International Tax News

Edition 121 July 2023

Start

www.pwc.com/its

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

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:

- Pillar Two in South Korea: Effective dates and much more (July 12)
- Pillar Two and Financial Services: What's the deal? (July 26)

PwC's Pillar Two Country Tracker

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

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.

* article originally published in the EU Gateway Newsletter

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

In this issue

Legislation

Denmark

Denmark proposes Pillar Two legislation

Denmark's legislative draft proposal to transpose Pillar Two into the Danish tax legislation was published the June 26, 2023 (titled Minimum Tax Act). The draft legislation aims to implement Pillar Two effectively from January 1, 2024 for financial years starting December 31, 2023 or later. The proposal aims to implement EU Directive 2022/2523 as of December 14, 2022 (the Directive). The draft proposal has been sent for consultation with various Danish parties; the deadline for providing comments to the draft bill is August 18, 2023.

The draft proposal generally aligns with the Directive and introduce a 15% minimum tax.

The proposal includes implementation of the Income Inclusion Rule (IIR) for income tax years starting 2024 with a later implementation of the 'Undertaxed Profit Rule' (UTPR) in 2025. The proposal also includes a Danish Qualified Domestic Minimum Top-up Tax (QDMTT) applicable from January 1, 2024.

The Pillar Two legislation effectively introduces a new corporate tax system in addition to the existing company tax framework. The Danish legislative draft proposal lays down the new rules in a separate legislative act. The new tax act will apply alongside and in addition to the existing Danish national tax rules, tax treaties, various EU Directives, and government decisions. The legislative act will apply to entities of (multinational or large domestic) groups that are based in the Denmark with a consolidated group turnover of at least €750 million (certain sectors are exempted).

Various Danish parties will discuss the legislative proposal in the coming months and an actual proposal is expected shortly after the summer holiday. The legislative bill is expected to enter into force on January 1, 2024 and apply to accounting years beginning on or after the December 31, 2023.

The Danish Ministry of Taxation estimates that the Minimum Tax Act will lead to a large administrative burden for approximately 75 Danish parent entities. The annual administrative burden for each parent entity is estimated to be approximately DKK 480,000 (about USD 71,000) and DKK 61,000 (about USD 9,000) for one subsidiary (on ongoing basis). Additionally, implementation IT-fees are estimated to be DKK 1.7 million (about USD 250,000) per parent entity plus additional establishment cost for advisors etc. estimated at DKK 750,000 (about USD 110,000) per parent entity.

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

Legislation

Germany

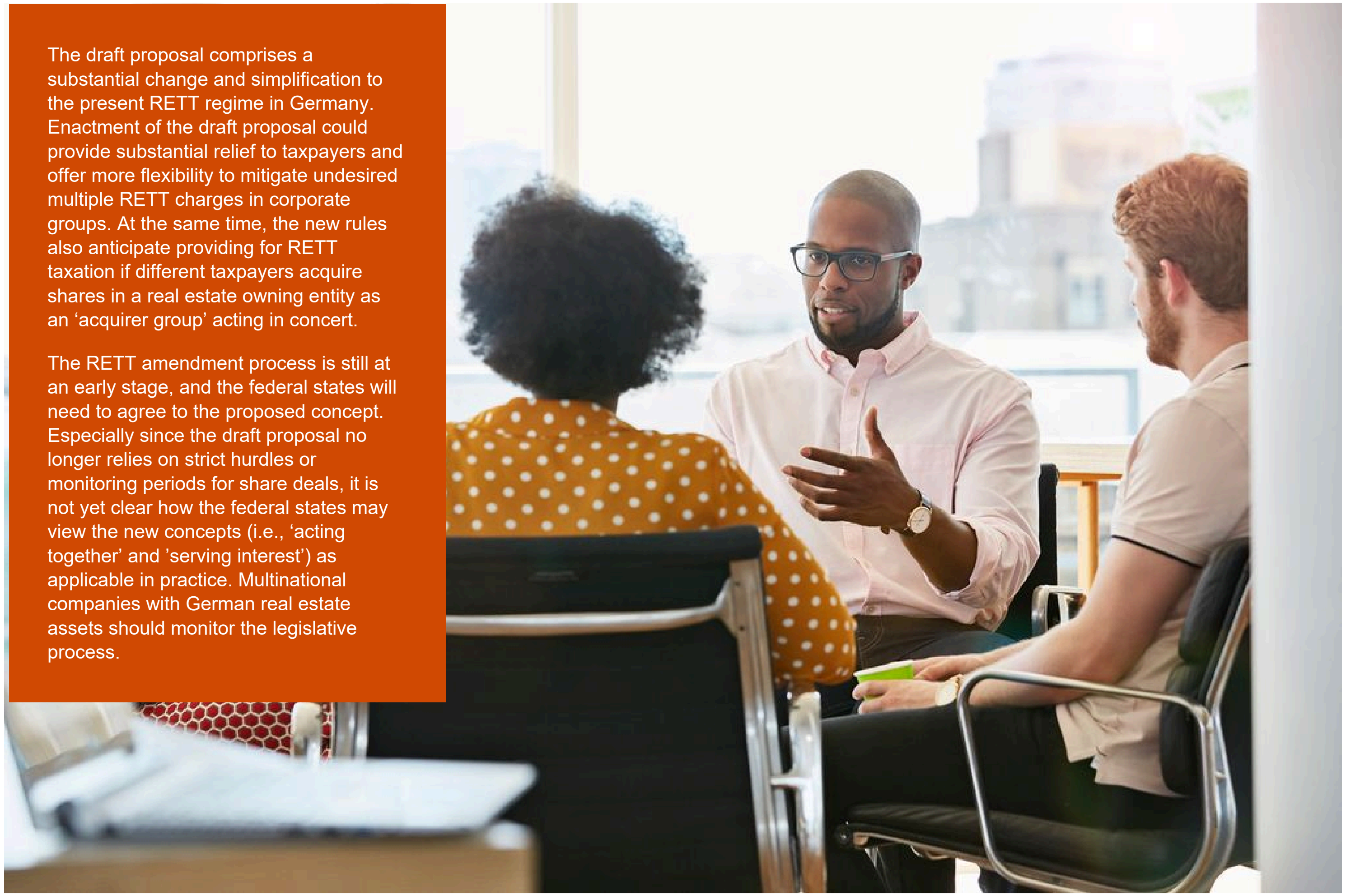
Discussion draft on German RETT changes submitted

The Federal Ministry of Finance has submitted a discussion draft of a law amending the Real Estate Transfer Tax Act (RETTA) to the federal states for initial comments. At this date, it is uncertain whether the circulated draft will lead to a change in the German real estate transfer tax (RETT) regime. If this draft is enacted, the German RETT regime would be substantially amended. For multinational companies with German real estate assets, RETT neutral reorganizations within a group would be possible. To prevent RETT neutral share deal transactions between third parties, the concept of a 'group of acquirers' acting together and the concept of 'serving interest' are being introduced. The proposal is intended to become effective January 1, 2024.

Read the full PwC Tax Insight.

The draft proposal comprises a substantial change and simplification to the present RETT regime in Germany. Enactment of the draft proposal could provide substantial relief to taxpayers and offer more flexibility to mitigate undesired multiple RETT charges in corporate groups. At the same time, the new rules also anticipate providing for RETT taxation if different taxpayers acquire shares in a real estate owning entity as an 'acquirer group' acting in concert.

The RETT amendment process is still at an early stage, and the federal states will need to agree to the proposed concept. Especially since the draft proposal no longer relies on strict hurdles or monitoring periods for share deals, it is not yet clear how the federal states may view the new concepts (i.e., 'acting together' and 'serving interest') as applicable in practice. Multinational companies with German real estate assets should monitor the legislative process.



