International Tax News

October 2023

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Legislation

Portugal

2024 State Budget Law proposal submitted to Parliament

The 2024 State Budget Law proposal was submitted to the Parliament on 10 October 2023. Some of the tax amendments and proposed measures include:

- **Reduced corporation tax rate for startups**: 12.5% Corporation Tax rate on the first EUR 50,000 of taxable income (conditions apply).
- **Tax deductibility of goodwill**: the acquisition cost of goodwill acquired in a business combination shall be allowed as a tax-deductible cost, in equal amounts, during the first 15 tax years (currently, 20) after its initial recognition (it shall apply to goodwill whose initial recognition occurs from 1 January 2024 onward).
- **New eligible expenses for investment support scheme**: salary costs incurred with the hiring of employees with a master degree or a PHD will now be eligible for the purposes of the tax regime for investment support ('Regime Fiscal de Apoio ao Investimento,' or RFAI). This regime provides for a deduction against CIT otherwise payable (capped at 50% of the Corporation Tax due) of 30% (for qualified investments lower than EUR 15 million) or 10% (for the part of qualified investments exceeding that limit) of the qualified investment (See PwC Portugal 2023 Tax Guide - Tax Benefits to Resident Entities).
- **Review of the incentive for capitalization of companies:** the annual CIT deduction allowed shall result from applying a variable rate corresponding to the average 12 month Euribor rate in the tax year concerned, increased by a spread of 1.5 percentage points or 2 percentage points in the case of small and medium-sized companies and small mid-caps. An additional deduction of 50%, 30% and 20% is granted, respectively, in the 2024, 2025 and 2026 tax years. This tax incentive allows for a notional interest deduction on the net increase in eligible equity (See PwC Portugal 2023 Tax Guide - Tax Benefits to Resident Entities).
- **Tax incentives to cinematographic and audiovisual production:** the government will be able to create a tax incentive to cinema and audiovisual production. The incentive would be a tax deduction based on cinema production expenses realised in Portugal. Eligible expenses must be at least EUR 1 million per cinematographic or audiovisual work or season of episodes.

For more information see our PwC State Budget coverage.

Parliament is discussing the 2024 State Budget Law proposal. Given the government's parliamentary majority, the tax measures likely will be enacted as proposed. However, additional tax measures may be included in the final documents as a result of the Parliamentary discussion, as well as inputs from stakeholders and economic agents. The tax measures highlighted indicate how Portugal seeks to provide a friendly tax regime for startups (alongside with the recently published legal framework for startups and scaleups). The media industry is also favored with the tax incentives for cinematographic and audiovisual productions.

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Legislation

Belgium

Belgium announces new measures and new sources to increase receipts

The Belgian Federal Government agreed on the federal budget on 9 October. The current budget round was important, as the budget needed additional funds. The total effort is 1.7B EUR, of which one third was found in new income sources (with the rest from savings and one offs). In order to obtain the new receipts, the government announced the following combined measures:

- **Change to the Belgian Controlled Foreign Companies (CFC) rules**: The Anti-Tax Avoidance Directive (ATAD) obliges countries to introduce a CFC rule. The directive provides two options. In 2017, the Belgian Government opted for the taxation of the non-distributed income arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage (*option B*). Basically, this option required that the significant people functions in respect of the CFC income were located in Belgium. However, the Belgian Government has changed position and instead will implement *option A* of the ATAD directive. This means that the new CFC rule would envisage taxing passive income, namely interest, royalties, dividends, and income from share disposals, which is subject to low taxation abroad (defined as half of the taxation that would occur under the Belgian rules), unless the taxpayer can prove that sufficient substance is available locally.
- **Banking tax:** increased contribution of the financial sector via (i) non deductibility of the banking tax, the tax on the credit institutions and the tax on the investment funds and (ii) a progressive rate of the banking tax envisaging a larger contribution of the largest financial institutions.
- **Tightening of the anti-abuse measures against international tax evasion:** The provision regarding deductibility of the payment of interest, compensation or fees for granting use of patents, manufacturing processes and other similar rights or payments for supplies or service would be amended. The new measure would provide for a reversal of the burden of proof, notably that Belgian tax authorities have to prove that the payment occurred between affiliated companies. The taxpayer would be able to bring counter-proof.
- **Changes to article 344, §2, of the Belgian Income Tax Code:** this provision (which renders unenforceable the transfer of assets to a legal entity located in a low-tax jurisdiction) would be extended to also cover indirect transfers.
- **Changes to the investment deduction**: significant increase to the deduction for sustainable and socially-responsible investments.
- **Strengthening of the Cayman Tax** based on the report of the Court of Audit (Rekenhof / Cour des Comptes)
- **Registration duties** on long lease (erfpacht/emphytéose) would increase from 2% to 5% effective 1 January 2024
- **Strengthening of the tax audits** on the non-profit organizations (legal entity income tax), special regimes in the corporate income tax, sport sector and brokers.

Next, the agreed-upon measures have to be put into law and go through the required parliamentary procedures before they will be published into the Official Gazette (Belgisch Staatsblad / Moniteur belge) and enter into force.

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Legislation

Bermuda

Bermuda models corporate income tax after the GloBE rules, with key differences

The Government of Bermuda issued its second public consultation paper (PCP) on 5 October, proposing a 15% corporate income tax (CIT) applicable to Bermuda businesses that are part of multinational enterprise (MNE) groups with annual revenue of €750M. The tax would be effective beginning in 2025. Consistent with the first public consultation, one of the primary policy underpinnings associated with the CIT, as described in the second PCP, is alignment with the Global Anti-Base Erosion (GloBE) rules and qualification as a Covered Tax. However, Bermuda currently has no proposals to introduce the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR).

The second PCP provides details with respect to the scope of the proposed CIT, as well as the computation of taxable income and the tax itself. MNEs that may become subject to the CIT should be aware of Bermuda's tight deadline to enact it. Comments with respect to the second PCP have been requested by 30 October 2023. The third and last PCP is expected to be released on or about 10 November 2023, with the consultation period to run until 24 November 2023. The Bermuda Government intends to table the CIT bill for debate, with a view to enactment prior to 31 December 2023.

For more information see our PwC Insight.

In anticipation of the enactment, affected MNE groups should analyze the potential tax accounting implications of the proposed CIT. The impact of the proposed CIT regime on Bermuda insurance companies' regulatory capital requirements also should be considered, along with the impact on any M&A or other transactions. Additionally, MNEs should monitor the CIT rules as they develop to determine if they may avail of certain elections. Such elections may need to be made by 31 December 2023.

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Legislation

Cyprus

Cyprus consents to Pillar Two Transitional CbCR Safe Harbour Rules, enhances tax deduction for R&D costs

Cyprus has consented to the Pillar Two Transitional CbCR Safe Harbour. In addition, Parliament recently voted to amend Article 9(1)(d) of the Cyprus Income Tax (IT) Law, which grants a tax deduction for expenditures incurred for scientific research and R&D. Finally, Cyprus Ministry of Finance announced that the Cyprus-Netherlands tax treaty will be effective 1 January 2024.

Read the full PwC Tax Insight here.

By consenting to the Pillar Two Transitional CbCR Safe Harbour, new and existing Cyprus companies of Pillar Two-eligible MNEs may not be impacted by the Pillar Two rules until after 2026. Also, eligible Cyprus intangible property (IP) companies should consider the 120% R&D 'super-deduction,' as this provision can apply to any type of IP developed via a cost sharing agreement. Finally, Cyprus taxpayers with existing and prospective Dutch entities in their structures should analyze the provisions of the soon-to-be-effective Cyprus-Netherlands tax treaty.

