International Tax News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

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Introduction of Country-by-Country Reporting with effect from January 1, 2016

Consistent with Action 13 of the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) project, Australia has passed legislation implementing Country-by-Country Reporting (CbCR).

The CbCR law will apply for years beginning on or after January 1, 2016, in line with the OECD's recommendation. All Australian and foreign groups with an Australian presence that have global turnover of more than 1 billion Australian dollars (AUD) will need to file the master file and local file with the Australian Taxation Office (ATO). The CbCR is expected to be filed by the parent company of the group with their home tax authority, so Australian multinationals will need to file the CbCR with the ATO.

Further administrative guidance is expected from the ATO, particularly in relation to the obligations of Australian subsidiaries of foreign groups.

PwC observation:
CbCR will considerably increase the compliance burden for multinational enterprises (MNEs) and although the first reports will not be due to be filed until late 2017, taxpayers should be careful not to underestimate the time that will be required to ensure their systems and processes are ready to produce the information needed.

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Australia

Changes to financial reporting of 'significant global entities'

Australia has enacted new law requiring 'significant global entities' (that is, entities that are part of a group with global income of more than 1 billion Australian dollars [AUD]) to prepare general purpose financial statements for their Australian operations.

The new financial reporting requirements will apply for years beginning on or after July 1, 2016. While some Australian subsidiaries and branches of multinationals already prepare general purpose financial statements, others prepare special purpose financial statements (which contain more limited disclosures, particularly in relation to related party transactions), and some do not prepare Australian financial statements at all.

The general purpose financial statements must be submitted by the taxpayer to the Australian Taxation Office (ATO) by the time of filing the tax return if they have not previously been filed with the Australian Securities and Investments Commission (ASIC). The ATO will be required to share the financial statements it receives with ASIC. Documents filed with ASIC are available to the public, so unlike Country-by-Country-Reporting (CbCR), which only requires information to be provided to tax authorities, this change will increase public transparency over the financial affairs of certain multinationals' Australian operations (being the key reason for the change).

Penalties for non-compliance will be based on the administrative penalties that taxpayers can incur for failing to lodge their returns.

PwC observation:
These changes will affect the reporting requirements of some multinational enterprises (MNEs) that are not currently lodging general purpose financial statements.

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Australia

Multinational anti-avoidance legislation with effect from January 1, 2016

On December 3, 2015, the Australian government enacted the new multinational anti-avoidance law (MAAL) which is a targeted anti-avoidance regime for multinational enterprises (MNEs) with annual global revenue of 1 billion Australian dollars (AUD) or more.

The MAAL applies from January 1, 2016 and is designed to counter the erosion of the Australian tax base by multinational entities using artificial or contrived arrangements to avoid the attribution of business profits to Australia through a taxable presence in Australia. The MAAL amends Australia's anti-avoidance law which applies to multinationals that supply goods or services to Australian customers and record the revenue from those sales overseas.

The MAAL applies where an Australian related entity of the foreign seller performs activities connected with the sales (e.g. marketing services), and it would be concluded that the arrangement was entered into with a principal purpose of avoiding tax in Australia or reducing their foreign tax liability. The MAAL was originally intended to target 30 unnamed multinationals, but the number of taxpayers who will be impacted is likely to be much higher than this. Where the MAAL applies, the foreign seller is deemed to have a permanent establishment (PE) and exposing those profits to 30% corporate tax plus penalties (100% of tax liability). There could also be withholding taxes (WHT) imposed.

PwC observation:
The tax and penalty costs to which taxpayers could be exposed under the MAAL are significant and could give rise to material uncertain tax positions that will need to be reported in the group's financial statements. Given the serious penalties, many taxpayers are evaluating what action they can take to address the risk of MAAL applying, and whether it is appropriate to approach the Australian Tax Office (ATO) to discuss their arrangements.

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Belgium

European Commission final State aid decision regarding the Belgian excess profit ruling system

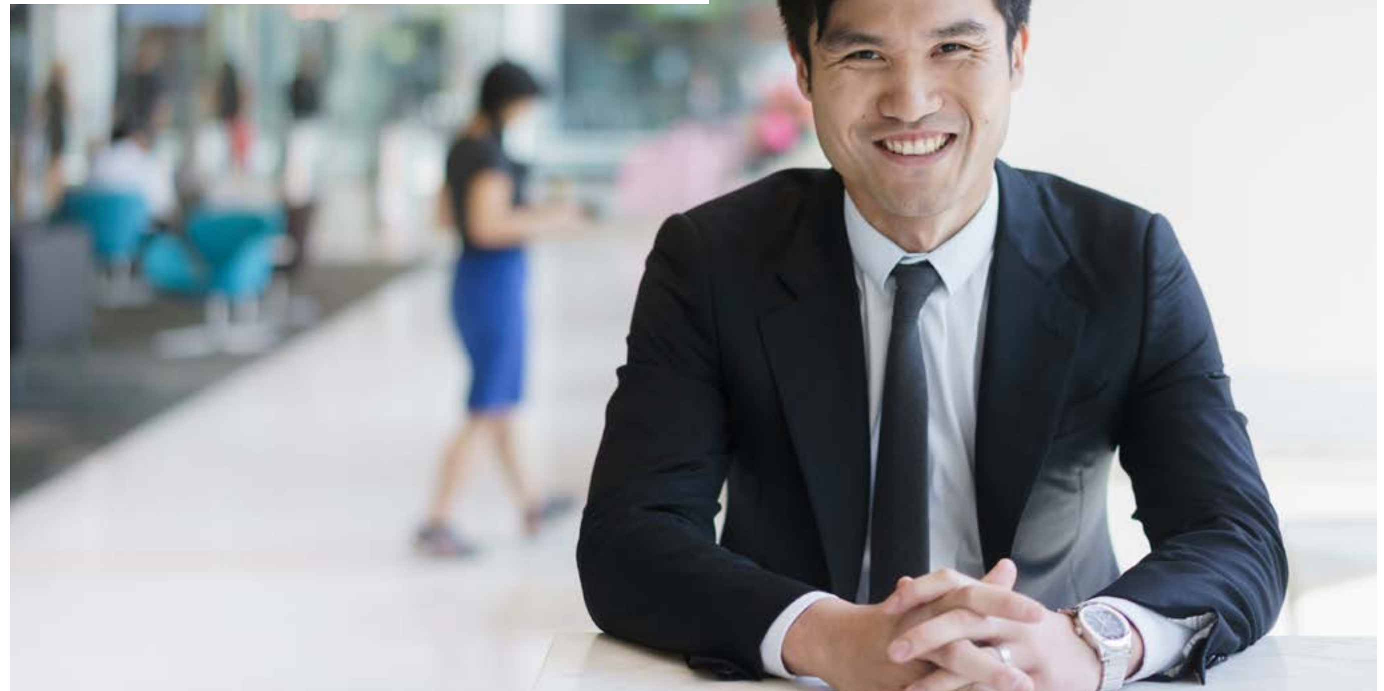
On January 11, 2016, the European Commission (EC) announced the adoption of its final decision in the formal State aid investigation into the Belgian excess profit ruling system embodied in article 185, section 2, b) of the Belgian Income Tax Code (BITC). The EC largely confirms the preliminary conclusions as expressed in the non-confidential version of the opening decision which was published on June 5, 2015. The EC has now formally concluded that in its opinion the excess profit provision constitutes unlawful fiscal State aid which must be recovered.

