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International Tax News

April 2024

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Welcome

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Doug McHoney, PwC ITS Global Leader, hosts PwC specialists who share insights on issues and developments in the OECD, EU, US and other jurisdictions. Listen to the latest:

As the world turns: Macroeconomic trends

Doug McHoney is at PwC's International Tax Conference in Dana Point, California with Dr. Alexis Crow, PwC's Geopolitical Investing Practice Leader.

Pillar Two Data Strategy: Play ball!!!

Doug McHoney is with Anthony Sciarra, a Principal in PwC's Tax Reporting and Strategy Practice and the Global Pillar Two Data Strategy leader, to discuss the importance of a Pillar Two Data Strategy.

Douglas McHoney
Global Leader - International Tax Services Network
+1 314-749-7824
douglas.mchoney@pwc.com

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Legislation

Australia

Australia passes multinational law reforms

The Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Bill 2023 - which contains reforms to limit interest deductions under Australia's thin capitalisation regime - passed the Senate/Parliament with amendments. This clears the way for the following measures to apply:

- new rules on the disclosure of information about subsidiaries by Australian public companies (listed and unlisted) in their annual financial reports, effective for financial years commencing on or after 1 July 2023
- new thin capitalisation rules, applicable to income years commencing on or after 1 July 2023
- debt deduction creation rules, applicable to income years commencing on or after 1 July 2024.

Many taxpayers were already nine months into the first year of these thin capitalisation changes. With the form of the rules finally confirmed, taxpayers who have not yet assessed the rules' impact should do so without further delay. Such assessment should include:

- review the capital structure and model the impact of the changes on the tax position
- consider eligibility for the group ratio test or third-party debt test; if eligible, understand the different outcomes under these tests
- maintain transfer pricing documentation to confirm that both the interest rate and the quantum of cross-border borrowings are arm's length, and
- ensure key stakeholders have been briefed.

Michael Bona
Brisbane
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Brisbane
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Legislation

Australia

Australia's Pillar Two draft legislation response

To give effect to Australia's response to the OECD/G20 two-pillar solution to address the tax challenges arising from digitalisation of the economy, Treasury released the following for comment:

- Exposure draft for primary legislation, which includes an Imposition Bill to impose the tax payable; an Assessment Bill to establish the liability and framework for the taxes; and a Consequential Amendments Bill, which contains consequential and miscellaneous provisions necessary for the administration of the global and domestic minimum taxes.
- Exposure draft for subordinate legislation, which includes the rules to implement the domestic framework for a multinational Top-up Tax including the specific computations.

The imposition of a Top-up Tax under the Income Inclusion Rule (IIR) and a Domestic Minimum Tax (DMT) is proposed to apply to fiscal years commencing on or after 1 January 2024, while the imposition of a Top-up Tax under the Undertaxed Profits Rule (UTPR) is proposed to apply from fiscal years commencing on or after 1 January 2025.

A discussion paper regarding the interactions with foreign income tax offsets, foreign hybrid entity, hybrid mismatch rules and controlled foreign company (CFC) rules was also released for comment.

Submissions on the exposure draft primary legislation and consultation paper closed 16 April 2024, while submissions on the exposure draft subordinate legislation close 16 May 2024.

Australia's introduction of a global and domestic minimum tax regime represents yet another significant development in the taxation laws applying to MNE groups. With the rules already in effect for some taxpayers, it is imperative that MNE groups that are within the scope of the regime consider the impact of the exposure draft legislation, determine the impact on their group and actively engage in consultation with the Treasury on the design of the final legislation.

Michael Bona
Brisbane
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Brisbane
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Legislation

Belgium

Belgian draft law amending the investment deduction and innovation income deduction regime

A draft law was submitted on 29 February 2024 covering (amongst other items) the investment deduction regime. The proposed changes to the investment deduction included in the preliminary draft law have largely been retained in the draft law submitted by the Belgian Government to parliament (see also our newsflash of 14 November 2023). The following items were adjusted from the preliminary draft:

- The new regime, as well as the correction related to the (partial) professional withholding tax exemption regime to determine the investment deduction basis would apply to investments made as of 1 January 2025.
- The increased 'thematic' investment deduction would not apply to companies in difficulty or by a company for which a recovery order is outstanding following a Commission decision declaring aid granted by Belgium unlawful and incompatible with the internal market.
- Moreover, the increased thematic deduction could only be applied to fixed assets for which no regional aid is requested (exceptions to be determined by the King).

A number of amendments were proposed on 22 March 2024, containing various tax provisions (including the proposed changes to the investment deduction regime), and several amendments related to the innovation income deduction (IID) regime.

