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.

Responding to the potential business impacts of COVID-19

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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.

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Legislation

Canada

Canada proposes mandatory disclosure legislation

On February 4, 2022, the Department of Finance released draft legislative proposals to enhance Canada's mandatory disclosure rules for reportable transactions, notifiable transactions, and uncertain tax treatments.

These rules are proposed to apply to taxation years that begin, and transactions entered into, after 2021. The penalty provisions, however, would not apply to transactions that occur before royal assent of the enacting legislation.

Reportable transactions:

Current rules in the *Income Tax Act* (ITA) require reporting a transaction if it is considered an 'avoidance transaction' as that term is defined for purposes of the general anti-avoidance rule, and it meets at least two of three defined hallmarks (contingent fee arrangement, confidentiality protection, or contractual protection).

The proposals would:

- require the presence of only one of the three hallmarks for a transaction to be reportable
- amend the 'contractual protection' hallmark to exclude protection offered in the context of normal commercial transactions to a wide market (e.g. standard commercial tax risk insurance), so that these protections would not trigger a reporting requirement
- amend the definition of 'avoidance transaction' for these purposes, so that a transaction can be considered an avoidance transaction if it can reasonably be concluded that one of the main purposes of entering into the transaction is to obtain a tax benefit.

A taxpayer would be required to report detailed information regarding the transaction to the Canada Revenue Agency (CRA) within 45 days of the earlier of the day that the taxpayer (or another person who entered into the transaction for the benefit of the taxpayer) becomes contractually obligated to enter into the transaction or enters into the transaction.

Notifiable transactions:

The proposals introduce a requirement to report pertinent information on a new category of specific transactions (known as 'notifiable transactions') to the CRA on a timely basis. The Minister of National Revenue, with the concurrence of the Minister of Finance, would have the authority to designate a transaction or series of transactions. A notifiable transaction is a transaction or series of transactions that is the same as, or substantially similar to, a designated transaction or series of transactions. Transactions will be considered substantially similar if they are expected to obtain the same or similar types of tax consequences and are either factually similar or based on the same or similar tax strategy.

Notifiable transactions would include both transactions that the CRA has found to be abusive and transactions identified as transactions of interest. The description of a notifiable transaction is expected to set out the fact patterns or outcomes in sufficient detail to enable taxpayers to comply with the disclosure rule.

Uncertain tax treatments:

Currently, there is no requirement to disclose uncertain tax treatments. The proposals would require a corporate taxpayer meeting the following conditions to report particular uncertain tax treatments to the CRA:

- the corporation is required to file a Canadian income tax return, and has at least $50 million in assets at the end of the taxation year
- the corporation, or a group of which the corporation is a member, has audited financial statements prepared in accordance with International Financial Reporting Standards or other country-specific generally accepted accounting principles relevant for corporations that are listed on a stock exchange outside Canada
- there is an uncertain tax treatment related to the corporation's Canadian income tax reflected in the audited financial statements.

A corporation would be required to report information on uncertain tax treatments at the same time that the reporting corporation's Canadian income tax return is due.

See our PwC Tax Insight for more information on the proposals.

These proposals significantly expand the types of transactions that could be reportable to the CRA. It will place a heavy burden on taxpayers and promoters or advisers to comply with these new disclosure obligations if they are involved in transactions designated as 'notifiable transactions' or considered to have an uncertain tax treatment. Although it is intended that reporting will be required for transactions entered into after 2021 that are the same as, or substantially similar to, transactions that are subsequently designated as notifiable transactions, the deadline for reporting such transactions is unclear. Late-filing penalties will not apply to transactions in 2022 that are undertaken before the date of royal assent of the enacting legislation for these rules, but the commencement of the reassessment period for such transactions could still be deferred until reporting occurs.

