

www.pwc.com/its

International Tax News

Edition 95
February 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.

Featured articles

Bernard Moens

Global Leader International Tax Services Network

T: +1 703 362 7644

E: bernard.moens@pwc.com

Responding to the potential business impacts of COVID-19

COVID-19 can cause potentially significant people, social and economic implications for organisations.

This link provides information on how you can prepare your organisation and respond.

In this issue

Legislation

Administrative

Treaties

Legislation

Hong Kong

The bill on carried interest tax concession in Hong Kong was gazetted

Hong Kong gazetted the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 (the Bill) on January 29, 2021. Key provisions include:

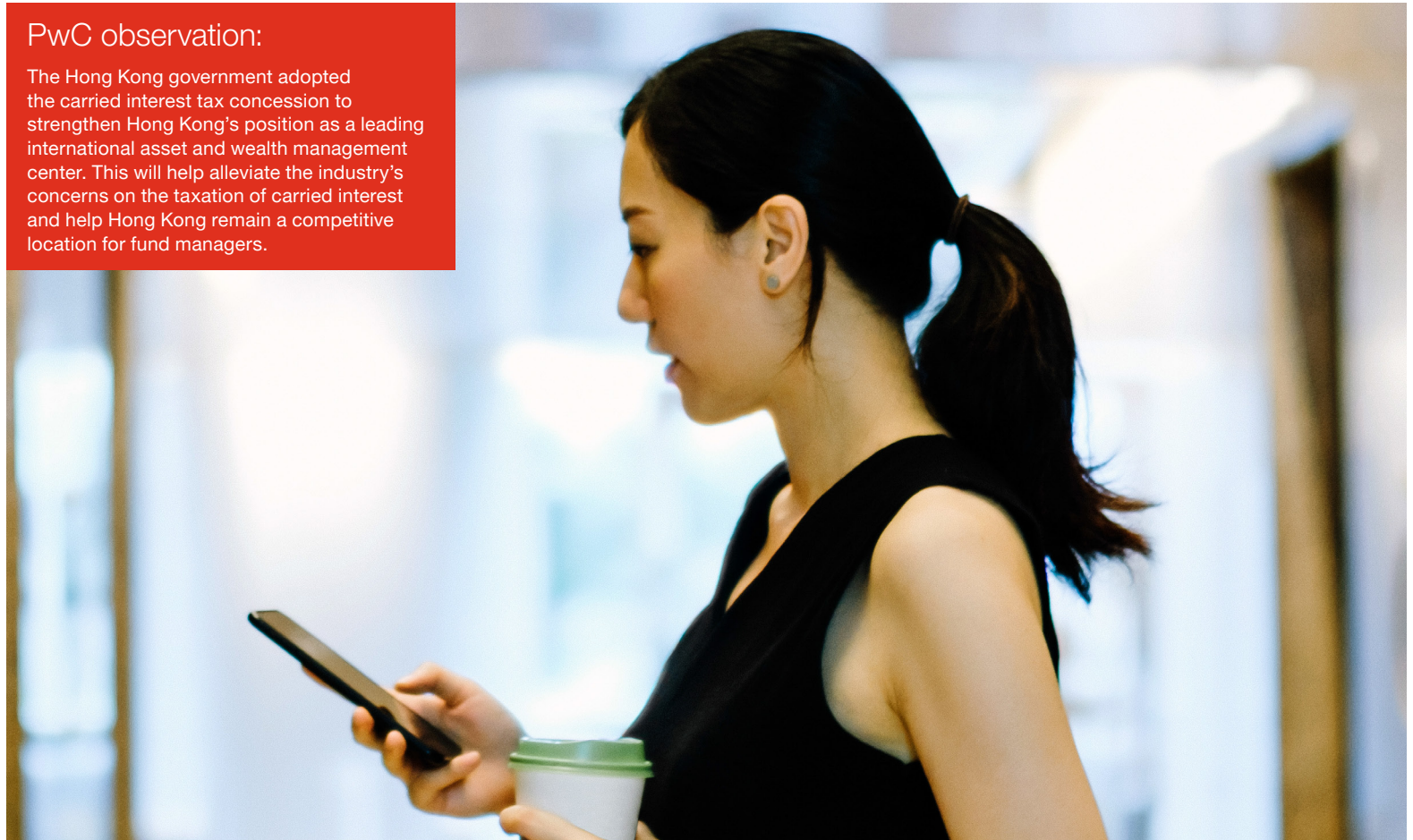
1. 0% profits tax rate on eligible carried interest (and excludes 100% of eligible carried interest from employment income for the salaries tax calculation)
2. expanded the eligible classes of assets that may be held and administered by a special purpose entity on behalf of a fund that owns the entity for purposes of the profits tax exemption for funds, and
3. related and transitional matters.