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Legislation

Cyprus

Cyprus consults on draft legislation for minimum tax on MNE groups and large-scale domestic groups

The Cyprus Ministry of Finance (MoF) opened on 3 October a public consultation on Cyprus' transposition into its national law of the EU Directive aimed at ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups (the Directive) dated 14 December 2022. The Directive itself was developed from the OECD/G20 Inclusive Framework on BEPS Pillar Two Model Rules (the Model Rules). The public consultation invites comments from interested parties until 31 October 2023.

The MoF has published the text of a Draft Bill in Greek. This text generally aligns with the Directive, and includes additional text to account for certain elements of the OECD/G20 Inclusive Framework on BEPS Administrative Guidance (AG) that has been released to date. The Draft Bill also includes administrative provisions, which, outside of the OECD's GloBE Information Return are determined on a per-country basis.

The Draft Bill would introduce a Qualified Income Inclusion Rule (QIIR), effective in 2024; a Qualified Undertaxed Payments Rule (QUTPR), effective in 2025; and a Cyprus domestic minimum Top-up Tax, effective in 2025.

Adoption of the Draft Bill would not modify Cyprus' corporate income tax (CIT) legislation. Instead, the Draft Bill would introduce additional tax legislation to be applied subsequently to the application of CIT and other relevant taxes.

Given the fast-approaching implementation of the Cyprus QIIR, in-scope groups should consider proactive measures now. In-scope groups also should analyze the potential implications of the Draft Bill and assess whether their existing data, systems, technology, and processes can adequately support the Pillar Two requirements. Also, in-scope groups should review the comments submitted to the Cyprus MoF.

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Legislation

France

France implements Pillar Two into domestic law

The Finance Bill for 2024 essentially aligns the provisions of EU Directive 2022/2523 requiring all 27 member states to implement the Pillar Two rules by 31 December 2023. However, France included a few adjustments designed to incorporate fragments of the Commentary on the Model Rules or the administrative guidance adopted by the OECD/G20 Inclusive Framework on 1 February and 13 July 2023.

France's share of Top-up Tax would be collected through the domestic minimum Top-up Tax and two additional mechanisms:

- an Income Inclusion Rule (IIR) ('Règle d'inclusion du Revenu') consisting of an additional tax levied at the parent entity level; and
- an Undertaxed Profits Rule (UTPR) ('Règle relative aux Bénéfices Insuffisamment Imposés') consisting of reassigning to a jurisdiction in which an entity is located a residual amount of Top-up Tax if the full amount of such tax could not be collected under the IIR. It would take the form of an additional levy and not, as authorized by the Directive, a denial to deduct expenses from the corporate tax base.

Double taxation would be avoided by crediting the additional domestic tax against tax calculated under the IIR and UTPR. The minimum annual taxation (which would include the domestic minimum Top-up Tax, the IIR and the UTPR) would be fully independent of French CIT.

Under the bill, the domestic minimum Top-up Tax and IIR would apply to financial years beginning on or after 31 December 2023, while the UTPR would generally apply to financial years beginning on or after 31 December 2024. Groups within scope should urgently evaluate and model the impacts of Pillar Two.

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Legislation

Malaysia

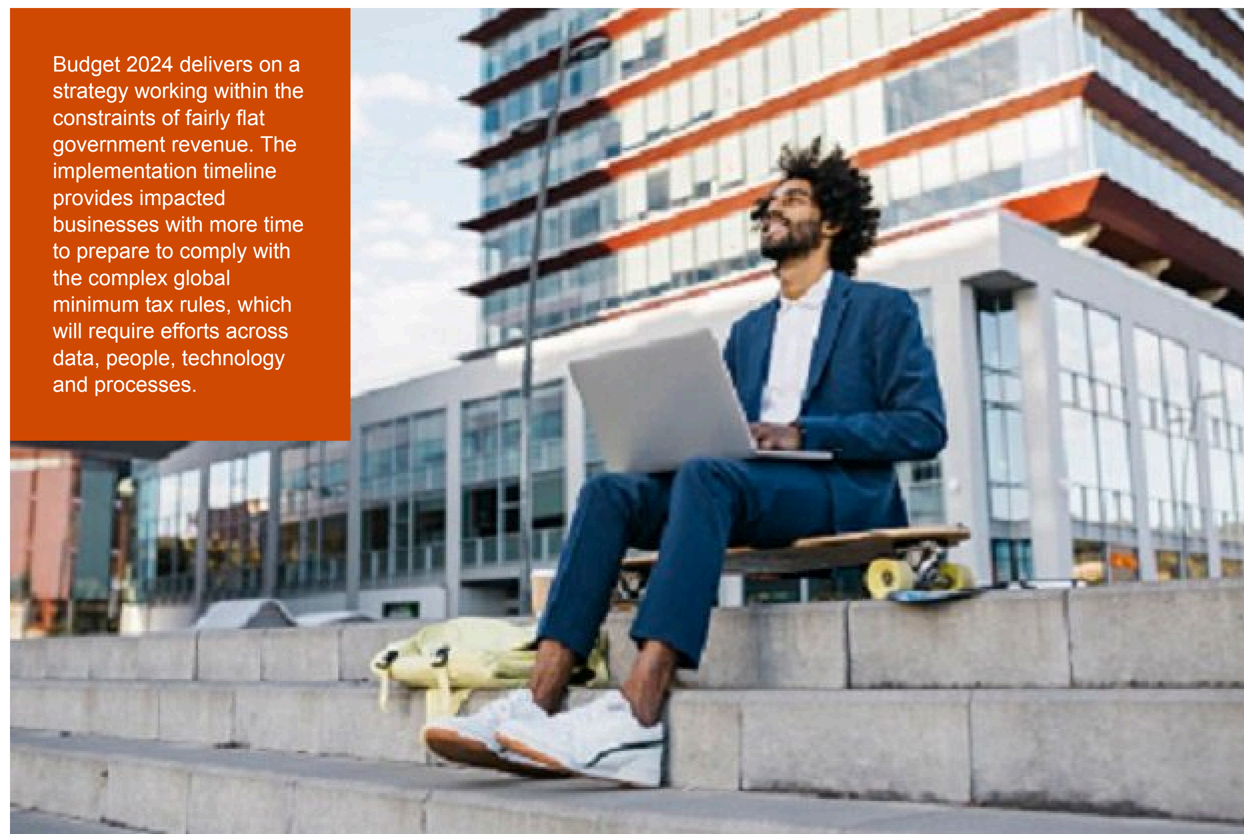
Malaysia expects to implement global minimum tax in 2025

Budget 2024 introduces key measures that aim to build a sustainable foundation, drive future growth, and ensure the stability of the Rakyat. In the absence of any measures that would increase government revenues significantly, the Finance Minister has worked within these constraints to target a lower budget deficit of 4.3%.

Global Minimum Tax

Malaysia remains committed to fulfilling its obligations under BEPS Pillar Two. Malaysia intends to implement a multinational Top-up Tax based on the GloBE rules, as well as a qualified domestic minimum tax. The government expects to implement the global minimum tax in 2025, consistent with many jurisdictions in the region, including Singapore and Thailand. This allows Malaysia to remain on similar footing as neighboring countries that compete for foreign investments. For more details see the full statement.

