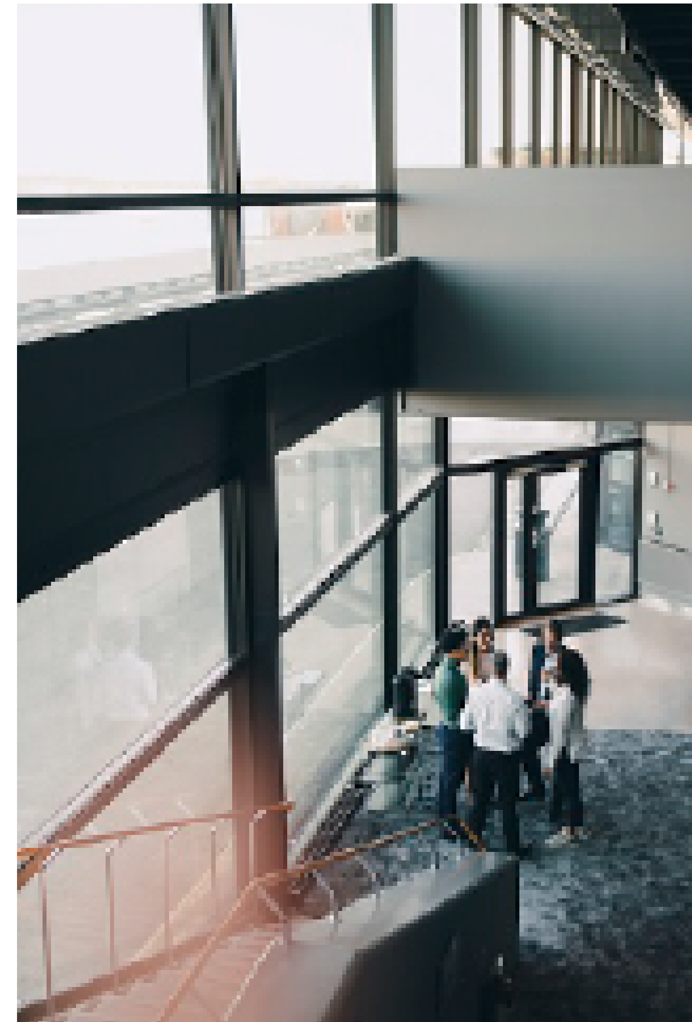
India Annual Budget 2023 introduces additional amendments in the tax laws

After proposing initial amendments in the annual budget on 1 February 2023, the Indian Parliament conceded a few unexpected amendments to the India tax law while passing the annual budget. Some of these are listed below.

- The Indian Government increased the tax rates for royalty and fees for technical services (FTS) that non-residents have earned from India from the current rate of 10% to 20% under the Indian tax laws. Consequently, the rate of tax deducted at source (TDS) on royalty and FTS under Indian tax laws has also increased to 20% (plus applicable surcharge and cess).
- TDS on winnings from online games has been preponed to 1 April 2023 instead of 1 July 2023 as initially introduced.
- The Indian Government now treats capital gains arising on the transfer, redemption, or maturity of specified mutual fund units (acquired on or after 1 April 2023) as short-term capital gains. A specified mutual fund is defined as a mutual fund where not more than 35% of its proceeds are invested in the equity shares of Indian companies, computed in a manner specified by the Indian tax laws.

For more information see our PwC Tax Insight.

Some of the additional amendments are unexpected and have far-reaching implications, one of which is an increase in the tax rate of royalty and FTS. Increasing the tax rates would effectively mean that the benefit of the lower tax rate of 10% would no longer be available; consequently, tax treaties with a lower tax rate should to be considered. Documentation, including the Tax Residency Certificate (TRC), Form 10F (i.e., a local form to be provided electronically now by tax authorities, in case certain details are not available in TRC) and no-permanent establishment declaration would have to be maintained to claim the tax treaty benefits. Non-residents would also have to evaluate whether they now need to obtain a tax registration or undertake compliances in India, such as tax filings.