Thomas Loose
Germany
+49 211 981 7884
thomas.loose@pwc.com

Arne Schnitger
Germany
+49 30 2636 5466
arne.schnitger@pwc.com

Legislation

Germany

Germany publishes draft Pillar Two implementation bill

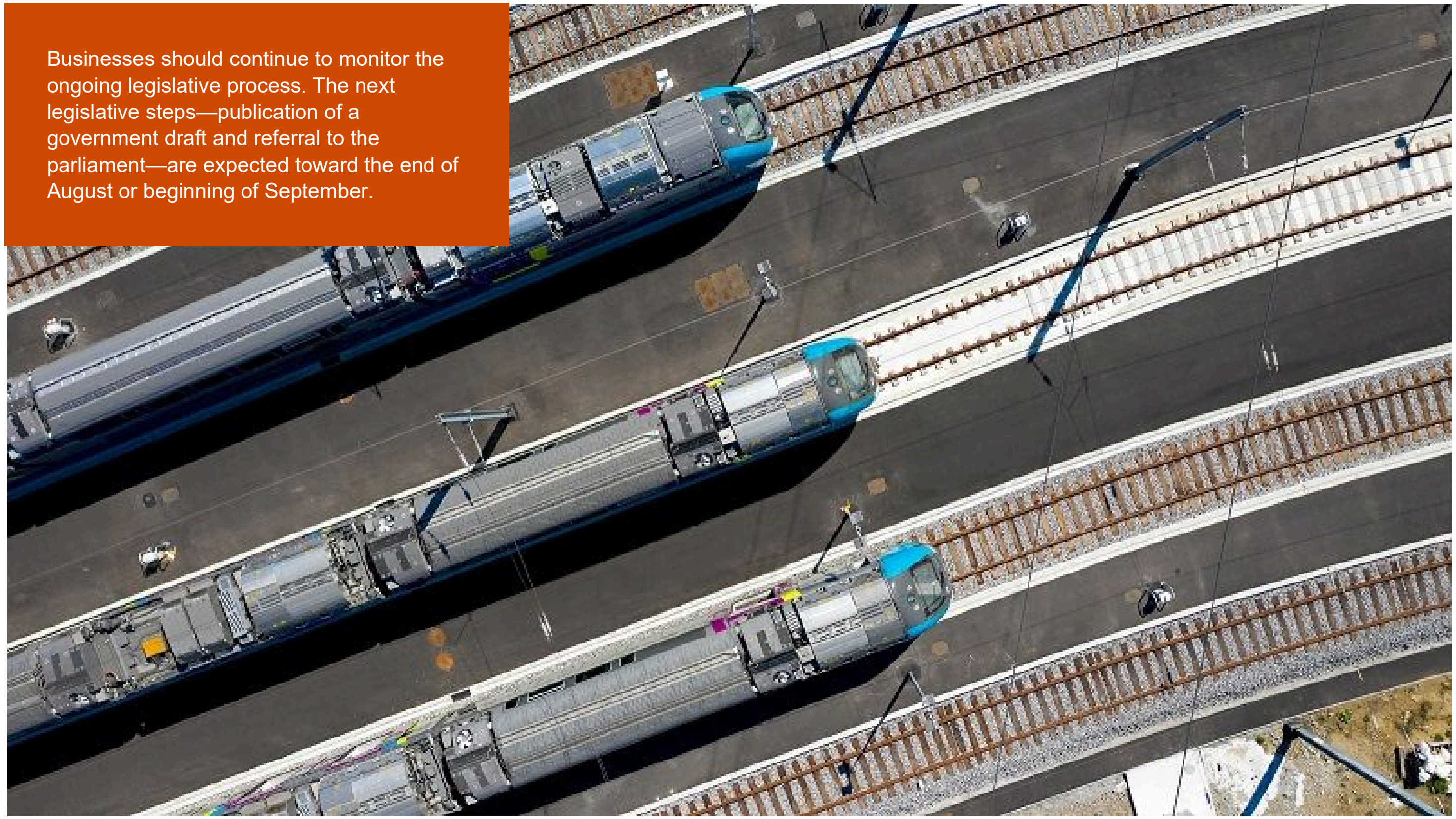
The German Federal Ministry of Finance on July 11 published a draft bill dated July 7 on implementation of the EU Council Directive to implement the global minimum tax into German national law. The legislation reflects updates from feedback received from various industry associations and the OECD Administrative Guidance published in February 2023. The legislation follows a March 20, 2023, discussion draft.

The legislation consists of 95 sections (instead of 89 sections in the discussion draft.)

Significant adjustments are also proposed in the Income Tax Act and the Foreign Tax Act, including abolition of the so-called royalty barrier rule, lowering of the low tax threshold for Controlled Foreign Corporations (CFCs) from 25% to 15%, and abolition of CFC income being subject to German trade tax.

Read the full PwC Tax Insight.

Businesses should continue to monitor the ongoing legislative process. The next legislative steps—publication of a government draft and referral to the parliament—are expected toward the end of August or beginning of September.



Ronald Gebhardt
Germany
00491754324019
ronald.gebhardt@pwc.com

Legislation

Hong Kong

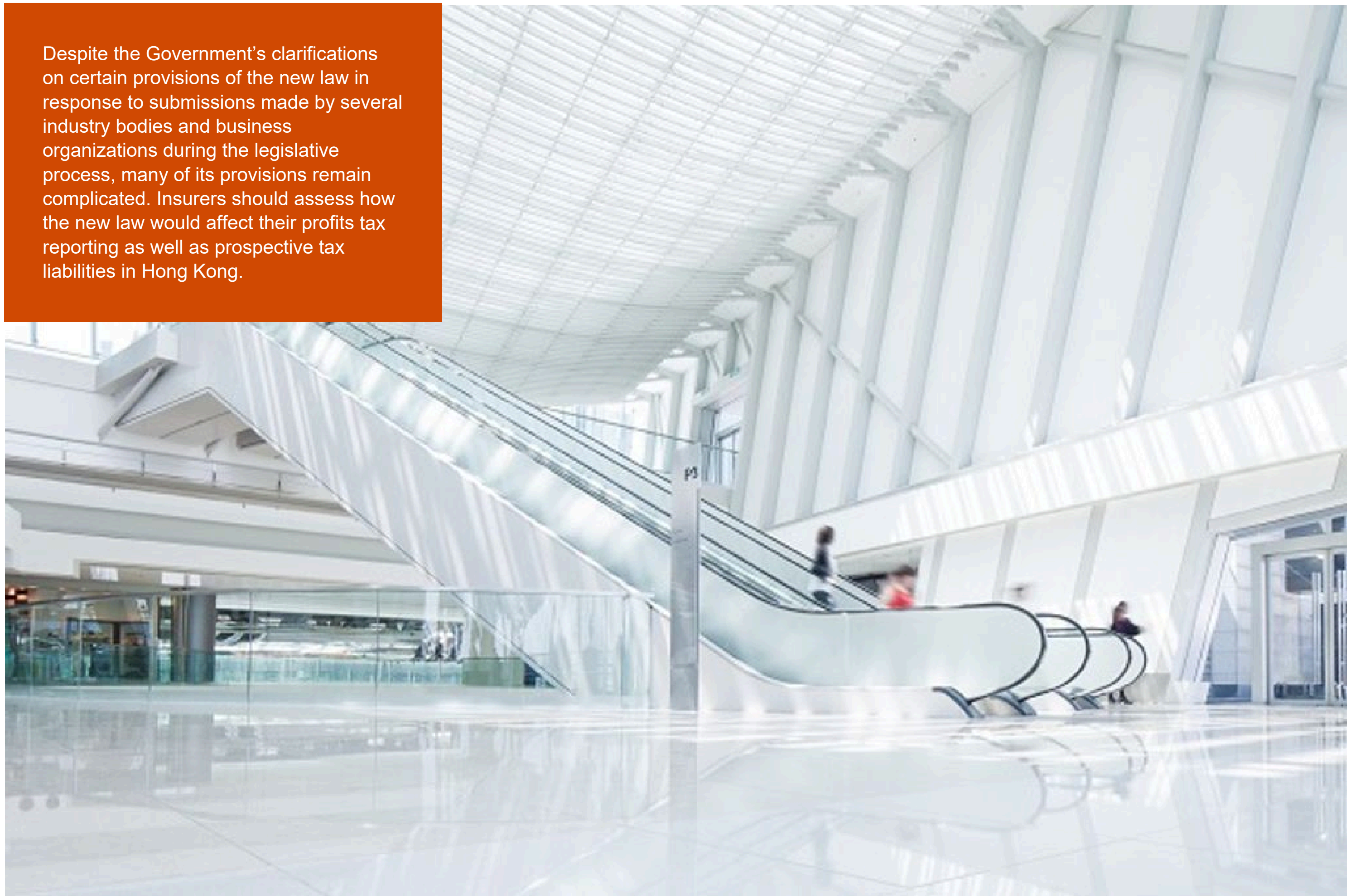
Hong Kong passes new legislation to address tax treatment of insurers upon implementation of Risk-based Capital regime

The Insurance Bill 2023 (Bill) passed its third reading in the Legislative Council, unamended, on July 6, 2023. The Bill was gazetted as the amendment ordinance on July 14, 2023 (new law).

The new law amends the Insurance Ordinance to provide a legal framework for the implementation of a Risk-based Capital regime for authorized insurers in Hong Kong. The new law also makes miscellaneous and related amendments to other ordinances, including the Inland Revenue Ordinance.

Read the full update here.

Despite the Government's clarifications on certain provisions of the new law in response to submissions made by several industry bodies and business organizations during the legislative process, many of its provisions remain complicated. Insurers should assess how the new law would affect their profits tax reporting as well as prospective tax liabilities in Hong Kong.



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

Legislation

Hungary

Hungarian Parliament approves bill covering tax law changes

The Hungarian government on June 6, 2023 submitted a bill (No. T/4243, the 'Bill') to Hungary's Parliament covering proposed tax law changes for 2024. While the Parliament approved the Bill without major changes for most of the provisions (including the corporate income tax rules and the extra profit surtaxes introduced by Government Decree 197/2022. (VI.4.)), provisions relating to the payment services tax (PST) were updated.

Below are key changes relating PST, which subjects certain payment services to a 0.3% tax, capped at HUF 10,000 (EUR 25) per transaction. The PST applies to foreign persons providing cross-border services to Hungary.