According to the draft law, taxpayers would have the option not to offset part or the full amount of the IID (both the IID of the year itself and the amount carried forward) against the taxable basis, but to convert it into a non-refundable tax credit for innovation income. The tax credit for innovation income could be carried forward indefinitely and could be offset against corporate income tax of (one of) the following taxable periods. Taxpayers would have the choice for each tax period whether to apply this tax credit. This option would enter into force for the 2025 assessment year.

This is particularly relevant since Belgium introduced the GloBE / Pillar Two rules. As a result of this modification proposed by the draft law, companies would have the option to voluntarily increase their current tax, thereby raising their ETR, and subsequently carry forward any remaining unused portion of the IID as a non-refundable credit. If the ETR for a given taxable period exceeds 15%, the tax credit for innovation income could be utilized to reduce the ETR accordingly.

Pieter Deré
Belgium
+32 498 48 95 11
pieter.dere@pwc.com

Evi Geerts
Belgium
+32 492 74 39 70
e.geerts@pwc.com

Legislation

Belgium

Belgian draft law amending the law introducing a minimum tax for multinational companies

The German Bundesrat (Federal Council) passed the 'Growth Opportunities Act' on March 22. The legislative action introduces an investment grant for certain investments aiming to achieve energy savings and makes various adjustments to national and international tax law provisions. This tax insight focuses on the significant changes with respect to the rules limiting the interest deduction and changes to the German minimum taxation rules.
•The definition of Qualified Refundable Tax Credits has been extended to include Marketable Transferable Tax Credits. This category includes credits that can be sold to third parties instead of receiving a refund from the government.
•A provision to allow NME Groups to elect to include dividends related to Portfolio Shareholdings (where the Ultimate Parent Entity (UPE) holds less than 10% of the ownership interests in the other Constituent Entity).

- The definition of Qualified Refundable Tax Credits has been extended to include Marketable Transferable Tax Credits. This category includes credits that can be sold to third parties instead of receiving a refund from the government.
- A provision to allow NME Groups to elect to include dividends related to Portfolio Shareholdings (where the Ultimate Parent Entity (UPE) holds less than 10% of the ownership interests in the other Constituent Entity).
- A provision for a QDMTT Safe Harbour. The safe harbour, when applicable, eliminates the need for an MNE Group to undertake a second calculation under the GloBE Rules after completing the QDMTT calculation.
- The introduction of simplified calculations for Non-material Constituent Entities, which provide for an alternative method to determine GloBE Income or Loss, GloBE Revenue and Adjusted Covered Taxes of Constituent Entities.
- The implementation of the UTPR Safe Harbour. This is designed to provide transitional relief from the UTPR in the UPE jurisdiction during the first two years in which the GloBE Rules come into effect.
- Clarification regarding the treatment of Hybrid Arbitrage Arrangements under the Transitional CbCR Safe Harbour that arise from differences in the source of financial information or differences between tax and financial accounting treatment. Note that there is no need for an actual hybrid instrument or arrangement. In summary, the CbCR Safe Harbour will not be available to the extent that inconsistent treatment of a Hybrid Arbitrage Arrangement (if entered into after 18 December 2023) would otherwise result in a jurisdiction qualifying for the CbCR Safe Harbour.
- Additional guidance on the allocation of Blended CFC Taxes (GILTI).

In line with the OECD Model Rules on Pillar Two, all deferred tax assets and liabilities that are reflected or disclosed in the financial accounts of the Constituent Entities for a Transition Year may be taken into account in a GloBE ETR calculation. However, there is still some uncertainty about the 'reflected or disclosed' requirement. Therefore, the Belgian Minister of Finance clarified this point in a reply to a parliamentary question. In his reply, he stated that it is sufficient that the total amount of deferred tax assets and liabilities is included in the consolidated financial statements, provided that a more detailed overview for each separate Constituent Entity is available and can be provided in the event of a tax audit.

Pieter Deré
Belgium
+32 498 48 95 11
pieter.dere@pwc.com

Evi Geerts
Belgium
+32 492 74 39 70
e.geerts@pwc.com

Legislation

Canada

24 Federal Budget

The Canadian Federal Government released the budget (the 2024 Budget) for the coming year on April 16, 2024. The significant proposals include:

Increased capital gains inclusion rate: The 2024 budget proposes to increase the capital gains inclusion rate from 1/2 to 2/3 for dispositions after 24 June 2024 for corporations and trusts. For individuals, the capital gains inclusion rate is only increased to 2/3 for the portion of capital gains realized after 24 June 2024 in excess of an annual $250,000 threshold.