The concession applies to amounts received by or accrued to a qualifying person or qualifying employee on or after April 1, 2020, beginning in the 2020/21 taxable year (and subsequent taxable years). The concession will not apply to eligible carried interest received or accrued before April 1, 2020, but falling within the basis period for a taxable year commencing on or after April 1, 2020.

The Bill was introduced into the Legislative Council on February 3, 2021. It is subject to the Legislative Council's scrutiny and approval before being enacted into law.

PwC observation:

The Hong Kong government adopted the carried interest tax concession to strengthen Hong Kong's position as a leading international asset and wealth management center. This will help alleviate the industry's concerns on the taxation of carried interest and help Hong Kong remain a competitive location for fund managers.



Fergus WT Wong/HK/TLS/PwC

Fergus WT Wong/HK/TLS/PwC

T: +852 2289 5818

E: fergus.wt.wong@hk.pwc.com

India

India budget 2021—Impact on foreign investors and multinationals

The Indian Finance Minister recently presented the Union Budget 2021-22 (Budget 2021) against the backdrop of the challenging economic environment. In view of India's tax reform measures to date, Budget 2021 maintains the same overall tax structure, but contains several measures that aim to provide tax certainty, facilitate tax administration, and reduce tax disputes.

Ease of doing business remains a government priority. The Budget continues to encourage investments and contains plans for privatization of public sector undertakings and monetization of infrastructure assets.

This **PwC Insight** highlights key Budget 2021 tax proposals affecting foreign investors and multinational entities doing business in India. Budget proposals take effect once both houses of Parliament pass them and they receive Presidential assent.

PwC observation:

Budget 2021 proposals aim to boost India's economic recovery through increased investments in public as well as private sectors, self-reliance through incentives across all business segments, and an improved ease of doing business.

The tax proposals present a stable approach, and focus on increasing tax certainty, attracting foreign investments, and improving tax administration in India.

Multinational entities should assess the impact of some of the key proposals such as the rationalization to the digital tax provisions and non-availability of depreciation on goodwill. The proposal to constitute a new Board for Advance Rulings is a welcome move and paves the way for speedy disposals of private ruling applications.

Sriram Ramaswamy (Sri)

India Desk, New York

T: +1 646 901 1289

E: ramaswamy.sriram@pwc.com

Japan

Japan's 2021 tax reform proposals

Japan's ruling parties published their 2021 tax reform proposals on December 12, 2020. Most of the provisions are expected to become law soon.

These tax reform proposals are the first under the Suga administration, and reflect the Administration's priorities of driving economic recovery from the pandemic, accelerating deregulation and realizing a digital transformation and carbon-neutral society.

In an effort to revitalize the economy, the 2021 tax proposals include R&D tax incentives, tax incentives for salary increases, the relaxation of carried loss deduction limitations and measures to promote M&A activity. In addition, the tax proposals introduce new investment incentives to promote the aforementioned digital transformation and carbon neutrality goals. Changes to further digitalize tax administration processes have also been proposed.

Relaxation of the loss carry forward deduction limitation

Companies that are certified under the revised Industrial Competitiveness Enhancement Act (ICEA) within one year of its effective date, that adopt a plan and make an investment during fiscal years beginning before April 1, 2026 are entitled to a special loss carry forward deduction.

Such companies will be able to carry forward and deduct, in the year of the investment, 100% of any tax loss incurred during their fiscal year ending between April 1, 2020 and April 1, 2021, (i.e., the 50% limit on use of carry forward losses will not apply) up to the amount of such investment.