The EC has focused on a number of attributes of the Belgian excess profit ruling regime, which it considered to be key for further analysis, and, now, in its final decision:

- The EC concludes that this system is only available to a limited number of multinational companies (MNCs) and in particular it is not available to stand-alone companies only active in Belgium.
- The EC holds that the system may result in the exemption of a significant part of the income of Belgian companies, resulting in double non-taxation.
- According to the EC, the system derogates from normal practice under Belgian company tax rules and the arm's-length principle under European Union (EU) State aid rules'.

Going forward, the EC orders the Belgian government to take all the necessary steps to recover the State aid granted. However, litigation before the European Courts appears likely and in that case the Court of Justice of the EU will ultimately have the final say on the merits of the EC's decision. On February 5, 2016, the Belgian government announced that it envisages to appeal against the EC decision.

PwC observation:
We invite our clients to assess the impact of the above on their business and to anticipate on whether this could affect their business going forward.



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Belgium

Reduced dividend withholding tax rate of 1.6995% for minority corporate shareholders

The Belgian withholding tax (WHT) act has been recently modified as a result of the European 'Tate & Lyle' case.

The new Act (Act of December 18, 2015) limits the WHT on dividends distributed to foreign minority corporate shareholders by Belgian companies to 1.6995% (instead of 27%), provided certain conditions are met, e.g.:

- The Belgian WHT cannot be credited or is not refundable in the beneficiary's jurisdiction.
- The beneficiary must be a non-resident corporate shareholder having a participation in the capital of the distributing company of less than 10% but with an acquisition value of at least 2.5 million euros (EUR).
- The participation should be held for an uninterrupted period of at least one year (in full ownership).
- The shareholder must be a company located in the European Economic Area (EEA) or in a jurisdiction with which Belgium has concluded a double taxation agreement (DTA).
- The shareholder must have a legal form as mentioned in the European Union (EU) Parent-Subsidiary Directive (or a similar form).

Note that the distributing company should have a certificate confirming that the various conditions are met, including confirmation to what extent the beneficiary can claim a tax credit or refund of the WHT on December 31 of the year preceding the dividend distribution.

PwC observation:
We invite our clients to assess the impact of the above described legislation on their business and to anticipate on whether this could affect their business going forward.

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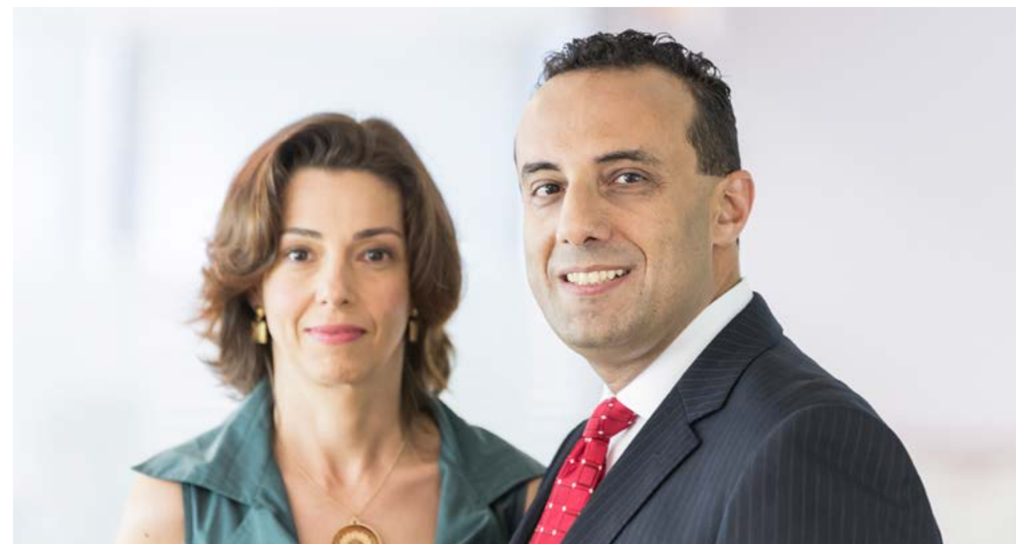
Israel

Israel reduces corporate tax rate

The Israeli Parliament in January 2016 amended the Income Tax Ordinance to reduce the corporate income tax (CIT) rate from 26.5% to 25%, effective January 1, 2016.

Companies without a calendar-year-end tax year will follow a 'special tax period' calculation. The taxable income generated during the special tax period will be taxed using a proportional formula, with the taxable income portion earned in 2015 taxed at the old rate of 26.5%, and the remaining taxable income taxed at the new rate of 25%.

PwC observation:
Multinational enterprises (MNEs) with activities in Israel should consider how the changes to the CIT rate may affect their operations.



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Italy

Relevant amendments to the Italian CFC regime

The 2016 Italian Budget Law (Law No. 208/2015, published in the Italian Official Gazette 302/2015) introduced relevant changes to the Italian controlled foreign company (CFC) regime provided for controlled companies located in 'tax haven' countries. In particular, the 'black list' of countries relevant for the application of the CFC regime has been repealed, introducing new criteria for the attribution of the status of 'black list' for a controlled foreign entity, based only on the nominal tax rate applied in the country of residence. The repealing is effective from 2016.

