International Tax News

Edition 108
May 2022

Launch

pwc

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

Brazil

Brazil reinforces commitment to align its TP rules with OECD Guidelines; taxpayers requesting more clarity

Brazil's Ministry of the Economy reaffirmed on April 12 its commitment to 'fully converge' its transfer pricing (TP) rules to the arm's length standard (ALS), bringing the rules in line with the OECD TP Guidelines. Specific draft legislation has not yet been released. This announcement is of increased significance to taxpayers in light of the recently adopted final regulations (TD 9959) (the 'Final Regulations') by the US Treasury and IRS addressing various aspects of the US foreign tax credit (FTC) regime, as well as BEPS 2.0 developments.

The new Brazilian rules, as expected, and necessarily as a result of the December 2019 announcement and publication, will include topics explicitly covered in the OECD TP Guidelines, such as:

- Explicit reference to the ALS as the guiding transfer pricing principle;
- A definition of related parties and a list of situations that will give rise to the application of TP rules;
- Reference to comparability factors, involving (a) contractual terms and conditions, (b) functions, assets, and risks, (c) characteristics of goods and services, (d) economic market circumstances, and (e) business strategy of the companies;
- Introduction of the profit-based Transactional Net Margin Method (TNMM) and Profit Split Method (PSM), in addition to the acceptance of other methods, such as the valuation method in the case of unique and valuable intangibles;
- Adopting the 'most adequate' method according to the facts and circumstances of the operation and availability of information for documentation;
- 'More flexible rules' for commodities, with the stated objective of capturing market values;
- Acknowledging Cost Contribution Agreements (CCAs) and addressing business restructuring;
- Introduction of new rules related to financial operations — e.g., adopting the OECD standards relating to debt, cash-pooling, guarantees, and insurance;
- New documentation format, adopting three elements in line with the OECD BEPS Action 13 — in addition to the Country-by-Country (CbC) reporting already provided for in the current legislation, the Master file and Local file will be introduced; and
- Introduction of Advance Pricing Agreements (APAs).

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

PwC observation:

Taxpayers should remain engaged, particularly since more clarity is needed as to whether any provisions might still raise concerns particularly for US FTC purposes, when draft provisions will be published, or if the debate will remain high-level and conceptual.

Romero S. J. Tavares
Brazil
T: +55 11 3674-2880
E: romero.tavares@pwc.com

Michela Chin
Brazil
T: +55 11 3674-2247
E: michela.chin@pwc.com

Canada

Canada proposes first package of hybrid mismatch rules

Canada's Department of Finance (Finance) on April 29 released draft legislative proposals (the proposals) to address hybrid mismatch arrangements, which are cross-border arrangements that are characterised differently under the tax laws of different countries. These proposals are the first of two separate legislative packages to implement into the Income Tax Act (the Act) the recommendations of the OECD BEPS Action Plan (Action 2 Report) to eliminate the tax benefits arising from hybrid mismatch arrangements.

This first package deals with 'deduction/non-inclusion' mismatches relating to hybrid financial instruments, including mismatches involving hybrid transfers of financial instruments and substitute payments relating to these instruments. Generally, these hybrid mismatches involve situations in which a payment relating to a financial instrument is deductible by the payer and is not included in the ordinary income of the recipient. The second package, which will implement the remaining recommendations of the Action 2 Report (to the extent relevant in the Canadian context), will be released for stakeholder comment at a later date and will apply no earlier than 2023.

The proposed rules are intended to align with the recommendations of the Action 2 Report and to be interpreted based on that report (except where the context otherwise requires). However, this first package of legislation contains notable deviations from the Action 2 Report, including:

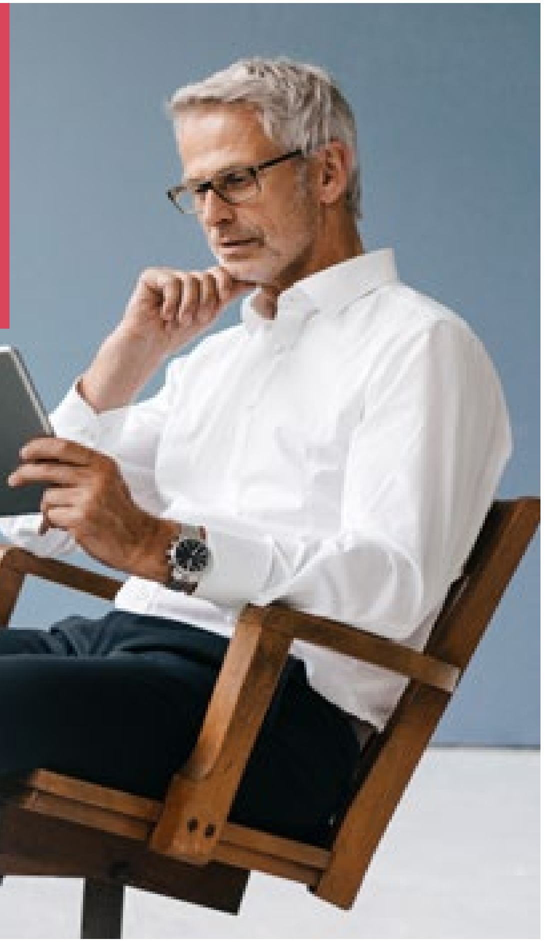
- treating interest payments that are non-deductible under these rules as deemed dividends for withholding tax purposes
- applying the rules to arrangements involving notional interest deductions (when no interest actually is paid).

The first package rules are proposed to apply to payments arising after June 30, 2022 (for these purposes, this can include amounts paid or accruing after June 30, 2022). Finance has requested that interested parties provide comments in response to the proposals by June 30, 2022.

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

PwC observation:

The proposed hybrid mismatch rules would be a complex addition to the Canadian tax regime, with many broad terms and complicated tests for three types of hybrid mismatch arrangements. Since the proposed rules are scheduled to take effect July 1, 2022, taxpayers need to quickly assess their impact on their financing arrangements and consider any appropriate response.



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

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

Mexico

Business reason rules for Mexican transactions

As part of the 2020 Tax Reform, a General Anti-Abuse Rule (GAAR) was introduced in the Mexican tax provisions to follow the standards of other OECD countries and prevent taxpayers from obtaining an unfair advantage. Under the GAAR, the tax effects of legal acts lacking a business reason and generating a tax benefit will be re-characterised into those undertaken to obtain a reasonably expected benefit for the taxpayer.

The Mexican Tax Authorities can presume the lack of a business reason based on three assumptions: upon evaluating the information they obtain during their tax audit procedures; when the economic benefit is lower than the tax benefit; and, in the case of a series of legal acts, when the economic benefit can be achieved undertaking less legal acts with more tax costs.

Even though the GAAR covers in general terms all the transactions carried out by taxpayers in Mexico, the legislators added a business reason requirement to specific transactions as part of the 2022 tax reform. The covered transactions include: financing (one relevant aspect is to ensure that they do not fall in the broad definition of back-to-back lending); national and international group restructures (involving the transfer of shares) under domestic rules; and mergers and spin-offs.

The new provisions include a number of transactions that should be reported to the Mexican tax authorities, when linked to the above mentioned restructures, which may create a business reason challenge.

PwC observation:

As of today, there is no practical guidance on how the Mexican Tax Authorities would review the existence of a business reason for a transaction. Therefore, companies considering any of the transactions mentioned above should document from the outset all the corresponding business decisions that support why they would undertake a certain transaction. Companies also should compare the economic and tax benefits, so that they can be prepared for potential questions from the Mexican Tax Authorities, even in cases in which the business reasons may be obvious.

