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# International Tax News

Edition 98  
May 2021



## 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.

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### Featured articles

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#### **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

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# Legislation

## Hong Kong

### Tax treatments for corporate amalgamations

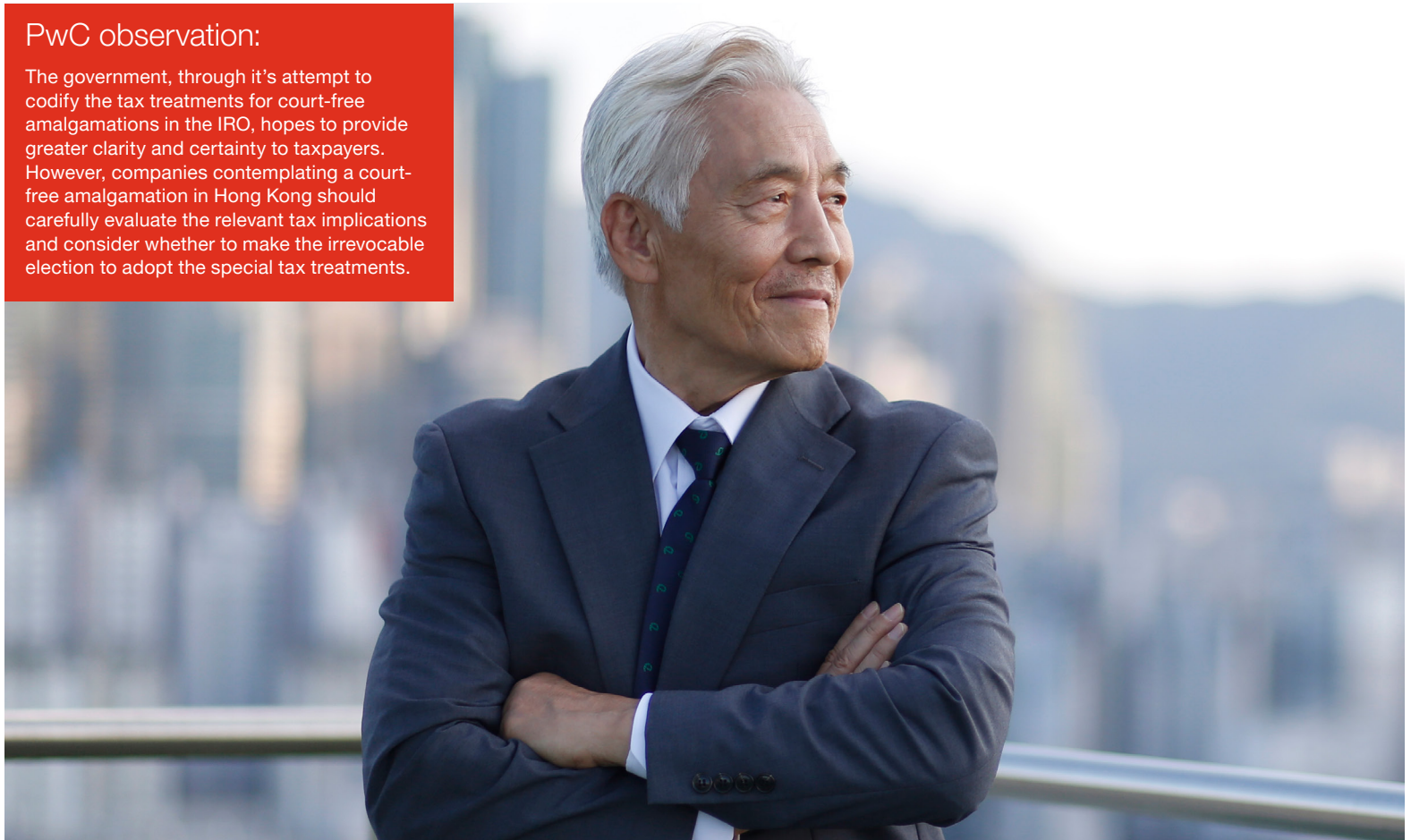
The Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021 (the Bill) was gazetted on March 19, 2021. The Bill, among other things, seeks to amend the Inland Revenue Ordinance (IRO) to specify the tax treatments for amalgamation of companies under the court-free procedures. The provisions will apply to qualifying amalgamations that take effect on or after the date of the Bill's enactment.