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Legislation

Spain

Spain approves corporate income tax and non-resident income tax modifications

Law 5/2022, of 9 March, which amends Law 27/2014, of 27 November, on corporate income tax and the revised text of the non-resident income tax law in relation to hybrid mismatches, was published in the Spanish Official State Gazette (BOE) om March 10.

The only change with respect to the previous wording consists of a technical improvement in the article of the CIT in relation to hybrid mismatches.

This new Law incorporates the necessary amendments to the regulation of the declaration of assets and rights abroad (Form 720) to bring it into line with European law, following the ruling of the Court of Justice of the European Union (Case C-788/19), which agreed that certain aspects of the legal regime associated with the obligation to declare assets and rights abroad was contrary to EU Law.

Multinational enterprises with either operations in Spain or with Spanish holding companies should review how these changes may affect their investments in Spain.

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Legislation

Hong Kong

Tax measures proposed in the 2022-23 Hong Kong Budget

In the 2022-23 Hong Kong Budget delivered February 23, the Financial Secretary proposed, among others, the following profits tax measures:

- A one-off reduction of 100% of profits tax for the year of assessment 2021/22, subject to a ceiling of HK$10,000 per case. The Revenue (Tax Concessions) Bill 2022, which seeks to implement this measure, was gazetted on March 4. The Bill was introduced into the Legislative Council on March 16.
- Tax concessions for eligible family investment management entities managed by single-family offices.
- An 8.25% tax concession to attract more maritime enterprises to establish a presence in Hong Kong.
- Following the OECD's work on BEPS 2.0, to continuing discussions with impacted large multinational groups on Hong Kong's implementation of BEPS 2.0 in order to ensure that Hong Kong's tax regime aligns with international consensus, while retaining the renowned simplicity, certainty and transparency of the territorial tax regime.

See our PwC Insight for more information.

This Hong Kong Budget contains measures covering enterprises in a wide range of industries, with immediate measures to address the challenges brought about by the current pandemic, as well as longer term measures to pave the path for recovery. In response to the BEPS 2.0 development, the government plans to inititate legislation in the second half of 2022 for a global minimum effective tax rate of 15% for large MNEs by 2023. It also is considering introducing a domestic minimum Top-up Tax for these MNEs effective in 2024/25, while maintaining a simple tax system including the territorial source principle in order to minimise the impact on SMEs. MNEs should follow how these developments may impact their operations.

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Administrative

Singapore

Singapore explores a new minimum effective tax rate regime

The Finance Minister announced that Singapore will study the feasibility of introducing a 15% minimum effective tax rate (METR) regime. This is in response to the Global Anti-Base Erosion Model Rules (the GloBE rules) released by the OECD/G20 Inclusive Framework to address the tax challenges arising from the digitalisation of the economy (Pillar Two).

For jurisdictions such as Singapore that have historically used tax incentives as part of a suite of measures to attract foreign direct investment (FDI), the proposed Top-up Tax under the GloBE rules presents a significant challenge to fiscal policy, since the value of tax incentives to multinational enterprise groups is diluted if a Top-up Tax is applied outside Singapore. The Singapore policy response is therefore twofold:

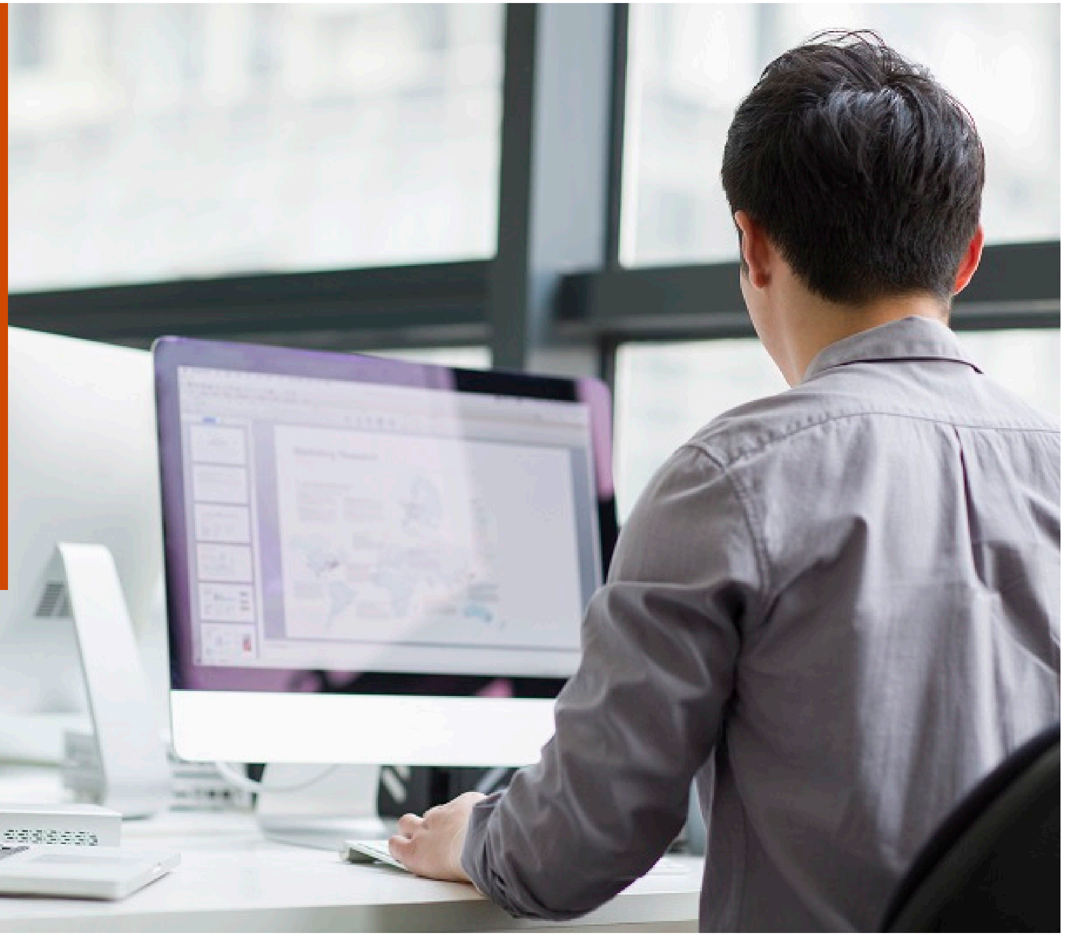
- to evaluate the role and structure of FDI incentives going forward, in order to ensure that Singapore remains competitive
- to evaluate whether and how to adjust the tax base so that any Top-up Tax is levied by Singapore and not foreign countries.

The METR, which would apply to multinational enterprise groups with annual revenues of at least €750 million, has therefore been tabled for consideration and will undergo industry consultation.

See our Budget 2022 Commentary for more inforation.

Details have not been released, but if enacted, the METR is expected to closely align with the GloBE rules, which are computationally complex and will require a significant reworking of an MNE’s tax compliance and tax accounting templates.

If the METR is implemented, multinational enterprises can expect enhancement of other non-tax measures so that Singapore remains competitive as a business location.



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Administrative

Spain

Spain addresses teleworking and the creation of a permanent establishment

The Spanish Directorate General for Taxation (Spanish DGT) recently issued a binding ruling on international teleworking and the potential creation of a permanent establishment (PE) in Spain. In the binding ruling (V0066-22), dated 18 January, the Spanish DGT ruled on the existence or not of a PE of British company due to the fact than an employee carried out its work in Spanish territory during the COVID-19 lockdown and decided to remain in Spain for personal reasons once the COVID-19 measures adopted in Spain were finalized.

The Spanish DGT noted for there to be a fixed place of business in the event that the activity is carried out from the employee's private home, two circumstances must be met: i) continuity over time and ii) that the place of business is at the disposal of the non-resident company.