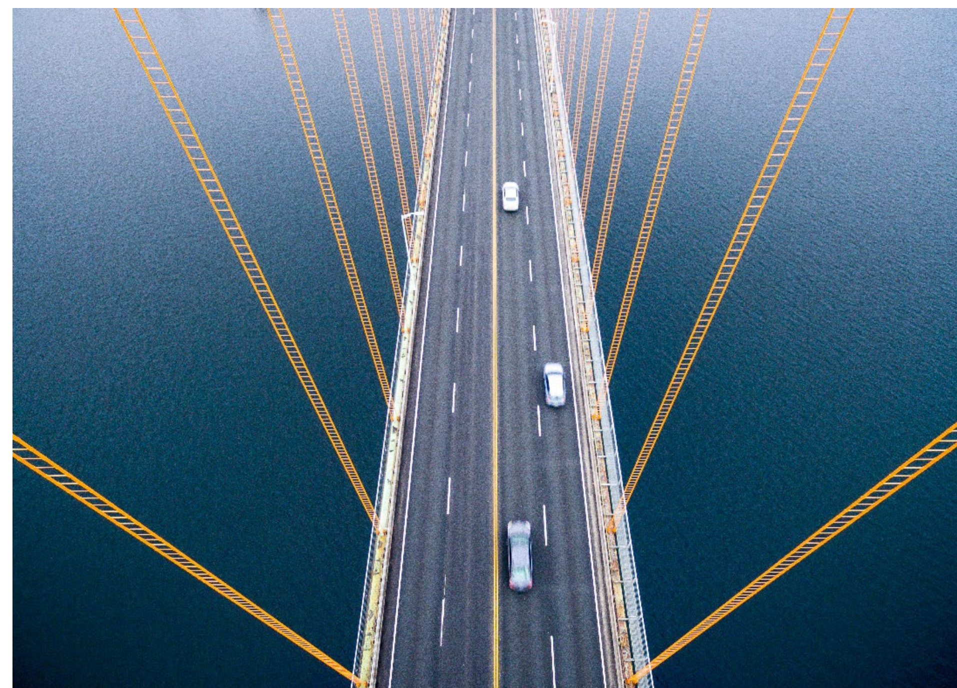
Relief from withholding for non-resident services performed: A person who makes a payment to a non-resident for services rendered in Canada is currently required to withhold 15% of the payment and remit that amount to the Canada Revenue Agency (CRA). This is intended to serve as a prepayment of tax that the non-resident may ultimately owe in Canada. Certain non-residents do not owe Canadian tax for these services, e.g., due to exemptions in tax treaties, or exemptions for specific activities like international shipping. In these circumstances, the CRA may provide an advance waiver from the withholding obligation for specific transactions, or the non-residents may apply for refunds of amounts that have already been withheld. The 2024 budget proposes to give the CRA legislative authority to grant single waivers that cover multiple transactions occurring over a specific time period, where certain conditions are satisfied. This measure will take effect upon royal assent of the enacting legislation.

Pillar One / Digital Services Tax: The budget reaffirms Canada's commitment to bringing Pillar One into effect as soon as a critical mass of countries is willing to participate. In the meantime, Canada is moving ahead with its plan to enact the Digital Services Tax (DST). The DST will take effect beginning in calendar year 2024, with the first year covering taxable revenues earned since 1 January 2022.

For more information on the proposals, see our Tax Insights - 2024 Federal Budget analysis. For a discussion of the DST, see our Tax Insights - Digital Services Tax: One step closer to becoming a reality.

As a result of the proposed increase in the capital gains inclusion rate, Canadian taxpayers that are expected to dispose of capital property in the near future should consider triggering a capital gain before 24 June 2024.

The 2024 Budget confirmed that the government will proceed with several previously announced measures including modernizing the General Anti-Avoidance Rule, the global minimum tax (Pillar Two), and legislative amendments to address hybrid mismatch arrangements. Multinational Groups should continue to monitor upcoming legislative releases in Canada on these measures.



Kara Ann Selby
Canada
+30 210 6874019
kara.ann.selby@pwc.com

Michael Black
Canada
+30 210 6874027
Michael.c.black@pwc.com

Legislation

China

China releases preferential CIT policies

Recently, China issued Cai Shui [2024] No.2, which provides a reduced CIT rate of 15% for eligible enterprises that engage in encouraged industries located in the Futian Bonded Zone of the Shenzhen park of Hetao Shenzhen-Hong Kong Science and Technology Innovation Cooperation Zone (HTCZ). This reduced rate is effective from 1 January 2023 to 31 December 2027.

