International Tax News

Edition 106
February 2022

Launch

Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

Featured articles

Bernard Moens
Global Leader International Tax Services Network
T: +1 703 362 7644
E: bernard.moens@pwc.com

Responding to the potential business impacts of COVID-19
COVID-19 can cause potentially significant people, social and economic implications for organisations. This link provides information on how you can prepare your organisation and respond.

In this issue

Legislation

Canada

Canada proposes excessive interest and financing expenses limitation legislation

The Department of Finance released, on February 4, draft legislative proposals that include detailed explanatory notes for implementing the 2021 federal budget and other measures. One federal budget proposal would limit the amount of net interest and financing expenses that certain taxpayers may deduct in computing their taxable income, based on a fixed percentage of EBITDA.

The proposals would limit the net interest and financing deductions to:

- 30% of adjusted taxable income, known as the 'fixed ratio' (40% for taxation years beginning after December 31, 2022 and before January 1, 2024), or
- by election, a higher percentage of adjusted taxable income based on the group/entity's net third-party interest expense to EBITDA ratio, known as the 'group ratio.'

The proposed new rules are referred to as the excessive interest and financing expenses limitation (EIFEL) regime. They are expected to take effect for tax years beginning after December 31, 2022. By introducing the EIFEL regime, Canada follows other jurisdictions in implementing a regime that is consistent with the OECD BEPS Action 4 recommendations.

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

PwC observation

The EIFEL rules would be a complex addition and would require additional compliance and tax considerations for many Canadian taxpayers, given the low de minimis threshold below which taxpayers would be exempt from the rules.

The rules are fairly mechanical and formula-driven; however, groups have some important informed choices to consider because of the various elections set out in the legislation, including:

- Applying the group ratio;
- Excluding interest from the definition of interest and financing expenses; and
- Transferring unused excess capacity between group members.

Since the rules would come into force for tax years beginning after December 31, 2022, taxpayers should start considering how the rules might impact their tax filings and tax accounting for the upcoming periods.

The consultation period on the rules is open until May 5, 2022. Taxpayers that have particular concerns on the current drafting of the rules should consider addressing their concerns to Finance as part of the consultation process.

Jamie Mitchell
Canada
T: +1 416 814 5755
E: jamie.c.mitchell@pwc.com

Kara Ann Selby
Canada
T: +1 416 869 2372
E: kara.ann.selby@pwc.com

Michael Black
Canada
T: +1 416 814 5876
E: michael.c.black@pwc.com

Mexico

Mexico approves changes to thin capitalization rules

Relevant changes to the thin capitalization rules were approved as part of 2022 Mexican tax reform.

For taxpayers electing to consider tax attributes instead of stockholders' book equity average of a given tax year, the net operating losses carry forward balance should now be included as part of the calculation and subtracted from CUFIN (after tax earnings) and CUCA (updated capital contributed) balances. This basically reduces the base value for the three times equity threshold. Furthermore, the election would not be available when the result exceeds 20% of the stockholder's book equity, unless such difference derives from a proven business reason and the relevant supporting documentation on those tax attributes is available, upon the tax authority's request.

The reform also included amendments to the applicable exemption for debts incurred in connection with construction, operation, or maintenance of productive infrastructure for strategic areas or electric energy generation. The exception now applies only to those taxpayers that hold the permits or authorizations, proving that they directly perform those activities.

Finally, the exception to determine the thin capitalization rules for Mexican non-regulated non-bank banks ('SOFOM ENR') will no longer be available for those SOFOMs carrying out activities mainly with their domestic or foreign related parties.

PwC observation

These reforms may impact MNEs whose Mexican subsidiaries are leveraged via loans, specifically, those taxpayers that historically elected the tax attribute alternative instead of stockholders' book equity for purposes of the limitation, as well as Mexican groups with SOFOMs within their structures. This is because their interest deduction could be negatively impacted from these changes. The new limitations and changes may lead taxpayers to revisit current and forecast calculations and debt finance structures within the group.