The Spainish DGT ruled that the continuity requirement was met since the employee remained in Spain after the lifting of the restrictive measures that were adopted because of the COVID-19 pandemic. The Spanish DGT cited several criteria that would lead to the conclusion that the place of business is not at the disposal of the company: i) that the permanence was at the employee's personal choice and not ordered by the company; ii) that the employee has a place of work at the company's offices in the United Kingdom at his or her disposal; and iii) that the company does not bear any costs or pay any special remuneration to the employee for teleworking.

The Spanish DGT held that a PE was not creared during the COVID-19 lockdown period, and for the post lockdown period, under these specific facts, the employyee's home office was not at the disposal of the UK entity and therefore did not create a PE. The Spanish DGT noted that specific facts and circumstances should be reviewed and considered on a case-by-case basis, and it avoided making a general statememt for similar situations.

> This binding ruling is relevant for multinationals with employees working from home due to the pandemic and that are still in Spain, taking into account that the residence of the employees in Spain also could trigger tax obligations for the employers.

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Administrative

Spain

Spain issues new partipcation exemption regime ruling

The Spanish Directorate General for Taxation (Spanish DGT) recently issued a binding rulling on the application of the exemption regime envisaged in Article 21 of the corporate income tax act.

Current article 21 of the corporate income tax act exempts dividends received by Spanish entities at 95% for fiscal years commencing on or after 1 January 2021 (previously exempted at 100%), if certain requirements are met.

Through this recent binding ruling, the Spanish DGT ruled on the relation between this new 95% exemption regime and the Spanish ETVE regime (Spanish Holding Regime). The ETVE regime provides that dividends distributed by, or capital gains from, an ETVE (which stem from participation exemption-qualifying income) obtained by nonresidents are not considered to be obtained in Spanish territory (i.e., non taxable), provided that certain requirements are met.

The Spanish DGT concluded that profits distributed to non-resident shareholders by Spanish entities subject to the ETVE Regime derived from income (dividends / gains) qualifying for the 95% participation exemption will not be deemed to have been obtained in Spanish territory, and the taxes paid (5% on the participation exemption-qualifying income) under the new 95% exemption regime will not be an obstacle to the application of this regime.

This binding ruling is relevant for those multinational groups with Spanish holding entities that are subject to the Spanish ETVE Regime and that plan to distribute dividends to their non-resident shareholders.

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Administrative

Spain

Spain publishes guidance on the annual tax and customs control plan for 2022

On 4 March 2022, the Spanish Tax Agency published the general guidelines of the Annual Tax and Customs Control Plan for 2022 by means of the Resolution dated 26 January 2022.

The Annual Plan defines the main strategy of the Spanish Tax Agency for fighting tax fraud, by means of identifying taxpayers, industries, transactions, and activities considered a priority for the prevention and control of tax and customs fraud, which are framed within the 2020-2023 Strategic Plan.

The Spanish tax authorities' audit and verification activities mainly will focus on:

- verification of the recurring transfer pricing documentation and reporting obligations
- identification of areas of preferential attention: related-party transactions classified as high tax risk, erosion of tax bases caused by the establishment of offshore structures, erosion of taxable bases caused by the establishment of structures abroad in which profits are retained that should be taxed in Spain
- avoiding the concealment of business or professional activities and the abusive use of company taxation by individuals.

The role of the International Tax Office is highlighted in order for it to carry out audits. This office will collaborate directly in the verification of large companies by issuing criteria to homogenize the treatment of similar situations and guarantee standards of quality and legal certainty in these situations.

Taxpayers should anticipate possible tax verifications and therefore should analyze whether they are in any of the risk groups. In addition, they should review their transfer pricing policy.

