International Tax News

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Launch

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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.

Featured articles

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Responding to the potential business impacts of COVID-19
COVID-19 can cause potentially significant people, social and economic implications for organisations. This link provides information on how you can prepare your organisation and respond.

In this issue

Legislation

China

China increases the number of sectors open for foreign investment

China released the updated version of Special Administrative Measures for Foreign Investment (2021 nationwide negative list) and Special Administrative Measures for Foreign Investment in the Pilot Free Trade Zones (PFTZs) (2021 PFTZs negative list) on December 27, 2021.

With the 2021 version, restrictions on the automobile manufacturing industry have been removed. Therefore, all manufacturing sectors are now open to foreign investors in PFTZs. In addition, foreign investors' access to the service sector in PFTZs have also increased. Foreign investments ownership by foreign investors must not exceed 33% and the legal representatives should have Chinese nationality.

The two negative lists entered into force on January 1, 2022.

PwC observation:

Since 2017, China has revised the negative list for five consecutive years, gradually reducing the market access restrictions on foreign investment. For those industries that are not included in the negative lists, foreign-invested enterprises should receive national treatment.

Over the past few years China has remained committed to opening up its economy, as well as improving its business environment. The number of sectors prohibited to foreign investors has been markedly reduced.

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China

China extends tax exemption for overseas investors in bond market

To promote the opening-up of the bond market, China's Ministry of Finance (MoF) and State Taxation Administration (STA) issued a Public Notice that allowed foreign institutions to benefit from a CIT and VAT exemption for bond interest income derived from their investment into the domestic bond market of mainland China from November 7, 2018 to November 6, 2021.

Recently, China extended these tax preferential policies to overseas investors investing in the Chinese mainland bond market through December 31, 2025. However, the scope of interest income eligible for the CIT exemption does not include bond interest derived from an investment that is effectively connected with the overseas institutional investor's establishment or place in China.

PwC observation:

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

China expects to expand this opening-up, and leverage the strengths of its large domestic market. The government likely will do more to attract foreign investment, including encouraging foreign investors to participate in China's domestic development through the bond market.

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Cyprus

Cyprus Parliament passes amending laws for prevention of international tax abuse

The Cyprus Parliament passed two bills amending the Cyprus tax legislation on December 9, with the goal of strengthening the Cyprus tax framework in order to prevent the abuse, evasion and avoidance of tax, in line with EU recommendations. Both amending laws will enter into force on December 31, 2022. They contain the following developments:

- For payments from Cyprus to companies in jurisdictions on the EU 'blacklist,' the bills introduced (or, in the case of royalties, expand) withholding taxes (WHTs) as follows:
  - A 17% WHT rate for dividend payments by unlisted companies to shareholders with an 'over 50% holding'
  - A 30% WHT rate for 'passive' interest payments (excluding payments by individuals)
  - A 10% WHT rate for royalties and similar type payments (excluding payments by individuals).
- For companies with no tax residency anywhere else in the world, the bills expand the Cyprus corporate tax residency test (currently only the 'management and control' test) by introducing a separate test based on incorporation or registration in Cyprus.

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

PwC observation:

These bills are a strong indication of Cyprus' willingness to prevent the abuse, evasion and avoidance of tax. Groups that operate in jurisdictions that are included on the **EU blacklist** should evaluate the potential impact on their business from the new WHTs and consider available restructuring alternatives

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Cyprus

Cyprus 2022 budget envisages 'mini reform'

On December 9, the Cyprus Minister of Finance (MoF) presented to parliament the proposed 2022 budget and envisaged fiscal policy plan for the next three-year period. The MoF outlined the government's vision for a possible 'mini-reform' of the Cyprus tax system.

Among other matters, the MoF's address referred to the impact of the Inclusive Framework's (IF's) recent agreement on Pillar One and Pillar Two, which would fundamentally change the international corporate tax system, in particular the Pillar Two 15% minimum effective global tax rate for 'large' corporate groups. With that in mind, the MoF believes that the intended increase of the statutory corporate tax rate per se from 12.5% to 15% effective in 2023 (potentially only applicable to corporate groups with global turnover exceeding EUR 750m) should not substantially affect foreign investments in Cyprus. The MoF considers that the comparative advantages of Cyprus as an investment destination outweigh an increase in the corporate tax rate.

The MoF also indicated that the tax code amendments driven by the IF give Cyprus the opportunity to modernise its tax system in order to reduce the administrative burden for businesses while maintaining an overall neutral position for the budget. In this context, the MoF said that the government's goal is to proceed with a targeted tax reform. In conclusion, the MoF committed that the discussion between the government and various stakeholders will be completed in 2022, leading to a finalised budget-neutral legislative proposal within 2022. The intended changes are expected to take effect in 2023 at the earliest.

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

PwC observation:

The MoF's address expresses the government's intention with respect to particular Cyprus tax code changes for which, currently, no specific conclusions can be reached. As the MoF indicated, the government first will hold discussions and exchange views with various stakeholders before it reaches a final legislative proposal sometime within 2022 with the overriding aim to bolster the competitiveness of the Cyprus economy and the position of Cyprus as an international business centre.