David Cuellar
Mexico
T: +52 55 9185 4388
E: david.cuellar@pwc.com

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

Carlos Orel Martinez
Mexico
T: +52 55 5100 2636
E: carlos.orel.martinez@pwc.com

Switzerland

Swiss electorate votes against abolishing issuance stamp duty

The Swiss electorate decided on February 13, against the legislative proposal of the parliament and federal council, and with a majority of 62.67%, that the issuance stamp duty should NOT be abolished. While abolishment of the issuance stamp duty would have been a welcome simplification, the NO vote confirms the status quo. Given the many exemptions available, the issuance stamp duty generally is more of an administrative burden than a significant tax cost factor.

The federal government levies three different types of taxes through the Stamp Duty Act. This includes:

i. issuance stamp duty on the issuance of equity;
ii. securities transfer tax on the trade of taxable securities; and
iii. tax on insurance premiums.

Swiss stamp duty law applies not only to Swiss-incorporated or certain tax-resident companies, but also to Liechtenstein companies under the Liechtenstein-Switzerland custom agreement. The securities transfer tax and the tax on insurance premiums were not part of the proposed abolishment and would have continued 'as is', regardless of the vote.

Issuance stamp duty imposes a 1% tax on the issuance and increase of equity (nominal capital and share premium) by direct shareholders in Swiss or Liechtenstein companies.

For more details also see:
PwC worldwide tax summaries – Switzerland

PwC observation

With the NO vote, issuance stamp duty remains in place and as is. However, there are many applicable exemptions, including (i) an exemption on the first CHF 1M of equity in exchange for ownership rights, whether made in an initial or subsequent contribution; (ii) tax neutrality for mergers, demergers, and other restructurings such as contribution of qualifying shares; and (iii) a CHF 10M lump sum exemption in case of recapitalization, etc.

Also, confirmed by federal court decision, indirect contributions into the equity reserves (so called 'grandparent contributions') are not subject to issuance stamp duty. Thus, many transactions are exempt from issuance stamp duty according to the current regime.

Martina Walt
Switzerland
T: +41 079 2866052
E: martina.walt@pwc.ch

Pascal Buehler
Switzerland
T: +41 587 924555
E: pascal.buehler@pwc.ch

United Arab Emirates

The UAE introduces a federal corporate tax

On January 31, the UAE Ministry of Finance (MoF) announced the introduction of a federal corporate income tax (CIT) effective for financial years starting on or after June 1, 2023.

The UAE CIT regime would be based on international best practices, with a low / minimal compliance burden on businesses. High-level details on the proposed CIT regime are set out in the press release and the Frequently Asked Questions (FAQs) published on the websites of the MoF and the Federal Tax Authority. Further information is expected by mid 2022.

Key features of the proposed UAE CIT regime include:

- a 9% statutory rate (income greater than AED 375,000);
- a 0% CIT for small businesses and startups (income less than AED 375,000);
- exemptions for UAE-based headquarters and international business hubs;
- no taxation on foreign direct investment;
- no taxation on personal income; and
- a minimal compliance burden for businesses that should strengthen the UAE's position as a global hub for business and investment and a leading international financial centre.

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

PwC observation

A UAE CIT regime would enable the UAE to adopt and implement the OECD BEPS measures that address the tax challenges arising from the digitalisation of the global economy, and the introduction of a global minimum tax rate for large multinationals. The press release and FAQs provide helpful information on the expected key features of the proposed UAE CIT regime. However, further specifics and technical details are needed in order for businesses to assess the impact and their readiness. Additional information is expected by mid 2022, which would give impacted businesses at least 12 months to prepare.

Mohammed Yaghmour
UAE
T: +971 (0) 56 406 3384
E: mohammed.yaghmour@pwc.com

Hanan Abboud
UAE
T: +971 (0) 56 177 7642
E: hanan.abboud@pwc.com

Safae Guennoun
UAE
T: +971 (0) 56 547 5365
E: safae.guennoun@pwc.com

Administrative

China

China provides preferential tax policies for infrastructure REITs

In order to support the pilot program of Real Estate Investment Trusts in the infrastructure sector ('infrastructure REITs'), China's Ministry of Finance (MOF) and State Taxation Administration (STA) jointly issued the MOF, STA Public Notice [2022] No. 3 (the Public Notice), clarifying the following preferential tax policies:

- Before the establishment of infrastructure REITs, the original equity holder transferring the infrastructure assets to the project company in exchange for its equity will be subject to the following special tax treatment:
  - The tax basis of the infrastructure assets received by the project company will be determined according to the original tax basis of the infrastructure assets; while the tax basis of the equity in the project company received by the original equity holder will be determined according to the original tax basis of the equity in the project company.
  - Neither the original equity holder nor the project company will recognize any gains, and the transfer will be exempt from corporate income tax (CIT).
- During the establishment of infrastructure REITs, when the original equity holder transfers the equity in the project company to the infrastructure REITs, the CIT payment for the gains arising from asset evaluation may be deferred until the completion of fundraising and the payment of consideration.

The Public Notice applies retroactively from January 1, 2021 and applies to the pilot projects carried out by China Securities Regulatory Commission (CSRC) and National Development and Reform Commission (NDRC). Cases that occurred before January 1, 2021 may retroactively apply the Public Notice.

PwC observation

China's public offered REITs market was officially established on June 21, 2021 with the listing of the first batch of infrastructure REITs pilot projects. The newly released Public Notice provides investors with clearer guidance on tax treatment. The initiator should consider tax-related issues at each process to reasonably reduce tax costs.

Long Ma
China
T: +86 (10) 6533 3103
E: long.ma@cn.pwc.com

India

India Budget 2022 – impact on foreign investors and multinationals

The Indian Finance Minister presented the Union Budget for 2022-23 (Budget 2022) on February 1. With India's current-year economic growth estimated to be 9.2%, Budget 2022 focuses on infrastructure spending with an aim to boost growth amid continued disruption from the pandemic. It also makes a strong pivot toward the digital economy, climate change, clean energy transition, and ease of living.

The Finance Minister has continued with the underlying theme of seeking to provide a stable and predictable tax regime to promote voluntary compliance and reduce litigation, while keeping the overall tax structure unchanged.

Budget 2022 proposals would take effect once both houses of Parliament pass it and Presidential assent is accorded.

Read the **PwC Tax Insight** for highlights on key Budget 2022 tax proposals affecting foreign investors and multinational enterprises doing business in India.

PwC observation

Budget 2022 specifically focuses on infrastructure development and expansion, which could have a multiplier effect on the Indian economy. Multinational entities should analyse the impact of key Budget 2022 proposals on their operations.

Sriram Ramaswamy
India
T: +1 646 901 1289
E: ramaswamy.sriram@pwc.com

Italy

Italy issues final circular on hybrid mismatch arrangements

The Italian Tax Authorities (ITA) published, on January 26, the final version of the interpretative Circular Letter (the Circular) on hybrid mismatch arrangements rules (the Hybrid Rules), as governed by Legislative Decree 142/2018 (the 'ATAD Decree') that implements the EU's anti-tax avoidance directives (ATAD) through domestic Italian legislation and that also considers the OECD BEPS report(s) on Action 2 (the OECD Report).

Key topics addressed and clarified in the Circular include:

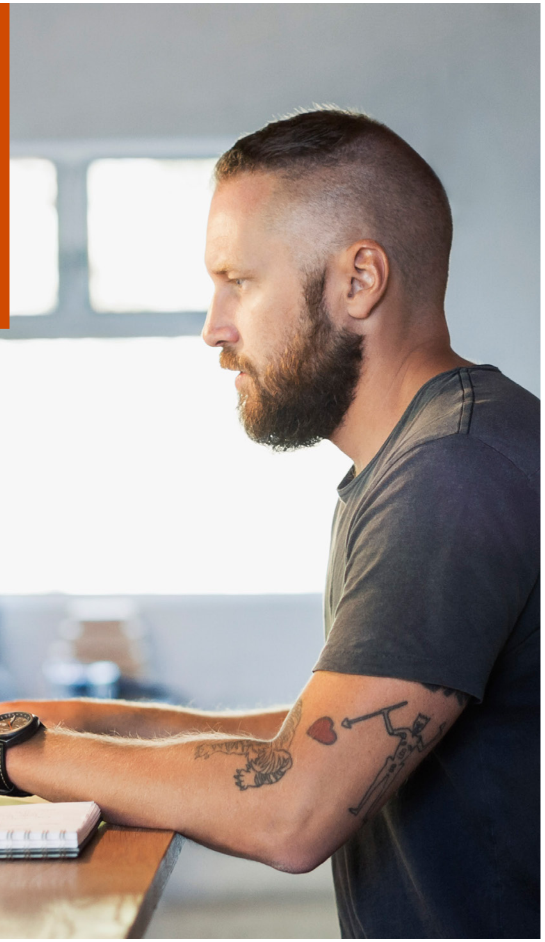
- The relevance of deductions related to a broad range of negative items of income in multiple scenarios, e.g., a deduction in a 'deduction, no inclusion' (D/NI) scenario can include cost of goods sold, amortization, and depreciation.
- A grandfathering rule limited to specified transactions (i.e., transactions that involve amortization or the use of tax losses that are due to hybrid deductions) carried out within the fiscal year that includes December 28, 2018.
- The application of reverse hybrid entity rules without any (1) investors threshold and (2) limitation based on the qualification of the funds.
- The definition of the conditions under which a controlled foreign corporation (CFC) regime can be considered as an alternative form of 'inclusion' or 'dual inclusion income' (DII) suitable to remove D/NI or 'double deduction' (DD) mismatches.
- The application, under certain conditions, of anti-imported hybrid mismatch rules to arrangements where the payee is in an EU Member State.
- The applicability of the Hybrid Rules even when a taxpayer decides to neutralize the mismatch on a voluntary basis, in the absence of an anti-hybrid rule in the taxpayer's jurisdiction.

Additionally, the ITA strongly recommends properly documenting the group's 'hybrid status' considering that: (1) the taxpayer cannot rely on any documentation during the tax assessment procedure, or in a subsequent tax litigation phase, if such 'hybrid dossier' is not provided upon request on a timely basis, and (2) tax auditors could recommend a criminal tax violation to the criminal prosecutor.

Read more in the **PwC Tax Insight**.

PwC observation

Considering that the Hybrid Rules target cross-border scenarios, both Italian and foreign multinationals should consider their potential impact as currently interpreted by the Circular. They should analyse their position for Italian tax purposes and consider the benefits deriving from the drafting of the hybrid dossier as a means of managing 'hybrid' risk and potential criminal penalties.



Alessandro Di Stefano
Italy
T: +39 02 9160 5401
E: alessandro.di.stefano@pwc.com

Dario Sencar
Italy
T: +39 02 9160 5401
E: dario.sencar@pwc.com

Mexico

Mexico extends tax benefits for IPOs and bonds

The Mexican Government published on December 23 a Decree that extends, and in some cases expands to fiscal year 2025, the tax benefits initially granted through a previous Decree. That previous Decree, published on January 8, 2019 (originally ending in FY 2021), related to the withholding tax on interest paid by Mexican residents for publicly traded corporate debt bonds and a reduced tax rate for certain taxpayers on the capital gain obtained from the sale of public shares through an initial public offering (IPO).

The main changes made by the new Decree are:

- The tax credit that is currently granted to withholding agents in connection with interest payments made to non-residents, and that is derived from debt bonds issued by Mexican-resident issuers and listed in an authorized Mexican stock exchange is now extended to cover interest payments issued by government-owned productive entities.
- An inclusion for the definition of bonds to mean those debt obligations or debt securities that may circulate in the authorized Mexican stock exchanges pursuant to the Mexican Securities Law and issued in a series or block and representing a participation over a collective debt.
- The extension, until 2025, of the tax benefit equal to 10% of the capital gain from the sale (through the authorized Mexican stock exchanges) of listed shares issued by Mexican entities, transferred by Mexican-resident individuals and non-residents. The condition requiring that the book equity of the Mexican issuer was MXN$1 billion is modified and must now not exceed MXN$25 billion at the IPO.

Read more in the **PwC Tax Insight**.

PwC observation

Taxpayers will need to wait for the Mexican Tax Authority to issue the rules necessary to properly apply these tax benefits. Nevertheless, the extension of these benefits should encourage investment in domestic corporate bonds and private equity markets (IPOs).