For more information about the loss carry forward deduction limitation, digital transformation, carbon neutrality, and digitalizing tax administration processes, please see our **PwC Insight**.

PwC observation:

Multinational enterprises currently investing in Japan should consider how the new incentives for investments in digital transformation and carbon neutrality may apply. If considering application of the incentives, immediate action may be required, given that adoption and certification of a business plan is required and may take time. In addition, corporations should review their tax administrative processes in light of the proposed changes around digitalization, as there is now more flexibility.

Haruhisa Shirato

Japan

T: + 81 80 4894 2440

E: haruhisa.s.shirato@pwc.com

Ryann Thomas

Japan

T: +81 80 1014 9707

E: ryann.thomas@pwc.com

Luxembourg

Luxembourg limits deductions for interest and royalties owed to 'non-cooperative' tax jurisdictions

The Luxembourg Parliament unanimously voted on January 28 to amend the income tax law provision governing the tax deductibility of corporate expenses. The draft legislation (Bill n°7547) was submitted to Parliament on March 30, 2020.

The new provision disallows deductions for interest or royalties owed to associated corporate entities established in jurisdictions that the EU Council considers non-cooperative in tax matters. It applies to expenses accruing on or after March 1, 2021.

The new legislation aligns with the EU Council guidelines agreed on December 5, 2019. Luxembourg companies should examine their interest and royalty payments to all relevant jurisdictions to determine whether they will be subject to the new limitation.

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

PwC observation:

Luxembourg companies that make interest or royalty payments to entities in jurisdictions deemed to be non-cooperative for tax purposes and listed in Annex I (published in the Official Journal of the EU) should recognize that such expenses will cease to be tax deductible to the extent that they accrue after February 28, 2021 and plan accordingly. Since the list is dynamic, taxpayers should monitor the Annex I list regularly.

The new provision implements the EU Council's December 2019 recommendations. Other EU Member States are expected to consider implementing similar measures in the coming years.



Sami Douenias/LU/TLS/PwC

Luxembourg

T: +352 49 48 48 30 60

E: sami.douenias@lu.pwc.com

Gerard Cops

Luxembourg

T: +352 49 48 48 2032

E: gerard.cops@lu.pwc.com

Nigeria

Implications of new tax laws for non-residents and the digital economy

Overview

In 2020, Nigeria introduced 'Significant Economic Presence' (SEP) rules, thus widening the tax net to include non-resident companies (NRCs) that remotely provide certain services. NRCs consist of companies that:

- engage in digital activities ('Digital SEP') and
- provide technical, professional, management and consulting services ('TPMC SEP').

Finance Act (FA) 2020 introduces more changes that will affect NRCs this year.

Submission of global and local financial statements

The FA 2020 requires taxable NRCs to file income tax returns comprising audited financial statements of their global operations (Global FS), as well as financial statements relating to their Nigerian operations (Local FS). This requirement also applies to NRCs that only create a Digital SEP. The Local FS should be certified by an independent certified accountant in Nigeria.

NRCs are also required to submit tax computation schedules based on profits attributable to Nigerian operations. However, companies that earn passive income and income from TPMC activities are not required to file returns.

The FA 2020 does not provide specific guidance on how to determine profits attributable to Nigerian operations.

Expansion of SEP rules to cover non-resident individuals and unincorporated entities

Income from TPMC activities earned by non-resident individuals and other unincorporated entities will be subject to tax in Nigeria if such non-residents create an SEP in Nigeria. This is similar to the rules recently introduced for NRCs. Withholding tax deducted by Nigerian customers will be the final tax on such income. The Minister of Finance is empowered to define what constitutes an SEP in this regard.

Other matters

Minimum tax – This is the least amount of tax that companies must pay in any year when they have little or no taxable profits. The minimum tax is generally 0.5% of gross turnover less franked investment income. However, this rate has been temporarily reduced to 0.25% for tax returns due by December 31, 2021.

