International Tax News

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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

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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 this issue

Legislation

China

China extends tax exemption for overseas investors in bond market

In order to promote the opening of the bond market, China's Ministry of Finance and State Taxation Administration issued a Public Notice to provide that from 7 November 2018 to 6 November 2021, foreign institutions could enjoy corporate income tax (CIT) and VAT exemption treatment for the bond interest income derived from their investment into the domestic bond market of Mainland China.

Recently, China further extended these tax preferential policies to overseas investors investing in the Chinese mainland bond market until 31 December 2025. Note that the scope of interests eligible for the CIT exemption treatment shall not include the bond interest derived from an investment that is effectively connected with an establishment or place of the overseas institution in China.

PwC observation:

Overseas institutional investors now can invest in China's interbank bond market through various channels, including Qualified Foreign Institutional Investors and Renminbi Qualified Foreign Institutional Investors, direct market entry and the Bond Connect program.

China will continue to expand opening up, and leverage the strengths of its big domestic market. More will be done to attract foreign investment and encourage more foreign investors to participate in China's domestic development through the bond market.

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Cyprus

Cyprus amends laws on prevention of international tax abuse

On 9 December 2021, the Cyprus Parliament voted to pass into law two bills for amending the Cyprus tax legislation, with the purpose of strengthening the Cyprus tax framework for preventing tax abuse, tax evasion and tax avoidance in line with EU recommendations. Both amending laws state that they will enter into force on 31 December 2022. They contain the following developments:

- For payments from Cyprus to companies in jurisdictions on the EU 'blacklist' (i.e.,companies in jurisdictions included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes), the laws introduce (expanded in the case of Cyprus-internal-market royalties) withholding taxes (WHTs) as follows:
  - for payments of dividends by unlisted Cyprus companies to such company shareholders with an "over 50% holding of the capital, votes or entitlement to profits," WHT at a 17% rate;
  - for payments of passive interest (excluding payments by individuals), WHT at 30% rate;
  - for payments of royalties and similar type payments (excluding payments by individuals), WHT at a 10% rate.

Currently the EU blacklist comprises the following jurisdictions: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu. Going forward, the European Union plans to update this list of EU-blacklisted jurisdictions up to two times a year.

Any dividend, interest or royalty payments (aside from royalty payments for the use of IP within the Cyprus internal market where no tax treaty reliance exists) to companies outside the EU blacklist continue to be exempt from any WHT.

- The Cyprus corporate tax residency test (so far based solely on the 'management and control' concept) is expanded with the introduction of a test based on incorporation/formation in Cyprus only for companies that do not claim to have a tax residency anywhere else in the world.

PwC observation:

These bills are a strong indication of Cyprus' willingness to prevent international tax abuse, tax evasion and tax avoidance.

Groups that operate in jurisdictions that are included on the EU blacklist should evaluate the potential impact on their business from the new WHTs and consider available restructuring alternatives.

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Poland

Poland enacts significant corporate tax changes effective in 2022

Polish President Andrzej Duda on 15 November signed legislation commonly referred to as the 'Polish Deal.' The legislation includes provisions that are expected to impact the taxation of investments and business activity in Poland. These include a 10% minimum tax on corporations, changes to withholding tax regulations, extension of the definitions of a controlled foreign entity and a Polish tax resident, and introduction of a 'shifted income' tax. The new provisions generally are expected to be effective 1 January 2022.

For more information, please refer to the **PwC Insight provided here.**

PwC observation:

Due to the broad scope of the new law and the 1 January 2022 effective date for most provisions, companies should evaluate current and anticipated investments in Poland and model the potential impacts of the law

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Administrative

India

US and India agree on transitional approach to India digital tax

The Indian Finance Ministry issued a 24 November press release announcing that it had agreed with the United States on a transitional approach to the 2% Indian Equalisation levy (the ‘Indian EL’ or digital tax) on e-commerce supply or services. The US Treasury also announced this agreement through a press release.

This agreement will be in effect during the interim period until Pillar One, relating to new nexus and profit allocation rules, comes into effect through a multilateral convention (MLC) in 2023.

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

PwC observation:

The announcement by the Indian Finance Ministry and the US Treasury provides a transitional approach wherein credit of the Indian EL paid in the interim period will be available against the future corporate tax liabilities (arising from Amount A) for US businesses in scope for Pillar One.