The Bill contains (1) general provisions that will apply to qualifying amalgamations and (2) special tax treatments that will only apply upon an irrevocable written election made by the amalgamated company within one month of the date of amalgamation (unless a further period for election is allowed).

Most of the codified tax treatments in the Bill follow the Inland Revenue Department's interim assessing practices, however, the Bill tightens the qualifying conditions for utilising the pre-amalgamation losses of amalgamating company and amalgamated company, and specifies different tax treatments for trading stock succeeded by an amalgamated company from an amalgamating company.

### PwC observation:

The government, through its attempt to codify the tax treatments for court-free amalgamations in the IRO, hopes to provide greater clarity and certainty to taxpayers. However, companies contemplating a court-free amalgamation in Hong Kong should carefully evaluate the relevant tax implications and consider whether to make the irrevocable election to adopt the special tax treatments.



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## Uruguay

### Corporate deductions – Micro and small enterprises

The Executive Branch issued regulations that allow small business taxpayers to deduct certain expenses for corporate income tax (CIT) purposes. Expenses are deductible for small business taxpayers (defined under Literal E, Article 52 CIT Law) (i) whose previous year sales, services and other gross income is below 305,000 Index Units and (ii) who are subject to “Monotributo” (under certain conditions).

Note that for expenses to be deductible, the transactions must be documented through electronic tax receipts and paid by accounts of financial intermediation institutions. These provisions will apply to years beginning on or after January 1, 2021.

### PwC observation:

These measures aim to promote the development and growth of micro and small enterprises by providing exceptions to the general tax deduction rules.

## Uruguay

### Tax measures in response to COVID-19

**Investment projects:** The Commission for the Enforcement of the Investment Law (COMAP) established an exception for the calculation of the commitments (indicators) assumed by companies benefiting from exemptions under the promoted investment projects regime. For fiscal years ending between April 1, 2021 and March 31, 2022, companies may choose not to compute the figures of this fiscal year for calculating their compliance with the committed indicators.

**Debts with the tax office:** For tax debts generated before February 28, 2021, fines and surcharges can be eliminated if taxpayers complete a payment agreement with the tax office. Taxpayers can apply for this beneficial regime from May 1, 2021 to February 28, 2022. In order to benefit from the regime, tax debts must be adjusted by the inflation index (IPC) and must be converted to indexed units. Additionally, tax debts can be paid in instalments, as negotiated with the Tax Office (with a maximum of 36 instalments).

### PwC observation:

These measures were undertaken to mitigate the impact of decreased economic activity caused by the pandemic.