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Mexico

Joint and several liability in transactions in Mexico

The acquiror of a Mexican taxpayer's ongoing concern would be considered jointly and severally liable for any taxes due by the going concern acquired (i.e., the legal entity transferring the assets). The 2022 tax reform imposes liability even for partial transfers of an on-going concern.

Regarding joint and several liability, an acquisition of a going concern will be assumed if the tax authorities determine that the transferor and acquiror of a set of assets falls into one of the following scenarios, among others:

a. The transferor totally or partially transfers to the acquiror assets or liabilities;
b. When there is partial or total identity of employees, the persons forming the management body, of partners or shareholder with effective control, of their legal representatives, suppliers, affiliated workers, fixed assets and infrastructure; and
c. When there is identity in the tax address or facilities, trademarks, patents, copyrights, or industrial property rights.

Joint and several liability in the transfer of shares by non-residents:

As a part of the 2022 Tax Reform, a new obligation is included for Mexican-resident issuers to report sales of Mexican shares between non-residents (in the month following the month of the sale). Specifically, an additional assumption of joint and several liability for taxes is included for legal entities that register new shareholders without having filed the notice of disposal of shares between foreign companies.

PwC observation:

Companies seeking transactions (acquisitions) in Mexico, regardless of the method in which the acquisition is structured, should consider these changes and other applicable tax provisions to identify the strengths and potential liabilities of the transaction, including those as joint and severally liable.

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Mexico

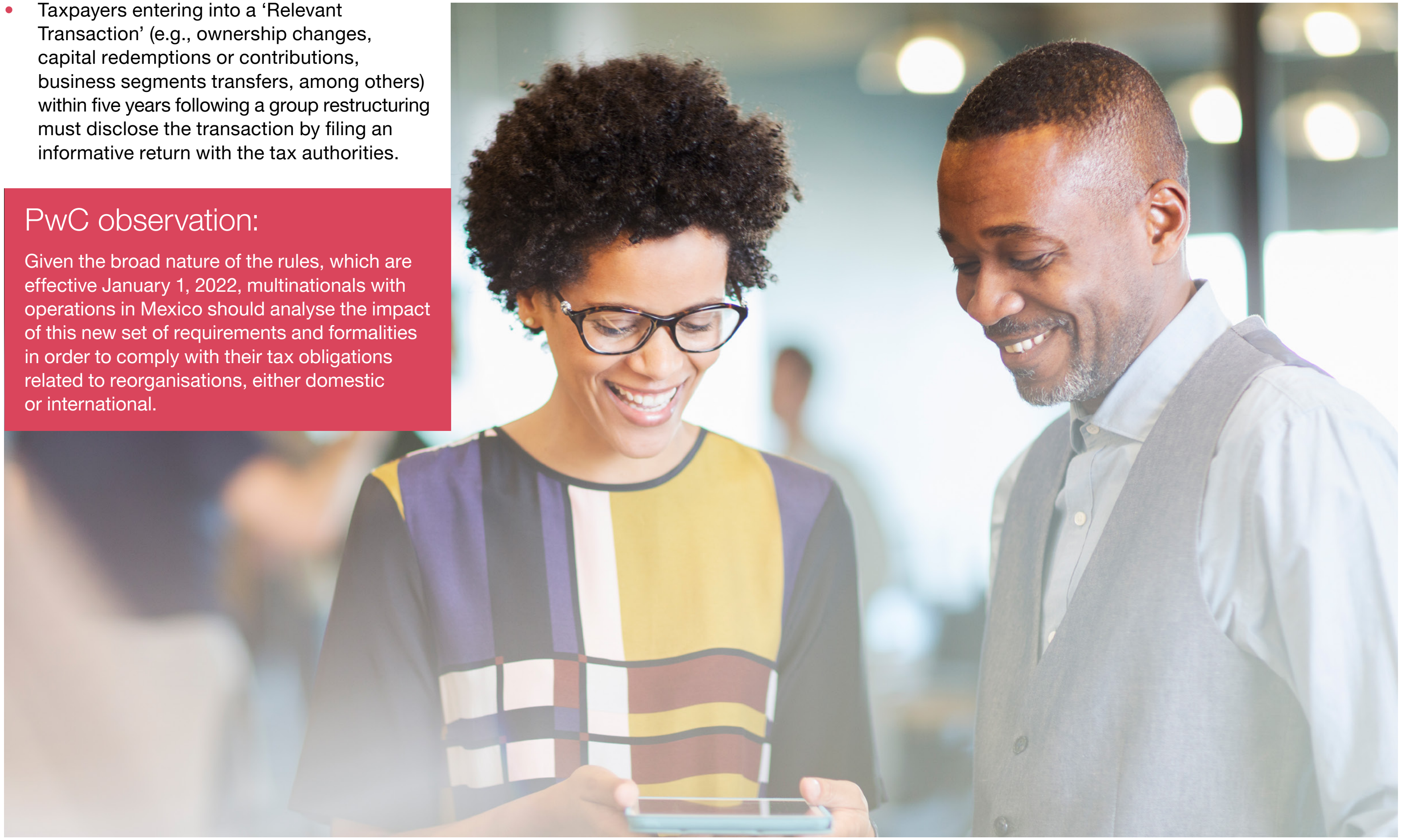
Imposes new requirements on domestic and international reorganisations

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

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

PwC observation:

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



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Netherlands

The Netherlands implements ATAD II's reverse hybrid rule

The Netherlands has enacted legislation implementing ATAD II's reverse hybrid rule beginning January 1, 2022. There is no grandfathering rule.