Under the current Italian CFC regime, the income realised by a controlled non-Italian entity is attributed to the Italian shareholder in proportion to its entitlement to the profits. This regime applies to:

- Companies resident in a country other than European Union/ European Economic Area (EU/EEA), subject to nominal tax rate lower than 50% of the one applied in Italy, i.e. 13.75% for 2016, to be further coordinated with corporate income tax (CIT) reduction from 2017 (so called 'black' CFC), unless proved that the CFC carried on true industrial or commercial activities in the local market or that the shareholding in the CFC was not hold with the aim at localizing the income in such 'black list' country, or
- Companies, resident in EU/EEA countries or elsewhere, subject to an effective tax rate lower than 50% of the Italian one and predominantly realizing passive income, i.e. dividends, interest, and royalties (so called 'white' CFC, that in fact applies to entities wherever resident).

PwC observation:
The amendments to the Italian CFC regime would most certainly have a significant impact on foreign investments carried out by/through Italian companies. Further clarifications are awaited from Italian tax authorities.

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Kazakhstan

Taxation of non-residents' income

Starting from January 1, 2016, Kazakhstan introduced new participation exemption requirement according to which dividends paid by Kazakhstan subsurface user to its non-resident parent company should be exempt from tax, provided that certain conditions are met.

PwC observation:
The introduced amendments can positively influence our clients. We would be happy to discuss any tax opportunities for applying tax exemptions as a result of the above-mentioned changes.

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Proposed Tax Legislative Changes
Australia

Consultation paper on anti-hybrid rules

As part of a review commissioned by the Australian government on July 14, 2015 in response to work completed by the Organisation for Economic Co-Operation and Development (OECD) on hybrid mismatches, the Board of Taxation (the Board) released a consultation paper on implementation of the OECD developed anti-hybrid rules on November 20, 2015.

The consultation paper focuses on issues associated with the implementation of the anti-hybrid rules into Australian domestic law and not whether the rules should be adopted at all. Further, the consultation paper does not outline any preliminary views of the Board regarding 'what', 'how', or 'when' the anti-hybrid rules should be implemented, rather, has been developed to facilitate discussion amongst various stakeholders on implementation issues that may arise and to assist the Board in making recommendations to the Australian government on these issues.

Consistent with the OECD's final report on Base Erosion and Profit Shifting (BEPS) Action 2, the consultation paper includes a summary of some Australian specific examples that will likely be caught should the anti-hybrid rules be implemented, for example, US general partnerships with Australian partners, limited partnerships, redeemable preference share financing instruments and security lending arrangements. The consultation paper focuses on the following themes:

- Costs and benefits (economic, commercial, or other) of implementing the anti-hybrid rules.
- Interaction with Australian domestic law and other OECD BEPS action items.
- Implementation timing and transitional issues.
- Technical issues association with each of the detailed recommendations made by the OECD, and legislative design, compliance, and administrative issues.

The Board has been requested to report to the Australian government by March 2016 to allow the issue to be considered as part of the 2016-2017 Federal Budget.

PwC observation:
In light of the current political environment in Australia and the focus on multinational companies (MNCs), we consider it likely that Australia will implement some, or all, of the anti-hybrid rules developed by the OECD. A commencement date has not yet been announced. However, we anticipate a commencement date being announced in the Federal Budget (expected in May 2016). Taxpayers should turn their mind to existing structures to determine the impact, if any, of the anti-hybrid rules should they be implemented.

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Brazil

Withholding tax on remittances abroad to cover personal expenses

By way of background, Article 60 of Law 12.249/2010 used to provide an exemption on withholding income tax (WHT) levied on amounts paid, credited, delivered, used or remitted to individuals or legal entities resident/domiciled abroad, intended to cover personal expenses of Brazilian individuals for tourism travel, business, service, training, or official missions, up to 20,000 Brazilian Real (BRL) per month.

The exemption was valid for triggering events occurring until December 31, 2015 and, since no additional provisions have been introduced in the Brazilian legislation, it is now expired.

In view of this, on January 26, 2016, the Brazilian Federal Revenue issued Normative Instruction 1,611 (NI 1,611) in order to regulate the levy of the WHT on such payments.

NI 1,611 states that, as of January 1, 2016, amounts paid, credited, delivered, used, or remitted abroad, destined to the payment of personal expenses deriving from tourism, business, service, training, or official mission trips, as well as expenses with tourist services, including hotel, transportation, accommodation, marine cruises, and tourism packages, are subject to 25% WHT. In contrast, income received by marine and air navigation companies domiciled abroad, from individuals or legal entities resident or domiciled in Brazil, is subject to 15% WHT.

WHT does not apply on remittances abroad for educational, scientific, or cultural purposes, as well as those destined for payment of school fees, registration fees for congress, conclave, seminars or similar events and fees for proficiency exams, and remittances for maintenance of dependents abroad, as long as they do not refer to income earned by the beneficiaries. Expenses related to hospital/medical expenses are also generally excluded from the levy of WHT.

Although not yet in force, the project for conversion into law of Provisional Measure 694/2015 foresees a reduced WHT rate of 6% applicable to the personal expenses mentioned above (up to 20,000 BRL per month) until December 31, 2019. The reduced WHT rate would not apply in cases where the beneficiary of the payment is either resident/domiciled in a tax haven or entitled to a privileged tax regime.

PwC observation:
Individuals and companies that usually remit funds abroad to cover expenses for Brazilian individuals should be aware of the new WHT rules.