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# Administrative

## United States

### USTR announces and suspends tariffs in Section 301 DST investigations

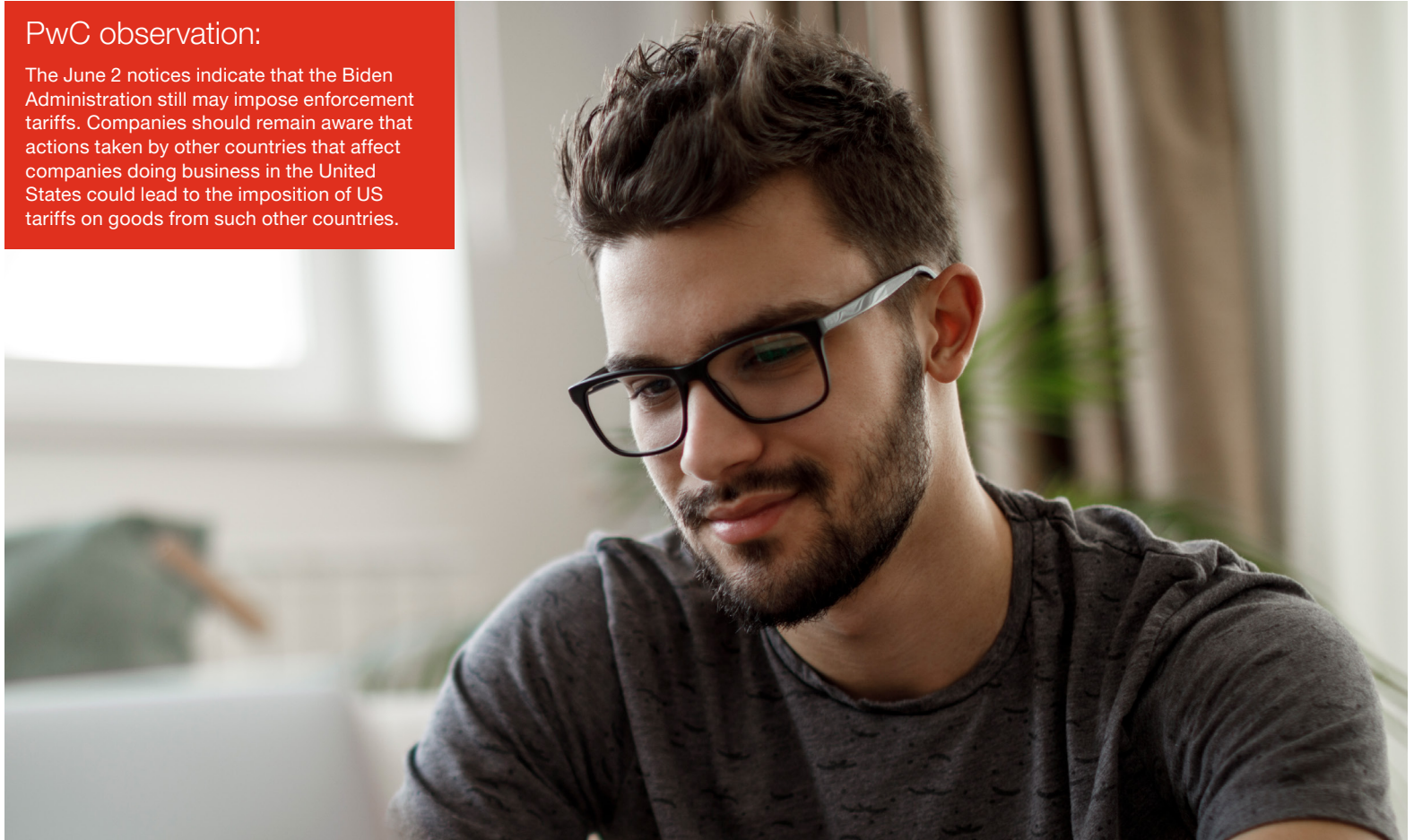
The United States Trade Representative (USTR) on June 2 announced the conclusion of its Section 301 investigations of digital service taxes (DSTs) adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom. The USTR's final determination in these investigations is to impose additional tariffs up to 25% on certain goods from these countries, but immediately suspend the tariffs for up to 180 days to provide additional time to complete the ongoing multilateral negotiations on international taxation at the OECD and in the G-20 process.

The USTR will continue to monitor the effect of the trade actions, the progress of the OECD and G-20 discussions, and the progress of discussions with the six affected countries. The USTR may adopt appropriate modifications to the actions taken on June 2, taking into account comments received in response to its March 31 notices.

For more information see our [PwC Insight](#).

### PwC observation:

The June 2 notices indicate that the Biden Administration still may impose enforcement tariffs. Companies should remain aware that actions taken by other countries that affect companies doing business in the United States could lead to the imposition of US tariffs on goods from such other countries.



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## United States

### Treasury 'Green Book' describes Biden's tax proposals for businesses

The US Treasury on May 28 released the much-anticipated 'General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals,' also known as the 'Green Book.' The Green Book serves as a guidepost for the Administration's proposed tax legislation, describing current law, proposed law, the Administration's policy rationale for the proposals, and revenue projections. While the Green Book reflects the Biden Administration's recommendations, Congress will be responsible for drafting and enacting any tax legislation.

It is not clear whether tax increase legislation will be enacted, President Biden's tax increase proposals will need the support of all 50 Democratic Senators and nearly all House Democrats to be enacted over the expected objections of Congressional Republicans. President Biden has been holding talks on a potential bipartisan infrastructure package with a group of Senate Republicans, who have ruled out any increase in tax rates. While those talks are underway, House and Senate Democratic

leaders have not yet begun formal consideration of an FY 2022 budget resolution that would be needed to provide 'budget reconciliation' instructions for consideration of President Biden's tax increase proposals.