In order to qualify for this reduced rate, the main business of the enterprise shall fall within the 'encouraged industries catalogue,' with more than 60% of the enterprise's total revenue derived from its main business. In addition, the management of the enterprise shall be located in a designated area of the Shenzhen Park of HTCZ, and implement substantial and comprehensive management and supervision over the production and operation, personnel, accounting and properties.

Among the Guangdong-Hong Kong-Macao Greater Bay Area cities/regions, Qianhai of Shenzhen, Hengqin of Zhuhai, and Nansha of Guangzhou also offer the 15% preferential CIT rate for enterprises in specific regions and industries. Substantive operations are a key requirement for enterprises to qualify for preferential CIT treatments in these special areas to prevent abuse of tax benefits by shell companies.

In addition to the CIT treatment, Cai Shui [2024] No.5 also provides Hong Kong residents working in the Shenzhen park of HTCZ an IIT exemption for income obtained from Shenzhen park that exceeds the tax burden in Hong Kong.

Long Ma
China
86 (10) 6533 3103
Long.ma@cn.pwc.com

Legislation

Hong Kong

Hong Kong introduces patent box tax incentive

The Inland Revenue (Amendment) (Tax Concessions for Intellectual Property Income) Bill 2024, which implements Hong Kong's highly anticipated patent box regime, was gazetted on 28 March 2024, following a one-month consultation conducted in September 2023. This comes on the heels of the various initiatives announced in the 2024/25 Budget intended to make Hong Kong a more attractive location for R&D and intellectual property (IP) trading (buying/selling and licensing) activities.

The Bill sets out the proposed design of the patent box regime and implements a concessionary tax rate of 5% for eligible IP income that is sourced in Hong Kong and derived from eligible IP developed through R&D activities effective beginning in the 2023/24 assessment year.

The government also adopted the following key recommendations:

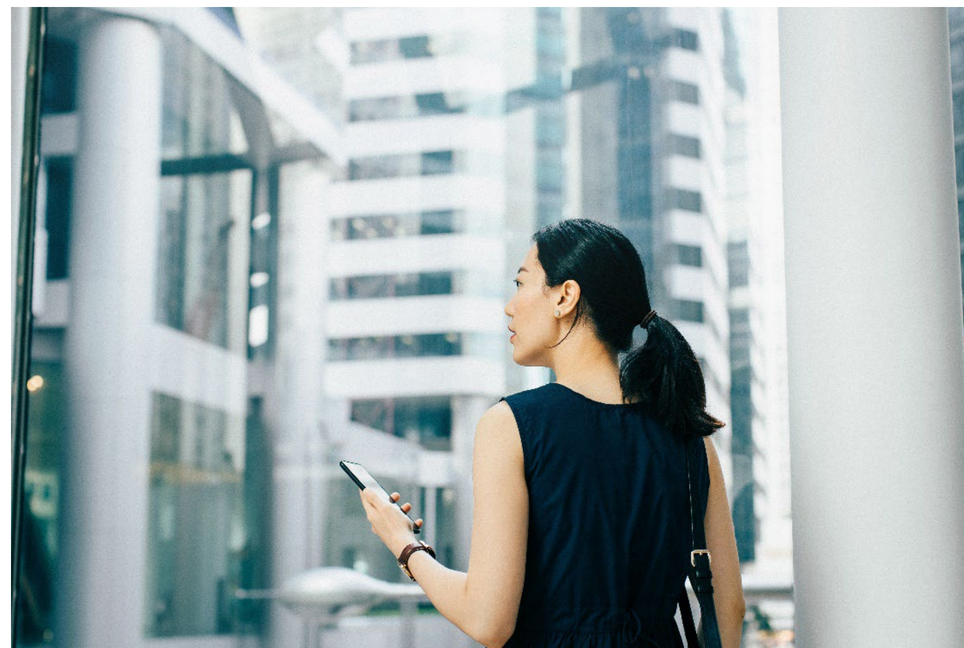
- Setting the concessionary tax rate at 5%; and
- Expanding the scope of eligible IP income to cover insurance, damages, or compensation derived in relation to eligible IP.

While other suggestions were not implemented, the introduction of the patent box represents a positive step towards bolstering Hong Kong's tax competitiveness in the context of R&D commercialization decisions. For more information see our PwC Tax Alert.