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Legislation

Japan

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

As part of the 2023 Tax Reform, Japan has introduced an Income Inclusion Rule (IIR) that will apply to fiscal years beginning on or after 1 April 2024, in line with the fiscal years of most Japanese multinationals. The 2023 Tax Reform legislation was approved by the Japanese Diet (parliament) on 28 March, 2023, and finalized with publication in the Official Gazette on 31 March, 2023. The Japan IIR was originally introduced in the 2023 Tax Reform proposals, issued by the governing parties in December 2022.

The Japan IIR legislation is closely aligned with the Global Anti-Base Erosion Model Rules published by the OECD (the 'GloBE Model Rules'). The legislation addresses in detail key provisions such as the entities that will be subject to the Top-up Tax and the computation of Top-up Tax itself, while also incorporating by reference the Transitional Safe Harbour Rules. The Ministry of Finance and the National Tax Agency will provide further guidance in the form of regulations, enforcement orders, and tax circulars.

The Tax Reform legislation did not include a Qualified Domestic Minimum Top-up Tax (QDMTT) or an Undertaxed Profits Rule (UTPR). While it is expected that Japan should implement both rules in due course, the timing is still unclear and may depend on where other countries stand. The earliest implementation would be in April 2025, by way of the 2024 Tax Reform.

Furthermore, for calendar-year taxpayers, the Japan IIR will first apply for fiscal years beginning 1 January 2025. In this regard, to the extent such Japanese MNCs have subsidiaries in jurisdictions that introduce an IIR, or UTPR, earlier than the IIR in Japan, they should consider how these rules may affect them. More generally, questions such as whether QDMTT of foreign jurisdictions will be creditable for Japanese tax purposes will need to be addressed.

With the enactment of the Japan IIR, taxpayers should prepare for its implementation 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. Determining the extent to which the Transitional Safe Harbour Rules apply will also be important. Taxpayers should also consider the interplay of the Japan IIR with the Japanese CFC rules and carefully monitor the introduction of new rules in other countries.

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Legislation

Spain

Modification to the exemption from obligation to provide a guarantee in requests for deferral and installments

A new Order (HFP/311/2023), published 28 March, raises the limit from EUR 30,000 to EUR 50,00 for exempting taxyper obligations to provide guarantees when requesting a tax deferral or debt installment.

The new limit will enter into force 15 April 2023. Requests for deferral and installment payments that are being processed at the time this Order enters into force will continue to be governed by the regulation provisions in force on the date that the corresponding request is submitted.

This new limit aims to help taxpayers comply with their tax obligations when incurring transitional economic-financial difficulties and will speed up the processing of these requests through automatic systems.

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Legislation

United Kingdom of Great Britain and Northern Ireland (the)

United Kingdom releases draft Pillar Two legislation

The United Kingdom released draft legislation on 23 March, containing an Income Inclusion Rule (IIR) and a Domestic Minimum Top-up Tax, as part of the latest installment of the UK's implementation of the OECD's Pillar Two project. Both the UK IIR ('Multinational Top-up Tax') and the UK domestic minimum tax apply for accounting periods beginning on or after 31 December 2023.

For more information see our PwC Insight.

The UK draft legislation generally aligns with the OECD Model Rules, Commentary and Administrative Guidance. The legislation provides for future amendment intended to ensure consistency with additional guidance to be published by the OECD. Since the UK's implementation of the Pillar Two rules is fast approaching, groups within scope should act now to analyze the potential impact on their group, as well as whether their current data models, systems, technology, and processes can respond to the new regime's requirements.

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Legislation

Lithuania

Update on Pillar Two status and other developments

A proposal relating to the Pillar Two project and potential changes to Lithuanian law on corporate accountability recently was registered in Parliament. The proposal would require multinationals to prepare an additional corporate income tax report and ensure that it's available to the public. However, no information was published regarding any changes to the tax laws.

Multinationals with revenue above EUR 750 million should continue to monitor these develpments. To date, there has been no information published regarding a minimum Top-up Tax or any changes in tax laws from the Tax Authorities or the Ministry of Finance.

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Administrative

Ireland

Irish Department of Finance releases Pillar Two feedback statement with draft legislation

Ireland's Department of Finance, on 31 March, published a Pillar Two feedback statement. The statement sets forth proposed Irish legislation to implement Pillar Two, including confirmation of the intention to introduce a Qualified Domestic Top-up Tax (QDTT). This feedback statement builds on a previous consultation process held in 2022 around implementing the EU Minimum Tax Directive in Ireland. Interested parties have until 8 May 2023 to respond as part of this process.