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Hong Kong

Bill to implement automatic exchange of information in Hong Kong

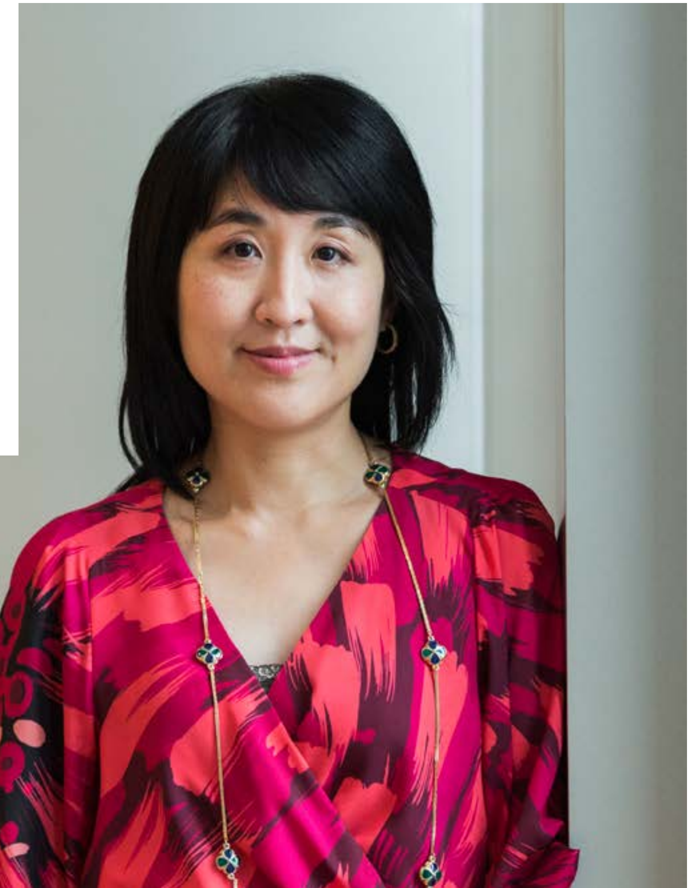
Further to Hong Kong's commitment to adopt the Common Reporting Standard (CRS) and automatic exchange of information (AEoI) in September 2014, the Inland Revenue (Amendment) Bill 2016 (the Bill) was gazetted on January 8, 2016. The Bill seeks to put in place a legal framework for Hong Kong to implement AEoI and commence the first information exchanges by the end of 2018.

Upon enactment of the legislation, financial institutions (FIs) will be required to identify financial accounts held by tax residents of reportable jurisdictions and to collect and furnish to the Hong Kong tax authority the reportable information of these financial accounts. The information collected will then be exchanged with the tax authorities of Hong Kong's AEoI partners on an annual basis.

The Bill has to be scrutinised and approved by the Legislative Council before being enacted into law.

PwC observation:
Hong Kong's commitment to the CRS and AEoI marks a new era of information exchange in Hong Kong. The Bill demonstrates Hong Kong government's determination to catch up with the latest international standard and implement AEoI in a timely manner. By adopting a pragmatic approach, all the essential AEoI requirements have been included in the Bill according to the CRS. The Bill will also ensure effective implementation by imposing appropriate sanctions on the FIs.

Multinational corporations (MNCs) with cross-border operations/transactions should be mindful of the evolving exchange of information (EoI) landscape in Hong Kong and evaluate its potential impact on their tax risk management practices.



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Hong Kong

Bill on Hong Kong's open-ended fund company regime

The Securities and Futures (Amendment) Bill 2016 (the Bill) was gazetted on January 15, 2016. The Bill seeks to introduce the legal, regulatory, and tax framework for an open-ended fund company (OFC) regime in Hong Kong. Currently, an open-ended investment fund can only be established in Hong Kong in the form of a unit trust. The Bill will provide an extra option for structure for investment funds domiciled in Hong Kong.

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The following profits tax and stamp duty treatments for OFCs are proposed in the Bill:

- OFCs will enjoy the same profits tax exemption as certain public funds and private funds, provided that the specified conditions are met. Specifically, (i) publicly offered OFCs will be exempt from Hong Kong profits tax irrespective of the locality of their central management and control (CMC) and (ii) privately offered OFCs will enjoy the profits tax exemption only if their CMC are located outside Hong Kong.
- Stamp duty will not be payable on the initial allotment and cancellation of OFC shares upon redemption. However, transfer of shares in OFCs will be subject to stamp duty.
- In respect of an umbrella OFC, each sub-fund under an OFC would be regarded as a separate OFC for stamp duty purposes. As such, the conversion of interest from one sub-fund to another and the transfer of dutiable assets between different sub-funds should be subject to stamp duty.
- Stock transactions involving in-kind allotment and redemption of shares of public OFCs, which are open-ended collective investment schemes authorised by the Securities and Futures Commission, will not be subject to stamp duty.

The Bill has to be scrutinised and approved by the Legislative Council before being enacted into law.

PwC observation:
The Bill demonstrates Hong Kong government's initiatives to promote Hong Kong as a premier international asset management centre and fund hub. Given the launch of the Mainland-Hong Kong Mutual Recognition of Funds programme, we expect the demand for a Hong Kong domiciled investment vehicle to increase, so the Bill is certainly timely in this respect. It would also be easier for an OFC to establish Hong Kong tax residency for treaty claim purposes as opposed to a unit trust, where the treaty application would involve both the trustee and fund manager. However, further steps such as blanket profits tax exemption for OFC, waiver of stamp duty on transfer of shares of all OFCs, etc. should be considered to make the OFC regime more attractive and on par with investment vehicle in other jurisdictions such as the Cayman Islands.

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Poland

Introduction of a General Anti-Avoidance Rule into Polish tax law

In December 2015, Polish government published a new draft version of amendments to Tax Ordinance Act (the draft) which would introduce a General Anti-Avoidance Rule (GAAR) into Polish tax law. According to the published draft, GAAR shall apply to all types of taxes (apart from value added tax [VAT] where other provisions are proposed to prevent VAT avoidance) and shall preclude a taxpayer from obtaining a tax benefit as a result of artificial transactions. It is expected that the proposed regulations will come into force by second quarter of 2016.

Proposed anti-avoidance rule
According to the published draft, legal transactions with the main purpose of obtaining a tax advantage contrary to the tax regulations shall not result in tax benefit.

The proposed regulations stipulate that if tax authorities detect artificial transactions designed mainly to gain tax benefit, tax consequences of such transactions will be assessed as if alternative 'appropriate' transaction had taken place. Additionally, if transactions carried out by a taxpayer do not have any real economic or business rationale other than tax avoidance, tax authorities may completely disregard them.

The transactions shall be deemed as artificial if they would not be carried out by a taxpayer acting in reasonable manner and whose objectives are not contrary to the purpose of the tax law.