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

#### PwC observation:

Treasury's Green Book largely contains many of the Administration's prior proposals. However, there are some new proposals, including, changes to the application of Section 265 to GILTI inclusions and the restriction on interest deductions similar to previous proposals (proposed Section 163(n)). Multinational companies should model these new provisions to understand the potential tax implications. Most of the international tax reform provisions are proposed to be effective for tax years beginning after December 31, 2021, although there are notable exceptions..

Looking ahead, all eyes are on Capitol Hill and what members of Congress (in particular moderate Democrats) are willing to support and enact into law. Additionally, companies should be following the bipartisan infrastructure negotiations as they will play an integral role in the timing of any potential tax legislation.



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## France

### **The Administrative Supreme Tax Court confirms the applicable method to characterize a foreign entity**

The French Supreme Tax Court laid out the method to determine the tax treatment applicable to a foreign company for its operations in France in a April 2, 2021 decision. Under French law it is necessary to identify, with regard to all the characteristics of the foreign company and the corporate law governing its incorporation and operation, to which French company it is comparable.

In this case, this issue at stake related to the French tax treatment of capital gains realized by a Delaware corporation selling its buildings located in France.

Delaware law governing corporations relies on many supplementary provisions which may or may not be included, upon election of the partners, in the certificate of incorporation. Therefore, the Court reasoned that it is not possible to automatically assimilate a Delaware corporation to a French corporation subject to corporate income tax.

An examination of the company's certificate of incorporation clauses is necessary to implement the assimilation method provided for French case law. In the present case, the company was treated as a French corporation in particular due to the limited liability of its shareholders.

#### **PwC observation:**

To carry out the case-by-case assessment, the Supreme Court relies notably on the following criteria: the purpose of the company, the nature of the shares, and the liability of the shareholders. The company's tax treatment in its country of incorporation is not considered for French tax characterization purposes.



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## OECD

### **G7 Finance Ministers commit to Pillars One & Two, including global minimum tax rate of 'at least' 15%**

The G7 Finance Ministers announced an agreement on June 5, in which the participating countries committed to new taxing rights that allow countries to reallocate some portion of profits of large multinational companies to markets (i.e., where sales arise—'Pillar One'), as well as enact a global minimum tax rate of at least 15% ('Pillar Two'). The meeting marked an early test of whether the US position on the OECD Inclusive Framework's 'Taxation of the Digitalising Economy' project would provide momentum to finding a common base for agreement.

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

### **PwC observation:**

While much attention has been focused on the statements from the G7 meeting, a more important indicator of whether major corporate tax changes are coming will be those determinations made by the Inclusive Framework at the end of June and the G20 Finance Ministers July 9-10. Even with an agreement in July, further important design elements will still need to be decided. Also, we expect that the coordination between the application of any new rules and repealing digital services taxes may have its own dynamics. Implementation of any new rules is likely to take several years and may create additional complexities for globally-engaged taxpayers, as countries are very unlikely to implement any agreed rules in exactly the same way and with the same effective dates.



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## EU

### EU General Court annuls European Commission's Amazon State aid decision

The General Court (GC) of the European Union, on May 12, rendered judgments regarding the action brought by Amazon group companies and Luxembourg against the European Commission's (EC's) final State aid decision of October 4, 2017 (SA.38944). The EC may appeal the decision to the EU Court of Justice within two months and 10 days of notification of the decision. Although the specific facts of the Amazon case cannot be applied to other taxpayers, multinationals should nevertheless monitor the appeals process and consider how the ultimate decisions could impact their situation.

For more information see our [PwC Insight](#).

#### PwC observation:

The GC provided in this decision important clarifications regarding the scope of the EC's burden of proof in establishing the existence of an advantage where the taxable income level of an integrated company belonging to a group is determined by the choice of the transfer pricing method.

## EU

### EU General Court confirms EC's final decision in Engie State aid case

The General Court (GC) of the European Union on May 12 rendered judgments regarding the action brought by Engie (formerly GDF Suez) group companies and Luxembourg against the final State aid decision of the European Commission (EC) of June 20, 2018 (SA.44888). Engie and Luxembourg may appeal the decision to the EU Court of Justice within two months and 10 days of notification of the decision. Although the specific facts of this case cannot be applied to other taxpayers, multinationals should nevertheless monitor the appeals process and consider how the ultimate decisions could impact their situation.