For more information see our PwC Insight.

The feedback statement indicates important policy decisions as to the QDTT, administration, and operation of the new tax. Pillar Two will be the biggest change to Ireland's tax system in decades and will require close analysis by a wide range of stakeholders to manage the implementation process. The Department of Finance's willingness to consult widely with stakeholders and practitioners is welcome, and businesses should consider responding to the specific questions asked or more generally about the proposed legislation by the 8 May deadline.

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Administrative

Spain

Royal Decree 249/2023 introduces multiple tax amendments

Royal Decree 249/2023 was published in the Spanish Official Gazette on 4 April 2023, and includes several tax regulatory modifications in order to implement various changes made by Law 11/2021, of 9 July, on measures to prevent and combat tax fraud. The modifications include:

- Development of information reporting on the ownership of virtual currencies and associated operations. The information to be provided is specified without prejudice to the fact that a future regulation to approve the assessment model may provide further detail. Moreover, some valuation rules are determined so that the provision of information can be complied in legal tender.
- The obligation to report virtual currencies located abroad. The first information reporting must be submitted as of 1 January 2024. The taxpayer-favorable regulation modifies interest associated with late payment interest for tax refunds agreed upon during tax audit procedures. The regulation also clarifies that in the computation of the accrual period, any deadline extensions that result from said procedures will not be taken into account.
- The WHT exclusion from the redemption or transfer of shares or shares in listed investment funds or companies is extended to equivalent collective investment institutions in other Member States, regardless of the market in which they are listed.

These modifications will enter into force 20 days after publication, except for article 5, which will enter into force on 1 July 2023.

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Judicial

France

French Court disallows carryforward of loss-making company's tax credits under treaty

A French loss-making company received dividends from a foreign source to which tax credits were attached in application of a tax treaty. When the company later made its first tax profit in France, it requested the offset of the unused foreign tax credits against corporate income tax (CIT) due. The Administrative Supreme Court held on 8 March 2023, that the company could not carry forward unused foreign tax credits based on two arguments.

First, the right to offset foreign tax credits against CIT due for subsequent years cannot be inferred from the silence of the tax treaty on this matter.

Second, this solution does not infringe the European Union principle of free movement of capital, given the difference in situations with regards to double taxation between a French loss-making company, for which the tax borne at source is deemed to be a definitive cost, and a company making a tax profit, for which it provides for a tax credit.

By retaining a strict conception of the notion of double taxation within the meaning of tax treaties, the Administrative Supreme Court seems to have sealed the outcome of foreign tax credits unused by French loss-making companies, even if other possibilities still seem to be available.

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Judicial

Spain

Spanish Constitutional Court agreed to review the new taxes on banking and energy sectors

As mentioned in previous publications, in December 2022 Spain adopted an extraordinary tax on windfall profits for the banking and energy sectors to come into effect in fiscal years 2023 and 2024. This new legislation led to notable controversy among concerned industries. As a result, various legal challenges were brought by institutions such as the Andalusian Government, which the Constitutional Court agreed to hear on 21 March 2023.

Additionally, on 16 February, the Spanish Bank Association asked the Supreme Court to nullify the tax on the financial sector. This is intended to raise €1.5 billion per year. On 7 March, Banco Sabadell, S.A. joined this claim, filing a legal challenge to the banking tax, and CaixaBank, S.A is planning to file a similar suit. On the other hand, Repsol, S.A., revealed its intentions to block the windfall tax on the energy sector soon.

At this juncture, the Spanish Constitutional Court agreed to review the legislation, although it denied the request to suspend the collection of both taxes while it reviews the case.