Charles Chan
Hong Kong
+852 2289 3651
charles.c.chan@hk.pwc.com

Overall, the proposed patent box regime aims to incentivize companies to base their R&D operations and patent commercialization activities in Hong Kong. Equally, the regime was designed broadly while adhering to the constraints of the OECD's nexus approach.

Taxpayers wishing to benefit from the patent box regime should evaluate whether they will be able to meet all the relevant conditions, consider their IP registration strategy, assess their level of eligible IP income and eligible IP expenditure, and ensure that relevant records are in place.



Legislation

Lithuania

Update on Pillar Two status

A project proposal for potential changes to the Law on Corporate Accountability was registered in the Parliament addressing the obligation for large multinational enterprises with revenue above EUR 750 million to prepare an additional, publicly available CIT report. However, neither the Tax Authorities nor the Ministry of Finance have published any information about a minimum Top-up Tax or any tax law changes.

While no changes have been registered in the tax law yet, Multinationals should continue to monitor and prepare for enactment of Pillar Two.

Ronaldas Kubilius
Lithuania
+370 612 89450
ronaldas.kubilius@pwc.com

Ingrida Kemežienė
Lithuania
+37068252535
ingrida.kemeziene@pwc.com

Monika Pašakinskienė
Lithuania
+370 690 25889
monika.pasakinskiene@pwc.com

Administrative

Australia

Draft taxation Determination on hybrid mismatch rules

ATO released draft Taxation Determination TD 2024/D1 which sets out the Commissioner's preliminary view on the following two separate but related issues on hybrid mismatch rules as to whether:

- hypothetical income or profits within the tax base of a country can be used to identify a 'liable entity' or entities in the country for the purpose of section 832-325 of the Income Tax Assessment Act 1997 (**ITAA 1997**), and
- a 'non-including country' for the purpose of subsection 832-320(3) of the 'hybrid payer' definition can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

The draft Determination outlines that the identification of a 'liable entity' or entities in a country in regard to income or profits for the purpose of section 832-325 can be based wholly on hypothetical income or profits within the tax base of the country. This will be necessary where, for example:

- an entity has not actually derived any income or profits in a particular period, or
- an entity has derived income or profits in a particular period, but no part of those income or profits are within the tax base of the country.

For purposes of subsection 832-320(3), a non-including country is a jurisdiction other than the country where the payee of the relevant payment is located or resides. Therefore, the laws of a jurisdiction other than the country where the payee is located or resides may fall for consideration in determining whether there is a hybrid payer within the meaning given by section 832-320.

The draft Determination also contains three illustrative examples.

Once finalised, the Ruling is proposed to apply both before and after its date of issue.

Michael Bona
Brisbane
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Brisbane
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Administrative

Italy

Certain Italian withholding tax on dividends paid to non-EU corporations may be eligible for a refund

Dividends paid by Italian companies to non-EU tax resident corporations are subject to a withholding tax (WHT) of 26%. If a tax treaty is applicable, the WHT may be lowered. According to the majority of tax treaties concluded by Italy, the lowered WHT ranges from 5% to 15%. Distributions of dividends from Italian-resident companies to Italian-resident corporate shareholders are subject to an effective taxation of 1.2%, while distributions to non-EU tax resident corporations are subject to higher taxation (WHT ranging from 5% to 26%). Such higher taxation may qualify as a restriction prohibited by the free movement of capital.

This type of restriction previously has been reviewed by the European Court of Justice (ECJ) in relation to the WHT treatment applied to dividend distributions made to EU corporations. This led the Italian Government to introduce in 2009 a reduced WHT of 1.2% for dividends paid to EU corporations subject to Corporate Income Tax ('Euro ritenuta'). Although there are no specific cases regarding Italy, the ECJ already has ruled on similar cases that higher WHT applied to dividends paid to non-EU resident taxpayers is in breach of the free movement of capital.

An opportunity may exist for taxpayers to file a refund claim for WHT higher than 1.2% incurred on dividends. Although the length of the process may vary depending on the outcome of the refund request and the Court's approach, it may represent an opportunity for tax savings without the risk of incurring penalties or sanctions.

For more information read our PwC Tax Insight.

Taxpayers should consider undertaking a factual analysis to ascertain the right to application of a 1.2% WHT with regard to its specific circumstances. This includes assessing the proper level of the non-EU corporation's economic substance (i.e., it must not be an artificial arrangement), as well as how the tax treaty relief applies.