Budget 2024 delivers on a strategy working within the constraints of fairly flat government revenue. The implementation timeline provides impacted businesses with more time to prepare to comply with the complex global minimum tax rules, which will require efforts across data, people, technology and processes.



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Legislation

The Netherlands

Netherlands advances Pillar Two

The Netherlands Draft Bill Minimum Taxation Act 2024, also known as Pillar Two, provides for a minimum effective tax rate of 15% per jurisdiction for large international enterprises (annual turnover exceeding 750 million euros). The law will come into effect on 31 December 2023, and will first apply to financial years starting on or after this date. The Memorandum in response to the Report on this draft bill was published on 11 September 2023. In it, the State Secretary of Finance answers questions from the various parliamentary factions. The memorandum addresses several interesting aspects, including the interaction between Pillar Two and corporate tax, and the compatibility of the draft bill with tax treaties.

The Memorandum in response to the Report is the next step towards the implementation of Pillar Two in the Dutch tax legislation. Soon, an Amendment Memorandum will follow, in which, among other things, the so-called safe harbour rules will be added, on which the Inclusive Framework reached an agreement in July. After that, the draft law will be further discussed in the House of Representatives. With the upcoming elections recess in mind, this will happen in the coming weeks, after which the Senate will further the legislative proposal. The parliamentary law-making proceedings of the draft legislative act will be combined with the Tax Plan 2024 package.

Coherence with Corporate Income Tax

The memorandum indicates that the Minimum Tax Law 2024 interferes with the Corporate Income Tax Law 1969. Despite the possibility of implementing Pillar Two in the corporate income tax, a separate tax law has been chosen due to the difficulties it entails. However, this choice does not eliminate the interference between both laws. Due to the regular Dutch corporate income tax rate of 25.8%, the effective tax burden in the Netherlands is generally above the minimum level. In specific cases, the effective rate may be lower, for example, if the liquidation loss scheme, the innovation box, or the tonnage regime are applicable. The memorandum indicates that only in very specific cases will the effective rate fall below the minimum level, as taxpayers almost always also generate profits that are subject to taxation at the regular rate. The government will continue to monitor this.

Compatibility with Tax Treaties

The note indicates that the Directive and the draft legislation are based on international political agreements within the Inclusive Framework. The note states that, at the request of the OECD, the Inclusive Framework has stated that tax treaties do not preclude the imposition of withholding taxes. This is with reference to the commentary on the OECD Model Convention, which states that CFC measures are allowed under tax treaties and are comparable to income inclusion withholding. The OECD has also argued that income inclusion withholding and under-taxed profit withholding do not burden the group entity in the low-tax jurisdiction. The note points out that, now that the Directive has been adopted, it can be inferred that the Member States, as well as the government, share this position. Therefore, it can be inferred from the note that the issue of incompatibility will be resolved. However, PwC expects that the topic will still be discussed in parliamentary debate.

Dispute Resolution

There likely will be discussions between tax authorities of different countries regarding certain interpretations within Pillar Two. The memorandum indicates that Pillar Two is a tax on profits and therefore falls within the scope of tax treaties. A possibility of mutual agreement and dispute settlement can be devised on the basis of a multilateral agreement. The government is pursuing this option. However, all of this still needs to be further elaborated at a later stage within the Inclusive Framework.

The complexity, novelty, and uncertainty associated with Pillar Two will pose a challenge when complying with the rules for multinational enterprises. Multinationals may need to investigate whether the necessary data to calculate the effective tax rate is available worldwide, and whether systems, technology, and processes need to be prepared to ensure global legal compliance.

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Legislation

Norway

Norway releases Budget, plans to introduce a global minimum tax

This year's budget includes few changes in the tax area. There are only insignificant changes in tax rates for individuals and businesses. The corporate income tax rate remains at 22% and there is no proposal to change it. Some of the corporate changes include:

The limit for direct expensing of operating assets: The government proposes to increase the limit for direct expensing of costs related to the acquisition of operating assets, from 15,000 to 30,000 kroner. This also applies to the depreciation of the remaining balance.

Changes in the interest limitation rules: The Ministry sent a proposal for consultation in April 2023 on rule changes related to the EBITDA rule between related parties in section 6-41 ninth paragraph of the Tax Act, as well as adjustments to the types of group contributions that should be deducted in the deduction limit under section 6-41 third paragraph of the Tax Act. The proposals were intended to make the rules more robust against undesirable adjustments. Based on the consultation, the Ministry proposes in the state budget not to include net intra-group interest income in the calculation of net interest expenses when the EBITDA rule between related parties in section 6-41 ninth paragraph applies to companies in a group. The Ministry proposes that the changes enter into force immediately with effect from and including the income year 2024.

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Legislation of tax exemption practice: The government proposes to legislate the practice that has been developed under the rules on tax-free reorganisations. The new rules will cover mergers and demergers, conversions and intra-group transfers. Where the rules previously have given the Ministry of Finance authority to consent to exemption from capital gains taxation in specific cases, the budget proposes to legislate these rules, so that exceptions from the Tax Act's rules on capital gains taxation are given to the greatest possible extent in the form of law or regulation, and not administrative decisions. The rules are proposed to enter into force with effect from and including the income year 2023. The Ministry proposes to legislate tax exemptions for certain typical cases. This will apply to tax-free cross-border mergers for securities funds (UCITS funds), tax-free amalgamation and division of savings banks with establishment of savings bank foundations and amendment of the rules for tax base on merger and demerger arrangements that arise in connection with triangular mergers and demergers (so that the tax base is set equal to the face value of the claim – this will mean that there normally will not be any gain or loss on conversion of such claims).

Special rules on taxation of private consumption in companies postponed to 2025: The Ministry of Finance sent a proposal for special rules on taxation of private consumption in companies for consultation in the spring of 2022. The aim was that the new rules would enter into force from 2024. The government wants to continue working on adjustments to the proposal that was sent for consultation, and does not now propose special rules for taxation of private consumption in companies. Instead, the aim is to present a proposal for more targeted special rules in 2024, with entry into force in 2025.

Global minimum taxation of large corporations: In Norway, a proposal to implement the Pillar Two rules in Norwegian law has recently been subject to consultation. The ministry is now reviewing the consultation responses, and, later in 2023, the government intends to present a bill with proposals to introduce a global minimum taxation of large corporations with effect from and including 2024. The introduction of the rules is not expected to generate significant tax revenues in the short term. However, the introduction of the rules will entail significant costs for implementation, reporting and compliance, both for the tax authorities and the affected taxpayers.

The government plans small changes in the corporate tax area for the income year 2024. The global minimum tax of 15% for groups with a total turnover of more than 750 million EURO will be presented as a separate matter later this year and the rules will take effect from the income year 2024.