The announcement, however, does not impact any other India digital tax measures – i.e., the 6% Indian EL on online advertisement or related services (introduced in 2016) and 18% Goods and Services Tax (GST) for online services.

Multinationals should assess the applicability of the Indian EL vis-a-vis Indian withholding tax (WHT) on their income, as the Indian EL applies only where the income is not subjected to WHT (as royalty or fees for technical services).

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Mexico

Mexico's 2022 budget includes numerous tax changes

The Mexican Congress on 26 October approved several changes to different tax laws as part of the proposed 2022 budget. These changes include amendments to the Mexican Income Tax Law (MITL), the Value-Added Tax Law (VATL), and the Mexican Federal Tax Code (MFTC). These amendments are still pending publication in the Federal Official Gazette; most of them are expected to enter into force on January 1, 2022.

Key changes include:

- Business reasons will be required to access various tax benefits, such as a transfer of shares at cost basis or the deferral of the capital gains tax derived from business restructuring, as well as for tax-neutral mergers and spin-offs.
- Maquiladoras will not be permitted to comply with transfer pricing obligations through Advance Pricing Agreements (APAs), and the only applicable mechanism to determine the profit margin will be the safe-harbour rules.
- The reinstatement of the tax report ('dictamen fiscal') obligation carried out by a CPA registered with the Mexican Tax Authority.
- Activities related to hydrocarbons will be subject to greater controls and penalties for non-compliance with the relevant tax obligations.
- Taxpayers that carry out acts or activities considered outside of the VATL's scope will not be able to credit the tax paid to suppliers or on the importation of goods when linked to those out-of-scope activities.
- If a taxpayer enters into a Mutual Agreement Procedure (MAP) under a tax treaty, the tax authority interest will have to be guaranteed.

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

PwC observation:

Given the broad nature of the changes introduced, multinationals with operations in Mexico should analyse the impact of these new provisions as well as the relevant business requirements and tax formalities to observe when determining the Mexican tax treatment.

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Mexico

Mexico imposes new requirements on domestic and international reorganisations

The Mexican tax reform 2022 introduces a new set of obligations impacting domestic and international transfer of entities, including mergers, spin-offs, and reorganisations. Some of the most relevant changes are the following:

- In the case of Mexican-source income derived from the transfer of Mexican shares between related parties where the seller elects to be taxed on the net gain, the 2022 tax reform introduces an obligation to include in the CPA's tax report the documentation to demonstrate that the sale price of the transferred shares is at fair market value (transfer pricing/valuation documentation).
- Additionally, in connection with tax-deferral authorisations for intra-group reorganisations, the deferred tax would become due whenever the Mexican issuer and the acquirer cease to consolidate their financial statements. Moreover, such authorisation would be void when, during a tax audit, the tax authorities determine that, either five years prior to or five years after the reorganisation, there were carried out certain transactions with no business reasons, or that the business reorganisation generated an income subject to a preferential tax regime.
- Taxpayers entering into a 'Relevant Transaction' (e.g., ownership changes, capital redemptions or contributions, business segments transfers, among others) within five years following a group restructuring must file an informative return with the tax authorities, disclosing such transaction.

PwC observation:

Given the broad nature of the rules that became effective 1 January 2022, multinationals with operations in Mexico should analyse the impact of these new requirements and formalities in order to comply with their tax obligations related to reorganisations, either domestic or international.

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Judicial

Canada

Alta Energy – Supreme Court of Canada finds no misuse/abuse of tax treaty

On 26 November 2021, the Supreme Court of Canada (SCC) rendered its judgment in The Queen v Alta Energy Luxembourg SARL, 2021 SCC 49. The SCC dismissed the government's appeal from the decision of the Federal Court of Appeal (FCA), finding that the Minister of National Revenue (the Minister) did not discharge her burden of proving abusive tax avoidance.

The taxpayer in this case was a Luxembourg holding company that acquired shares of an Alberta energy corporation and subsequently sold such shares for a considerable gain. Under the Canada-Luxembourg Income Tax Convention 1999 (the Treaty), the capital gain was not taxable in Canada because it was 'excluded property' under Article 13(4) of the Treaty. The capital gain was also not taxable in Luxembourg based on domestic Luxembourg tax law which does not tax capital gains.