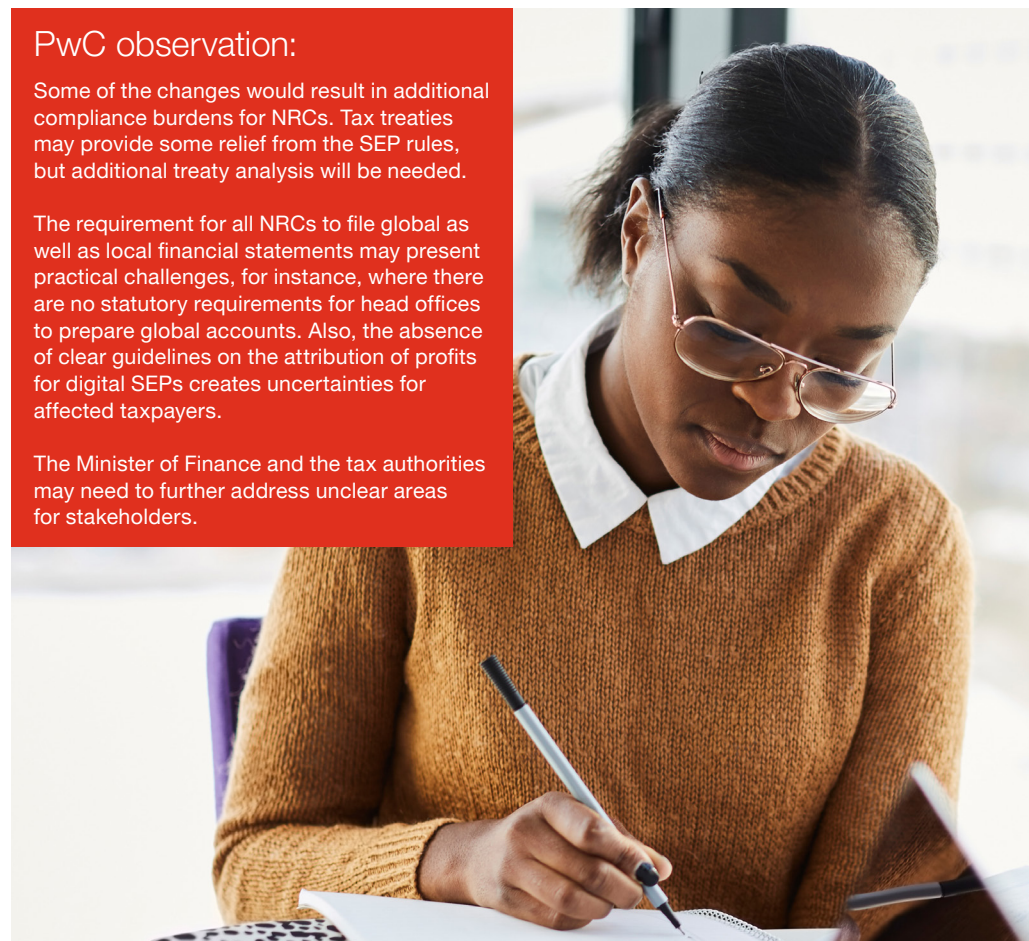
Digital SEPs and other NRCs might be required to comply with Minimum Tax provisions going forward. However, given the exemption from minimum tax for companies within their first four calendar years of business, digital SEPs will be shielded from the tax until year five after the SEP order commences.

PwC observation:

Some of the changes would result in additional compliance burdens for NRCs. Tax treaties may provide some relief from the SEP rules, but additional treaty analysis will be needed.

The requirement for all NRCs to file global as well as local financial statements may present practical challenges, for instance, where there are no statutory requirements for head offices to prepare global accounts. Also, the absence of clear guidelines on the attribution of profits for digital SEPs creates uncertainties for affected taxpayers.

The Minister of Finance and the tax authorities may need to further address unclear areas for stakeholders.



Esiri Agbeyi

Nigeria

T: +234 (0) 708 727 3056

E: emuesiri.agbeyi@pwc.com

Emeka Chime

Nigeria

T: +234 (0) 802 594 7675

E: chukwuemeka.x.chime@pwc.com

Russia

Russian offshores (SARs) – new benefits

The Russian Ministry of Finance introduced draft law that expands the eligibility criteria for receiving multinational holding company (MNHC) status and introduces additional benefits. With that, companies will need to invest and meet physical presence requirements in a given Special Administrative Region (SAR).