Legislation

Romania

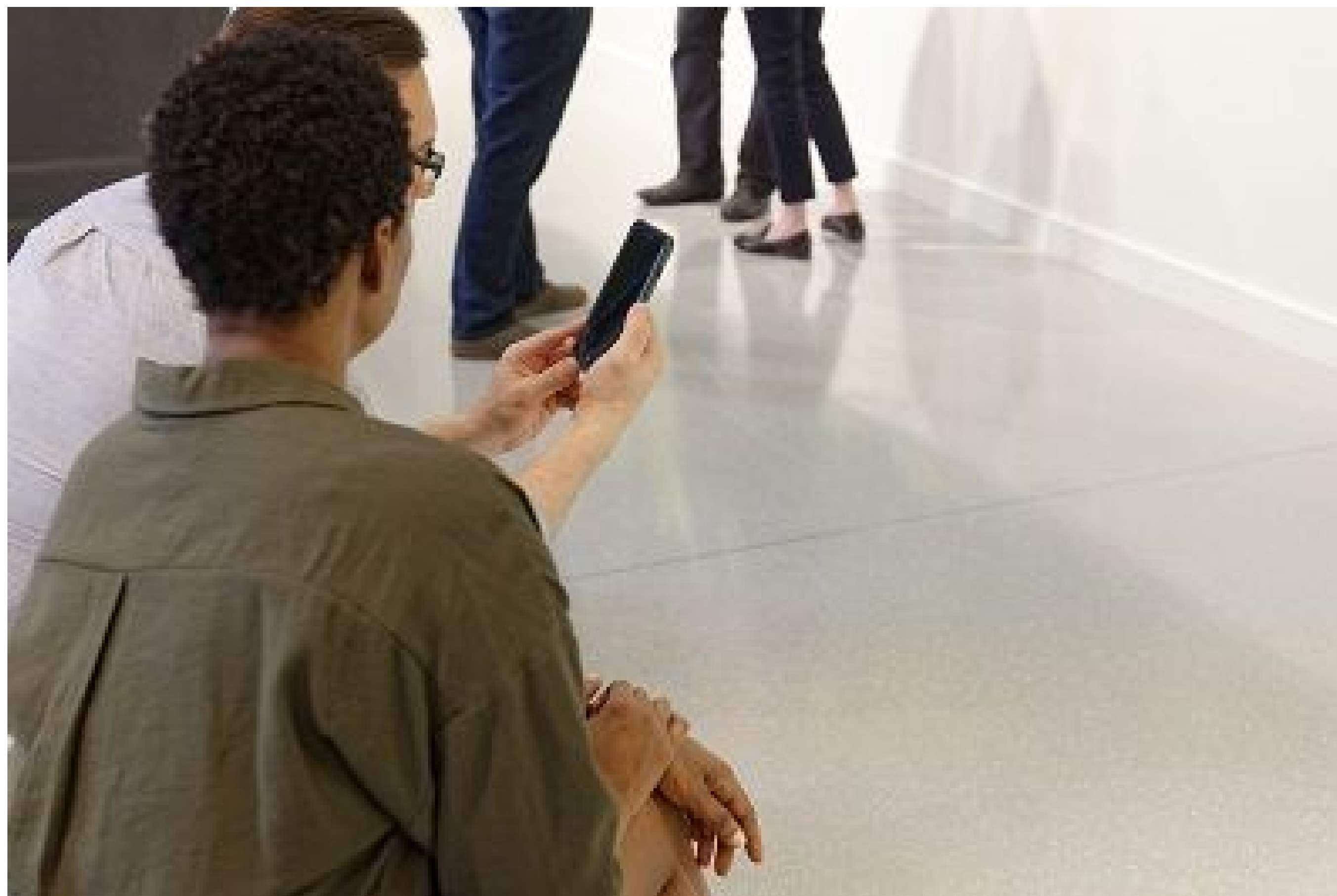
Romania minimum turnover tax

The Romanian Government published a draft Emergency Ordinance, which introduces a minimum turnover tax on taxpayers with turnover of more than 50 million Euros in the previous year.

Taxpayers whose corporate income tax is lower than the minimum turnover tax established according to a stated formula, or who have a fiscal loss, are obliged to pay the corporate income tax at the level of the minimum turnover tax.

The value of minimum turnover tax is computed as 1% applied to the total revenues, from which certain elements are deducted.

Ministry of Finance representatives have stated that the minimum turnover tax should qualify as an income tax, as defined by the Pillar Two Model Rules.



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Legislation

Romania

Romania publishes draft Pillar Two legislation

Romania published draft Pillar Two legislation on 4 October, in order to implement the Minimum Tax EU Directive.

Based on the draft legislation, the Pillar Two Globe Rules would apply for financial years starting on or after 1 January 2024 (QDMTT and IIR). The UTPR would apply to financial years starting on or after 1 January 2025.

The draft legislation provides that the OECD GloBE Commentary, as well as other OECD guidance such as the Administrative Guidance and Safe Harbour rules existing - or that will be published - are to be used as a source of 'illustration and interpretation' for the application of the Pillar Two Globe Rules in Romania.

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Legislation

Slovakia

Slovakia addresses the EU Directive on Pillar Two

The Slovak Ministry of Finance submitted in August 2023, a draft act on an additional amount of tax (Top-up Tax) for discussion and comments from governmental bodies and other relevant institutions. The Top-up Tax Act, expected to be effective as of 31 December 2023, implements Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (Pillar Two).

The Top-up Tax Act will apply to Slovak entities, including Slovak permanent establishments of tax non-residents, that are part of a multinational group of enterprises or a large-scale domestic group (group) if the consolidated annual revenue of such a group reported by the main parent entity (parent entity) in its consolidated financial statements is €750+ million in at least two of four accounting periods preceding the analysed accounting period. The EU Directive stipulates that if actual taxation is below the minimum level, a top-up to 15% will be made by either applying the primary Income Inclusion Rule (IIR), or the secondary Undertaxed Profits Rule (UTPR). An optional method under the Directive is additional taxation via the Qualifying Domestic Minimum Top-Up Tax (QDMTT).

Given that very few parent entities are headquartered in Slovakia, the Ministry has decided to apply an option in the Directive to delay application of the IIR and UTPR rules. However, given the higher number of subsidiary entities that are Slovak tax residents, the Top-up Tax Act introduces QDMTT to avoid taxation of these entities in other countries as a result of application of the mandatory IIR and UTPR rules by parent or other entities seated abroad.

The taxable period for the Top-up Tax is the period for which the group's parent entity prepares the consolidated financial statements, or in some cases, a calendar year. The deadline for filing a Top-up Tax return (notification) may not be extended or waived, and the law stipulates sanctions for not submitting them by the given deadline.

The most extensive part of the Top-up Tax Act stipulates the procedure for calculating the effective tax rate and the potential Top-up Tax of entities concerned by specifying detailed rules for the calculation of the qualifying income (or loss) and adjusted covered taxes of these entities. The law also defines the method for calculating income not subject to Top-up Tax, and provides an exception for entities that report defined payroll costs and defined costs of tangible assets during the performance of their economic activities. If several entities are part of the same group in Slovakia that meet the turnover criteria for the application of the Top-up Tax Act, their cooperation in the preparation of tax returns will have to be intensive, as the basic indicators for the calculation of the potential Top-up Tax on the excess profit will be determined on a common basis for all entities of the same group located in Slovakia.

Slovak entities that fall under the scope of the Top-up Tax Act based on the size criteria of their groups will be obliged to file a Top-up Tax return and submit a notification containing information required by law for the assessment of this tax within 13 months of the end of the taxable period. If a number of Slovak entities are part of the same group, they may select and authorise one of them to fulfil this notification duty for all of them. The Financial Directorate of the Slovak Republic will then post both documents – the Top-up Tax return and the notification – on its website.

The Top-up Tax Act will not apply to exempted entities, e.g. international organizations, NPOs, pension funds, and investment funds if they are at the top of the ownership chain.