At the SCC, the Minister argued that the general anti-avoidance rule (the GAAR) should apply to deny the benefits under the Treaty and that the result of the FCA's decision was to render the GAAR inapplicable to Canada's tax treaties and provided a 'roadmap' to the avoidance of Canadian tax. The Minister believed the FCA decision eroded the integrity of Canada's bilateral tax treaties and argued that an 'economic connection' was required to obtain treaty benefits.

In its decision, the SCC dismissed the Minister's appeal, finding that, while the GAAR acts to bar abusive tax avoidance transactions, including those in which taxpayers seek to obtain treaty benefits that were never intended by the contracting states, the GAAR cannot be used to fundamentally alter the criteria under which a person is entitled to treaty benefits. The SCC held that the Treaty provisions operated as intended, there was no misuse or abuse of the Treaty, and the GAAR did not apply to deny the tax benefit claimed by the Taxpayer.

For more information, please refer to the **PwC publication here.**

PwC observation:

The SCC's decision in Alta Energy clarifies the analysis of whether a taxpayer's choice of a foreign jurisdiction for investment into Canada may be an abuse or misuse of a tax treaty. The SCC has confirmed that the principles of certainty, predictability and fairness require a robust analysis of the intentions of the two sovereign states who have carefully negotiated the treaty instrument.

The SCC has confirmed that Canadian courts may not use the GAAR to rewrite tax statutes or tax treaties to prevent alleged treaty shopping where the treaty itself clearly does not do so.

This decision does not consider the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Based Erosion and Profit Shifting (the MLI) which was signed by Canada on 7 June 2017. As part of the MLI, Canada added a principal purpose test (PPT) to its Covered Tax Agreements, which will deny a treaty benefit if it is reasonable to conclude that one of the principal purposes of an arrangement or transaction was to obtain the benefit, unless granting the benefit would be consistent with the object and purpose of the relevant tax treaty provisions. Therefore, this decision may have more relevance to older transactions as the facts predated the PPT's introduction.

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Canada

Loblaw Financial Holdings – Supreme Court of Canada interprets the foreign accrual property income regime

On 3 December 2021, the Supreme Court of Canada (SCC) rendered its judgment in The Queen v. Loblaw Financial Holdings Inc., 2021 SCC 51. The SCC dismissed the government's appeal from the decision of the Federal Court of Appeal (FCA), finding that Glenhuron Bank Limited (Glenhuron) (a controlled foreign affiliate of the taxpayer) conducted business principally with arm's length persons for purposes of the foreign bank exclusion in the definition 'investment business' in subsection 95 (1) of the Income Tax Act (Canada) (ITA).

The SCC held that Glenhuron's business qualified for the foreign bank exclusion, meaning that the income from the business was not foreign accrual property income (FAPI) and was therefore not taxable in Canada.

The SCC affirmed the FCA's approach for determining whether a business of a foreign affiliate (FA) is conducted principally with arm's length persons (the 'arm's length test'). This test focuses on the FA's income-earning activities and not its capital receipts (e.g. capital invested in the FA by related parties). As well, the SCC's decision reaffirms the importance of giving full effect to Parliament's precise and unequivocal words as a means to ensuring certainty for taxpayers.

This decision comes on the heels of the SCC's decision in The Queen v. Alta Energy Luxembourg SARL, 2021 SCC 49.2 In both cases, the SCC found for the taxpayer and dismissed the Crown's appeal.

For more information, please refer to the **PwC publication here.**

PwC observation:

The SCC decision in Loblaw Financial Holdings should give taxpayers comfort. At a technical level, the SCC rejected the notion that a business's capital structure is a significant factor in determining with whom that business is conducted. Although the foreign bank exclusion has been amended since the taxation years at issue in this case so that it generally applies only to large financial services entities, the SCC's findings remain relevant to those entities.

As well, the SCC clearly recognised the importance of certainty, predictability and fairness for taxpayers and reaffirmed in no uncertain terms that taxpayers should be able to rely on "Parliament's precise and unequivocal words" when interpreting the ITA. Finally, this is the second time in two back-to-back tax cases that the SCC has sided with the taxpayer and dismissed an appeal by the Minister.

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France

Local regulatory requirements may justify charging a lower amount to certain subsidiaries

French tax authorities challenged the royalty rates applied by a French taxpayer in charging its Indian and Brazilian subsidiaries, which were lower than those invoiced to other subsidiaries in similar transactions.