For more information see our [PwC Insight](#).

#### PwC observation:

This decision confirms for the first time that the EC can determine the existence of a selective advantage for State aid purposes on the grounds of non-application of a local concept of abuse of law by the local authorities.

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## EU

### **EU Parliament and Member States reach provisional political agreement on public country-by-country reporting**

Negotiators for the European Parliament and the Portuguese EU Council Presidency, on behalf of the Council of the EU (EU-27 Member States), provisionally reached a compromise deal on the EU's draft Directive on public country-by-country reporting ('Public CbCR') for big multinational groups, on June 1. This political agreement, once endorsed, requires multinational groups or standalone undertakings with a total consolidated revenue of at least €750m, in that and the previous financial year, whether headquartered within the European Union or not, to publicly disclose the corporate income tax they pay in each EU Member State plus in each of the countries that are listed in Annex I of the EU list of non-cooperative jurisdictions for tax purposes ('the EU's blacklist'), or listed for two consecutive years in Annex II (the 'EU's grey list'). There is a de minimis for groups with only a small footprint in the European Union.

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

#### **PwC observation:**

The provisionally agreed text still needs to be endorsed in a final vote in the EU Council by qualified majority, and in the European Parliament by a simple majority of members.



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## EU

### European Commission releases ‘Communication on Business Taxation for the 21st Century’

The European Commission released a ‘Communication on Business Taxation for the 21st Century’ setting out its long-term vision and short-term legislative agenda on May 18. The aim is to align the EU tax framework with the new realities of the globalised and digitalised economy post-Covid, and to ensure that Member States’ tax systems are fit for purpose. In the Commission’s words: “the EU needs a robust, efficient and fair tax framework that meets public financing needs, while also supporting the recovery and the green and digital transition by creating an environment conducive to fair, sustainable and job rich growth and investment”. The Communication sets a tax agenda for the next two years with five key actions:

- Action 1: Table a legislative proposal for the publication of effective tax rates paid by large companies, based on the methodology under discussion in Pillar 2 of the OECD negotiations (by 2022)

- Action 2: Table a legislative proposal setting out union rules to neutralise the misuse of shell entities for tax purposes (ATAD 3) (by Q4 2021)
- Action 3: Adopt a recommendation on the domestic treatment of losses (alongside Communication)
- Action 4: Make a legislative proposal creating a Debt Equity Bias Reduction Allowance (DEBRA) (by Q1 2022)
- Action 5: Table a proposal for BEFIT (Business in Europe: Framework for Income Taxation), moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States (by 2023)

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

### PwC observation:

The Commission’s Communication was long-awaited and clearly indicates the EU’s desired future of business taxation. In some cases, piecemeal announcements over the last few months have been brought together in this communication and the principles and policy rationales underpinning these measures are now clear. Notably, this communication marks the EC’s third attempt in a decade to pivot the Member States towards a common corporate tax base. While the international tax landscape has moved on since the last common consolidated corporate tax base (CCCTB) proposal failed to move forward, ultimately the same concerns need to be addressed – the issue of unanimous voting on tax matters, tax sovereignty and achieving a system that is perceived as fair and workable by all Member States. The breadth of the changes is significant and it seems likely that the proposed changes will impact taxpayers with EU activities. Accordingly, taxpayers should review the Communication, and discuss with your usual PwC contact who can provide you with further information and contextualise the announcements for your business.



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## Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
ATO	Australian Tax Office
BEFIT	Business in Europe: Framework for Income Taxation
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
DEBRA	Debt equity bias reduction allowance
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
ECJ	European Court of Justice
ETR	effective tax rate
EU	European Union

Acronym	Definition
GAAP	generally accepted accounting principles
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
NRC	non-resident companies
OECD	Organisation for Economic Co-operation and Development
PCG	practical compliance guidelines
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
USTR	United States Trade Representative
VAT	value added tax
WHT	withholding tax

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Mitie Design RITM5534207 (06/21).