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Judicial

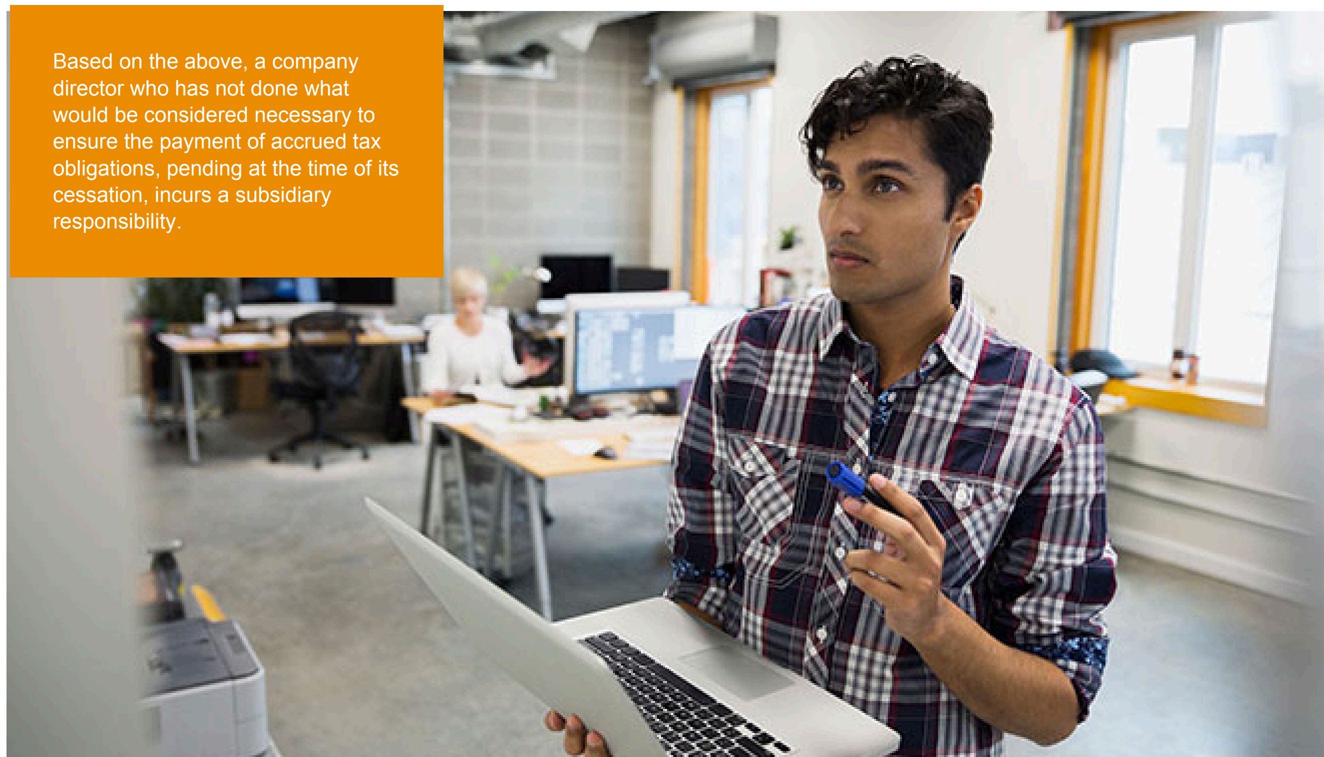
Spain

Spanish Supreme Court strengthens the subsidiary tax responsibility of directors in cessation

Spanish tax legislation establishes, in general terms, the subsidiary tax responsibility for tax liabilities for those directors that have not performed the necessary acts to comply with the company's tax obligations. In this regard, the Spanish Supreme Court strengthened this responsibility in its recent judgment no. 281/ 2023, of 7 March, by claiming that the directors are responsible for all contingences occurred until their cessation has been formally published in the Commercial Registry.

The Supreme Court also established that a company director's responsibility does not cease due to the expiration of his or her mandate or the designation of a new one, but until he or she is formally replaced, and such circumstance is notified to third parties through publishing his or her termination in the Commercial Register.

Based on the above, a company director who has not done what would be considered necessary to ensure the payment of accrued tax obligations, pending at the time of its cessation, incurs a subsidiary responsibility.



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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
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
IIR	Income Inclusion Rule
MNE	Multinational enterprise
NID	notionial interest deduction
PE	permanent establishment
QDMTT	Qualified Domestic Minimum Top-up Tax
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?

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