David Cuéllar
Mexico
T: +52 55 5263 5816
E: david.cuellar@pwc.com

Carlos Orel Martínez
Mexico
T: +52 55 5100 2636
E: carlos.orel.martinez@pwc.com

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

Judicial

France

Court decision acknowledges tax credit for taxes paid abroad on dividends

Under the participation exemption, companies established in France and that hold qualifying shares representing at least 5% of the issued capital of subsidiaries (French or foreign) have the option of excluding 95% of the subsidiaries' net dividends from the French CIT basis. The remaining 5% of the dividends, reduced to 1% in certain circumstances, are subject to CIT.

In a January 27 decision, the Lyon Administrative Court of Appeal ruled that such parent companies may, within the limits provided by international tax treaties, claim a tax credit in France for the tax paid abroad in respect of said dividends.

The Court justifies this solution by the fact that the add back of 5% of the dividends should be analysed as genuine taxation in France and not only an add back corresponding to expenses.

PwC observation

MNEs with holding companies in France should assess the opportunity to file a claim in order to benefit from a tax credit in France. For dividends paid relating to the 2019 financial year (CIT paid in 2020), the deadline for filing a claim is December 31, 2022.

Guillaume Glon
France
T: +33 1 56 57 40 72
E: guillaume.glon@avocats.pwc.com

Guilhem Calzas
France
T: +33 1 56 57 15 40
E: guilhem.calzas@avocats.pwc.com

Julie Copin
France
T: +33 1 56 57 44 17
E: julie.copin@avocats.pwc.com

OECD/EU

OECD

OECD launches Public Consultation on Pillar One draft Model Rules on Revenue Sourcing and Nexus

On February 4, the OECD released **draft Model Rules** with respect to nexus and revenue sourcing under Amount A of Pillar One. Comments to the draft Model rules are due by February 18. Note that this is the first in a series of several sets of rules that the OECD is expected to release over the coming months, with very short comment periods, as part of a 'rolling consultation.'

Nexus

The introductory statement to the draft Model Rules provides that the new special-purpose nexus rule applies solely to determine whether a jurisdiction qualifies for profit reallocation under Amount A and will not alter the nexus for any other tax or non-tax purpose (i.e., designed as a standalone provision to limit any unintended spill-over effects). To determine whether a 'Covered Group' (i.e. an MNE in-scope of Amount A) satisfies the nexus test for Amount A in a jurisdiction, it will have to apply the revenue sourcing rules, which identify the jurisdiction in which revenue arises for purposes of Amount A.

As agreed by the OECD Inclusive Framework last year, the nexus threshold will be EUR 1m for jurisdictions with annual GDP equal to or greater than EUR 40bn and EUR 250k for jurisdictions with annual GDP of less than EUR 40bn. Note that the multilateral convention (MLC) will outline an agreed approach to currency fluctuations.