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Administrative

Australia

ATO corporate tax transparency data check

The Commissioner of Taxation is required to publish certain income tax information of some corporate taxpayers (including total income, taxable income, tax payable) as well as Petroleum Resource Rent Tax (PRRT) payable by an entity. The Australian Taxation Office (ATO) has indicated that it plans to release this year's annual Report of corporate tax information in early November 2023. The report will include information reported in 2021–22 income tax returns (and returns for earlier years if not previously published). The taxpayers to be included in this year's report include:

- Australian public or foreign owned entities with total income of $100 million or more
- Australian resident private companies with total income of $200 million or more, and
- Entities reporting PRRT payable.

The ATO publishes information that is reported by large corporations. The data is published to inform public debate about the corporate tax system and helps to:

- improve awareness
- increase community confidence that corporations are paying the right amount of tax
- encourage voluntary compliance.

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Administrative

Australia

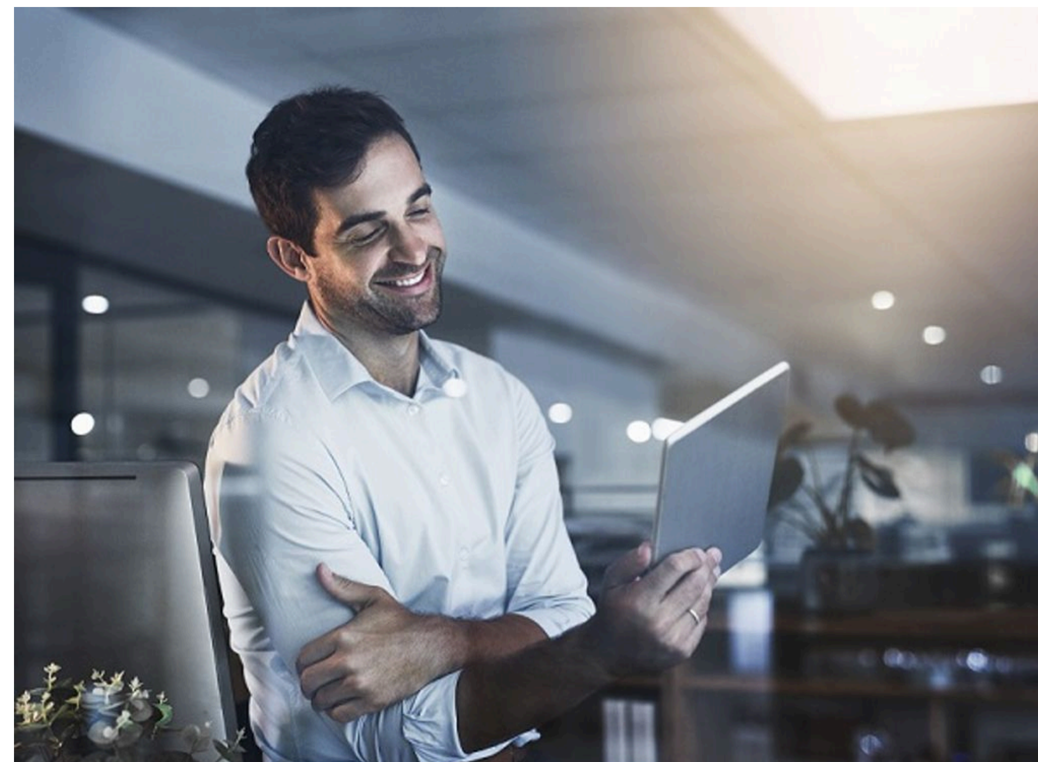
ATO working on administration for Pillar Two

A recent speech given by Hector Thompson, Deputy Commissioner, International, Support and Programs at ATO, outlined the ATO's approach to the forthcoming Pillar Two reforms to address the challenges of the digitalisation of the economy.

Namely, the ATO has already established a dedicated project team for the implementation of the proposed Pillar Two global minimum tax and domestic minimum tax, including developing its compliance approach, providing guidance to in-scope taxpayers and advisers, developing systems to allow for lodgement and exchange of the GloBE information return (GIR), and to develop data and analytics capabilities. Other comments of particular note were:

- While the GIR is being developed by the OECD, separate tax returns will need to be developed by the ATO to enable the assessment of any Top-up Tax liability for GloBE or Domestic Minimum Tax attributable to Australia.
- The ATO will seek to minimize the compliance burden by considering the use of the informational elements of the GloBE computations that will already be reported in the GIR.
- The first returns are expected to be due for filing by 30 June 2026 for multinationals with fiscal years ending 31 December 2024.
- The ATO has no plan to follow a traditional justified trust methodology for the initial years of GloBE to obtain assurance that taxpayers have paid the correct amount of tax, although it will still seek a level of comfort or confidence that obligations are met.

The ATO is transitioning to the implementation phase of the GloBE Rules and is increasing its investment and engagement efforts, with particular focus on consulting and collaborating with multinational companies and professional services firms.



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Administrative

Austria

Austrian Ministry of Finance publishes consultation draft for Minimum Tax Act

The Austrian Ministry of Finance (BMF) published on 3 October a consultation draft for an act to ensure a Global Minimum Tax (Pillar Two). The consultation period ended on 20 October. The new regulations will enter into force as of 1 January 2024. The Minimum Tax Act transposes into domestic law the complex framework of the EU Directive on a global minimum level of taxation as well as of the OECD's model rules. Some of the key points include:

Scope: Only large company groups reaching a minimum of EUR 750 million in net sales in at least two of the four past financial years fall within the personal scope. It is irrespective whether it is a solely domestic or a multinational company group.

Levy of the Top-up Tax: The global minimum tax rate of 15% is ensured via the income inclusion rule (IIR) in 2024 and the undertaxed profits rule (UTPR) beginning in 2025. For domestic Constituent Entities subject to less than a 15% effective tax rate, a domestic Top-up Tax (QDMTT) is introduced preceding the IIR and UTPR. This prevents an outflow of domestic tax base to a foreign Ultimate Parent Entity's (UPE's) jurisdiction. On the other hand, the domestic Top-up Tax results in the requirement of Austrian Constituent Entities of foreign company groups to comply with corresponding Austrian compliance obligations.

Safe harbour rules: In order to simplify administration the following safe harbour rules are included in the Minimum Tax Act:

- ·Safe harbour for qualified (foreign) domestic Top-up Taxes (e.g. relevant on the level of the Austrian UPE regarding foreign (low-taxed) business units)
- ·Transitional CbCR safe harbour (de minimis test, effective tax rate test, routine profits test)
- ·Simplified calculation of CbCR safe harbour for non-material Constituent Entities.

When determining the safe harbour requirements, a country-based approach should be taken. If a safe harbour is granted, the Top-up Tax amount is reduced to zero for the respective tax jurisdiction, and determining the ETR according to the complex general framework is not required. However, this does not affect compliance obligations, e.g., filing a Pillar Two tax return. The transitional CbCR safe harbours do only apply for the first three financial years (starting in 2024). The significant simplification is that for these tests the CbCR and financial information (already available within the company) is used.

The consultation draft largely follows the EU Directive, the OECD model rules, and OECD publications, such as the administrative guidance and safe harbour rules, which provide significant simplifications for the transition period. The challenge for affected companies is to implement this completely new framework within a short time period, derive many data points, adapt the in-house processes to the new requirements, and integrate them into their systems.