The draft law provides additional benefits for MNHCs:

- MNHCs may apply the 5% tax on received income (including inward dividends) if they meet the criteria for regional investments and physical presence (see below). The rate may be applied until December 31, 2028.
- MNHCs may apply the 10% tax on dividends, interest, and royalties paid from the MNHC if the latter applies the 5% rate, i.e., meets the criteria for regional investments and physical presence (see below).
- The grandfather clause, stipulating that reduced rates of corporate income tax and personal income tax will not be increased, repealed, or modified for MNHCs.

- Tax exemption on exchange differences (except for securities denominated in foreign currency).
- Tax exemption on income earned by branches that are engaged in mineral extraction projects, with such tax-exempt transactions simultaneously qualified as controlled from a transfer pricing perspective.
- A transition period for the pass-through approach to dividends received by the MNHC.

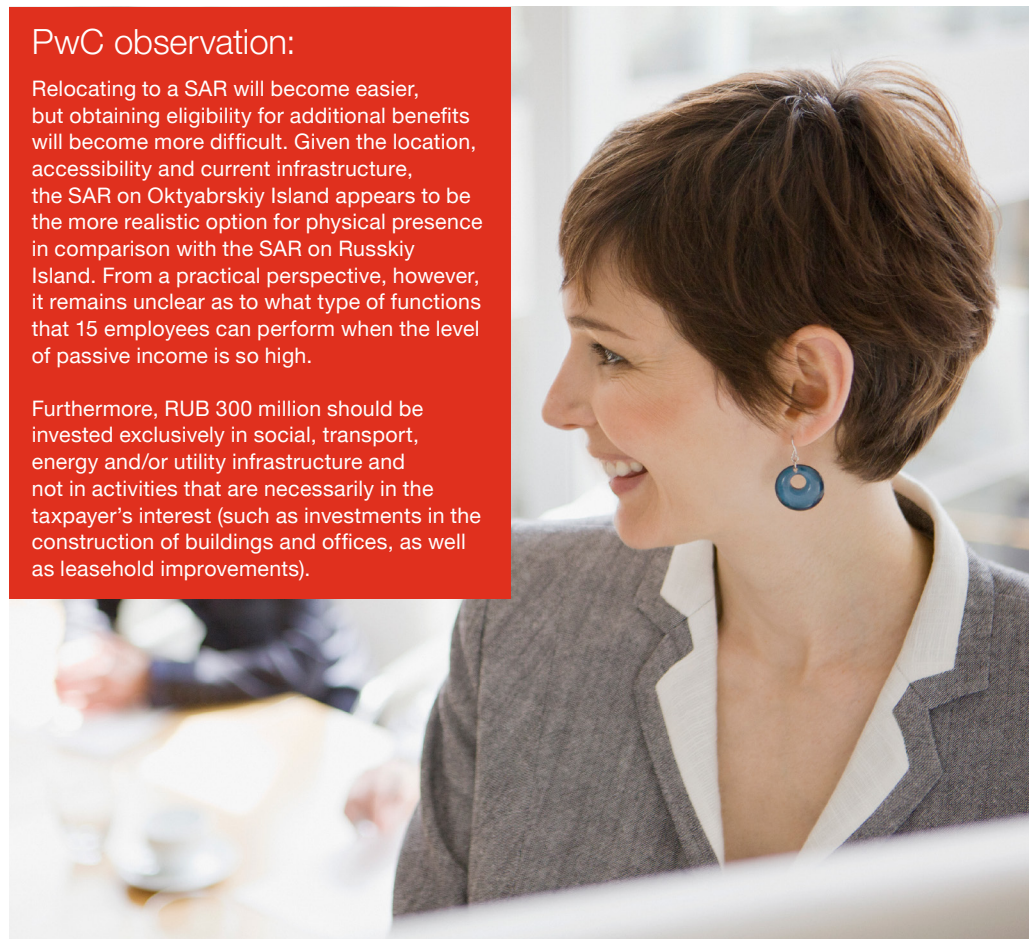
In order to be eligible for the first two benefits listed above, companies must meet all of the following criteria:

- Investments of at least RUB 300 million in the construction of social, transport, energy or utility infrastructure in the Russian region where the SAR is located.
- The MNHC's passive income should equal at least 90% of its total income.
- It must employ at least 15 full-time employees who permanently or temporarily reside in the Russian region where the SAR is located.
- It must have an office (owned or leased) of at least 100 sq. m. located in the SAR.

PwC observation:

Relocating to a SAR will become easier, but obtaining eligibility for additional benefits will become more difficult. Given the location, accessibility and current infrastructure, the SAR on Oktyabrskiy Island appears to be the more realistic option for physical presence in comparison with the SAR on Russkiy Island. From a practical perspective, however, it remains unclear as to what type of functions that 15 employees can perform when the level of passive income is so high.

Furthermore, RUB 300 million should be invested exclusively in social, transport, energy and/or utility infrastructure and not in activities that are necessarily in the taxpayer's interest (such as investments in the construction of buildings and offices, as well as leasehold improvements).



Mikhail Filinov/RU/TLS/PwC

Moscow

T: +7 495 967-60-00

E: mikhail.filinov@pwc.com

Uruguay

Corporate restructuring: Mergers and demergers – Decree No. 21/021

The Executive Power issued Decree 21/021, which adjusts some of the provisions included in Decree 76/020 (See **International Tax News March 2020 Edition**). The original regulations established that companies that resolve to merge or demerge – according to the provisions of the Commercial Companies Act – may choose to do so without computing the goodwill, provided they meet certain conditions.

Decree 21/021 introduced new adjustments including:

1. A requirement to keep the equity proportions of the beneficial owners of the companies participating in the mergers and demergers, for a period of not less than two years. Said percentages must be at least 5%.
2. Widening of the beneficial owner concept, allowing the Executive Power to include in the list (upon request of a party) cases in which the beneficial owner condition is satisfied, taking into account: (i) the acquisition modes, (ii) the integration of the equity participations, (iii) the form adopted for the entity's administration, (iv) the degree of relationship, among others.

PwC observation:

The above-mentioned adjustments would allow the execution of corporate reorganizations with relevant tax and administrative savings in more cases.



Patricia Marques

Uruguay

T: +598 2916 0463

E: patricia.marques@pwc.com

Eliana Sartori

Uruguay

T: + 598 2916 0463

E: eliana.sartori@pwc.com

Administrative

Germany

German IP nexus rules: Ministry of Finance circular simplifies WHT & capital gains tax procedures

The German Ministry of Finance issued a circular on February 11 that updates the filing and withholding procedures for royalties attributable to IP registered in a German book or register. By following this new simplified process within the prescribed time limits, taxpayers may avoid penalties.

The updated procedures provide a simplified process for royalties received by taxpayers who are eligible for treaty benefits under the relevant German tax treaty. Pending meeting certain criteria and qualifications, taxpayers can apply for a retroactive withholding exemption certificate which will be effective for all open tax years. However, the circular provides a limited time period for taxpayers to take advantage of these simplified procedures.