The Bill originally intended to clarify uncertainties regarding the definition of cross-border service provision. The Bill submitted to Parliament stated that the PST is applicable to foreign persons who provide payment services, credit and loan granting, currency exchange activity and currency exchange intermediation services (“in-scope services”) to Hungarian tax residents (including both individuals and entities). However, based on the legislation approved by Parliament, the definition of in-scope services was reconsidered. The precise meaning of the cross-border service provision remains unclear; as such, the uncertainties stemming from prior legislation introduced in 2022 remain.

The Bill also introduces a new levy for non-resident airlines.

Foreign investment service providers should assess the impact of the legislation carefully analyze their expected position as a result of the changing legislation. Although the approved Bill clarifies some previously open questions, uncertainties around the definition of cross-border service provision remain.

Many airlines with departing flights from Hungary are not Hungarian tax residents and have no fixed establishment in Hungary which would have qualified as a PE for the purposes of the local business tax. As a result of the new levy on non-resident airlines, many airlines may have additional Hungarian tax and compliance obligations (registration obligation and yearly tax returns).

Juhász Gergely
Hungary
+36 30 689 5487
gergely.juhasz@pwc.com

Legislation

Poland

Polish Ministry of Finance plans to change the rules on issuing the individual tax rulings

The Ministry of Finance on June 20, 2023, launched tax consultations on the draft amendment to the Tax Ordinance (the 'Bill'). A key proposal concerns amendments to the provisions on issuance of individual tax rulings.

An individual tax ruling and associated compliance provides protection against the payment of interest on tax arrears, fiscal penal sanctions (such as fines), and the payment of the tax itself. A tax ruling also provides assurance of correctness of the tax settlements.

The new provisions would require new tax rulings to maintain the received protection. The validity of the rulings or their modifications will be limited to 5 years (the current state of law issued rulings do not have any specific validity period). Per the transition rules, individual tax rulings issued before January 1, 2019, will expire on January 1, 2024. Individual tax rulings issued after December 31, 2018 would expire within 5 years from the date of its issuance.

Taxpayers will need to extend the validity of an individual tax ruling for another 5 years to continue to benefit from the protection of the ruling and pay an increased application fee for extension of the validity. The procedure to renew an individual tax ruling is based largely on the previously issued individual tax ruling however changes in a taxpayer's facts during the ruling's validity period will need to be addressed. The application fee is to be linked to the minimum remuneration for work, resulting in an increase up to 90 times the current fee (the second half of 2023 the minimum remuneration will amount to around EUR 800). Certain exception would apply.

During the ruling validity period, the fiscal authority may state that the individual interpretation has expired if it is inconsistent with the general interpretation or tax explanations issued under the same legal status. Taxpayers should monitor developments related to the topics covered by their tax rulings. Comments to the draft bill are due by August 31, 2023.

The most important changes planned with regard to individual tax rulings concern limiting the period of their validity to five years and an increase in fees for issuing the individual tax rulings. Work on the amendments to the Tax Ordinance Act may be undertaken after the autumn parliamentary elections. Taxpayers should review individual tax rulings previously obtained, assess their validity and consider application for a new tax ruling to ensure further protection prior to the law being effective.

Agata Oktawiec
Poland
+48 502 184 864
agata.oktawiec@pwc.com

Wiktor Samborowski
Poland
+48 519 507 244
wiktor.samborowski@pwc.com

Legislation

Singapore

Proposed taxation of gains on disposal of foreign assets

The Ministry of Finance (MOF) on June 6, 2023, published the draft Income Tax Bill 2023 (the 'draft Bill') for public consultation. The proposed section 10L imposes a tax on gains from sale or disposal of any movable or immovable property situated outside Singapore (collectively 'foreign assets') that are received in Singapore by a relevant entity which does not have economic substance in Singapore.

The proposed change will apply to gains from sale or disposal of foreign assets occurring on and after January 1, 2024.

As the proposal has not been legislated, businesses should monitor this development and consider its implications.

Read the full Tax Insight here.

The proposed section 10L comes on the back of increasing efforts to curb cross-border tax avoidance and prevent double non-taxation. While this proposal is not entirely surprising in today's international tax policy environment, it represents a significant shift in Singapore's tax regime which currently does not tax capital gains.

The draft bill is not yet law, and there may be further changes following feedback from the ongoing public consultation. The MOF has indicated that it will publish a summary of the feedback received and its responses in August 2023. Businesses should follow these developments closely and evaluate potential implications and whether they can satisfy the economic substance requirements.

Paul Lau
Singapore
+65 88698718
paul.st.lau@pwc.com

Legislation

United Kingdom of Great Britain and Northern Ireland (the)

UK consultation launched on three fundamental aspects of UK's taxation of multinational enterprises

HM Revenue & Customs (HMRC) on June 19, 2023, launched a consultation on possible changes to three of the most fundamental aspects of the UK's taxation of multinational enterprises (MNEs). The three consultation areas are:

- Transfer pricing (TP) - the basis on which profits are divided between jurisdictions as a result of transactions between two or more legal entities within the same MNE.
- Permanent establishments (PEs) - the attribution of part of the profits of a single legal entity to two or more jurisdictions.
- Diverted Profits Tax (DPT) - a targeted measure introduced in 2015 to counter what HMRC considers to be "contrived arrangements designed to avoid profits being taxed in the UK."

HMRC sees the consultation as an opportunity for modernization to provide better clarity and to maintain alignment with policy intention, international standards and the UK's network of bilateral tax treaties. Any reforms would be intended to improve fairness, produce simpler and more easily understandable legislation, and promote inward investment into the UK by increasing certainty and access to treaty benefits.

Read the full PwC Suite article.

One of the two PE options under consideration - as defined by Article 5 of the current OECD Model, subject to the relevant double tax treaty - would result in the extension of the domestic PE definition due to the 2017 OECD Model approach to "dependent agent" PEs:

- PEs would include someone who "habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise", even if they do not actually conclude the contracts.
- The "independent agent" exemption from PE status would not apply where "a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related."

The UK has not adopted the Multilateral Instrument (MLI) measures for dependent agent PEs; such a change only would impact where there is no double tax treaty or where a new treaty is negotiated to include the expanded definition. If the UK were to change its MLI position, it would have a much wider impact.

Mike Cooper
United Kingdom
+44 (0)7809 755633
michael.j.cooper@pwc.com

Sonia Watson
United Kingdom
+44 (0)7841 567087
sonia.watson@pwc.com

Administrative

Germany

Germany publishes anti-hybrid rules draft guidance

The German Federal Ministry of Finance on July 14 published a comprehensive draft decree on its interpretation of the German anti-hybrid rules, which apply generally to all expenses incurred after December 31, 2019. While the draft decree clarifies certain items, several questions remain unresolved. Comments can be made by August 10, 2023.

Read the full PwC Tax Insight.

The draft decree is subject to comments and potential changes. Multinational companies with German subsidiaries should monitor the legislative process and analyze the impact of the draft decree on the deductibility of expenses in Germany. Businesses also should comply with the documentation requirements of the treatment of transactions under foreign law, as required by the draft decree.

Thomas Loose
Germany
+49 211 981 7884
thomas.loose@pwc.com

Arne Schnitger
Germany
+49 30 2636 5466
arne.schnitger@pwc.com

Administrative

India
Guidelines released for computation of 'net winnings' from online games for withholding tax

As per the recent amendment in the Indian tax law, with effect from April 1, 2023, in relation to income by way of winnings from online games, the tax law has obligated every person responsible for paying such income to withhold tax from the 'net winnings'.

To provide clarity on the mechanism to compute the amount of net winnings, the Indian Government has released guidelines and introduced rules in the domestic laws, including for situations where the winnings are paid in kind.

For more information see our PwC Insight.

The guidelines released by the Indian Government provide much-needed clarity and will mitigate the litigation that may arise on incorrect computation of 'net winnings' in the absence of a prescribed mechanism.

Sriram Ramaswamy
Partner on Secondment
+1 646-901-1289
ramaswamy.sriram@pwc.com

Chengappa Ponnappa
India
+91 98451 88834
chengappa.ponnappa@pwc.com

Administrative

Nigeria

Nigeria's FIRS issues assessments to international petroleum tankers and transport vessels

Nigeria's Federal Inland Revenue Service (FIRS) recently started issuing assessments to companies operating ocean-going petroleum tankers, including International Petroleum Vessel Companies (IPVCs) deemed to have 'conducted business' in Nigeria. These assessments typically include a deemed 6% tax on alleged freight income, and in some cases demurrage and detention charges, together with penalty and interest. There are no public details on how the income earned by the IPVCs was determined; the FIRS stated that failure by these IPVCs to submit tax returns or make payments will be considered as tax evasion.

Non-Resident Companies (NRCs) that carry out international transportation are taxed on their profits from the outward carriage of freight from Nigeria. In practice, however, international shipping businesses are taxed at an effective rate of 6% on outward carriages (i.e., applying a 30% tax on a deemed 20%profit).

NRCs may be able to benefit from tax treaties and be partially or fully exempt from corporate income tax if a Nigerian owned vessel also operates in the home countries the NRCs.

Ambiguities exist in applying the taxing provisions, including determining what parties would be captured. Arrangements for carriage of commodities can be complicated as they involve several parties such as the vessel manager, the vessel owner, the owner of the items being transported, etc. There are no clear definitions on what constitutes 'carriage' or 'transportation'.