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OECD/EU

European Union

EU Finance Ministers do not reach unanimous support for proposed Pillar Two Directive

The EU Finance Ministers met to debate and ultimately vote on a compromise text covering the introduction of a minimum taxation by the EU Member States. While there was broad support for the compromise text, available here , it was not supported unanimously. The date on which Member States would transpose the Directive and make it effective had been changed from 1 January 2023 to 31 December 2023 in the compromise text. The UTPR is pushed out to 31 December 2024 under this compromise text. Poland still has reservations. Unanimous agreement is required under the special legislative procedure.

To read more, see the full Tax Policy Bulletin.

The lack of unanimous agreement on the compromise text is not surprising on the whole but it raises the question as to how the French Presidency expects to resolve the fundamental issues raised, most particularly those raised by Poland.

Postponing the implementation of the new rules to 31 December 2023 would enhance the possibility of proper implementation of these very complicated rules, both by taxpayers and tax administrations (and note that there is a technical issue to be clarified on the application of these rules on the last day of many business' tax years). It would also mitigate the risk of divergence between the OECD Model Rules and the EU rules, particularly with respect to safe harbours on which the OECD will probably not publish guidance before the end of this year.

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OECD/EU

OECD

OECD releases Pillar Two Commentary and launches public consultation on the Implementation Framework

The OECD released Commentary and illustrative Examples to the Pillar Two Model Rules (Model Rules) on 14 March 2022. The Commentary provides guidance on the interpretation and application of the Model Rules and is intended to promote a consistent interpretation of the Model Rules, which will help facilitate coordinated outcomes for both tax administrations and MNE Groups.

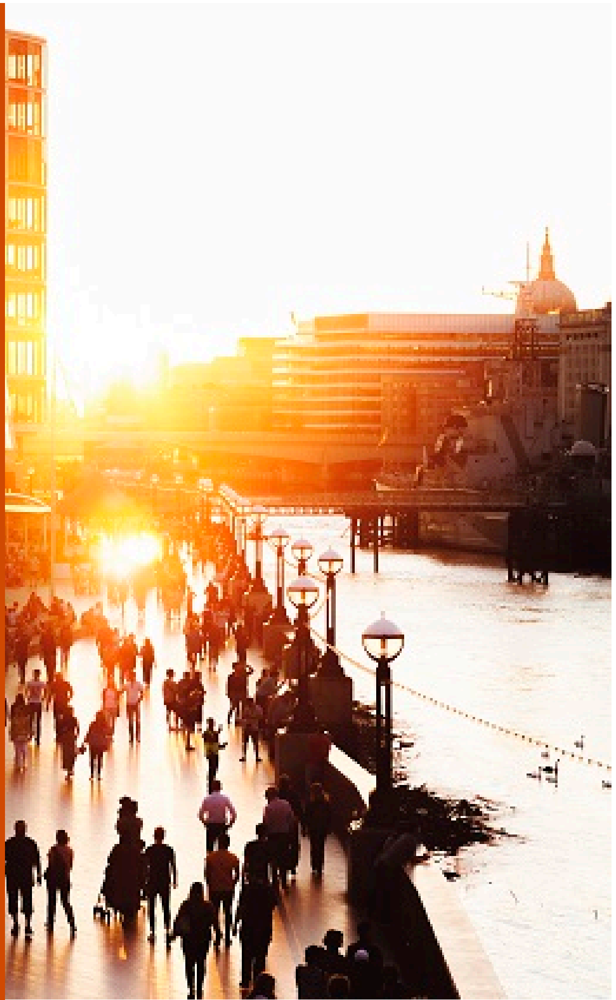
The Commentary has been eagerly anticipated given the number of questions that remain open since publication of the Model Rules. In addressing the following open issues, the Commentary:

- Reinforces the position that there need not be a connection and/or transaction (e.g., a deductible payment) between the collecting Constituent Entity/jurisdiction with the UTPR Top-up Tax Amount and the Low-taxed Constituent Entity/ jurisdiction with the Top-up Tax Amount.
- Makes no change to the provisions on booking down tax attributes to the minimum tax rate (Article 4.4.1), and the possibility of a Top-up Tax in a year when there is no income (Article 4.1.5).
- Provides a specific example of a “tax credit equivalent to a portion of the tax paid under the IIR to be used against other taxes” as being a condition that would prevent a regime from being regarded as a qualified IIR.
- Notes that the Implementation Framework “will include implementing a process to assist tax administrations in determining whether a country has introduced a qualified IIR.” The outcomes of these subsequent determinations are intended to be released and made available to the public.
- Expands on the definition of ‘Qualified Refundable Tax Credit,’ and clearly articulates the disparate treatment of qualified versus non-qualified tax credits. The use of non-qualified tax incentives or tax credits reduce covered taxes and may end up reducing the ETR of the UPE in its home country below 15%, triggering application of the UTPR.

Read the full Tax Policy Bulletin here.

The Commentary attempts to explain the Pillar Two Model Rules in a more accessible way. It helps address some of the outstanding issues but, from a technical point of view, it does not go as far as we would have hoped to clarify a number of outstanding issues.

The public consultation on the Implementation Framework does not look for further comment on the policy choices made in the Model Rules or the Commentary. Rather the focus is on putting in place mechanisms that will ensure tax administrations and MNEs can implement and apply the Model Rules in a consistent and coordinated manner while minimising compliance costs. Our view is that questions of sufficient importance raised by the Model Rules and Commentary can still be raised by reference to the Implementation Framework.



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OECD/EU

Hong Kong

The OECD concludes that Hong Kong's carried interest tax concession regime is 'not harmful'

On 24 January 2022, the OECD released the latest peer review results under BEPS Action 5 - Harmful Tax Practices, which set out the new conclusions made by the Forum on Harmful Tax Practices (FHTP) on nine preferential tax regimes. In particular, the FHTP concluded that Hong Kong's profits tax concession regime for carried interest was designed in compliance with the FHTP standards and is therefore 'not harmful.'

See the OECD Peer Review Results on Prefential Regimes.

The OECD's conclusion is good news for taxpayers currently enjoying the carried interest tax concession regime in Hong Kong. This regime offers a 0% profits tax rate on eligible carried interest and 100% exclusion of eligible carried interest from income subject to salaries tax. It is key to the development of the Hong Kong asset and wealth management industry.

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Treaties

France

France updates tax treaties with Argentina, Colombia, and Denmark

The French network of tax treaties has recently been updated:

- **The first tax treaty with Colombia entered into force on 1 January 2022,** seven years after its signature by France. The treaty will apply effective 1 January 2023. It essentially follows the 2014 OECD Model.
- **The new protocol of tax treaty with Argentina** was ratified by France on 31 January 2022. Application of this protocol still depends on ratification by Argentina which is pending. It provides for a reduction of withholding tax rates; a wide definition of dividends; a 'permanent establishment services' clause and a most-favored-nation clause.
- **A new tax treaty with Denmark was signed in February 2022,** thirteen years after the termination of the last tax treaty. It must now be submitted for parliamentary approval and then ratified by both states before entering into force. It is essentially consistent with the 2017 OECD Model and it includes key provisions of the MLI:
  - The MLI general anti-abuse rule: the 'principal purpose test'
  - Regarding PEs, a new 'dependent agent' definition to cover situations in which an agent habitually plays the principal role leading to the conclusion of contracts that are then routinely concluded without material modification by the enterprise. It also includes provisions addressing the artificial avoidance of PE status through 'commissionaire arrangements' and
  - Specific provisions regarding transparent entities and dual residency
  - The maximum rates of withholding tax provided by the treaty are 15% on dividends, reduced to 0% under certain conditions (beneficial ownership etc.), and 0% on interest and royalties.

Taxpayers engaged in cross-border operations between France and Colombia, Argentina and Denmark, must take into account the new provisions of these tax treaties and protocols and monitor entry into force.

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Glossary

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

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Worldwide Tax Summaries

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

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