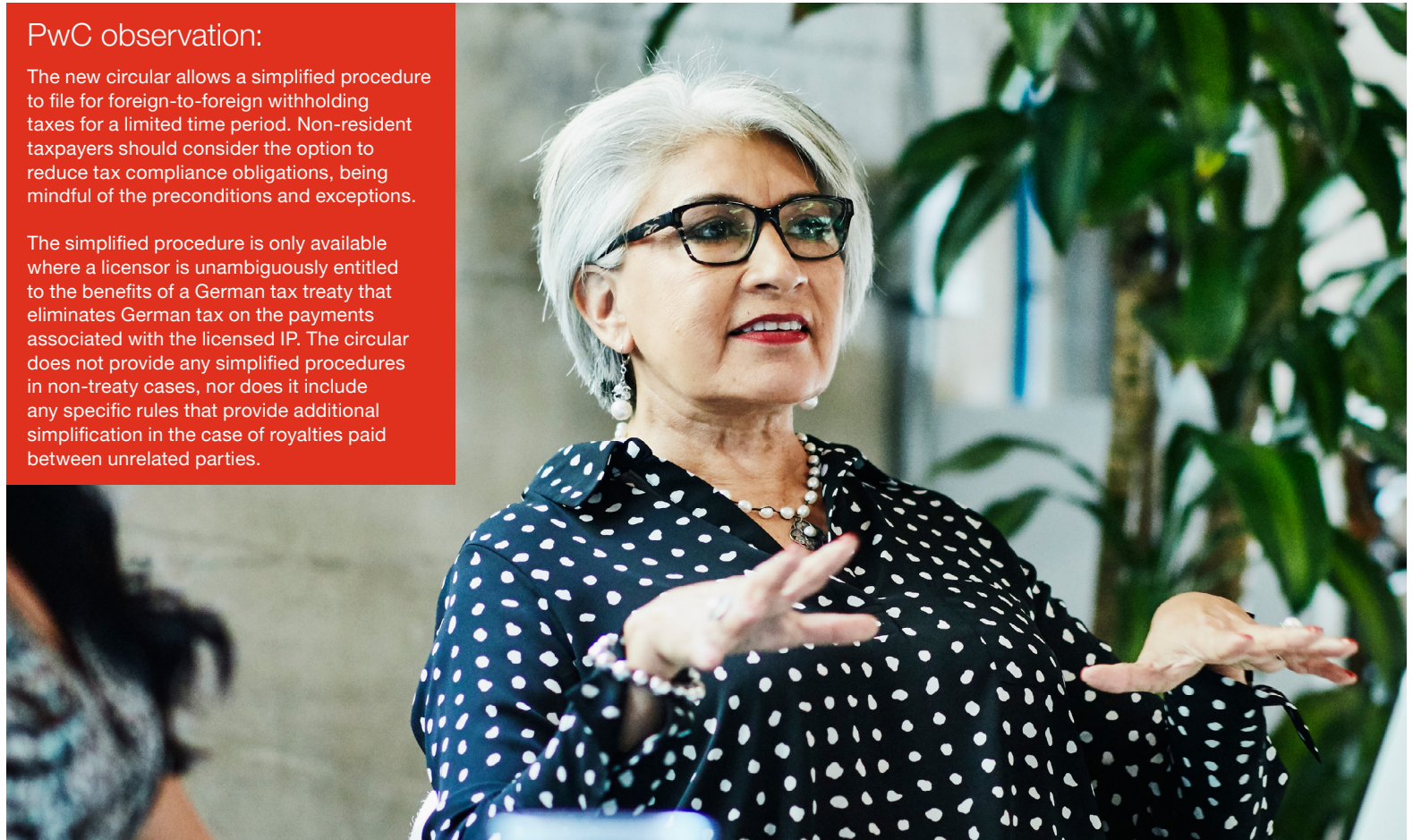
The circular notes that no withholding tax (WHT) is applied to capital gains realized on dispositions of German-registered IP. Instead, taxpayers are instructed to file a German tax return with respect to such disposition, irrespective of whether the disposing taxpayer is eligible for treaty benefits under a treaty with Germany.

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

PwC observation:

The new circular allows a simplified procedure to file for foreign-to-foreign withholding taxes for a limited time period. Non-resident taxpayers should consider the option to reduce tax compliance obligations, being mindful of the preconditions and exceptions.

The simplified procedure is only available where a licensor is unambiguously entitled to the benefits of a German tax treaty that eliminates German tax on the payments associated with the licensed IP. The circular does not provide any simplified procedures in non-treaty cases, nor does it include any specific rules that provide additional simplification in the case of royalties paid between unrelated parties.