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

Administrative

Singapore

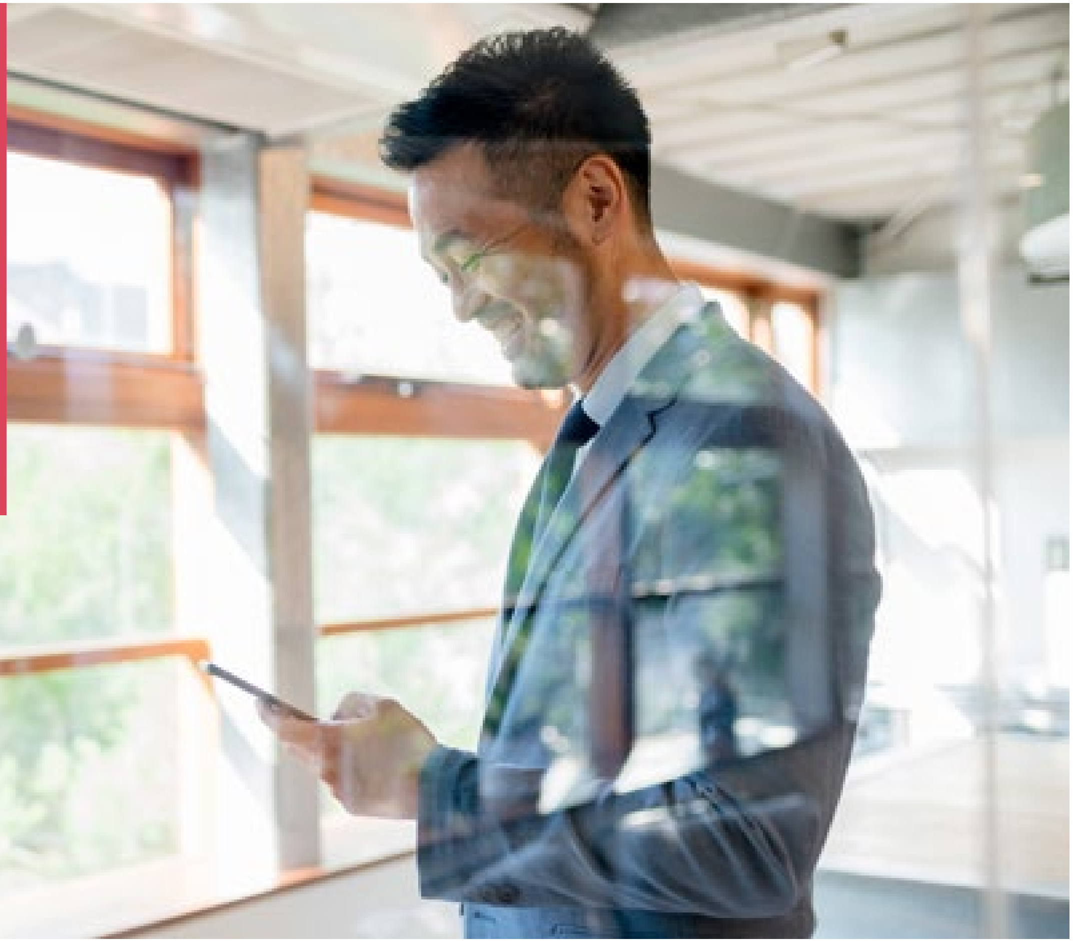
Singapore launches tax governance and tax risk management initiatives

The Inland Revenue Authority of Singapore, on February 17, launched two new voluntary compliance initiatives: the Tax Governance Framework (TGF) and Tax Risk Management and Control Framework for Corporate Income Tax (CTRM). These initiatives aim to promote the adoption of good tax governance principles and assist organisations in establishing a robust tax governance framework. The initiatives have been modelled upon the successful implementation of the Goods and Services Tax Assisted Compliance Assurance Programme (GST ACAP) and other tax governance initiatives implemented by tax authorities around the world, e.g., Australian Taxation Office, HM Revenue & Customs and the Netherlands Tax and Customs Administration.

The TGF and CTRM programmes operate independently, and a company may choose to adopt one or both initiatives according to its readiness and business objectives. For more information see our **PwC Insight**.

PwC observation:

The TGF and CTRM complement the existing GST ACAP. Similar to the GST ACAP program, the TGF and CTRM programmes are designed to permeate widely within an organisation with process and operating touch points that cut across relevant business units, functions and systems. Considerable time and effort may be required to achieve TGF and/or CTRM status for certain companies, however, the review of tax risk and governance framework does not need to be a 'one-off' grandiose exercise that demands substantial resources. A bite-size phased approach can be considered in an environment where many organisations are balancing their resource and budget constraints.



Chris Woo
Singapore
T: +65 9118 0811
E: chris.woo@pwc.com

Paul Lau
Singapore
T; +65 8869 8718
E: paul.st.lau@pwc.com

Judicial

France

Court holds French CFC rules must be examined with regard to the freedom of establishment only

A French company held a Mauritian company which recognised a capital gain upon the sale of shares. French tax authorities considered that this capital gain was taxable in France pursuant to French CFC rules.