Alessandro Di Stefano
Italy
+39 348 840 8195
Allesandro.di.stefano@pwc.com

Giuseppe Falduto
Italy
+1 646-464-3071
giuseppe.t.falduto@pwc.com

Claudio Valz
Italy
+48 519 504 755
claudio.valz@pwc.com

Administrative

United States

Extensive package of stock repurchase excise tax proposed regulations

Treasury and the IRS on 9 April issued two sets of proposed regulations on the excise tax on certain repurchases of corporate stock (the Excise Tax). The first set of proposed regulations addresses the application of the Excise Tax, while the second set of proposed regulations provides rules on procedure and administration. The proposed regulations affect certain publicly traded corporations that repurchase their stock or whose stock is acquired by certain specified affiliates.

Enacted as part of the Inflation Reduction Act of 2022, the Excise Tax is a nondeductible 1% tax imposed on the fair market value of any stock of publicly traded US corporations that is repurchased by the corporation or certain affiliates. There are limited exceptions provided where the Excise Tax does not apply. Repurchases occurring after 31 December 2022, generally would be subject to the proposed regulations, except with respect to certain repurchases and acquisitions of stock made after 31 December 2022, that were funded on or after 27 December 2022. If adopted, the proposed regulations would clarify the calculation of the Excise Tax, its application to certain transactions and other events, and the filing and payment requirements associated with the Excise Tax.

For more information see our PwC Insight.

Companies should consider whether to submit comments on these new proposed regulations. Comments on the application of the Excise Tax (the first set of proposed regulations) are due 60 days after the proposed regulations are published in the Federal Register. Comments on the procedure and administration of the Excise Tax (the second set of proposed regulations) are due 30 days after the proposed regulations are published in the Federal Register.

Julie Allen
United States
(703) 965-9353
julie.allen@pwc.com

Matt Lamorena
United States
(202) 215-6478
matthew.lamorena@pwc.com

Judicial

Mexico

Limitation on payments made to preferential tax regimes

The Mexican Income Tax Law (MITL) was amended in 2020 to include Article 28, Section XXIII, which limits the deduction of payments made by Mexican residents to foreign related parties, through structured arrangements whose income is subject to preferential tax regimes (PTRs), or which are used to pay to another entity that is subject to a PTR. This section notes the non-deductibility of payments made to preferential tax regimes between related parties, through structured arrangements that lead to hybrid mismatches.

An important exception to the non-deductibility rule exists when the payment derives from the recipient's business activity, and the recipient has, among other characteristics, the personnel and assets sufficient to carry out such business activity. Furthermore, the recipient must maintain and have formed its effective seat of management under the laws of a country with which Mexico has a broad exchange of information agreement in place.

This provision is generally clear in its intention but is difficult to interpret. From either a strict or broad interpretation, this provision can lead to different outcomes that create uncertainties. Thus, a taxpayer (that regularly makes payments to preferential tax regimes) filed a constitutional claim (*amparo indirecto*) claiming the amended provision breached various Constitutional principles (i.e., legal certainty, proportionality, equality, legality, reasonability), implies a burden to taxpayers, and violates the freedom of commerce & trade and the retroactivity principle.

The Judge of the first instance determined that the taxpayer did not have the grounds to challenge such tax reform; however, the taxpayer challenged the preliminary determination, and the case was brought to the Supreme Court of Justice (Supreme Court) for further analysis. The Supreme Court determined that the amended provision did not infringe any of the above-mentioned Constitutional principles. Therefore, such payments should be considered non-deductible unless the taxpayer complies with certain exceptional requirements.

This judicial ruling, since it was approved by the majority of four Justices, creates Jurisprudence, which will be binding for lower courts. The Tax Authorities are expected to apply this ruling during tax and transfer pricing audits.

Based on the ruling, taxpayers should analyze their payments made from Mexico to abroad, particularly those that could qualify as PTRs and that qualify as related parties under Mexican tax rules through structured arrangements or where there is a hybrid mismatch component. This could include payments made to LLCs, trusts, partnerships, or through cash poolings, regardless of their location. Moreover, payments made to the United States, European countries with participation exemption rules, and generally to jurisdictions with a special tax regimes or tax incentives that could reduce the effective tax rate, could fall into the definition of PTR as established in the MITL.

The Mexican tax authorities are expected to reject deductions and claim taxes based upon this recent Supreme Court resolution.

Marta Milewska
Mexico
+52 55 52636000
marta.milewska@pwc.com

Mario Alberto Gutierrez
Mexico
+52 55 5263 5849
mario.alberto.gutierrez@pwc.com

Fernando Lorenzo
Mexico
+52 55 3966 1817
fernando.lorenzo@pwc.com

Judicial

Mexico

Business profits: Court precedent

A lower court in Mexico ruled against the application of the 'business profits' concept (Article 7) under the Mexico – US tax treaty in January 2024. This court case may not have the same impact as the jurisprudence reported in our September 2023 International Tax News publication, but provides a clear insight to understand that the authorities will continue in the same line of thinking challenging the 'business profits' utilization of the tax treaties entered by Mexico.