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Administrative

China

China increases super deduction ratio of R&D expenses to 120% for certain industries

In recent years, China's fiscal and tax authorities have issued a series of CIT preferential policies to encourage enterprises to increase R&D spending, including increasing the super deduction ratio of R&D expenses to 100% for enterprises of qualified industries, implementing the super deduction for overseas entrusted R&D activities, etc.

In September 2023, China issued Public Notice [2023] No.44 to further increase the super deduction ratio of R&D expenses for CIT purposes to 120% for integrated circuit enterprises and the enterprises manufacturing the industrial mother machines from 1 January 2023 to 31 December 2027.

In addition, the filing method related to the super deduction has been reformed. If the R&D expenses are correctly collected, eligible enterprises can choose the way and time of filing to enjoy the R&D super deduction. For example, enterprises may choose to claim the super deduction of R&D expenses incurred in the first half of a year under the Q2 provisional CIT filing, or to claim those incurred in the first three quarters under the Q3 provisional CIT filing, rather than during the annual CIT filing to be completed by the end of May the following year. Utilizing the benefit as early as possible helps ease enterprises' cash flow pressures.

As an important initiative to support scientific and technological innovation, the preferential policy of the R&D expenses super deduction will relieve enterprises' tax burdens and encourage more R&D spending. This is a favorable policy for enterprises in the scientific and technological innovation and manufacturing industries.

Meanwhile, accurately identifying qualified R&D activities is critical for claiming the benefits. The increased super deduction ratio for R&D expenses also puts in place higher standards on enterprises' management of R&D activities to ensure tax compliance. Enterprises should consider the scientific and technological attributes of this policy and retain the supporting documents for future inspection.

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Government considers the creation of opportunities zones with tax incentives

The government may create special opportunities zones where investors in these zones could benefit from corporate income tax, acquisition tax incentives, etc. This initiative involves providing more than 10 types of incentives, which are distinct from those currently available in existing economic zones, as outlined by the Presidential Council on New Initiative for Regional Development.

The introduction of these special opportunities zones aims to address the limitations of incentives available in existing economic zones. Tax incentives under consideration for investors in special opportunities zones include:

- Where a company relocates to an opportunities zone after selling its real estate, the deferral of individual or corporate income tax on gains arising from the sale of the real estate until it disposes of any real estate acquired within such a zone, as well as 100% individual or corporate income tax exemption for the first five years for a business startup or a new business place in such a zone, followed by a 50% reduction for the two subsequent years;
- With respect to real estate newly acquired by a company relocating to or starting a business in such a zone, 100% acquisition tax exemption and 100% property tax exemption for the first five years, and a 50% reduction for the next five years; and
- For companies that received family business succession benefits, substantial relaxation of the follow-up management requirements to remain eligible for these benefits.

The primary goal of creating these opportunities zones is to stimulate economic development and job creation in relatively underdeveloped local regions.

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United States of America (the)

IRS Notice provides additional interim CAMT guidance

The Inflation Reduction Act, enacted in 2022, imposes a corporate alternative minimum tax (CAMT) based on adjusted financial statement income (AFSI) of an 'applicable corporation' for tax years beginning after 31 December 2022. Treasury and the IRS on 12 September 2023 released Notice 2023-64 in another round of substantive guidance on the CAMT.

The Notice provides interim guidance on several important issues. These include the identification of a taxpayer's applicable financial statement (AFS) and the computation of AFSI and related adjustments, such as those required for depreciation and amortization, as well as others necessary to prevent duplications and omissions, including treatment of financial accounting adjustments and changes in financial accounting principles. Additionally, the guidance clarifies how taxpayers should determine the applicable corporation that is subject to the CAMT, treat financial statement net operating losses (FSNOLs), and compute CAMT foreign tax credits (FTCs).

Notice 2023-64 states that taxpayers may rely on the guidance provided in the Notice for tax years ending on or before the publication of forthcoming proposed regulations in the Federal Register. These are expected to apply for tax years beginning on or after 1 January 2024. A taxpayer also may rely on the interim guidance described in the Notice for any tax year that begins before 1 January 2024.

For more information see our PwC Insight.

As the CAMT is effective for tax years beginning after 31 December 2022, taxpayers potentially subject to the CAMT should consider how guidance in the Notice may impact previous positions taken based on a reasonable interpretation of the statute and prior interim guidance. Issuance of the Notice comes as calendar-year corporations are finalizing their federal income tax returns for the 2022 tax year and making the third quarterly installment of estimated federal income taxes for the 2023 calendar tax year. In this regard, Notice 2023-42 waived the addition to tax under Section 6655(a) relating to the CAMT for a tax year that begins after 31 December 2022, and before 1 January 2024.

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United States of America (the)

Proposed regulations address triangular reorganizations and inbound nonrecognition transactions

Treasury and the IRS on 5 October issued proposed regulations providing guidance on the taxation of cross-border triangular reorganizations and related transactions. These Proposed Regulations modify regulations previously announced in Notice 2014-32 and Notice 2016-73. Notice 2014-32 addressed transactions that Treasury viewed as exploiting certain aspects of final regulations published on 19 May 2011 under Section 367(b) (the 2011 Final Regulations).

Notice 2016-73 contained additional rules to address transactions that Treasury viewed as exploiting the 2011 Final Regulations, as modified by the rules announced in Notice 2014-32, and announced that additional regulations would be issued under Section 367.

With respect to the rules described in Notice 2014-32, the Proposed Regulations generally would apply to transactions completed on or after 25 April 2014, subject to limited exceptions. For the rules described in Notice 2016-73, the Proposed Regulations generally would apply to transactions completed on or after 2 December 2016. To the extent the Proposed Regulations contain rules not previously announced in Notice 2016-73, the Proposed Regulations would be applicable to transactions completed on or after 6 December 2023, the date the Proposed Regulations are filed in the Federal Register. Comments are due by 5 December 2023.

For more information see our PwC Tax Insight.

Treasury and the IRS issued various guidance (regulations and notices) to address certain concerns it had with the use of triangular 'B' reorganizations in the cross-border context. The Proposed Regulations, based on prior notices with modifications, therefore may have minimal impact on future transactions. The government may wish to issue final regulations in light of ongoing litigation with respect to past transactions, where the government is asserting positions based on rules contained in Notices 2014-32 and 2016-73. The Proposed Regulations would be legally binding if finalized and might be given retroactive effect based on the rule contained in Section 7805(b)(1)(C), which provides that a regulation may apply to taxable periods ending after the date on which a notice substantially describing the contents of the regulation is issued to the public. The Proposed Regulations also contain new rules that were not part of the original notices.

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Administrative

Poland

Poland publishes new draft of WHT explanations

The Ministry of Finance in Poland published on 28 September the long-awaited draft of withholding tax (WHT) explanations regarding the rules for WHT collection. The project focuses on clarifying the beneficial owner concept, related substance requirements and the look-through approach. The guidelines should be considered after checking whether preferential WHT treatment might apply. After analyzing whether the recipient of the payments should be treated as the beneficial owner, companies should check whether:

- the recipient realizes a small margin on the transferred payments;
- the recipient has no actual taxation of income from received receivables; or
- the receivable is further transferred to an entity that would not benefit from preferential taxation provided for in tax treaties or EU directives.

The Ministry of Finance previously published draft WHT explanations regarding the rules for collecting WHT in 2019. The prior explanations were meant to explain the key concepts covered by pay and refund mechanism regulations introduced by the act amending the PIT and CIT taxation as of 1 January 2019. However, despite public consultations and discussion on the draft, the project never entered into force.