The taxpayer argued that French CFC rules were incompatible with the free movement of capital. They considered this freedom applicable since these CFC rules apply where a French taxpayer hold more than 50% of the financial rights, which does not necessarily give control over the foreign entity (e.g., non voting preference shares).

However, the French administrative Supreme Court noted that under the safeguard clause, taxpayers could escape French CFC rules by demonstrating that their investment has a principal purpose and effect other than to enable profit shifting to a low-tax jurisdiction.

The Court ruled that given their purpose and in particular the safeguard clause, French CFC rules are intended to apply only to shareholdings that enable the French taxpayer to exercise definite influence over the decisions of the subsidiary established outside France, in particular in a third state, and to determine its activities, even if the company established in France does not hold the majority of the capital or voting rights.

Consequently, the free movement of capital could not be invoked by the taxpayer to challenge French CFC rules.

PwC observation:

This court decision is one of the numerous recent rulings regarding French CFC rules. These rulings should be carefully analysed by taxpayers when structuring their investments outside France.

Guillaume Glon
France
T: +33 (0)1 56 57 40 72
E: guillaume.glon@avocats.pwc.com

Guilhem Calzas
France
T: +33 (0)1 56 57 15 40
E: guilhem.calzas@avocats.pwc.com

OECD/EU

EU

EU Commission publishes proposal to implement debt-equity bias reduction allowance ('DEBRA')

The European Commission has published an EU Directive proposal regarding a debt-equity bias reduction allowance (DEBRA) and a limitation of the tax deductibility of exceeding borrowing costs (the proposal). This proposal, published May 11, is one of the Commission's key actions on corporate tax, as set out in the Communication on Business Taxation for the 21st Century.

The proposal aims to address the disparity in treatment between debt and equity financing by introducing a tax deductible allowance for equity investments over a 10-year period, as well as further limiting the ability to deduct interest on debt investments. The restriction on deducting debt interest will interact with the existing interest limitation rule (ILR) under Article 4 of the Anti-Tax Avoidance Directive (ATAD).

The proposed rules would apply to taxpayers that are subject to corporate income tax in one or more EU Member States, including permanent establishments of non-EU head offices. The proposed rules do not apply to financial undertakings (as exclusively defined in the proposal). Member States that already apply an allowance on equity under their national law may postpone application of the rules for a period up to 10 years and in no case for a period longer than the duration of the benefit under national law.

For more information see our **Tax Policy Bulletin**.

PwC observation:

The introduction of a notional interest on incremental equity is welcome because this reduces debt-bias in the tax system, rebalancing the use of equity, and leads to a more neutral taxation on economic rent. The introduction of a further, and more impactful, restriction on the ability of a business to deduct exceeding borrowing costs related to debt financing will be an unwelcome surprise for many taxpayers. For taxpayers that avail themselves of the equity-escape carve out, the group ratio rule, or any of the carve outs that the ILR provides, this suggests the Commission intends to prevent such taxpayers from availing themselves of tax relief related to genuine costs of doing business. The lack of carve outs that are commonly available under the ILR is also noteworthy.

As with all proposals that relate to direct tax, in order for this proposal to progress, unanimity is required from all 27 EU Member States. If adopted, an EU Member State shall implement the provisions of the EU Directive by [December 31, 2023] and apply them from [January 1, 2024] (the dates are presented in square brackets in the proposal, indicating that they may be subject to change).

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

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

OECD

OECD launches public consultation document on Pillar One – Amount A: Regulated Financial Services Exclusion

The OECD released the public consultation document on the Pillar One – Amount A: Regulated Financial Services Exclusion on May 6. The Regulated Financial Services Exclusion is intended to exclude from the scope of Amount A the revenues and profits from 'Regulated Financial Institutions' (RFIs). There are seven types of RFIs defined in the consultation document:

- Depositary Institution
- Mortgage Granting Institution
- Investment Institution
- Insurance Institution
- Asset Manager
- Mixed Financial Institution
- RFI Service Entity (a service entity that exclusively performs functions for a RFI).

The definition for each type of RFI generally contains three elements, all of which must be satisfied: a licensing requirement; a regulatory capital requirement; and an activities requirement. The exclusion will apply on an entity-by-entity basis. An Entity that meets the definition of RFI will be wholly excluded from Amount A. An Entity that does not meet that definition will be wholly included in Amount A.