Tax rulings
Tax rulings will not be issued, and if once issued will not protect in case tax avoidance is identified. However, taxpayers will have a right to apply for a 'securing opinion' to the Minister of Finance (MoF) instead. The taxpayer should include a description of the planned transactions and their economic purpose in the application.

The Minister should examine the application and decide whether the described transactions are designed with the purpose of obtaining tax benefits within the meaning of the Tax Ordinance Act.

Entry into force
The draft stipulates that the amendments will come into force after 14 days of the date of their promulgation. According to our information, proposed regulations are intended to go into effect in the beginning of the second quarter of 2016.

PwC observation:
The main purpose of the GAAR, as announced, is to target multinational companies (MNCs) which minimize their tax liabilities in Poland by applying tax avoidance measures. Having in mind draft amendment, we recommend taxpayers to analyse tax reconciliations from the perspective of the proposed GAAR and to consider them when planning business activities. In particular, it would be suggested to properly document the reasoning of business decisions made.

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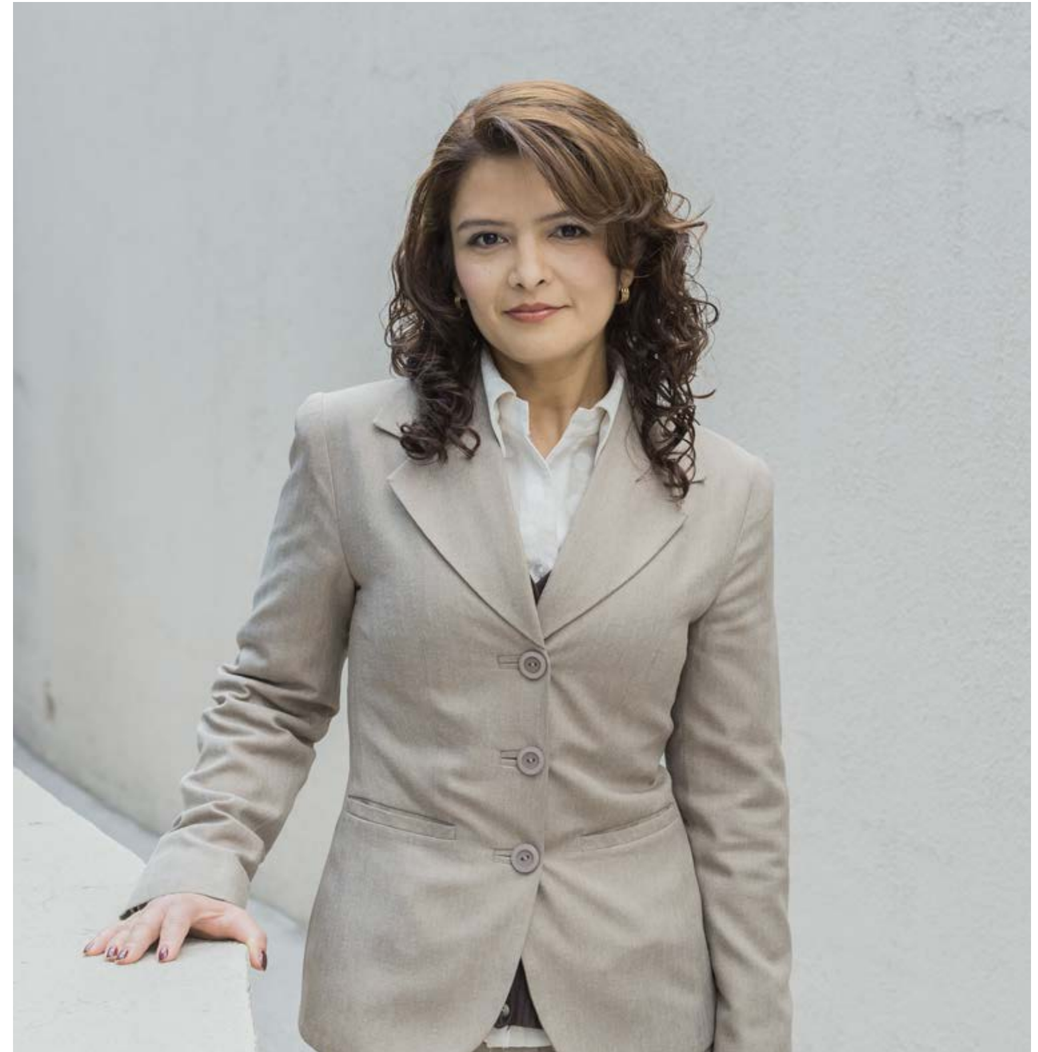
United States

IRS issues proposed regulations on country-by-country reporting

On December 21, 2015, the Treasury Department and the internal revenue service (IRS) issued highly anticipated proposed regulations (REG-109822-15) that would require annual US country-by-country (CbC) reporting for US-parented multinational enterprise (MNE) groups.

In issuing the regulations, the Treasury Department has demonstrated its intent to meet the multilateral commitment it made in the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project negotiations to collect the CbC information for purposes of exchanging it with other governments. By adhering to the requirements of the Administrative Procedures Act with a 90 day comment period for the proposed regulations, Treasury has provided a meaningful timeframe for public comment and may allay Congressional concerns. Implementation of CbC reporting represents a significant new compliance burden for US companies, which should begin preparing for this new reporting requirement as soon as possible.

PwC observation:
Although CbC reporting has been anticipated for several years as part of the ongoing BEPS project, the release of the proposed regulations marks an important step in implementing the requirement. The proposed regulations impose a significant new compliance burden, and US companies that have not already started to prepare should do so immediately. Additionally, with respect to issues in the proposed regulations needing clarification or modification, Treasury and the IRS have requested comments on a significant number of important issues, with comments due by March 22, 2016. The comment period is 90 days from the date of publication in the Federal Register, which occurred on December 23, 2015.



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Tax Administration and Case Law

Australia

Significant increased penalties for anti-avoidance and transfer pricing adjustments from July 1, 2015

All multinational enterprises (MNE's) with annual global revenue of 1 billion Australian dollars (AUD) or more will be subject to increased penalties where adjustments are made by the Commissioner in relation to transfer pricing and anti-avoidance cases.