International shipping companies that earn income from the outbound carriage of freight from Nigeria and are not protected by the treaties are required to register as a non-resident company and comply with domestic tax laws. Tax authorities also are entitled to carry out audits and issue additional assessments within 6 years from the relevant tax year. This limitation does not apply in cases of fraud, willful default or neglect by the company.

Read the full Tax Alert here.

International companies that operate ocean-going vessels/tankers should assess whether they fall within the scope of the specific tax rules for shipping companies, or any other tax provision. Businesses located in treaty countries with specific conditions also should determine whether they can meet those conditions. Taxpayers can question (within a specific time period) and raise objections to taxes raised.

Kenneth Erikume
Nigeria
+234 818 001 6451
kenneth.y.erikume@pwc.com

Esiri Agbey
Nigeria
+234 708 727 3056
emuesiri.agbeyi@pwc.com

Administrative

United States of America (the)

Tax committee leaders release US-Taiwan tax agreement discussion draft

The chairmen and ranking members of the House Ways and Means and Senate Finance Committees on July 12 released a discussion draft of legislation ('the legislation') to provide treaty-like benefits aimed at relieving double taxation for businesses engaged in cross-border activities between the United States and Taiwan.

The legislation would add new Section 894A, creating benefits for residents of Taiwan, including reduction of US federal income and withholding taxes, application of permanent establishment rules under traditional treaty standards, and treatment of income from employment. The legislation also defines 'qualified residents' of Taiwan and includes rules applicable to dual resident individuals. The provisions would be effective as of the date of the enactment of the legislation but only would apply once the US Treasury Secretary determines that Taiwan has granted reciprocal benefits to US persons.

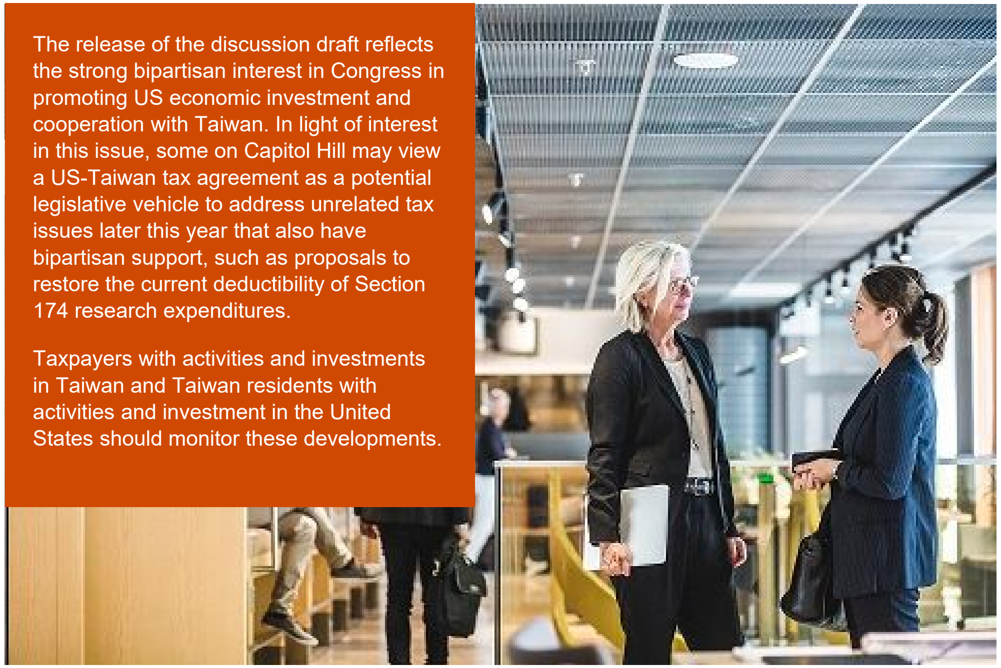
In releasing the legislation, which was made available along with a summary and a technical explanation of the proposed rules, the lawmakers requested comments on the discussion draft to be provided by July 24, 2023.

Separately, the Senate Foreign Relations Committee on July 13 approved a bill (S. 1457, the Taiwan Tax Agreement Act of 2023) to authorize the negotiation of a US-Taiwan tax agreement providing double taxation relief.

Read the full PwC Tax Insight.

The release of the discussion draft reflects the strong bipartisan interest in Congress in promoting US economic investment and cooperation with Taiwan. In light of interest in this issue, some on Capitol Hill may view a US-Taiwan tax agreement as a potential legislative vehicle to address unrelated tax issues later this year that also have bipartisan support, such as proposals to restore the current deductibility of Section 174 research expenditures.

Taxpayers with activities and investments in Taiwan and Taiwan residents with activities and investment in the United States should monitor these developments.



Pat Brown
United States
(203) 550-5783
pat.brown@pwc.com

Rohit Kumar
United States
(202) 841-8300
rohit.kumar@pwc.com

Administrative

United States of America (the)

United States Internal Revenue Service issues temporary foreign tax credit relief

Treasury and the IRS on July 21 issued Notice 2023-55 (the 'Notice'), which announces temporary relief for taxpayers in determining whether a foreign tax may be creditable under Sections 901 or 903 in a tax year ('relief year') beginning on or after December 28, 2021, and ending on or before December 31, 2023 (the 'relief period').

During the relief period, taxpayers that satisfy certain consistency requirements may determine the creditability of foreign taxes under standards set forth in former regulations under Section 901 (for a net income tax) and revised regulations under Section 903 (for an 'in lieu of' tax).

Treasury and the IRS continue to analyze issues relating to final regulations (T.D. 9959) published on January 4, 2022 under Sections 901 and 903 (the '2022 final regulations'), and are considering proposing amendments to those regulations. Treasury and the IRS also are considering whether, and under what conditions, to provide additional temporary relief beyond the relief period.

Read the full PwC Tax Insight.

These changes permit taxpayers to determine the creditability of their foreign income taxes and 'in lieu of' taxes without satisfying the attribution requirement and the more onerous cost recovery requirement promulgated in the 2022 final regulations. This relief is expected to favorably affect the creditability of foreign taxes, such as certain Brazilian corporate income taxes, various services and royalty withholding taxes, and nonresident capital gain taxes. The relief generally is available for calendar tax years 2022 and 2023 and for fiscal tax years ending in 2023. Taxpayers that already have filed a 2022 tax return should consider filing an amended return.

Elizabeth Nelson
United States
(202) 460-8329
elizabeth.nelson@pwc.com

David Sotos
United States
(202) 701-3236
david.sotos@pwc.com

Judicial

India

Indian Administrative Tribunal favorably rules on taxability of reimbursement under overseas secondment arrangements

The Indian Administrative Tribunal (Tribunal) in a recent ruling held that reimbursement of salary paid to employees seconded to India cannot be taxed as fees for technical services under the India-US Double Taxation Avoidance Agreement (DTAA).

Under typical overseas secondment arrangements, social security laws of a secondee's home country and business considerations result in payroll retention and salary payment by the overseas entity, which is claimed as reimbursement from the Indian company employing such secondee. These reimbursements usually are not subject to tax, being pure cost reimbursements.

The Indian Supreme Court, in the context of indirect tax laws, previously adjudicated that the secondment of employees by an overseas entity resulted in manpower supply services being rendered by the foreign company, and payment for such services will be liable to service tax.

The Tribunal distinguished its ruling from the Supreme Court decision on the below aspects.

- The Indian Supreme Court decision has to be read in the context in which it is delivered, which was taxability of manpower recruitment and supply under the service tax regime.
- The Tribunal relied on the previous decision of the higher Appellate authority, where the Supreme Court decision was not followed in light of the 'make available' clause in the Double Taxation Avoidance Agreement (DTAA) between India and US.

The Tribunal relied on various terms of the secondment agreement to note that the seconded employees are employees of Indian affiliates and the amount paid by the Indian affiliate was only on account of cost-to-cost reimbursements.

For more information see our PwC Insight.

The taxation of salary reimbursements received by foreign entities from Indian companies under secondment arrangements has been a matter of intense litigation in India, more so after the recent Supreme Court decision in the context of indirect tax law. The Tribunal's ruling that reimbursement of salary paid to employees seconded to India cannot be taxed as fees for technical services under the India-US DTAAis a welcome one to taxpayers. The Tribunal ruling emphasizes the importance of terms captured in secondment arrangement and related documentation.

Sriram Ramaswamy
Partner on Secondment
+1 646-901-1289
ramaswamy.sriram@pwc.com

Chengappa Ponnappa
India
+91 98451 88834
chengappa.ponnappa@pwc.com

Judicial

Italy

Italian Supreme Court judgments on the beneficial owner requirement under the domestic implementation of the Interest-Royalties Directive*

The Italian Supreme Court (the "Court") on February 28, 2023 issued several “twin” judgments concerning the application of the beneficial ownership requirement under the domestic implementation of the Interest-Royalties Directive (the "Directive"). In the judgments, the Court clarified that in order for the recipient of the exempt interest income to qualify as the beneficial owner three separate tests need to be met, namely the: 1) substantive business activity test, 2) the dominion test, and 3) business purpose test. The Court applied the aforementioned tests to the Italian income-recipient entity and denied the application of the Directive to the foreign EU controlling entity, a Luxembourg holding company. The Court reasoned the Italian interest-payer entity was not directly owned by the Luxembourg company, and thus out of scope of the Directive as the Directive does not apply to indirect holdings. However, the Luxembourg company *was* considered the beneficial owner of the income in Luxembourg.