The current draft WHT explanations is a partial look at the concept of WHT collection, focusing on the beneficial owner concept. It also addresses the Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (the IR Directive). Finally, it covers the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (the Parent-Subsidiary Directive).

The project provides a restrictive view on meeting the beneficial owner condition. In particular, it includes an exemplary list of premises that may indicate that the payment recipient is not its beneficial owner, but only acts as an income administrator. In the light of the project, the premises are that, for example, the intermediary realizes a small margin on the transferred payments, or receivables are transferred to another entity within short time periods.

The draft explicitly states that, with respect to dividends, the beneficial owner requirement should be examined as part of due diligence. Moreover, according to the draft, this requirement should apply to every tax treaty, regardless of whether its wording includes the beneficial owner clause.

The draft WHT explanations also indicate that preferences under tax treaties and directives should not be granted to entities that do not conduct actual business activity. An artificial nature may also occur when an entity conducts real business activity, but the transaction in which it participates is artificial in light of the functional profile of the recipient. The draft WHT explanations indicate that for the purposes of both tax treaties and directives, the beneficial owner definition under the Polish tax provisions should be followed.

The draft WHT explanations stressed the need for effective taxation. This seems to be one of major challenges arising from the project especially for European holding entities with passive income (e.g., dividends) or entities who permanently or recently incurred tax losses.

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Mexico

Tax incentives for the exportation manufacturing industry

The Federal Executive published on 11 October in the Mexican Official Gazette a Decree granting an incentive for companies engaged in the exportation manufacturing industry and in the production of cinematographic and audiovisual content. The incentives include accelerated depreciation of certain fixed assets acquired by said companies and a 25% deduction on the increased training costs. The provisions of the Decree entered into force on 12 October 2023.

The Decree grants a tax incentive to the exportation manufacturers an accelerated depreciation for certain categories of fixed assets provided these manufacturers are involved in the production, elaboration, or industrial manufacturing of certain types of goods. Such goods include, among others, raw material for the pharmaceutic instruments, and fuel motors. In addition, the incentive is aimed at producers of cinematographic and audiovisual content.

The incentive consists of higher depreciation rates (ranging from 56% to 86%, depending on the type of fixed asset) than those set forth in the Mexican Income Tax Law for purposes of the annual deduction under the straight-line method. In order to access the accelerated depreciation, the taxpayers should consider the following:

- The fixed assets subject to this depreciation method are those newly acquired (i.e., used for the first time in Mexico) during the 12 October 2023, to 31 December 2024 period, provided that these assets are used during a consecutive two-year period.
- The incentive should not be applied for the acquisition of furniture and office equipment, vehicles propelled with an internal combustion engine, car bullet-proofing, other assets not individually identifiable, and airplanes different from those used for aerial spraying.
- There are special rules for purposes of determining the monthly estimated advanced income tax payments and cases in which the fixed assets are no longer useful or are lost due to a fortuitous cause.

Furthermore, companies belonging to the aforementioned industries can access an additional deduction for purposes of the FYs 2023-2025 annual income tax returns. This additional deduction equals 25% of the increase over the previous fiscal year for expenses related to employee training. This should be registered with the Mexican Social Security Institute (IMSS).

In order to take the deduction, companies must meet certain requirements:

- They are not blacklisted under the Mexican Federal Tax Code; they do not have tax assessments determined by the Mexican Tax Authorities; they are not subject to tax audit review procedures from the latter; their digital seals and electronic invoicing certificates are not restricted or cancelled; and they are not in a liquidation period.
- They must be registered before the Taxpayers' Registry (RFC); they can obtain a positive tax compliance opinion and they file a notice regarding the application of this deduction in the terms of the Mexican tax provisions.

These tax incentives are great opportunities for the companies belonging to the identified industries, especially for those contemplating additional investments. Such companies should consider whether they can meet the requirements listed in the Decree.

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Judicial

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'Commitment fees' ruled non-deductible for tax purposes

The Upper Chamber of the Federal Administrative Court ruled that the commitment fee (a financial charge resulting from the non-use of the credit line in order to compensate the creditor) did not meet the 'strictly indispensable' requirement to be considered deductible for income tax purposes. The Court reached this conclusion on the basis that this fee is only enforceable if the credit line is not used; in that case it is not related to the company's business purpose, being in nature an agreed penalty between the participants in the credit line.

Taxpayers should analyze their loan agreements in order to identify any agreed-upon commitment fees.

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Judicial

Poland

Possibility of applying a look-through approach in relation to withholding tax on dividends

The Provincial Administrative Court in Warsaw in its judgment on 14 September 2023, (ref. III SA/Wa 1513/23) confirmed the possibility of applying the look-through approach in relation to the exemption from withholding tax on dividends, pursuant to the Polish rules implementing the EU Parent-Subsidiary Directive. The judgment concerned the appeal of an individual tax ruling (negative for the taxpayer) to determine whether it is possible to use the look-through approach and apply the withholding tax exemption on dividends towards the indirect shareholder, located in the same EU country as the parent entity.

In 2023 the tax authorities issued several negative tax rulings, denying taxpayers and tax remitters the ability to apply the exemption in similar situations and thus negating the possibility of applying the look-through approach. Based on the literal wording of the Polish rules implementing the EU Parent-Subsidiary Directive, the exemption may be applied only towards an entity directly holding at least 10% of the shares in the Polish company paying the dividend. Still, the jurisprudence in this respect is not uniform.

In a 2022 tax ruling, the tax authorities confirmed the admissibility of using the look-through approach to dividend payment to an indirect shareholder and applying preferential taxation / tax exemption in a situation where the payment is made through an intermediary to the beneficial owner established in the EU (EEA) country. Until now this view was not commonly shared by the fiscal authorities.

The tax authorities' recent unfavorable position should be considered consistent with the linguistic interpretation of the Polish provisions implementing the EU Parent-Subsidiary Directive. However, these provisions do not introduce the requirement that the recipient have the status of beneficial owner in relation to dividends, which is at the same time required by the tax authorities.

The above judgment is the first court case allowing the application of the look-through approach for purposes of the WHT exemption of dividends paid from Poland and a sign of positive jurisprudence for the taxpayers and WHT remitters.

Taxpayers remain uncertain about the possibility of applying the WHT exemption in relation to paid dividends. Many hope that the possibility of applying the look-through approach to dividends will be confirmed by not only by additional jurisprudence of administrative courts, but also the Supreme Administrative Court, as well as by final (binding) WHT explanations prepared by the Ministry of Finance (a draft of new explanations was published on 28 September 2023). According to the draft explanations' current wording, the tax authorities will not be obliged to apply the look-through principle. While this position reduces taxpayer protection, the WHT explanations draft is in public consultation and its final content may change. In the short term, taxpayers should observe the practice of administrative courts in order to determine whether a preferential line of jurisprudence for taxpayers will be established.

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EU/OECD

European Union

Council of the EU approves changes to the EU list of non-cooperative jurisdictions

The European Finance Ministers, sitting as the Council of the EU, approved the recommendations of the EU Code of Conduct Group in relation to the updated list of non-cooperative jurisdictions. Three jurisdictions, Antigua and Barbuda, Belize, and Seychelles were all added to Annex I (the so-called EU blacklist). British Virgin Islands, Costa Rica, and Marshall Islands were removed from the previous Annex I list (published in February 2023).