The increased penalties will apply to adjustments made in transfer pricing and anti-avoidance cases for income years beginning on or after July 1, 2015. The higher penalty rates apply to amended assessments made under the existing transfer pricing and anti-avoidance rules as well as the newly enacted multinational anti-avoidance law. The rates will be up to 100% of the tax shortfall from the adjustment.

Taxpayers that have a 'reasonably arguable position' will not be exposed to the higher penalty rates. It is important to note for transfer pricing cases that a 'reasonably arguable position' can only be established if transfer pricing documentation is compliant with Australian requirements and was prepared prior to filing the tax return for the relevant year.

PwC observation:
Taxpayers should consider any aggressive positions taken to ensure that they have a reasonably arguable position and, if relating to transfer pricing, compliant transfer pricing documentation.

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Australia

Government proposes multinational tax avoidance taskforce

In a speech on February 3, 2016, the Assistant Treasurer, Kelly O'Dwyer, announced that the Australian government is finalising options for the establishment of a 'tough new taskforce' targeting tax avoidance by multinational companies (MNCs).

At this time, there are limited details publicly available regarding the manner in which the taskforce will be established, its target areas and its expected manner of operation. That said, the Assistant Treasurer has made it clear that the Australian government will ensure that the Australian Taxation Office (ATO) has the resources it requires to 'test the law on an equal playing field with the world's largest companies'.

PwC observation:
Given the focus on multinational's tax avoidance, we expect there may be an increase in cross-border tax disputes, and potentially more litigation, in the near future.

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Australia

Voluntary tax disclosure code for large and medium sized businesses

On December 1, 2015, the Board of Taxation (the Board) released a consultation paper on the voluntary tax transparency code (VTTC). The Australian government commissioned the Board to develop the VTTC as a way to improve community confidence in the Australian tax system and to encourage all businesses to adopt a low-risk approach to their tax affairs through enhanced public disclosure.

The consultation paper contains the Board's preliminary recommendations for additional disclosure of tax information by 'large businesses' (Australian turnover of at least 500 million Australian dollars [AUD]) and slightly less disclosure for 'medium businesses' (Australian turnover of at least AUD 100 million but less than AUD 500 million). In broad terms, the Board's preliminary recommendation is that:

- Medium businesses should improve tax disclosures in their financial statements, in particular by (i) providing a reconciliation of accounting profit to tax expense and to income tax paid or income tax payable, (ii) identifying material temporary and non-temporary differences, and (iii) disclosing accounting effective company tax rates for Australian and global operations.
- In addition to the above requirements, large businesses would also be required to prepare an annual taxes paid report that contains (i) a qualitative description of the approach to tax policy, tax strategy, and governance, (ii) summary of corporate taxes paid, and (iii) qualitative information about international related party dealings, financing and tax concessions.

It was recommended that foreign multinationals without any taxable presence in Australia would not be required to disclose sales to Australian customers.

The proposed approach sets the minimum standards at a level to best preserve commercially confidential information and limit compliance costs, while at the same time, make a meaningful contribution to demands for greater tax transparency in Australia. There is flexibility for multinational companies to disclose more information, should they choose, and there is an emphasis on providing qualitative explanations over raw numbers.

The Board considered that the VTTC should be in operation in time for 2015-2016 financial statements or annual reports and that there should be a central website providing access to all VTTC. The Board is required to submit its final report to the Australian government by the end of May 2016.

PwC observation:
Given the focus on multinationals' tax avoidance, we expect there may be an increase in cross-border tax disputes, and potentially more litigation, in the near future.

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Norway

Clarification on the tax treatment of carried interest

In November 2016, the Norwegian Supreme Court ruled in a case regarding the tax treatment of carried interest from a Jersey private equity fund, the so-called Herkules Capital-judgment.

Carried interests are paid to investment partners (in this case to their private holding companies) if the profit on the fund's investments exceed a pre-defined threshold. The Supreme Court concluded under dissenting votes that the carried interest must be assigned as business income to the investment fund's General Partner which was a Jersey limited company (manager for the fund) and not to the advisory company where the investment partners were employed. The parties had agreed that the income in this first step was business income (and not capital income).

Thereafter, the Court found that the payments made to the investment partners' holding companies should be classified as capital income and not employment income for the investment partners. Employment income would have been levied payroll tax (14.1%) for the employer and employment tax of approximately 50% for the individual investment partner.

PwC observation:
Before the Herkules Capital-judgment, there has been a lot of uncertainty connected with the tax treatment of carried interest in Norway. Several cases have also been put on hold in the tax administrative system pending the Supreme Court's judgment. In our knowledge, there are also few judgments regarding the tax treatment of carried interest in the rest of Europe, and this subject has been subject to a great deal of discussion. Hence, this judgment has been highly anticipated. Even though one has to keep in mind that the judgment is passed pursuant to a specific set of facts, in our opinion the judgment has transfer value to other cases and should be guiding on how carried interest should be classified for tax purposes in Norway.

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EU Law
OECD

European Commission proposes Anti-Tax Avoidance Package

The European Union (EU) Commission (EC) on January 28, 2015, presented an anti-tax-avoidance package (ATAP) that consists of seven sections, including a proposed anti-tax-avoidance directive (draft ATA directive). The draft directive outlines minimum standards based on proposals from the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) deliverables. The draft directive differs from corresponding BEPS proposals in some regards and covers additional subjects, such as exit taxation and a minimum level of taxation on third-country income. The ATAP will be subjected to political and technical discussions, and its enactment is uncertain. If it is enacted in some form, it is expected to significantly affect foreign companies investing in the EU.

The ATAP consists of the following sections:

- The draft ATA directive.
- An EC recommendation on the implementation of G20/OECD BEPS suggestions regarding tax treaty abuse and permanent establishments (PEs).
- A proposed amendment to Directive 2011/16/EU on mandatory automatic exchange of information (AEOI) in the field of taxation to enable coordinated implementation of G20/OECD BEPS country-by-country reporting (CBCR) requirements.
- A general policy communication on the ATAP and the proposed way forward.
- A general policy communication on an EU external strategy for effective taxation.
- An EC staff working document.
- A study on aggressive tax planning.

PwC observation:
The legislative proposals of the ATAP will be submitted to the European Parliament for consultation and to the Council for adoption. Before endorsing and implementing the various documents, all Member States must consent on a unanimous basis and decide on the way forward. Although it is uncertain when and in what form the ATAP will be enacted, it is important to monitor updates and further developments. If the ATAP is enacted in some form, it may significantly impact multinational enterprises investing in the EU.