Action item: If the structure of your organisation includes partnerships or other entities (eventually established under foreign law) that are fiscally transparent in the Netherlands, then ATAD II's reverse hybrid rule may result in these partnerships or entities becoming subject to corporate income tax in the Netherlands. This is the case when the partnership or entity has a participant with an interest of at least 50%, while the participant is established (or is a resident) in a country that qualifies the partnership or entity as non-transparent. Such participant may be either a corporate entity or an individual. If a partnership or entity becomes liable for corporate income tax as a result of the measure, the partnership or entity will have to calculate its profit independently and file a corporate income tax return.

In the case of split ownership where Participant A, resident in a country that qualifies the partnership as non-transparent; and Participant B, resident in a country that qualifies the partnership as fiscally transparent, the partnership will be granted a reduction from its taxable profit for which the Participant B is directly taxed, in order to avoid double taxation.

In addition, there may be an obligation to withhold dividend withholding tax or conditional withholding tax on interest and royalty payments. Finally, under certain conditions a foreign participant may become liable to tax in the Netherlands for corporate or personal income tax purposes.

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

PwC observation:

Taxpayers should determine whether there are any Dutch incorporated entities, or foreign entities located in the Netherlands, which are as a main rule treated as transparent under Dutch tax law. Specifically, whether the entities could become subject to tax under these proposed rules, due to a difference in qualification by one of its direct or indirect shareholders or partners.

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Spain

Spanish 2022 budget includes 15% minimum corporate tax rate

The Spanish Government announced its 2022 Budget Package which includes two main corporate income tax changes:

i. Minimum tax: a 15% minimum corporate tax rate is proposed for those companies that have annual revenues over EUR 20M or are part of a consolidated group. This proposal is consistent with the political agreement reached by 136 countries October 8, 2021 on a plan to modernise the international tax system, which would apply to multinational groups with at least EUR 750M of annual revenues. Spanish minimum taxation would be set at 15% of the taxable base, but the regulation contains a series of exceptions that limit the number of incentives that would be affected.
ii. Rental real estate entities: the government also proposed lowering the 85% reduction of the standard corporate tax rate for rental real estate income to 40%.

PwC observation:

Some incentives would not be affected by this minimum taxation (such as the deduction for double taxation, Canarian incentives, etc.). Therefore, Spanish companies should review their existing tax deductions and determine their potential tax liability in subsequent years.

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Switzerland

Swiss withholding tax law reform in progress

The Swiss Parliament approved an amendment of the Swiss Withholding Tax Act on December 17, 2021. The Parliament abolished Swiss withholding tax on domestic interest on bonds in order to strengthen the Swiss debt capital market and increase Switzerland's attractiveness for group financing activities. Only interest paid or credited to Swiss resident individuals on bank or insurance accounts shall remain subject to Swiss withholding tax.

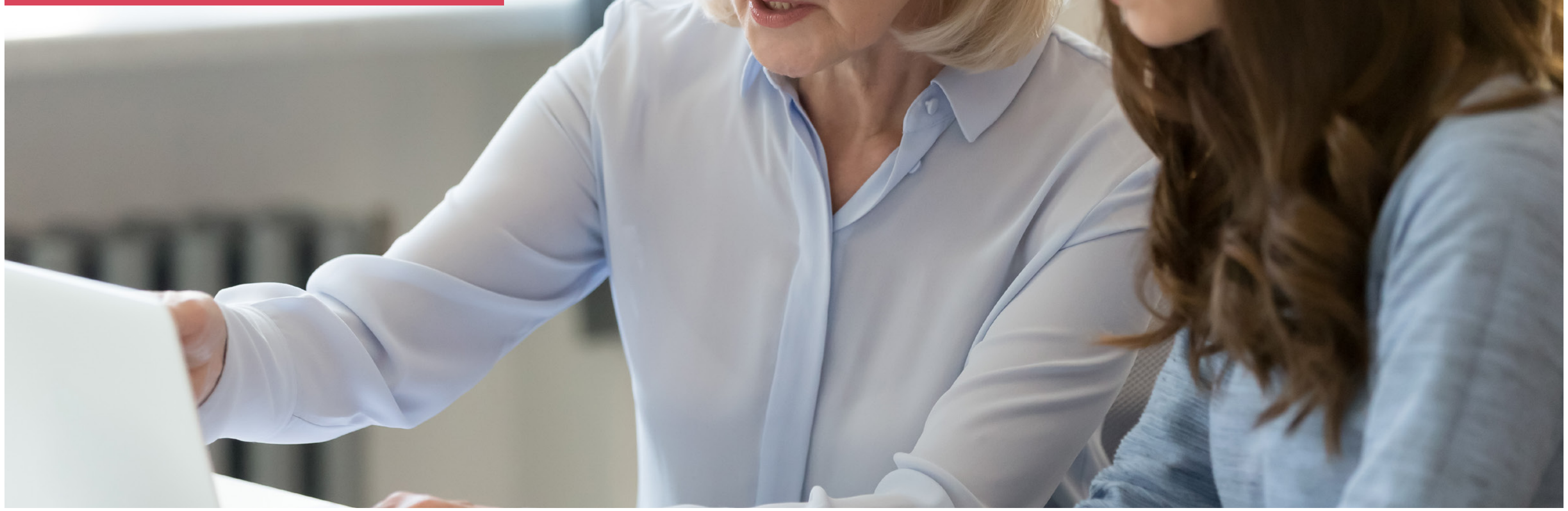
The Parliament also introduced a new basis for the levy of Swiss withholding tax on manufactured or compensation payments made on Swiss underlyings. This new rule shall apply to both domestic and foreign parties paying out such payments. Furthermore, the current reform will also strengthen and stimulate the securities and asset management business by abolishing Swiss Transfer Stamp Tax on domestic bonds and on the issuance of specific foreign money market funds. The withholding tax on dividends remains unchanged. The law approved by Swiss Parliament is still subject to facultative referendum, which is likely to be called by the socialist party.