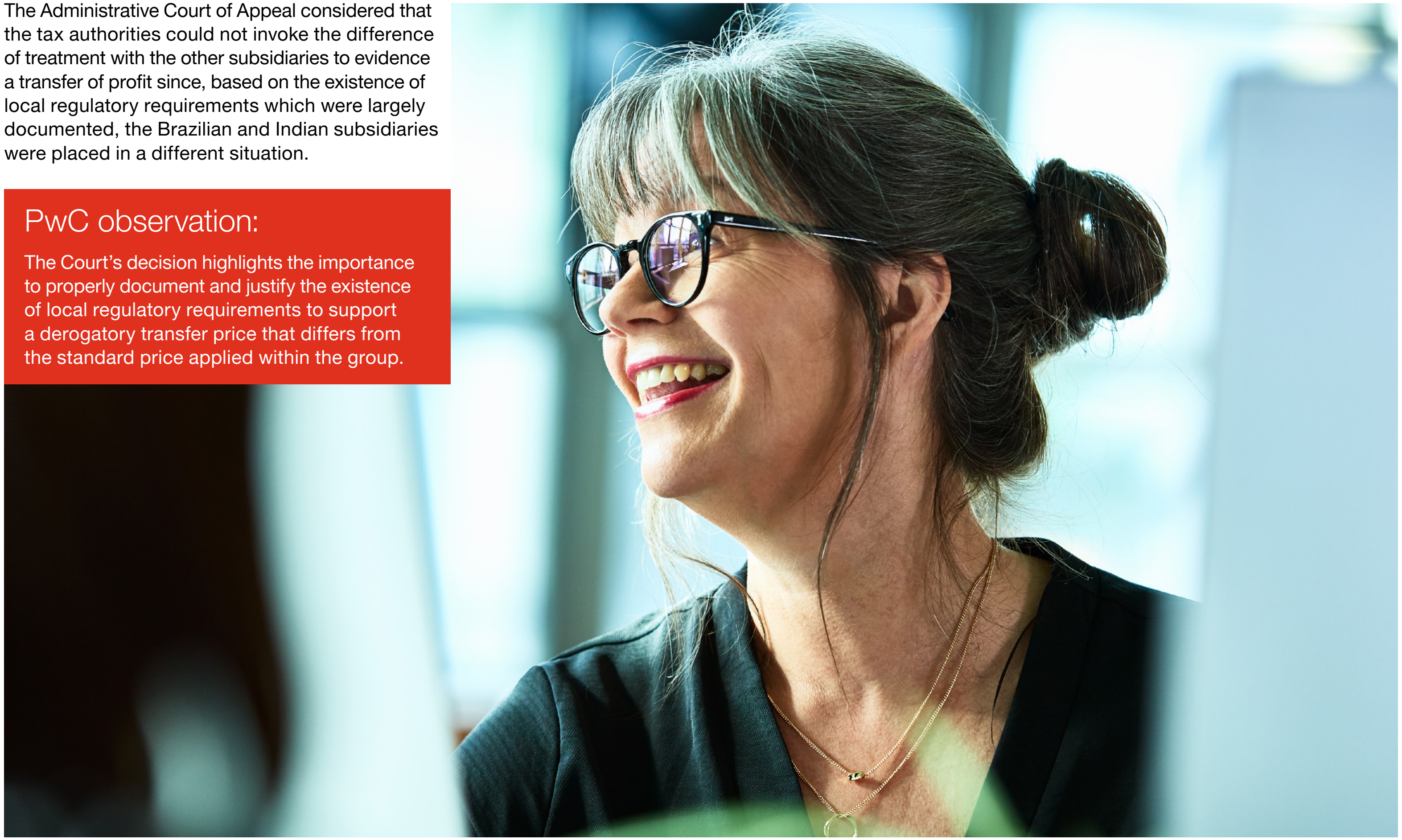
According to the taxpayer, the different treatment was justified by local constraints in these two countries which were documented by memoranda drafted by local advisors. For the period concerned, the rate of remuneration that a company was allowed to pay in India to a foreign company was equal to 2% of export turnover and 1% of domestic turnover for the use of trademarks and brand names and 5% and 8%, respectively for technical know-how royalties.