Arne Schnitger

Germany

T: +49 30 2636 5466

E: arne.schnitger@pwc.com

Volker Käbisch

Germany

T: +49 211 981 1527

E: volker.kaebisch@pwc.com

Treaties

Cyprus

First-time tax treaty with Kazakhstan and new tax treaty with Egypt

A first-time tax treaty between Cyprus-Kazakhstan became effective on January 1, 2021. Highlights include:

- a maximum 5% WHT rate applies on dividends where the recipient is a company (other than partnership) that directly holds at least 10% of the paying company's capital.
- a maximum 10% WHT applies on interest and royalty payments.
- for capital gains, Cyprus retains the exclusive taxing rights on share disposals made by Cyprus tax residents, except in the following cases:
 - non-listed shares that derive more than 50% of their value, directly or indirectly, from immovable property situated in Kazakhstan, and
 - shares that derive the greater part of their value from certain offshore rights or movable property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in Kazakhstan.

A new tax treaty between Cyprus-Egypt became effective on January 2, 2021. Highlights include:

- a maximum 5% WHT applies if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the paying company
- a maximum 10% WHT applies on interest and royalty payments
- For capital gains, Cyprus retains the exclusive taxing rights on share disposals made by Cyprus tax residents, except in the following cases:
 - non-listed shares that derive, at any time during the 365 days preceding the alienation, more than 50% of their value directly or indirectly from immovable property situated in Kazakhstan, and
 - non-listed shares in cases where the alienator at any time during the 365 days preceding the disposal held directly or indirectly at least 20% of the company.

PwC observation:

The tax treaty with Kazakhstan provides opportunities for structuring inbound and outbound investments via Cyprus and further collaboration between the two countries. Similarly, the new tax treaty with Egypt will contribute to the further development of trade and economic relations between the two countries.

Marios Andreou/CY/TLS/PwC

Cyprus

T: +357 22 555 266

E: marios.andreou@pwc.com

Stelios Violaris/CY/TLS/PwC

Cyprus

T: +357 22 555 300

E: stelios.violaris@pwc.com



France

New decision of the Administrative Supreme Court regarding beneficial ownership in tax treaties

In a recent case, the British company, which collects and transfers royalties to its members (authors, composers and record companies), received French-sourced royalties. The French tax authorities found that the company could not be viewed as the beneficial owner of these royalties. Therefore, they refused the benefit of the exemption from French withholding tax for the fraction of the royalties repaid to authors who are not British tax residents.

The Administrative Court of Appeal noted that the company members assigned their rights to the company, which directly holds the power of using and allocating the collected funds. In addition, the company's interest is distinct from that of its members. The Court of Appeal therefore ruled that the company should be regarded as the beneficial owner of the royalties and not acting as an agent of the artists.

However, in a decision of February 5, 2021, the Administrative Supreme Court ruled that the Court of Appeal had incorrectly characterized the facts of the case. The Administrative Supreme Court highlighted that the company's purpose was to collect and manage the royalties for its members and that, in practice, most of these royalties are transferred to these members each year.

PwC observation:

Although the conditions to qualify as beneficial owners remain unclear, the Administrative Supreme Court did not only consider the powers formally granted to a company, but also how the royalties are allocated in practice.



Guillaume GLON

Paris

T: +33 (0) 1 56 57 40 72

E: guillaume.glon@pwcavocats.com

Guilhem CALZAS

Paris

T: +33 (0) 1 56 57 15 40

E: guilhem.calzas@avocats.pwc.com

Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CGT	capital gains tax
CIT	corporate income tax
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
ECJ	European Court of Justice
ETR	effective tax rate
EU	European Union
ECOFIN	EU Economic and Financial Affairs Council
GAAP	generally accepted accounting principles

Acronym	Definition
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
MNHC	multinational holding company
NID	notional interest deduction
NRC	non-resident companies
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
SAR	Special Administrative Region
SEP	significant economic presence
VAT	value added tax
WHT	withholding tax

Contact us

For your global contact and more information on PwC's international tax services, please contact:

Bernard Moens
Global Leader International Tax Services Network

T: +1 703 362 7644
E: bernard.moens@pwc.com

Geoff Jacobi
International Tax Services

T: +1 202 414 1390
E: geoff.jacobi@pwc.com

www.pwc.com/its

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with over 276,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2021 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

Mitie Design RITM4939100 (03/21).