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

PwC observation:

With the withholding tax reform, the Parliament is making a new, promising attempt to strengthen Switzerland's attractiveness as an issuing location of bonds and for the establishment of group financing activities and finance hub. If no referendum is initiated, the abolishment of WHT on Swiss bonds should be effective beginning January 1, 2023.

However, a referendum may be called and a Swiss public vote may be required. Accordingly, referendum period has to be monitored during 2022.



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Administrative

France

French tax authorities publish guidelines on new anti-hybrid provisions

France's Finance law for 2020 introduced, for financial years beginning January 1, 2020, new anti-hybrid provisions implementing the ATAD II directive. These provisions deny the deduction of payments, expenses, or losses in the following situations, when occurring between related parties:

- A payment is deducted by the debtor without being included in the tax result of the beneficiary because of a hybrid mismatch between two jurisdictions;
- The same payment, expense or loss is deducted in France and in another jurisdiction.

On December 15, 2021, tax authorities published their guidelines on these anti-hybrid rules. The main clarifications relate to the treatment of foreign group consolidations, the timing of inclusion, the concept of imported mismatches, and safeguard rules in the case of double deductions.

PwC observation:

The guidelines expressly indicate that MNEs should prepare robust documentation for tax authorities in the case of a tax audit. The absence of hybrid mismatch may in particular be demonstrated through accounting documentation, tax returns and ad hoc documentation prepared by the taxpayer or counsel.

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Nigeria

The Nigerian Tax Authority now has the powers to assess income tax on the turnover of foreign digital companies

The recently released Finance Act 2021 introduces a provision that gives the Federal Inland Revenue Service (FIRS) the powers to tax foreign digital companies on a turnover basis.

The Companies Income Tax Act (CITA) empowers the FIRS to assess companies to tax on a 'fair and reasonable' percentage of their turnover, if such businesses have no or very low assessable profits which, in the FIRS opinion, are less than expected. This is often referred to as the 'deemed profits' basis. In practice, a 20% margin is deemed on turnover and subjected to CIT at 30% (resulting in an effective rate of 6% of turnover).

Prior to enactment of Finance Act 2021, this provision did not technically apply to Non-Resident Companies (NRCs) that create a digital Significant Economic Presence (SEP) in Nigeria. The recent amendment now extends this provision to Digital SEPs.

PwC observation:

The taxation of the digital economy remains a focus area for the Nigerian government as a means of revenue generation.

Following this amendment, there likely would be increased tax disputes between foreign digital companies and the FIRS, as the local laws do not clearly define the parameters for determining if the assessable profits declared are less than expected, nor does the law define the reasonable percentage that would be applied on turnover.

Affected stakeholders likely will engage with the FIRS for a lower 'fair and reasonable' rate for Digital SEPs, different from the 20% that has been historically used.

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Judicial

France

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

French tax authorities challenged the royalty rates that a French taxpayer charged to its Indian and Brazilian subsidiaries because they were lower than those invoiced to other subsidiaries in similar transactions.

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

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

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

PwC observation:

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

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Canada

Supreme Court of Canada finds no misuse/abuse of tax treaty

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

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

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

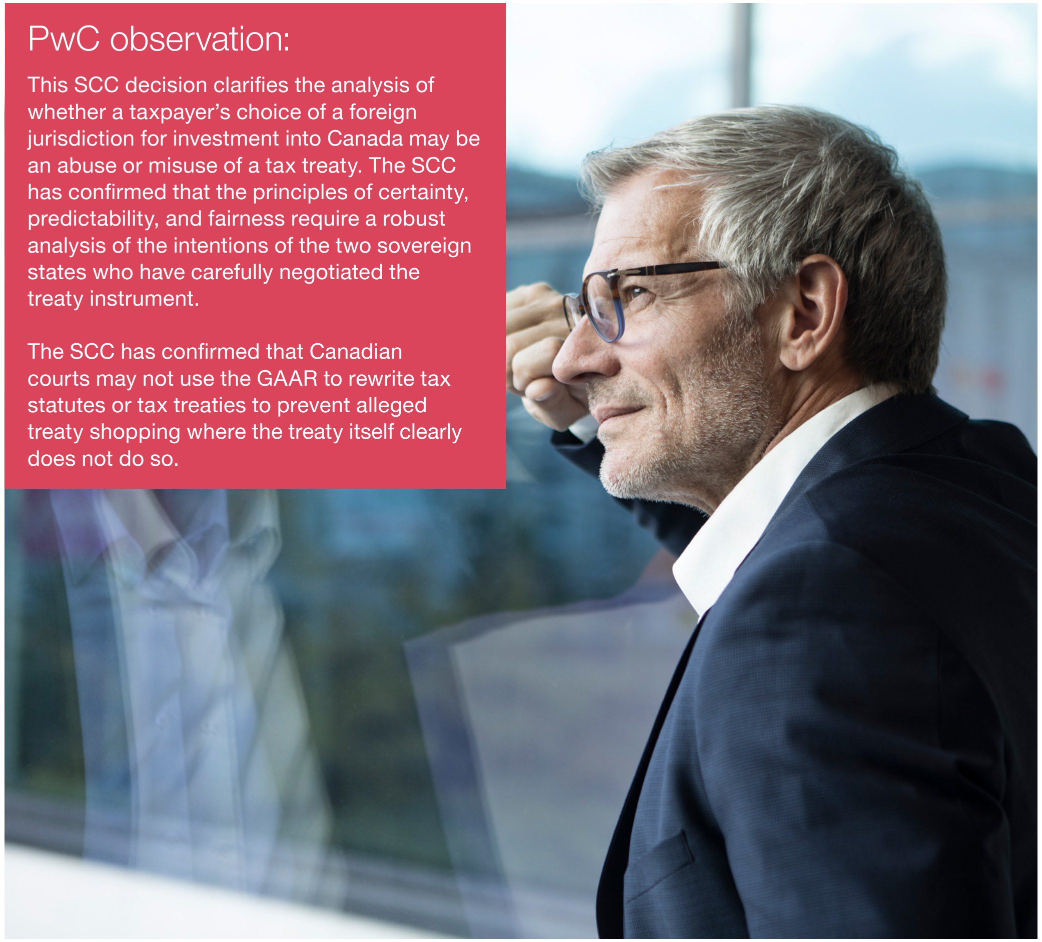
In its decision, the SCC dismissed the Minister's appeal, finding that, while the GAAR acts to bar abusive tax avoidance transactions, including those in which taxpayers seek to obtain treaty benefits that were never intended by the contracting states, the GAAR cannot be used to fundamentally alter the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

For more information on the SCC decision, see our **PwC Insight.**

PwC observation:

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

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



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OECD/EU

OECD

OECD releases Pillar Two 15% minimum effective tax rate Model Rules

The OECD released the long-awaited Pillar Two 15% minimum effective tax rate Model Rules **(see here)** on 20 December, just days before the expected release of a draft EU Directive on minimum taxes. As set out in the October 8, 2021 Statement by the OECD/G20 Inclusive Framework (IF), these Model Rules are the first of three expected sets of guidance: the Model Rules; an explanatory Commentary, expected in January; and a more detailed Implementation Framework, expected in the middle of 2022 at the earliest.

These Model Rules cover the income inclusion rule (IIR) and undertaxed payments rule (UTPR), collectively referred to as 'GloBE.' More detail on the other part of Pillar Two, the subject to tax rule (STTR) will not be made public until 2022. It has been reiterated that the aim is for Pillar Two to be brought into law in 2022, to be effective in 2023, with the UTPR to come into effect in 2024.

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

PwC observation:

For the first time, taxpayers have a clearer outline of the Model Rules – although still with much more detail to be provided next year. What is also clear, however, is how complex the rules will be, and how difficult they will be to comply with. While a multitude of issues still need further clarification, companies are urged to address how to organise for compliance – bearing in mind, of course, that further clarity may only come with the Implementation Framework in mid-2022.

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European Union

EU Commission releases draft Directive proposing measures to prevent the misuse of shell entities for tax purposes

The European Commission (EC) has published the **text of a draft Directive** laying down rules to prevent the misuse of shell entities for tax purposes and to amend Directive 2011/16/EU on Administrative Cooperation (DAC). This proposed Directive, published on December 22, provides indicators of minimum substance for undertakings in Member States and rules regarding the tax treatment of those undertakings that do not meet the indicators.

The proposed Directive would apply to all undertakings that are considered tax resident and are eligible to receive a tax residency certificate in a Member State (subject to some specific exclusions), including SMEs, partnerships, trusts and other legal arrangements. It is likely to result in additional reporting requirements and in some cases, additional tax liabilities for those impacted.

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

PwC observation:

Given the wide scope of this proposed Directive, it likely will have a large impact on both commercial and personal undertakings that are in scope. Given the purpose of the proposal, the EC has made no exclusion of the groups within the scope of the OECD's Pillar Two Model Rules that meet the €750 million revenue threshold. While this proposed Directive may work well in limiting the use of shell entities for tax avoidance and evasion, it will create an added layer of complexity that all EU resident, and many non-EU resident, entities will need to consider.