Annex II of the list (greylisted countries) was also updated with four jurisdictions removed from the state of play document: Thailand, Montserrat, Jordan and Qatar.

For more details see our PwC Tax Policy Alert.

Businesses should review the updated lists and consider the potential consequences for entities located in impacted jurisdictions.

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European Union

EU Directive (DAC8) adopts wider reporting requirements for crypto and other transactions

The Council of the EU adopted, on 17 October 2023, a Directive amending the EU rules on administrative cooperation in the area of taxation (DAC8). The amendments primarily pertain to the reporting and automatic exchange of information on certain revenues from crypto asset transactions and the provision of advance tax rulings for the wealthiest (high net worth) individuals. The Directive aims to strengthen the existing legislative framework by broadening the scope for registration and reporting obligations and improving overall administrative cooperation between tax administrations.

For more details see our Tax Policy Alert.

The Directive was adopted by Member States in the Council, by unanimity. The Directive was subsequently published in the Official Journal on 24 October. It will enter into force on 13 November 2023. Member States will have until 31 December 2025 to transpose the new rules into national law with first application for most provisions effective 1 January 2026.

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Multilateral instrument implementing the Pillar Two Subject to Tax Rule opens for signature

On 3 October 2023, the OECD Inclusive Framework (IF) announced the conclusion of negotiations on a multilateral instrument (MLI) to implement the Pillar Two Subject to Tax Rule (STTR). The text of the STTR MLI, along with an explanatory statement, high-level summary ('at a glance'), and frequently asked questions (FAQs) can be found on the OECD website. As of 2 October 2023, the MLI is open for signature by all states without reservations. The STTR allows countries to increase taxes on certain cross-border payments (not including dividends) among associated entities under a bilateral tax treaty where the nominal rate in the recipient country is below 9% (adjusted for tax base reductions such as tax exemptions and tax credits).

For more information see our PwC Tax Policy Alert.

The STTR MLI is much narrower in scope than its UN predecessor (UN STTR), which applies in less clearly defined circumstances and leaves much of the content of the provision to be negotiated bilaterally. As a result, parallel STTR universes may emerge. In some cases, the STTR MLI will be implemented and applied by a subset of IF jurisdictions and for a subset of their double tax treaties (currently more than 70 developing IF jurisdictions are entitled to request inclusion of the STTR in their treaties, but it is not clear which countries these are). In other cases, developing countries may seek to implement the UN STTR in a subset of their double tax treaties, but this will require bilateral negotiation and agreement in all cases. It will be important to monitor the decisions of developed and developing countries as they may significantly influence after-tax returns of intra-group international investments.

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OECD releases Multilateral Convention to implement Amount A of Pillar One

The OECD on 11 October 2023 released a package of guidance in relation to Amount A of Pillar One: the text of a consensus-based Multilateral Convention (MLC) and accompanying explanatory statement, an Understanding on the Application of Certainty for Amount A of Pillar One (UAC), and an update to the economic impact assessment of Pillar One. Notably absent from the package is any further guidance on Amount B (i.e., transfer pricing for routine distribution and marketing transactions), which the Inclusive Framework (IF) continues to work on, post-consultation, to provide final guidance by the early part of 2024. Despite running to approximately 850 pages, the release does not open the MLC to countries for signing at this point, because there are still issues to be resolved.

The guidance indicates how many countries are required to sign and the percentage of businesses that must be covered by Amount A (note this cannot be met without the United States). However, it is still unclear what it will actually take for individual countries to ratify and for enough of them to do so to bring the MLC provisions into force.

In addition to the MLC and related documents for Pillar One, the OECD also released a Minimum Tax Implementation Handbook that is intended to assist governments as they consider moving forward with the global minimum tax under Pillar Two. It highlights the key provisions of the rules and the considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing implementation options. It also highlights plans for a peer review process, exchange of agreements and the development of technology tools designed to smooth the transition for filing and reviewing information returns.

For more information see our Tax Policy Bulletin.

The 140 IF countries have agreed to the text of the MLC for public release, but there is no formal opportunity to sign. While the MLC demonstrates continuity in many key technical areas such as revenue sourcing, nexus, and tax base, some jurisdictions have presented different views on other items as noted in the footnotes.

The US has opened a 60-day public consultation on the MLC, and is especially interested in stakeholder comments around “novel issues identified by a review of the complete text, implementation and administrability issues (including the balance between simplification and technical precision), and technical adjustments to address errors or clarify the operation of the Pillar One MLC provisions.” However, in all likelihood we will not see consultations for the vast majority of other countries, beyond some key stakeholder conversations, nor is it clear that the MLC would be reopened to take into account comments raised in individual countries.

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EU/OECD

European Union

EU General Court rules Spain's goodwill deduction not unlawful State aid

The General Court of the European Union (GCEU), on 27 September delivered its judgment upholding several appeals brought by the Spanish Government and several companies against the European Commission's (EC's) decision that declared the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies to be unlawful State aid. As a result, the GCEU annulled the EC's decision.

For more information see our PwC Tax Policy Alert.

It remains to be seen whether the EC will appeal this judgment to the Court of Justice of the EU (CJEU). In the meantime, however, the GCEU provides insightful observations on both the ability of the EC to revoke earlier decisions and the principle of legitimate expectations. Companies should continue to track state aid developments and assess the potential impact of recent judgments. State Aid remains a dynamic area and we expect to see more interesting judgments delivered.

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Treaties

Mexico

Amendment to Protocol to Germany-Mexico Tax Treaty

The amending protocol to the Germany-Mexico income and capital tax treaty (signed on 8 October 2021 will become effective 1 January 2024. The protocol includes the following main changes:

- **Preamble:** States that the treaty's purpose is to prevent double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or tax avoidance.
- **Permanent establishment:** Introduces an express requirement that all exceptions to a 'permanent establishment' involve preparatory or auxiliary activities.
- **Dividends:** A 365-day holding period requirement is added, so the 5% withholding tax rate will apply whenever the beneficial owner of the shares holds directly at least 10% of the capital of the entity and such holding period is met.
- **Capital gains:** The protocol provides that gains derived from the disposition of shares or comparable interests may be subject to taxation in the treaty partner jurisdiction if, at any time within the 365 days preceding the disposition, the shares or comparable interests derive more than 50% of their value, directly or indirectly, from real estate located in that other jurisdiction.
- **Mutual agreement procedure:** The 10-year limit was eliminated. Instead, the protocol provides that any agreement reached will be implemented regardless of the time limits provided in the domestic legislation.
- **Application of the tax treaty in special cases:** The Protocol includes a new provision that allows the denial of treaty benefits whenever a resident derives an item of income and such item of income: i) is attributable to permanent establishments (PEs) in a third jurisdiction, (ii) the profits attributable to such PE are exempted in the residence jurisdiction and iii) an income on which the tax in the third jurisdiction is less than 60% of the tax that would be due in the residence jurisdiction.
- An active trade or business exception and a principal purpose test was also included.

Although the treaty is not a covered agreement for purposes of the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) that entered into force for Mexico on 1 July 2023, the purpose of the amending Mexico-Germany protocol is to adopt the measures to prevent tax base erosion and profit shifting embodied in the MLI. Therefore, taxpayers conducting transactions with residents in Mexico and Germany would need to assess the potential impact of the amended protocol.

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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	notional 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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