In essence and in a simplified manner, Mexican tax argued that the term 'business profits' lacks a clear definition in Mexico's tax treaties and in the domestic law. Such broad and unspecified nature of the definition could create uncertainty for taxpayers, as it does not specify the types of income that should be considered as business profits, although there are valid arguments to challenge Mexican tax authorities' conclusion.

n this new lower tax court case, the tax authorities contended that the business profits article of the treaty should not apply to administrative services. They argued that this income should instead fall under the category of personal independent services according to Mexican domestic law, and therefore should not be interpreted as deemed business profit. It is important to remember that tax treaties signed by Mexico hold a higher hierarchical position than the federal law (e.g., Mexican Income Tax Law). Therefore, any interpretation made at the judiciary level must adhere to Mexico's obligation to respect its international covenants and avoid any violation of the treaties, known as a treaty override.

Over the years, lower tax court cases have addressed Mexico's interpretation of 'business profits' (Article 7) concept in relation to various types of foreign income, including technical assistance, personal independent services, advertising, and more. This recent lower tax court case associated with the application of tax treaties expands the range of cross-border payments that could be challenged by the Mexican tax authorities with a possible negative consequence that a higher withholding could be requested and collateral tax implications could be triggered (i.e., the deduction of the payment could be disallowed for income tax purposes in Mexico and VAT could be owed by the Mexican taxpayer from the non-deductibility of the payment).

Companies should assess their risk profile when it comes to the tax treaty application of the 'business profits' article since the typical expectation would be that no withholding should apply; however, the Mexican tax authorities are consistently scrutinizing the interpretation and concluding otherwise. Companies must carefully consider whether to continue withholding or to defend the application of the tax treaty. Businesses should act now to safeguard their financial interests and confirm that all arguments, documentation and formalities to seek protection against potential tax liabilities are in due shape and form.

Marta Milewska
PwC Mexico – TLS Lead Partner
+52 55 52636000
marta.milewska@pwc.com

Mario Alberto Gutierrez
PwC Mexico – ITS Lead Partner
+52 55 5263 5849
mario.alberto.gutierrez@pwc.com

Judicial

Netherlands

NL Supreme Court on interest deduction and finance costs

The Dutch Supreme Court, on 22 March, ruled in a case about interest deduction on shareholder loans and the tax treatment of financing costs (arrangement fees). The case concerns a private equity structure with which a company was purchased. According to the Supreme Court, the interest is not deductible to the extent that the structure for the purchase was set up to avoid a rule to restrict interest deduction (Article 10a of the Dutch Corporate Tax Act 1969).

In addition, the Supreme Court decided in this judgment that the one-off costs for taking out a loan may be charged directly to the result, unless this includes prepaid interest (in which case the costs must be capitalized and amortized over the term of the loan). According to the Supreme Court, you may therefore charge the costs to the result all at once in the year in which they are incurred, but you may also choose to activate the costs and amortize them over the term of the loan. Note that the one-off costs cannot always be (fully) deducted in the year in which they are incurred based on a different rule, namely the so-called earnings stripping measure.

For more information see our PwC Insight.

With this judgment, the Supreme Court has given substance to the possibility of testing interest deduction against the Taxpayer's intention to evade the law (*fraus legis*). More specifically, it has been clarified when there is a set of legal acts that have been concluded with the overriding intention of defeating 'relatedness' within the meaning of Article 10a of the Corporate Tax Act 1969.

Article 10a CIT Act aims to prevent the Dutch tax base from being eroded by artificial creation of interest charges within a group of taxpayers. Who belongs to that group is determined based on the 'relatedness' criterion. In short, this involved all persons and companies with a legal or economic interest of 1/3 or more. However, even if the structure tries to (artificially) avoid this connection, there may be an interest deduction limitation. After years of uncertainty about this, the Supreme Court has now made this clear.

Jeroen H Peters
Netherlands
+31 6 20035734
jeroen.h.peters@pwc.com

Brenda Coebergh
Netherlands
+31 (0)65 396 57 07
brenda.coebergh@pwc.com

Vassilis Dafnomilis
Netherlands
+31 6 13998729
vassilis.dafnomilis@pwc.com

Judicial

Netherlands

Offsetting WHT only in developing countries EU-compliant

The Dutch Supreme Court has ruled that Article 36 of the 2001 Unilateral Decree for the Avoidance of Double Taxation is not contrary to the free movement of capital. According to Article 36 of the Decree, a credit against Dutch corporate income tax is provided for dividend, interest, and royalty income paid from a payer resident in a developing country and subject to tax there, whether or not at the source.