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European Union

European Commission's Directive proposal on implementing Pillar Two 15% minimum effective tax rate in the EU

On December 22, 2021, the European Commission (EC) published its **proposal** for a Council Directive "on ensuring a global minimum level of taxation for multinational groups in the Union" (Draft Directive) aimed at implementing the OECD Pillar Two Model Rules on a 15% minimum effective tax rate in the EU Member States.

The Draft Directive closely follows the OECD Model Rules, which set out the rules of the so called Income Inclusion Rule (IIR) and Under-taxed Payment Rule (UTPR). However it departs from the Model Rules "with some necessary adjustments, to guarantee conformity with EU law." The major key differences are:

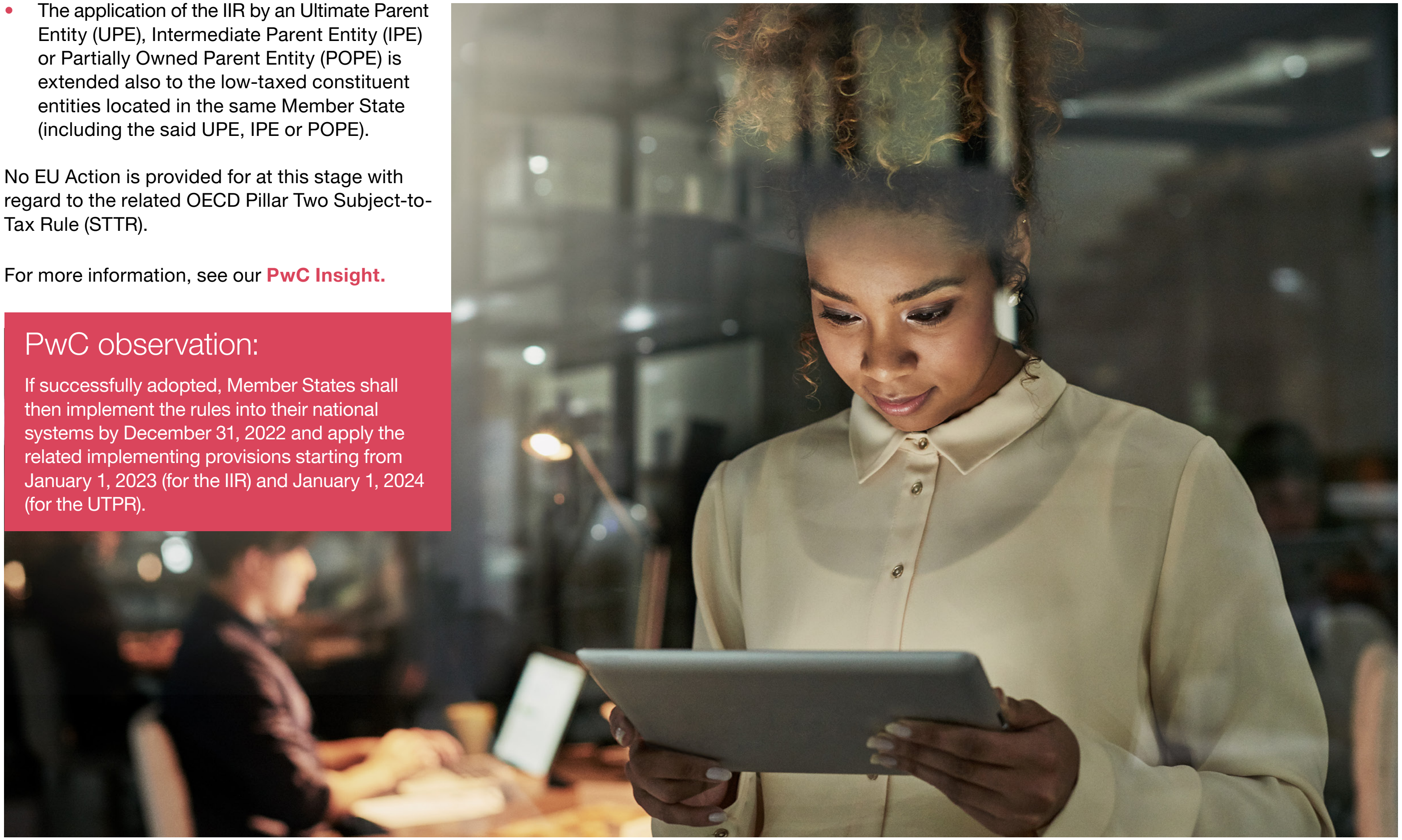
- There is an extension of the IIR to 'large-scale' purely domestic groups with consolidated revenues of at least EUR 750 millions in at least two of the four preceding years (however,transitional rules provide for a zero-rate application of the top-up tax due for the first five years of application of the rule);
- The application of the IIR by an Ultimate Parent Entity (UPE), Intermediate Parent Entity (IPE) or Partially Owned Parent Entity (POPE) is extended also to the low-taxed constituent entities located in the same Member State (including the said UPE, IPE or POPE).