Alessandro Di Stefano
Italy
+39 348 8408195
alessandro.di.stefano@pwc.com

Franco Boga
Italy
+39 02 91605400
franco.boga@pwc.com

EU/OECD

European Union

CBAM Reporting: Transitional Period Requirements Published in Draft, First Report Due by January 31, 2024*

Detailed regulations on the Carbon Border Adjustment Mechanism (CBAM), stipulating how, what and when companies need to report, were published for consultation with the period ending July 11, 2023. The CBAM is a levy on the importation of certain goods (e.g., iron, steel, electricity, certain indirect emissions, etc.) into the EU. It is aimed to better reflect (and eventually effectively tax) the embedded carbon emissions resulting from the production of the goods, and to avoid carbon leakage. It is an important part of the EU's 'Fit for 55 package', next to the EU Emissions Trading System (EU ETS).

The consultation provisions concern CBAM reporting requirements during the transitional phase (October 1, 2023 to December 31, 2025). During this time, the CBAM is in force, but does not require importers to purchase CBAM certificates. CBAM reports need to be filed within one month after the end of the reporting quarter, with an additional month to correct errors in the submitted report. The first CBAM report (covering the fourth quarter of 2023) is due by January 31, 2024 and can be amended up to February 29, 2024. During the first year of implementation, reporting can be done based on:

1. EU methodology: Annex IV, CBAM-regulation, which is broadly in line with the EU ETS;
2. equivalent third-country (non-EU) national systems; and
3. reference values.

Through July 31, 2024, a reporting declarant lacking the necessary information for each import of CBAM goods has an option to utilize alternative methods to determine direct emissions. The declarant would need to indicate and reference in the CBAM report the methodology followed to establish such values. From January 1, 2025, the last year of the transitional period, the draft implementing act indicates that only the EU methodology will be accepted. For more information about the draft CBAM implementing regulations, including the applicable fines for non-reporting, click here.

Importers (and suppliers) of CBAM goods will only have a short period of time after the formal adoption of the draft implementing regulation (expected August or September 2023) to start collecting all the required greenhouse gas (GHG) emissions data on their imports in Q4 2023. Operators of industrial plants in non-EU countries that emit GHGs related to the production of CBAM goods which are imported into the EU should prepare necessary information for the CBAM reporting on EU imports. They also will need to decide what data to share through the central EU CBAM (transitional) register, for reporting purposes.

"Significant administrative and financial obligations may be expected to phase in for a wide range of industries over the coming years. Such changes may have a significant impact on both European (industrial) operations as well as the wider global supply chain." Niels Muller, Partner PwC Energy, Utilities & Resources | Sustainability

Niels Muller
The Netherlands
+31 6 51600861
niels.muller@pwc.com

EU/OECD

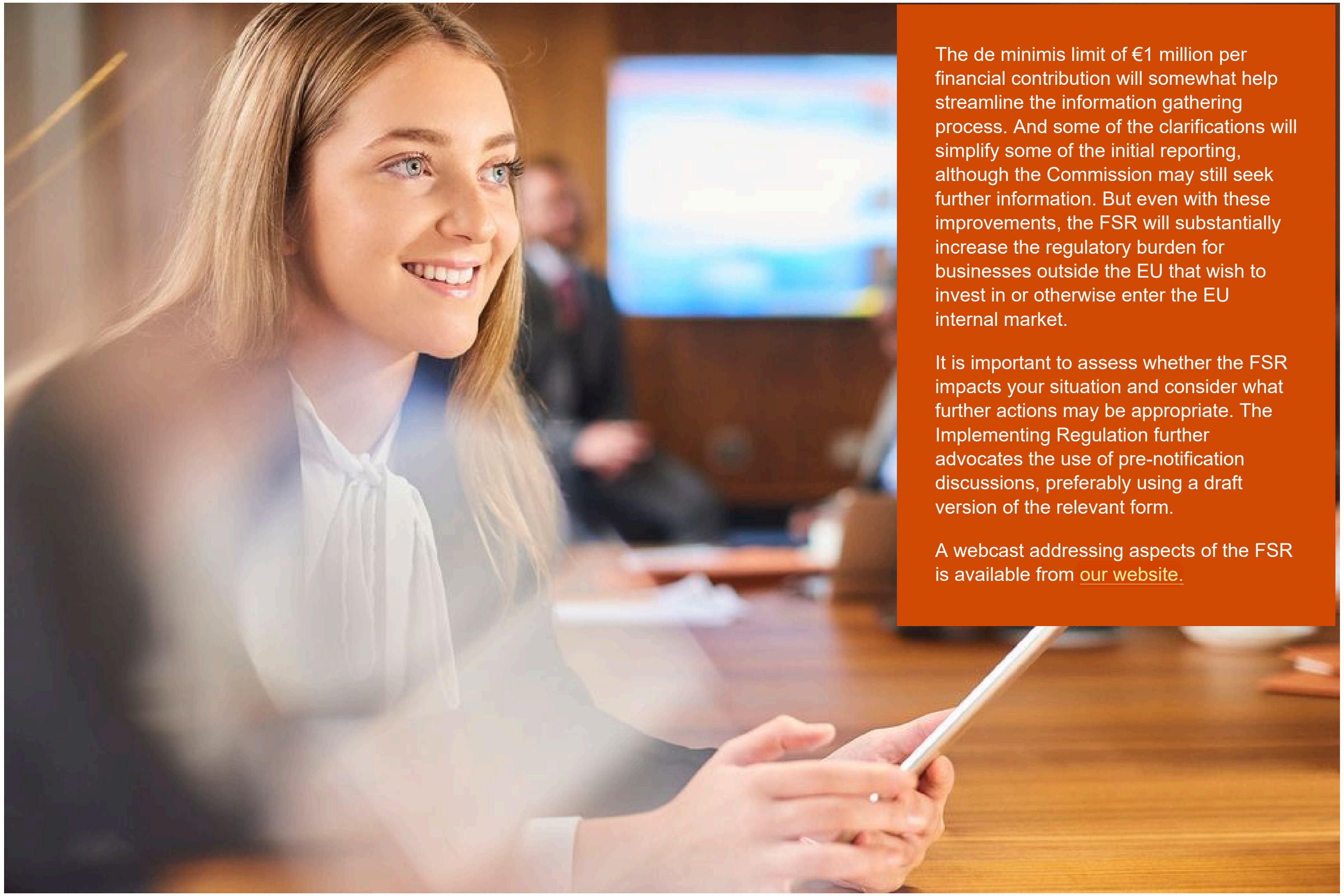
European Union

EU Foreign Subsidies Regulation (FSR): new guidance on notification procedures offers some streamlining

An EU regulation (‘The Implementing Regulation’) setting out notification procedures regarding non-EU subsidies that might distort the internal market was adopted by the European Commission on July 10. In particular, it establishes the form of notification, the degree of aggregation of information and some exclusions in applying the rules of the Foreign Subsidies Regulation (FSR) which was adopted by the European Parliament and Council in November 2022 (see our Tax Policy Alert).

The FSR will apply from July 12, 2023. As of October 12, 2023, companies will have to notify either mergers and acquisitions (‘concentrations’) or participation in public procurement bids, where they involve foreign financial contributions, meet the relevant notification thresholds and do not fall within the new exceptions. Notifications under the Commission’s ex-officio power of investigation in other cases are to be determined in each case.

Read the full PwC Tax Policy Alert.



The de minimis limit of €1 million per financial contribution will somewhat help streamline the information gathering process. And some of the clarifications will simplify some of the initial reporting, although the Commission may still seek further information. But even with these improvements, the FSR will substantially increase the regulatory burden for businesses outside the EU that wish to invest in or otherwise enter the EU internal market.

It is important to assess whether the FSR impacts your situation and consider what further actions may be appropriate. The Implementing Regulation further advocates the use of pre-notification discussions, preferably using a draft version of the relevant form.

A webcast addressing aspects of the FSR is available from our website.

Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

EU/OECD

European Union

European Commission FASTER Directive would harmonise withholding tax procedures in the EU

The European Commission published the draft Faster and Safer Relief of Excess Withholding Taxes (FASTER) Directive on June 19 to encourage investment in the Single Market by making withholding tax procedures in the European Union more efficient and secure for investors, financial intermediaries and Member State tax administrations. FASTER is a key element of the Communication on Business Taxation for the 21st Century, and the Commission's Action Plan on the Capital Markets Union 2020. The Capital Markets Union (CMU) is a plan to create a single market for capital, allowing investors to benefit regardless of their location. FASTER responds to calls for standardised withholding tax procedures and is estimated to save investors around €5.17 billion per year. The proposal, while promoting 'faster' is also promoting 'safer,' so includes anti-avoidance provisions, as well as new obligations for both financial institutions and tax administrations. Once adopted by EU Member States, the proposal is expected to come into force on January 1, 2027.