As noted in the consultation document, the defining character of the Regulated Financial Service sector is that it is subject to prudential requirements based on capital adequacy, which is the regulatory driver that helps align the location of profits with the market. The scope of the exclusion derives from that requirement, meaning that Entities that are subject to risk-based capital measures (and only those) are excluded from Amount A.

For more information see our **Tax Policy Bulletin**.

PwC observation:

Considering the late stage in the project's official timeline for completion, it is concerning that significant aspects of these rules remain completely unagreed (e.g., the treatment of reinsurance and asset management), or have been left open (e.g., percentages used in the RFI definitions), or are stated to be addressed in forthcoming commentary.

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

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

OECD

OECD launches public consultation documents on Pillar One – Amount A: Tax Certainty

The OECD released the public consultation documents on the Amount A – Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A on May 27. Amount A of Pillar One introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located.

The Tax Certainty Framework consultation document includes a number of elements described as being designed to (i) provide Groups with certainty; (ii) minimise the risk of individual states undertaking unilateral actions; and (iii) eliminate potential double taxation, in respect of the new Pillar One model rules:

- A Scope Certainty Review, to provide an out-of-scope Group with certainty that it is not in-scope of rules for Amount A for a Period, removing the risk of unilateral compliance actions.
- An Advance Certainty Review, to provide certainty over a Group's methodology for applying specific aspects of the new rules that are specific to Amount A, which will apply for a number of future Periods.
- A Comprehensive Certainty Review to provide an in-scope Group with binding multilateral certainty over its application of all aspects of the new rules for a Period that has ended, building on the outcomes of any advance certainty applicable for the Period.

All three of these elements are supported by a binding process to resolve any disagreements that arise.

The Tax Certainty for Issues Related to Amount A consultation document contains draft provisions which set out a mandatory and binding mechanism that will be used to resolve transfer pricing and permanent establishment profit attribution disputes that Competent Authorities are unable to resolve through the mutual agreement procedure (MAP).

For more information see our **Tax Policy Bulletin.**

PwC observation:

It is appropriate for the OECD Secretariat and Inclusive Framework to look at new and innovative ways to prevent the risk of double taxation. However, the complexity of participating in the proposed certainty framework is evident from the releases, augmented by the amount of new terms and processes that will be necessary to achieve the required certainty.

Although the final design of the Tax Certainty Framework for Amount A remains to be settled, what is clear is that both tax administrations and Groups will need to commit significant resources to ensure that there are adequate numbers of people with the right skills and knowledge to operate the model effectively. The administrative burdens that will be placed on tax administrations either to provide the required levels of certainty (as a Lead Tax Administration), or in policing the taxing rights allocation (as a non-Listed Party) will be significant.

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

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

OECD

OECD releases crypto-asset reporting framework and amendments to CRS

The OECD on March 22 released a public consultation document regarding the Crypto-Asset Reporting Framework (CARF) — a new global tax transparency framework on the development of automatic information exchange with respect to crypto-assets — as well as proposed amendments to the existing Common Reporting Standard (CRS). The consultation document is intended to inform policy decision makers on the possible adoption of CARF and its related design components. The proposed framework has been developed in light of concerns that crypto-assets could be used to undermine the existing international tax transparency framework, including CRS.

CARF would require emerging digital market intermediaries, such as crypto-asset exchanges and wallet providers, to apply due-diligence procedures to identify their customers and to report annually customers' aggregate exchanges and transfers to their respective tax administration.

The OECD also proposes updates to CRS that seek to bring new digital financial products within CRS and aim to improve the quality and usability of CRS reporting. The updates would address points raised by businesses as well as governments since the adoption of CRS.

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

PwC observation:

So far, crypto has not been the focus of CRS and the automatic exchange of information regimes. This will change with the OECD's newly released plan. Banks and other financial market participants that are classified as reporting financial institutions under CRS likely would be heavily impacted by this new framework and should take steps to prepare for its implementation.

Mazhar Wani
United States
T: +1 415-515-4451
E: mazhar.wani@pwc.com

Rebecca Lee
United States
T: +1 202-280-5721
E: rebecca.e.lee@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 RITM8705884 (05/22).