No EU Action is provided for at this stage with regard to the related OECD Pillar Two Subject-to-Tax Rule (STTR).

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

PwC observation:

If successfully adopted, Member States shall then implement the rules into their national systems by December 31, 2022 and apply the related implementing provisions starting from January 1, 2023 (for the IIR) and January 1, 2024 (for the UTPR).



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Treaties

Cyprus

Amending protocol to Cyprus – Germany tax treaty enters into effect

The amending protocol to the Cyprus – Germany tax treaty, signed on February 19, 2021, entered into force on December 8, 2021 and became effective as of January 1, 2022.

The protocol introduces, among other items, the minimum standards of the OECD BEPS action items. The amendments affected by the Protocol include:

- The replacement of the wording in the Preamble of the tax treaty;
- The alignment of 'Article 7 Business Profits' with the OECD Model Tax Convention;
- The introduction of a Principal Purpose Test (PPT) through the pre-existing Article 27 'Entitlement to Benefits'.

PwC observation:

The main purpose of the Protocol to the existing Cyprus – Germany tax treaty is to introduce the minimum standards of BEPS actions. Taxpayers should consider the Protocol's effects on their current and future investment plans.

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Cyprus

Cyprus-Jordan sign first-time tax treaty

Cyprus and Jordan signed a first-time tax treaty on December 17, 2021. The tax treaty is based on the OECD Model Convention for the Elimination of Double Taxation on Income and on Capital, and on the UN Model Tax Agreement, and incorporates all the minimum standards of the OECD BEPS project.

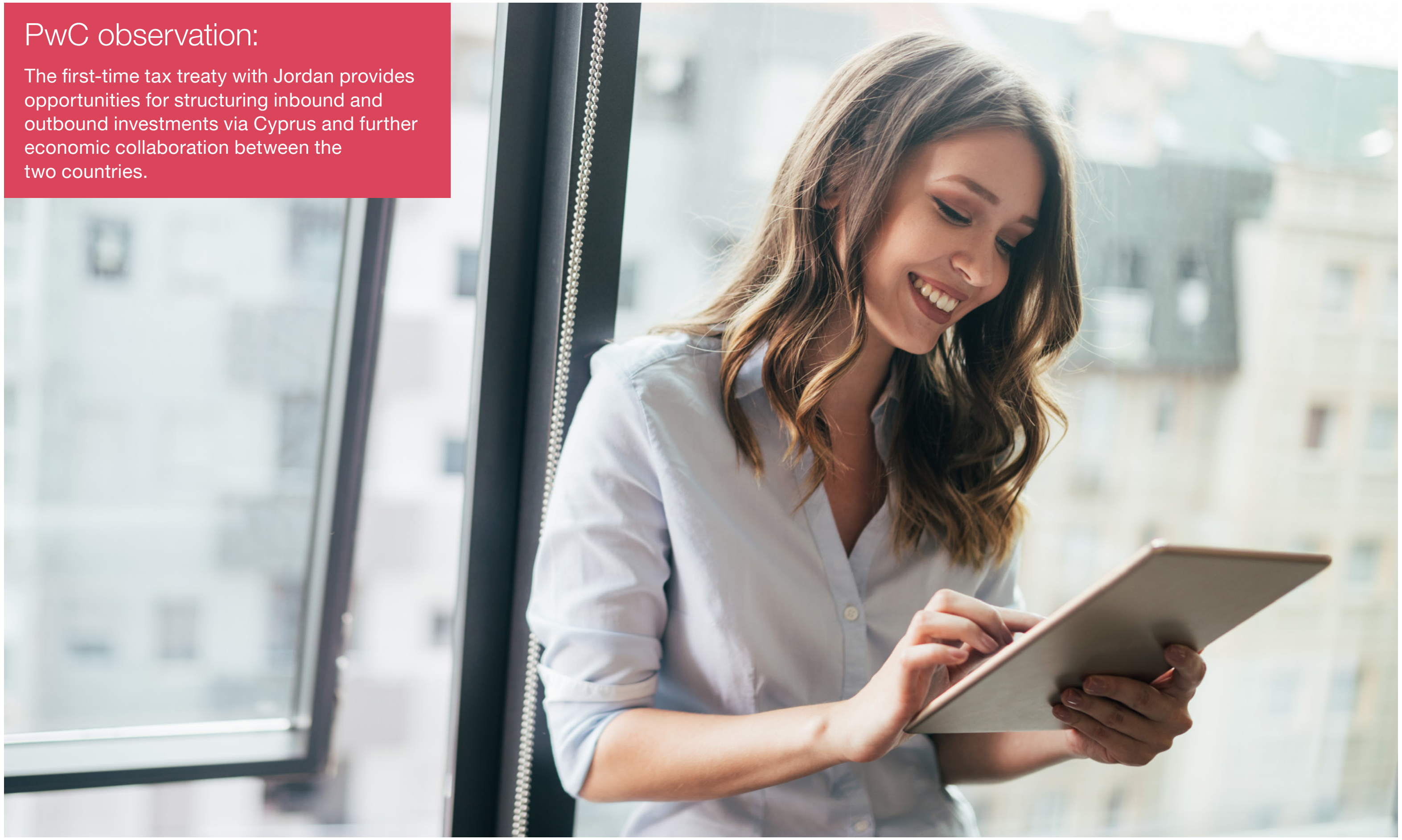
As per the tax treaty, a maximum 5% WHT rate applies on dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends. In all other cases a maximum 10% WHT rate applies on dividends.