Read the full PwC Tax Policy Alert.

FASTER is an important development in cross-border withholding taxes, establishing a common, standardised, EU-wide system for withholding tax relief. Whilst a 2027 implementation date may appear distant, investors, financial intermediaries and tax authorities should currently be assessing tax operating and risk models to better understand risks and opportunities. Making withholding tax procedures in the EU more efficient and fair will support cross-border investment, thus contributing to building the CMU. Financial institutions should consider the benefits of utilising automation and machine learning to bring these benefits to their clients. It will be also interesting to see how this new process may interact with the subject to tax rule (STTR) that is expected to be put forward as part of the Pillar Two project and with the potential EU 'Unshell' Directive to the extent it addresses relief for transactions between Member States.

Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

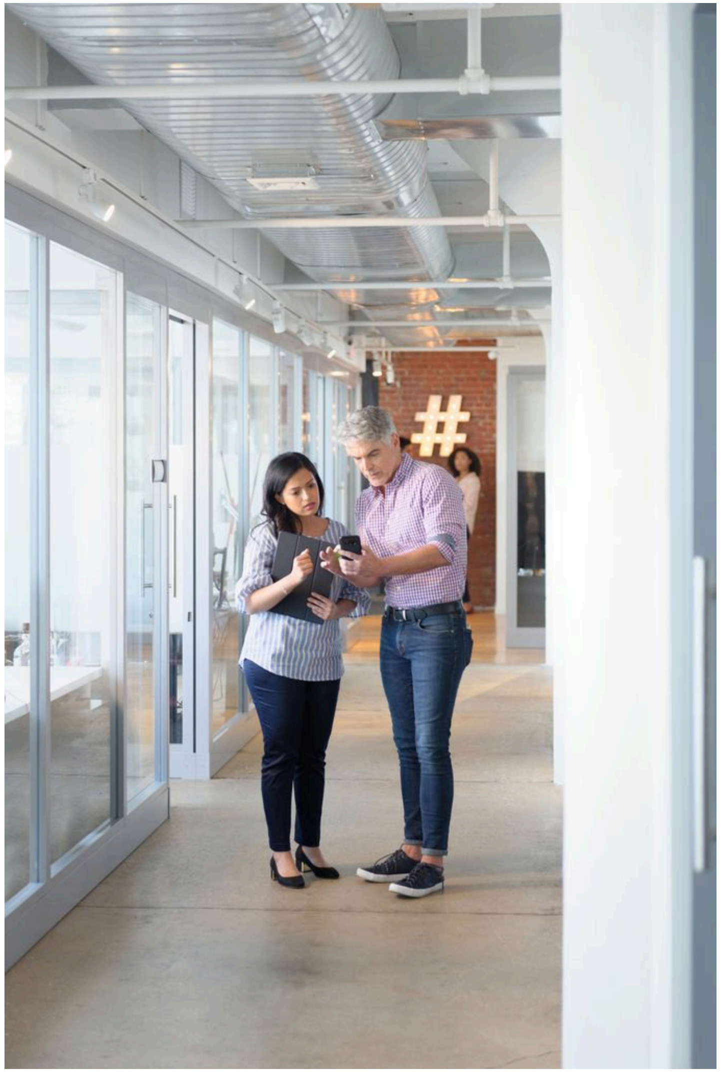
EU/OECD

European Union

EU's ambitious goal to seal the Unshell Directive deal before November 2023*

Spain took over the presidency of the EU Council from Sweden on July 1, 2023, inheriting the pending proposal to tackle the misuse of shell entities ("Unshell Directive"). According to the ECOFIN report to the European Council on tax issues dated June 7, 2023, the six-month term of the Swedish Presidency brought progress on matters that previously had created controversy among the EU Member States, such as: (1) the scope of the Unshell Directive, (2) minimum substance criteria,(3) tax consequences, and (4) tax residence certificates. Further discussions are needed on outstanding issues, with the common objective to limit administrative burdens for both taxpayers and tax administrations. While the Spanish presidency aims to finalize the Unshell Directive by November 2023, enabling the European Commission to potentially present its tax intermediary proposal, Securing Activity Framework of Enablers (SAFE), due to the due to the upcoming June 2024 European Parliament elections, no new legislative proposals are expected post-November 2023.

The information around the Unshell Directive proposal can make distinguishing accurate information, versus what is not, difficult. Scope, minimum substance criteria and tax implications could be viewed as challenging aspects of the proposal. While the ECOFIN report notes that significant advancements in these areas have been made, questions remain as to what open items still need to be addressed. For example, one welcome area of information would be detail on whether the EU Member State of the shell entity can maintain the application of the participation exemption, or conversely, if it is mandated to levy taxes on the pertinent income.



Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

EU/OECD

OECD

OECD releases Outcome Statement on the two-pillar solution

On July 12, 2023, the OECD published a press release and “Outcome Statement” following the 15th plenary meeting of the OECD/G20 Inclusive Framework on BEPS (IF), which took place in Paris on July 10-11. The Outcome Statement provides an update on the status and timeline for implementing Amount A and B of Pillar One and the Pillar Two Subject-to-Tax Rule (STTR). The Outcome Statement was approved by 138 of the 143 IF members (Belarus, Canada, Pakistan, the Russian Federation, and Sri Lanka did not sign, but Kenya and Nigeria did). The Outcome Statement will be delivered to the G20 Finance Ministers and Central Bank Governors at their meeting on July 17-18.

However, while the Outcome Statement notes progress made on both Pillars, it also acknowledges that differences remain between countries. Importantly, the timeline for releasing a multilateral convention (MLC) for Amount A of Pillar One has been delayed to the second half of 2023 (with a goal of it entering into force during 2025) and the standstill on Digital Services Taxes (DSTs) was conditionally extended. The Outcome Statement also states that during the week beginning July 17, the OECD will launch a second public consultation on Amount B – where, again, there is clearly not yet full agreement – that will run through the end of August and publish documentation relating to the STTR (with the Multilateral Instrument (MLI) implementing the STTR to be released and open for signature from 2 October 2023).

Read the full PwC Tax Policy Alert.

While the technical work on Amount A progresses, it is clear that political agreement on the rules is still far from being reached. The Outcome Statement notes that several jurisdictions have “expressed concerns with some specific items in the MLC,” though it does not elaborate on what these concerns are. The EU Commission’s Progress Report on Pillar One (dated June 30, 2023), however, highlights several outstanding issues, including the elimination of double taxation, the marketing and distribution safe harbour (MDSH) and the treatment of withholding taxes, DST measures, the implementation of an autonomous domestic business exemption, as well as the condition of entry into force. This likely explains why the official timeline for the project's completion has yet again been delayed.

The 30-jurisdiction/60% UPE threshold for DST standstill, makes clear that this will only occur if the U.S. signs by December 31, 2023. However, even if the US signs, ratification by the U.S. Senate is not guaranteed.

Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

EU/OECD

OECD

OECD presents report to G-20 Finance Ministers and releases key documents under Pillar One and Pillar Two

On 17, July 2023, the OECD/G20 Inclusive Framework on BEPS (IF) released four important documents related to Pillar One and Pillar Two and a Progress Report to the G20 Finance Ministers and Central Bank Governors for their meeting on July 17-18. These publications follow last week's IF plenary meeting and resulting "Outcome Statement," which provided an update on the status and timeline for implementing Amount A and B of Pillar One and the Pillar Two Subject-to-Tax Rule (STTR).

The documents include:

- OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors;
- Public Consultation Document on Amount B of Pillar One;
- Pillar Two STTR;
- Pillar Two GloBE Information Return; and
- Pillar Two Administrative Guidance (including a permanent safe harbour for jurisdictions that introduce a Qualified Domestic Minimum Top-up Tax (QDMTT) and a new transitional safe harbour, which provides relief from the application of the UTPR for fiscal years commencing on or before the end of 2025).

This Alert provides a short summary of these documents. It will be followed by additional Alerts containing more in-depth analysis and observations later this week.

Read the full PwC Tax Policy Alert.

It will take time to analyse the full implications of the releases in light of specific fact patterns and business models. Based on an initial review, we can see that some of the issues identified in the responses to the various consultations as administratively burdensome, or incompatible with existing systems, have been addressed. However, many unknowns remain for both Pillar One and Pillar Two and only through taxpayers' continued engagement with the OECD can these issues be resolved. Taxpayers should start to work through these new rules and model the outcomes of the releases as soon as possible given the pace at which many of these rules are being, or soon will be, implemented.

Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

EU/OECD

OECD

OECD releases Pillar One Amount B

On July 17, 2023, the OECD released an updated public consultation document on Amount B of Pillar One, which attempts to simplify the transfer pricing of certain baseline wholesale marketing and distribution activities by providing agreed returns, as laid out in a "pricing matrix," to the source country on such activities. The OECD also published a short overview, titled "Amount B in a Nutshell," to assist stakeholders in understanding Amount B. Comments are due 1 September 2023. The consultation document outlines the design elements of Amount B and identifies aspects which require further work, including:

- Ensuring an appropriate balance between quantitative and qualitative approaches in identifying baseline distribution activities;
- Determining the appropriateness of the pricing framework and its application; and
- Identifying the criteria to apply Amount B utilising local databases in certain jurisdictions.