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Treaties

Australia

Revised Australia-Germany double tax treaty

On November 12, 2015, Australia and Germany signed a new tax treaty which will replace the previous double tax treaty (DTT) signed in 1972.

The key features of the new treaty include reduced withholding tax (WHT) rates and new arbitration rules (as well as a range of rules to prevent potential double taxation). Importantly, the new treaty also gives effect to the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) recommendations in particular, for example, recommendations involving permanent establishments (Action 7) and treaty abuse (Action 6).

We expect legislation will be introduced into the Australian Parliament shortly to give the revised treaty the force of law in Australia.

PwC observation:
The revised Australia-Germany tax treaty reflects the standard developed by the OECD. We expect this to set the benchmark for future treaty negotiations.

China

Multilateral Convention on Mutual Administrative Assistance in Tax Matters came into effect from February 1, 2016 in China

On August 27, 2013, China signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), committing to more international cooperation on tax administration. Later in mid 2015, the Standing Committee of the National People's Congress of China approved the signed Convention and clarified the application of relevant administrative provisions. On January 18, 2016, China's State Administration of Taxation (SAT) announced that the Convention has entered into force on February 1, 2016 in China and will be implemented from January 1, 2017. The SAT also clarified the 16 categories of taxes (e.g. corporate income tax [CIT], value-added tax [VAT], business tax, etc.) covered by the convention as well as the reservations made by China (e.g. tax recovery and document delivery). In addition, the SAT also clarifies that currently the Convention signed by China shall not be applicable to the Special Administration Regions of Hong Kong and Macau.

PwC observation:
The Convention provides China with one more channel to improve information collection and counter tax avoidance and evasion. Against the backdrop of the Base Erosion and Profits Shifting (BEPS) project, the enactment of the Convention demonstrates China's continuous effort for international collaboration.

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Hong Kong

The Fourth Protocol to the double tax treaty between Hong Kong and China entered into force

The Fourth Protocol to the double tax treaty (DTT) between Hong Kong and China entered into force on December 29, 2015 and became effective on the same date.

PwC observation:
The most important benefit brought by the Fourth Protocol to Hong Kong taxpayers is to provide tax exemption in China for gains derived by Hong Kong tax residents and 'Hong Kong resident investment funds' (as defined in the protocol) from disposal of shares of Chinese companies listed in recognised stock exchanges, provided certain conditions are met. Such tax exemption, together with the reduced withholding tax (WHT) rate for aircraft and shipping rentals, should be welcomed by taxpayers in Hong Kong.

On the other hand, by strengthening the anti-treaty abuse provisions and expanding the scope of information exchange under the China-Hong Kong DTT to cover certain non-income taxes in China, Hong Kong shows its commitment to international tax cooperation and increased tax transparency. Taxpayers who wish to enjoy the benefits under the DTT are obligated to make legitimate use of the DTT and refrain from treaty shopping.

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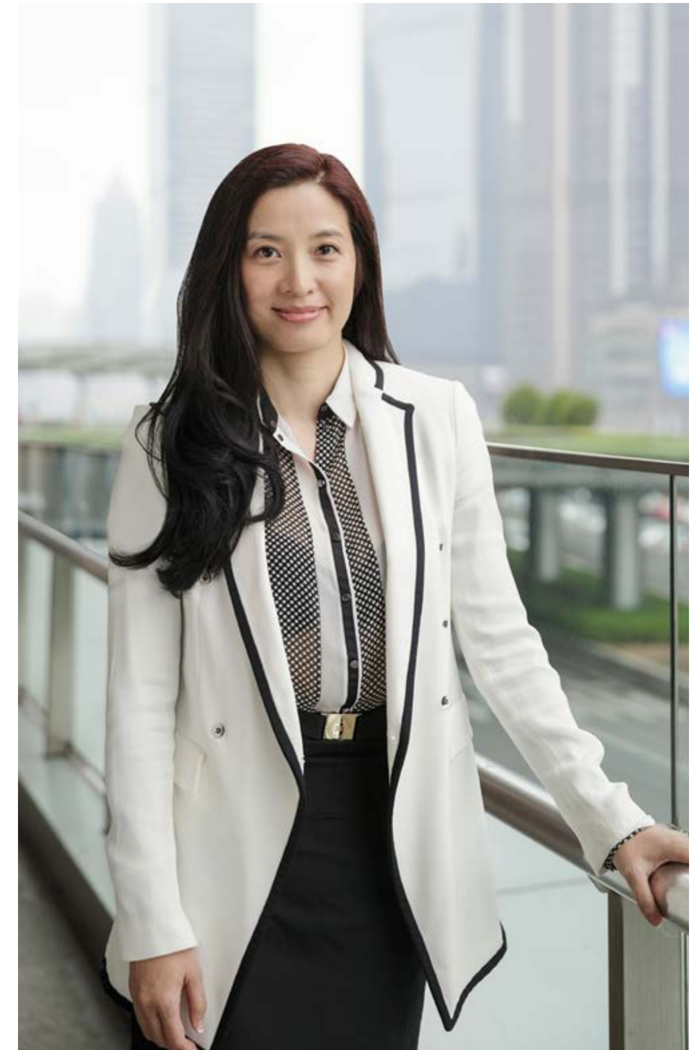
Hong Kong

Hong Kong-Russia double tax treaty signed

Hong Kong signed a double tax treaty (DTT) with Russia on January 18, 2016, bringing the number of DTTs signed by Hong Kong to 34. The DTT has not yet entered into force due to pending completion of the ratification procedures by both sides.

There is an existing air services agreement between Hong Kong and Russia that was signed in 1999. The article in that existing agreement dealing with avoidance of double taxation of the air services (i.e. Article 12) will cease to have effect from the date upon which the Hong Kong-Russia DTT becomes effective.

PwC observation:
Given that Hong Kong does not currently impose any withholding tax (WHT) on dividends and interest paid to non-residents, one of the major benefits under the Hong Kong-Russia DTT for Russian resident corporations is the reduced WHT rate of 3% (as opposed to the domestic rate of 4.95%) on royalties derived from Hong Kong.