In Brazil, a trademark license agreement had to be registered with the Brazilian patent office for the transfer of royalties and was only approved on condition that the royalty rate did not exceed 1% of the total net sales of products bearing the trademark, under penalty of non-deductibility for tax purposes but also of criminal incrimination. Regulations only allowed a local company to pay know-how royalties to a foreign company during the first five to ten years of the introduction of a new special process.

The Administrative Court of Appeal considered that the tax authorities could not invoke the difference of treatment with the other subsidiaries to evidence a transfer of profit since, based on the existence of local regulatory requirements which were largely documented, the Brazilian and Indian subsidiaries were placed in a different situation.

PwC observation:

The Court's decision highlights the importance to properly document and justify the existence of local regulatory requirements to support a derogatory transfer price that differs from the standard price applied within the group.



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OECD/EU

EU

European Parliament votes to pass public country-by-country reporting

Following a final debate between members of the European Parliament (MEPs) in the European Parliament plenary session, a majority of MEPs voted on 11 November to pass changes to amend Directive 2013/34/EU, which deals with financial reporting of certain types of undertakings (the EU Accounting Directive). This vote follows the political agreement reached with the Council in June and a further updated text that was agreed in September 2021. The amendments have become known as public country-by-country reporting (pCbCR) requirements.

The agreed changes to the EU Accounting Directive will require multinational groups or standalone undertakings with a total consolidated revenue of at least €750m, over a period of two consecutive financial years, whether head quartered 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 either on the EU list of non-cooperative jurisdictions for tax purposes (the 'EU's blacklist'), or listed for two consecutive years on the list of jurisdictions that do not yet comply with all international tax standards but have committed to reform (the 'EU's grey list').

The vote marks the passage of the final political hurdle for this measure. The next step will be the publication of the amended Directive in the Official Journal. The Directive will enter into force 20 days after publication in the Official Journal. EU Member States will then have 18 months to transpose the Directive into domestic legislation. It is possible Member States could transpose it in a shorter time, and, thus, that it could be effective earlier.

But, if transposition does not occur ahead of the mandated time line, businesses can expect that the additional disclosure requirements will become applicable in mid-2024, that they will apply to accounting periods beginning after that date, and that disclosure will first be required in the latter part of 2025 (or, more likely, 2026 for those with a 31 December accounting year end).

For more information, please refer to the **PwC publication here.**

PwC observation:

This measure is an important development, in that it will require enhanced reporting for large businesses in terms of the corporate income tax they pay in each EU Member State, and in black- or-grey-listed countries. For many businesses, this will require the reporting of such information publicly for the first time. Businesses should consider these new requirements as part of the broader consideration of overall tax strategy, governance and ESG objectives.

The adopted changes to the EU Accounting Directive will enter into force 20 days after publication in the Official Journal. EU Member States will then have 18 months to transpose the adopted changes into their national laws. Therefore, the provisions should become applicable for businesses no later than mid-2024 and, depending on when a business's accounting period begins and ends, the first reporting deadline will follow thereafter (possibly as early as the latter part of 2025, but more likely in 2026). The adopted changes to the EU Accounting Directive include a review clause; the rules will be reviewed in four years and possibly extended to other groups and additional items after an assessment.

In the context of its broader tax transparency agenda, the EU Commission will propose legislation that requires businesses (with turnover of more than €750 million) to report information concerning their effective tax rates. Further details on this and other transparency measures are expected to become public in early 2022.

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Glossary

Acronym	Definition
APA	Advanced Pricing Agreement
CIT	corporate income tax
CPA	Certified Public Accountant
EL	Indian Equalisation levy
FA	foreign affiliate
FCA	Federal Court of Appeal (Canada)
FAPI	foreign accrual property income
GAAR	general anti-avoidance rule
GST	Generation Skipping Tax
ITA	Income Tax Act (Canada)
MAP	Mutual agreement procedure

Acronym	Definition
MEP	Member of the European Parliament
MFTC	Mexican Federal Tax Code
MITL	Mexican Income Tax Law
MOF	Ministry of Finance (China)
MLC	multilateral convention
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Based Erosion and Profit Shifting
PPT	principal purpose test
STA	State Taxation Administration (China)
SCC	Supreme Court of Canada
VAT	value added tax
WHT	withholding tax

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