Moreover, a maximum 5% WHT rate applies on interest payments and a maximum 7% WHT rate applies on royalty payments and fees for technical services.

Cyprus and Jordan must each now undertake certain legal ratification steps in order for the tax treaty to enter into force.

PwC observation:

The first-time tax treaty with Jordan provides opportunities for structuring inbound and outbound investments via Cyprus and further economic collaboration between the two countries.



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Netherlands

Tax treaty between Russia and the Netherlands terminates

The tax treaty between Russia and the Netherlands is terminated as of January 1, 2022.

Action item: The main consequence of the termination is that Russia can levy (higher) withholding taxes on outbound dividend, interest and royalty payments. These (higher) withholding taxes are not creditable in the Netherlands, due to the application of the Dutch participation exemption and could lead to a higher tax burden. Even when the Dutch participation exemption is not applicable, the Russian withholding tax will not be creditable in the Netherlands based on a unilateral Dutch decree, assuming Russia is not designated as an OECD developing country.

In addition, the termination of the tax treaty will have consequences for application of the Dutch dividend withholding tax (DWHT) exemption. Since having a tax treaty containing a dividend article in place is a requirement for the application of the Dutch DWHT exemption, the exemption may no longer apply for dividends paid to Russian companies (if up the chain there are only Russian entities). As such, these dividends should be subject to 15% Dutch DWHT.

Finally, under the terminated treaty, a building site or construction or installation project would only constitute a permanent establishment (PE) in Russia if it lasts more than 12 months. Due to the tax treaty's termination, a building site or construction or installation project will constitute a PE in Russia immediately (and may lead to compliance obligations in Russia from the start of the project). The profits of a PE in Russia will however be exempt under Dutch domestic law.

For more information, please see our PwC publication and the **recent webinar here.**

PwC observation:

Taxpayers should review all structures where a Dutch company holds shares in a Russian company, shares are held by Russian shareholder(s), and corporate structures where a Russian (withholding) tax was reduced on the basis of the Netherlands – Russia tax treaty.

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Spain

Spain – Netherlands tax treaty under review

The Dutch government published a parliamentary paper on October 21 2021, announcing a review of its tax treaties with the Philippines, Spain, Vietnam and Zimbabwe.

This would be the first review to the Spain – Netherlands tax treaty The new treaty is expected to incorporate some of the MLI provisions, and it likely will include a real estate clause in the taxation of capital gains.

PwC observation:

MNE investing in Spanish real estate rich companies through an intermediate Dutch entity will need to revisit their corporate structure in advance of the expected changes in the Spain – Netherlands tax treaty.

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Spain

OECD Multilateral Instrument

On September 28, 2021 Spain deposited its instruments of ratification for the MLI Convention thus underlining its commitment to prevent the abuse of tax treaties and base erosion and profit shifting by multinational enterprises

The MLI will enter into force in Spain on January 1, 2022, bringing the total number of jurisdictions that have ratified the Convention to 67 out of 96. Nevertheless, it is not yet possible to determine the date on which the modifications will take effect, since Spain opted for the reservation provided for in article 35.7 of the MLI whereby, it must notify bilaterally to each state the completion of the ratification procedure.

PwC observation:

Foreign / Spanish MNEs should evaluate the covered tax agreements and matching provisions with Spain to determine the MLI's impact in the day-to-day operations. In addition, MNEs should consider their international corporate structure in order to determine whether any PPT / LOB clause(s) should be reviewed in light of the new framework.

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Spain

Spanish cabinet adopted an agreement on the termination of Spain-Turkmenistan tax treaty

The Spanish Council of Ministers adopted an agreement acknowledging Turkmenistan's notice of termination of the Spain-Turkmenistan tax treaty on June 29, 2021.

The tax treaty was signed on March 1, 1985 and has been effective in Spain since January 1, 1987. Spain continued to apply the tax treaty with Turkmenistan and included the treaty in its list of covered tax agreements to be amended by the MLI when it submitted its provisional list of reservations and notifications to the OECD in 2017.

Article 23 of the tax treaty provides that it may be unilaterally terminated, and Turkmenistan notified Spain on February 9, 1999, of its decision to terminate the treaty via Note Verbale 05/333. In accordance with the tax treaty's termination article, its provisions ceased to apply as of January 1, 2000.

PwC observation:

The adopted agreement will be sent to parliament for approval, and subsequently, a notice concerning the treaty's termination will be published in the Spanish Official Gazette

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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 amortisation
EC	European Commision
ECOFIN	EU Economic and Financial Affairs Council
EU	European Union
GAAP	generally accepted accounting principles

Acronym	Definition
HRMC	Her Majesty's Revenue and Customs
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
UTT	uncertain tax treatment
VAT	value added tax
WHT	withholding tax

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Corporate taxes

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