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Italy

DTT between Italy and Hong Kong entered into force

The double tax treaty (DTT) between Italy and Hong Kong, signed on January 14, 2013, has been entered in force from January 1, 2016 (Italian Official Gazette 249 of October 26, 2015). The DTT provides, inter alia, for the exchange of tax information between the two countries, reduced withholding tax (WHT) rates on cross-border income and taxation of capital gains only in the country of the seller is resident.

PwC observation:
Taxpayers should consider the possible impact of the DTT between Italy and Hong Kong on their structures.

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Kazakhstan

Mutual Agreement between the competent authorities of the US and Kazakhstan

In 2015, Kazakhstan signed the Mutual Agreement between the competent authorities of the US and Kazakhstan. This Agreement provides clarification on application of the Kazakhstan-US double tax treaty (DTT) benefits to tax transparent entities and envisages the associated procedures.

PwC observation:
The signed agreement can positively influence our clients. We would be happy to discuss any tax opportunities for applying tax exemptions/refund as a result of the above-mentioned change.

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Kazakhstan

Kazakhstan signed several new DTTs

In 2015, Kazakhstan ratified the double tax treaties (DTTs) with Macedonia, Vietnam, and Qatar.

PwC observation:
We would be happy to discuss any tax opportunities and provide tax consulting services for applying the DTTs.

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Spain

Protocol to Spain-Mexico double tax treaty

A protocol that amends the Convention for the Avoidance of double taxation and the Prevention of Fiscal Fraud and Evasion and Protocol of July 24, 1992, was signed on December 17, 2015.

The main amendments are described below:

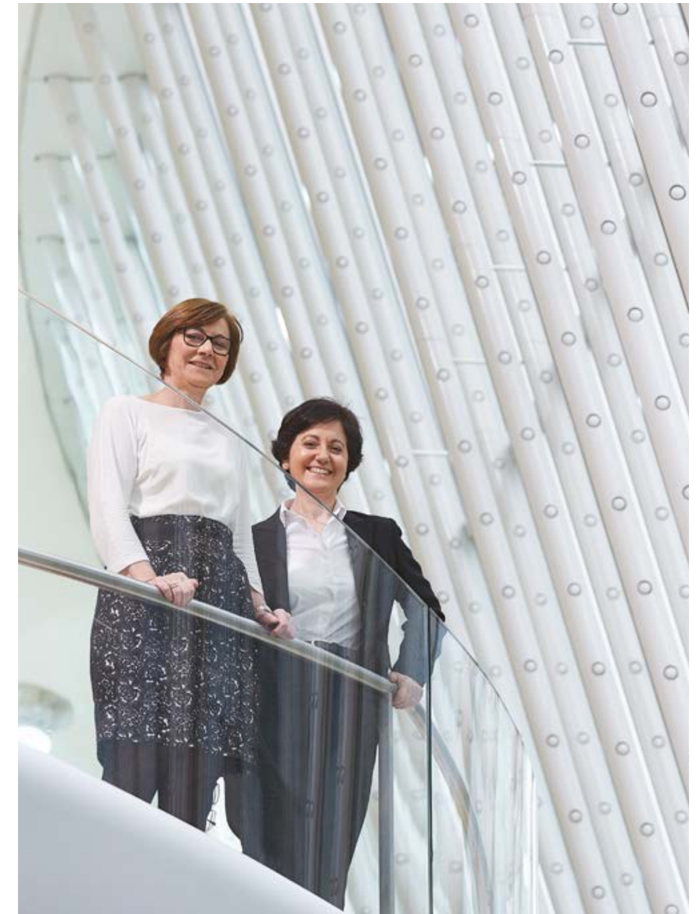
- Under the treaty, dividends were subject to withholding tax (WHT) at a rate of 5% or 15% depending on the percentage of ownership in the distributing company. The Protocol establishes a WHT exemption if the shareholder is an entity owning directly at least 10% of the distributing company's capital; in other cases, the WHT is set at a rate of 10%.
- The treaty established a 15% WHT rate and a reduced one of 10% when the recipient is a bank. The Protocol reduces the general WHT rate to 10% and establishes a lower rate of 4.9% on interest paid on loans granted by financial institutions and insurance companies, as well as on interest paid on bonds that are traded in a recognised securities market. Interest may also be exempt from WHT if it is paid by a Contracting State or if it is paid on loans granted to promote exports, provided that certain requirements are met.
- Until now, capital gains on the transfer of shares were subject to tax at a rate of 25%. The Protocol, as a general rule, reduces that rate to 10%. On the other hand, the Protocol eliminates the possibility of exempting gains on the transfer of shares when they have been owned for less than 12 months. However, the Protocol allows a capital gains tax exemption in the issuing country when the capital gain is realised by (i) a financial institution, (ii) an insurance company, (iii) a pension fund, or (iv) a resident through the sale of publicly traded stock (except Spanish REITs).

If more than 50% of the value of the shares is derived, directly or indirectly, from real estate, the capital gain on the transfer of the shares may be subject to tax in the country where the real estate is located. However, real estate that is used in industrial, commercial, agricultural, or professional activities must not be taken into account when determining the percentage of the value of the shares that is derived from real estate.

The Protocol also modifies the tax deferral regime on the transfer of shares in internal reorganizations by requiring a minimum ownership of 80%.

- Other highlights introduced by the protocol are as follows: i) a new article of assistance in the collection of taxes is included, ii) the methods of elimination of double taxation are updated, iii) a most favoured nation clause which provides that if Mexico agrees lower WHT rates on interest and/or royalties in future tax treaties with other Organisation for Economic Co-operation and Development (OECD) or European Union (EU) countries, these rates will automatically replace those contemplated in the Spain-Mexico treaty, and iv) the Protocol introduces an anti-abuse article recognizing the application of internal rules and procedures on treaty abuse. Likewise, the Protocol empowers both Contracting States to deny treaty benefits to arrangements when the principal purpose is to obtain those benefits. Finally, the Protocol also allows both Contracting States to apply their rules on controlled foreign companies (CFCs), thin capitalization, and anti-preferential tax regimes.

PwC observation:
The 2015 Protocol to the Spain-Mexico double tax treaty (DTT) reduces source-taxation of dividends, interest, and capital gains, introduces a number of amendments to update the 1992 provisions and includes a GAAR.



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