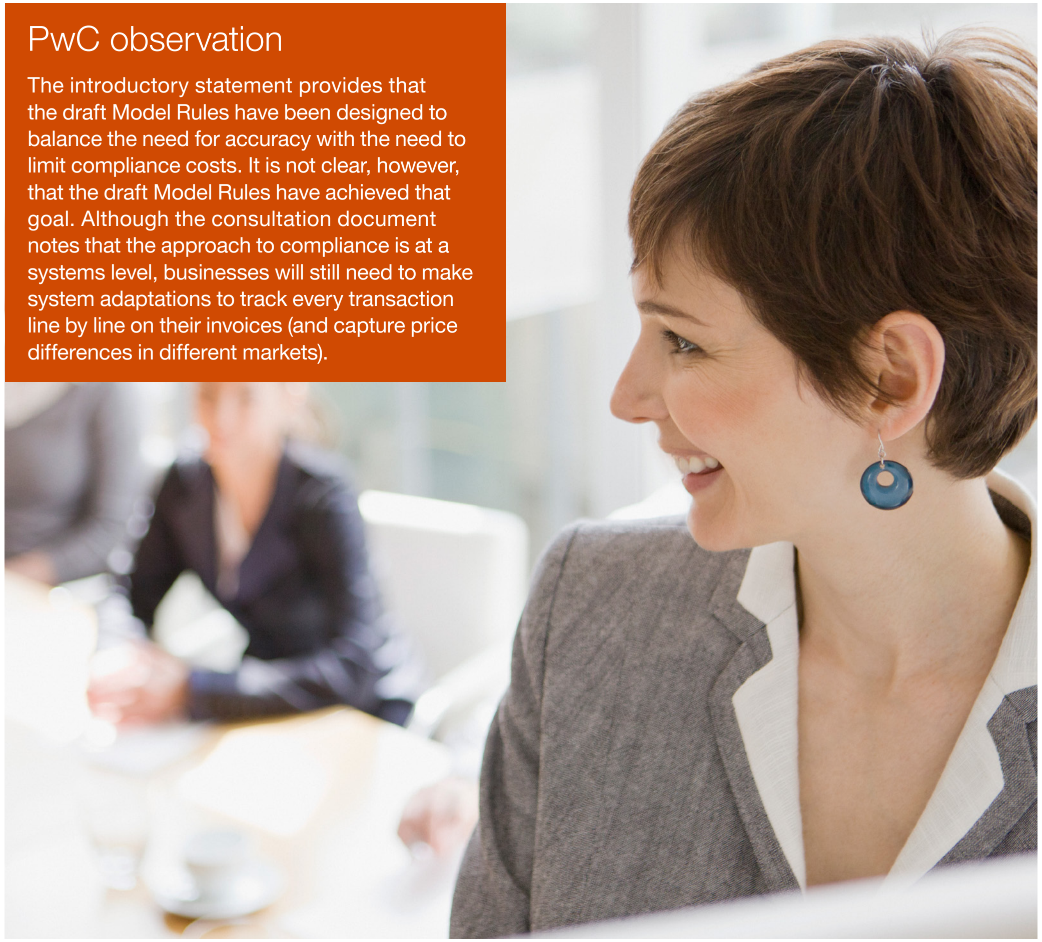
Revenue sourcing

The introductory statement to the draft Model Rules provides that the revenue sourcing rules provide a methodology for a Covered Group to use available information to reliably identify the market jurisdiction based on a range of possible indicators, or, in cases where a 'back-stop' is needed, based on an allocation key that is expected to provide a reasonable approximation of the market jurisdiction. The consultation document argues that 'back-stop' allocation keys are provided to ensure that no revenue goes unsourced (particularly important for third-party distribution arrangements, components, certain services, and intangible property). The revenue sourcing rules include a legislative article that articulates the sourcing approach, supported by a schedule setting out the detailed rules for applying the revenue sourcing principle for the type of revenue in question. The legislative article and schedule are intended to be binding.

Read more in the **Tax Policy Alert**.

PwC observation

The introductory statement provides that the draft Model Rules have been designed to balance the need for accuracy with the need to limit compliance costs. It is not clear, however, that the draft Model Rules have achieved that goal. Although the consultation document notes that the approach to compliance is at a systems level, businesses will still need to make system adaptations to track every transaction line by line on their invoices (and capture price differences in different markets).



Stef van Weeghel
Netherlands
T: +31 88 792 6763
E: stef.van.weeghel@pwc.com

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

Edwin Visser
Netherlands
T: +31 88 792 3611
E: edwin.visser@pwc.com

Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CGT	capital gains tax
CIT	corporate income tax
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortisation
EC	European Commision
ECOFIN	EU Economic and Financial Affairs Council
EU	European Union
GAAP	generally accepted accounting principles

Acronym	Definition
HRMC	Her Majesty's Revenue and Customs
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
UTT	uncertain tax treatment
VAT	value added tax
WHT	withholding tax

Contact us

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

Bernard Moens
Global Leader International Tax Services Network

T: +1 703 362 7644
E: bernard.moens@pwc.com

Geoff Jacobi
International Tax Services

T: +1 202 262 7652
E: geoff.jacobi@pwc.com

Worldwide Tax Summaries:
Corporate taxes

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 – download the eBook of our comprehensive tax guide, or explore rates in over 150 countries using our online tools, updated daily.

www.pwc.com/its

SPS Design RITM7760219 (03/22).