The IF plans to approve a final report on Amount B and incorporate key content into the OECD Transfer Pricing Guidelines (TPG) by January 2024. It is important to note that the proposals outlined in the consultation document represent the work of the OECD Secretariat, since the IF has not yet reached consensus on them. Their basic design may be subject to change, unrelated to the consultation process.

Read the full PwC Tax Policy Alert here.

The potential implementation of Amount B, contingent upon its final scope design, holds out the promise of streamlining existing transfer pricing procedures by taking certain activities and the return due on them out of controversy, by providing certainty on pricing for tax authorities and taxpayers alike. It is therefore crucial for businesses operating with limited risk distributors, commissionaires, and/or sales agents to closely monitor these developments and assess their implications for their current transfer pricing policies. Notably, the proposed outcomes are subject to variations across industries and distributors with slightly different features. Amount B is meant to apply to a large range of industries buying and selling tangible goods, including consumer goods, alcohol and tobacco, construction, vehicles, IT hardware, software and components, textiles, machinery and tools, and pharmaceuticals.

Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

EU/OECD

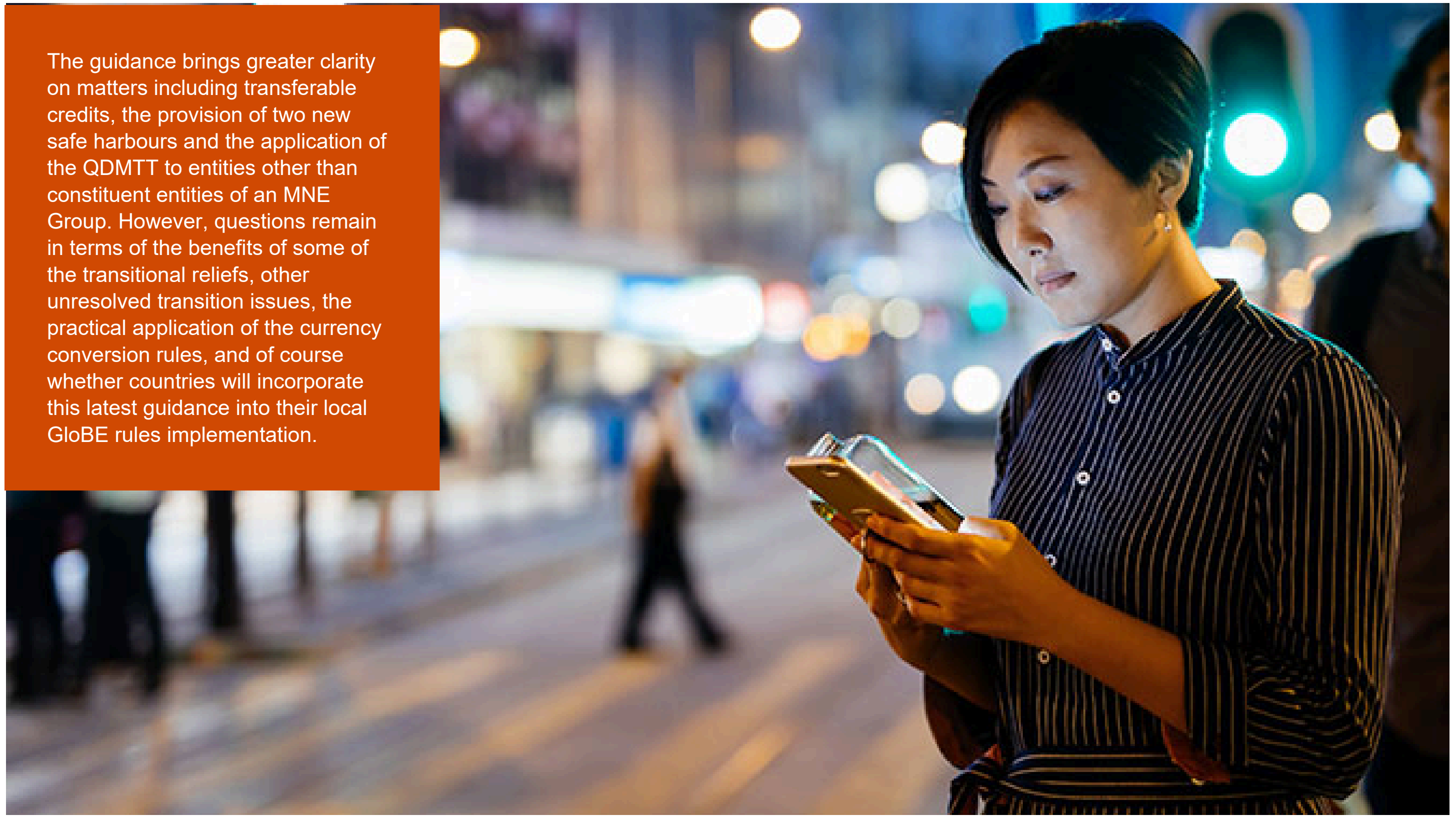
OECD

OECD releases Pillar Two GloBE Rules Administrative Guidance and GloBE Information Return

The OECD/G20 Inclusive Framework on BEPS (IF) released a number of documents relating to the Two-Pillar solution on July 17, 2023, one of which was a second set of Administrative Guidance on the Pillar Two GloBE Model Rules. This release (the guidance) follows the publication of the first set of Administrative Guidance in February 2023. The guidance covers a range of issues where stakeholders sought additional clarity, including the Qualified Domestic Minimum Top-up Tax (QDMTT) and Transitional UTPR Safe Harbours, the treatment of transferable tax credits, application of the Substance Based Income Exclusion (SBIE) and others. The guidance, including more detailed examples, will be incorporated into a revised version of the Commentary that will be released later this year. Also released as part of the OECD package was an updated version of the GloBE Information Return (GIR).

Read the full PwC Tax Policy Alert.

The guidance brings greater clarity on matters including transferable credits, the provision of two new safe harbours and the application of the QDMTT to entities other than constituent entities of an MNE Group. However, questions remain in terms of the benefits of some of the transitional reliefs, other unresolved transition issues, the practical application of the currency conversion rules, and of course whether countries will incorporate this latest guidance into their local GloBE rules implementation.



Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

EU/OECD

OECD

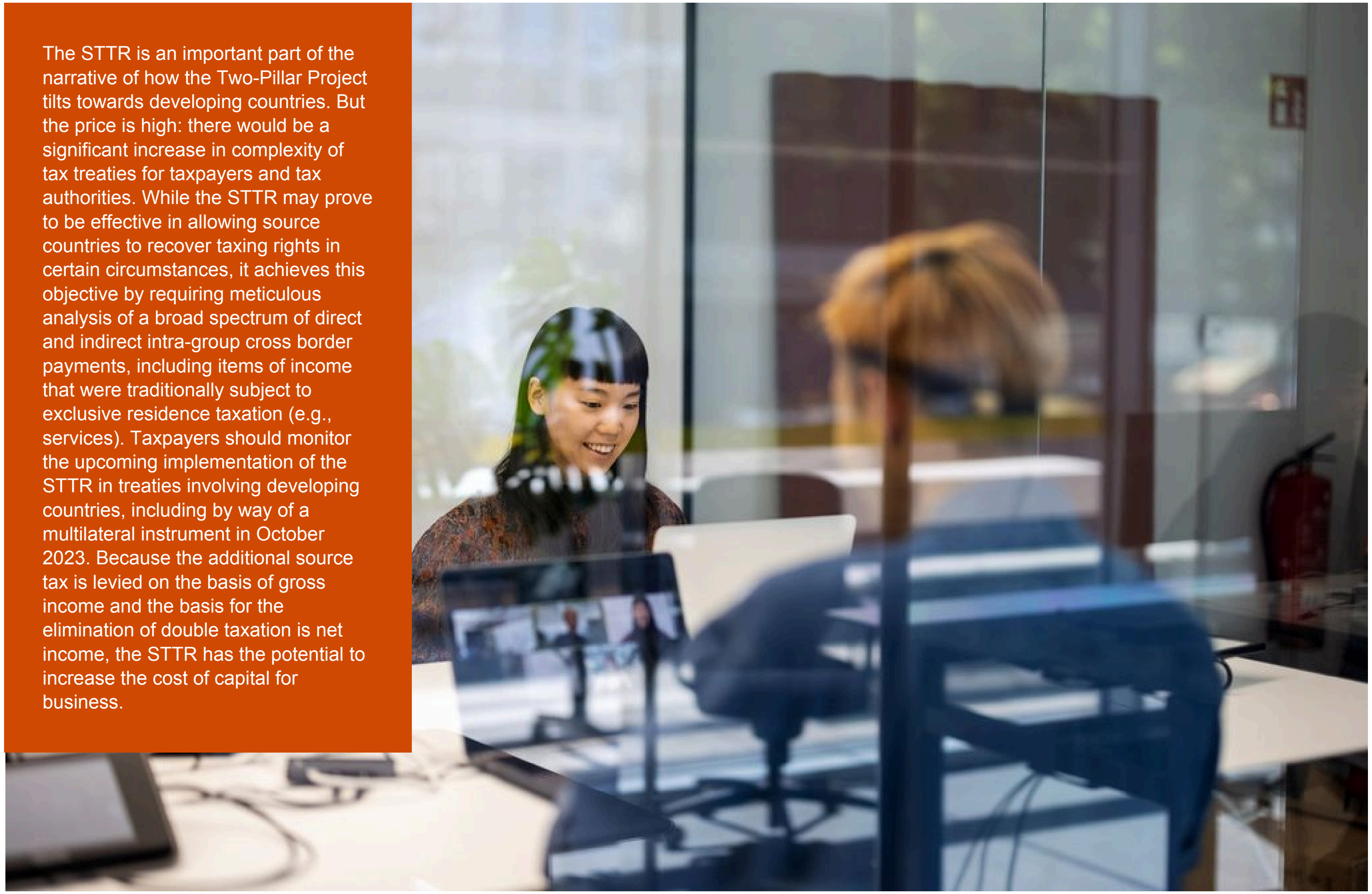
OECD releases Pillar Two STTR

On July 17, 2023 the OECD Inclusive Framework (IF) released a report with model treaty text to give effect to the Subject-to-Tax-Rule (STTR), together with an accompanying commentary explaining the purpose and operation of the STTR. The OECD Secretariat also published a summary of the STTR, titled "The Subject to Tax Rule in a Nutshell," to assist in understanding the STTR model provisions.

The STTR is a treaty-based rule that allows source countries to impose an additional tax liability on certain intragroup payments in case the recipient is subject to a nominal corporate tax rate of less than 9% (adjusted for tax base reductions such as tax exemptions and tax credits). A wide range of payments between connected persons are targeted by the rule, including interest, royalties and service fees, with the notable exclusion of dividends. The STTR takes priority over the GloBE Rules and is creditable as a covered tax. Its implementation by countries is planned to start in October 2023 via a multilateral instrument (to allow for multiple bilateral tax treaties to be changed at the same time). IF members have committed to adopt the STTR when requested by other IF members that are developing countries.

Read the full PwC Tax Policy Alert.

The STTR is an important part of the narrative of how the Two-Pillar Project tilts towards developing countries. But the price is high: there would be a significant increase in complexity of tax treaties for taxpayers and tax authorities. While the STTR may prove to be effective in allowing source countries to recover taxing rights in certain circumstances, it achieves this objective by requiring meticulous analysis of a broad spectrum of direct and indirect intra-group cross border payments, including items of income that were traditionally subject to exclusive residence taxation (e.g., services). Taxpayers should monitor the upcoming implementation of the STTR in treaties involving developing countries, including by way of a multilateral instrument in October 2023. Because the additional source tax is levied on the basis of gross income and the basis for the elimination of double taxation is net income, the STTR has the potential to increase the cost of capital for business.



Will Morris
United States
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser
The Netherlands
+31 0 88 7923 611
edwin.visser@pwc.com

Treaties

Belgium

The Netherlands and Belgium sign a new tax treaty: key provisions for companies*

The Netherlands and Belgium on June 21, 2023, signed a new tax treaty (the "Treaty"). Below is a summary of key provisions for companies.

- For a dual-seat company, rather than through a mutual agreement procedure, conflicts are resolved by considering the company's residency as the place where effective management makes decisions.
- A new permanent establishment concept is introduced in accordance with the MLI.
- Two parts regarding shareholders with their own BV who migrate to Belgium.
  - The Netherlands is allowed to tax dividends up to ten years after emigration, even if the BV has also moved to Belgium.
  - Belgium will not levy any tax on the sale of the shares or on the liquidation of the BV that is associated with the value increase during the Dutch period, if a Dutch tax claim is still outstanding. The claim must be on the value increase of the shares of the director-major shareholder that arose during the period that the shareholder was a tax resident of the Netherlands.
- Anti-abuse provisions in line with the principal purpose test (PPT) of Article 7 of the Multilateral Instrument (MLI).
- Explicit reference that the Treaty provisions do not prevent the application of Pillar Two legislation.
- For the interpretation of Treaty provisions derived from the OECD Model Treaty, the Commentary to the OECD Model Treaty applies at the time of application of the tax treaty (dynamic treaty interpretation).

Ongoing discussions between the Netherlands and Belgium regarding frontier workers who work from home did not delay the signing of the new treaty. These matters will be addressed in a separate Amendment Protocol at a later stage. The Council of State will be asked for its advice and the new tax treaty will be submitted to parliament for tacit or explicit approval.

The Treaty differs on fundamental points from the prior tax treaty. Certain areas of the Treaty appear to have an adequate solution to prevent both double taxation and double non-taxation. For migrating substantial interest holders, certain Treaty provisions seem to cater to the Dutch desire to protect the Dutch tax basis.

One notable item is the specific interpretation provision included in the protocol; in effect, it provides for a dynamic interpretation of the Treaty in case of amendments to the OECD commentary. The provision appears *more* dynamic than a recent Supreme Court ruling, and companies should monitor how the Dutch courts decide to interpret it.

The explicit reference to Pillar Two legislation prompts consideration of whether other EU Member States will readily accord precedence to the application of their own Pillar Two legislation when a scenario falls within the purview of a tax treaty.

Vassilis Dafnomilis
The Netherlands
+31 6 13998729
vassilis.dafnomilis@pwc.com

Treaties

Mexico

Mexico Executive Branch enacts the MLI

Mexico, one of the original Multilateral Instrument (MLI) Signatories back in 2017, has undertaken to adopt the measures introduced by the MLI, opting to cover all of its tax treaties, regardless of their status which pursuant to the MLI provisions would become a 'Covered Tax Agreement' (CTA) only once the two relevant signatories Contracting Jurisdictions have mutually selected their convention as covered. The MLI contains provisions that modify certain existing tax treaties and potentially disallow benefits that would otherwise be available. Mexico deposited the instrument of ratification along with Mexico final notifications and reservations for the MLI with the OECD on March 15, 2023.

Previously, the Mexican Senate had approved the MLI on October 12, 2022, and completed its legislative ratification process by November 22, 2022. Importantly, existing tax treaties are only modified once both parties to the tax treaty have ratified. On June 19, 2023, the Mexico Executive Branch published the Enactment of the MLI in the official Gazette which would enter into force on July 1, 2023.

Nevertheless, all provisions of the CTA regarding both withholding taxes on Mexican-source income (i.e., interest, royalties, dividends), and taxes levied by Mexico where no withholding applies (i.e., capital gains, permanent establishments), with parties that already have ratified and deposited the instrument will be affected by the MLI as from January 1, 2024.

Read the PwC Tax insight.

Taxpayers should consider the potential impact of the MLI if they are currently, or anticipate, relying on benefits under Mexico's income tax treaty network. Taxpayers doing business in Mexico or receiving Mexico source income should evaluate the potential impacts on their existing operations and structures. Such impacts could be applicable as early as next fiscal year, considering the elections made by Mexico and the other jurisdiction. Moreover, for accounting purposes, any Financial Accounting Standards Board Accounting Standards, Income Taxes—Overall—Disclosure (or other applicable accounting standards obligations) also must be evaluated on a case-by-case basis.

Marta Milewska
Mexico
+52 55 3232 1137
marta.milewska@pwc.com

Mario Alberto Gutierrez
Mexico
+ 52 55 4373 6036
mario.alberto.gutierrez@pwc.com

Treaties

United States of America (the)

Senate approves the US-Chile Treaty with reservations that need to be approved by Chile

The US Senate approved, on June 22, and by a 95-2 vote, a resolution of ratification of the pending US-Chile Income Tax Treaty (the Treaty) with two reservations and two declarations. The Treaty was signed in February 2010 and has been pending ratification in the United States since then. The reservations now must be approved by the Chilean Congress before the Treaty can move forward toward ratification and entry into force.

Read the full PwC Tax Insight.

Taxpayers that have operations and payments involving Chile should examine how the Treaty provisions may apply to their activities and prepare for the Treaty's anticipated entry into force.

Oren Penn
United States
+1 202 413 4459
oren.penn@pwc.com

Nils Cousin
United States
+1 202 492 8361
nils.cousin@pwc.com

Glossary

Acronym	Definition
ATAD	anti-tax avoidance directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Covered Tax Agreement
DPT	Diverted Profits Tax
DST	digital services tax
DTT	double tax treaty
EBITDA	Earnings Before Interest, Taxes, Depreciation, and Amortization
ETR	effective tax rate
EU	European Union
EU ETS	European Union Emissions Trading System
FSR	Foreign Subsidies Regulation
IF	OECD/G20 Inclusive Framework on BEPS
MLC	Multilateral convention
MNE	Multinational enterprise
PE	Permanent establishment
PPT	Principal purpose test
PST	Payment services tax
QMDTT	Qualified Domestic Minimum Top-up Tax
OECD	Organisation for Economic Co-operation and Development
RETT	Real estate transfer tax
SAFE	Securing Activity Framework of Enablers
STTR	Subject-to-tax rule
TP	Transfer Pricing
TPG	Transfer Pricing Guidelines
UTPR	Undertaxed Profits Rule

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.