The developing countries designated in Article 6 of the Unilateral Decree are countries with which no double taxation treaty has been concluded with the Netherlands (i.e., non-treaty countries). The **designated developing countries** for 2023 are Afghanistan, Angola, Belize, Benin, Bhutan, Bolivia, Burkina Faso, Burundi, Cameroon, Cambodia, Cape Verde, the Central African Republic, Chad, Colombia, the Comoros, Congo, Congo (Dem. Rep.), Djibouti, El Salvador, Eritrea, Eswatani (formerly Swaziland), Gambia, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Iran, Iraq, Ivory Coast, Kenya, Kiribati, Korea (Dem. People's Rep.), Kosovo, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Micronesia, Mongolia, Mozambique, Myanmar, Nepal, Nicaragua, Niger, the Palestinian Autonomous Areas, Papua New Guinea, Peru, Rwanda, Samoa, São Tomé and Principe, Senegal, Sierra Leone, the Solomon Islands, Somalia, South Sudan, Sudan, Syria, Tajikistan, Tanzania, Timor-Leste, Togo, Tokelau, Tuvalu, Vanuatu and Yemen. The 2023 list is identical to the list for 2022.

For royalties received from countries that are (i) not designated as developing, and (ii) with which no tax treaty exists, the Decree provides that taxes withheld on such income are not creditable against other taxes, but instead constitute a deductible expense.

For more information see our PwC Insight.

If your organisation receives dividend, interest or royalties from a company residing in a non-tax treaty and designated developing country, and taxes are imposed there, you're eligible to claim (under conditions) a credit against the Dutch corporate income tax for taxes paid abroad. A distinction is therefore made between developing countries and those that are not. The Supreme Court has established that this difference does not conflict with EU law.

Jeroen H Peters
Netherlands
+31 6 20035734
jeroen.h.peters@pwc.com

Brenda Coebergh
Netherlands
+31 (0)65 396 57 07
brenda.coebergh@pwc.com

Vassilis Dafnomilis
Netherlands
+31 6 13998729
vassilis.dafnomilis@pwc.com

Treaties

Australia

Consultation on tax treaty network expansion

The Australian Government is entering into tax treaty negotiations with Brazil and Ukraine to expand its treaty network. The government also is revising existing tax treaties with New Zealand, South Korea and Sweden. Treasury requests= submissions from stakeholders on the key outcomes Australia should seek in negotiating these tax treaties and any other issues related to Australia's tax treaty network.

Expanding the tax treaty network helps provide taxpayers with more certainty. Taxpayers potentially affected should follow these developments.

Michael Bona
Brisbane
+61 (0) 405 136 010
michael.bona@pwc.com

Chris Stewart
Brisbane
+61 (0) 407 005 521
chris.d.stewart@pwc.com

Treaties

India

India invokes MFN clause under Spain treaty, issues protocol to Mauritius treaty

The Mauritius Government cabinet, on 23 February 2024, agreed to sign a protocol to amend the tax treaty between Mauritius and India in order to comply with the OECD BEPS minimum standards.

In addition, India's Ministry of Finance recently issued a notification invoking the most-favoured nation (MFN) clause under the India-Spain tax treaty. As per the notification, the Indian Government modified the India–Spain tax treaty by importing a lower tax rate of 10% for royalties and fees for technical services (FTS) from the India–Germany tax treaty.

For more information read our PwC Tax Insight.

While more details are awaited regarding the India-Mauritius treaty, this will likely result in the principle purpose test or similar test becoming part of the India–Mauritius tax treaty.

The automatic applicability of the MFN clause has been a subject matter of dispute. The Central Board of Direct Taxes clarified in February 2022 that, among other things, issuance of a notification by the Indian Government is a prerequisite for applying the MFN clause in a tax treaty. Subsequently, the Supreme Court of India held that a notification is a necessary and mandatory condition to give effect to a tax treaty or any protocol that has the effect of altering the existing provisions of law. A review petition against the Supreme Court judgment is pending.

The present MFN notification is in line with the findings of the Supreme Court and the benefit of a lower tax rate under the India–Germany tax treaty, i.e., a tax rate of 10% is now extended to the taxpayers on royalties and FTS taxable under the India–Spain tax treaty.

Sriram Ramaswamy
Partner on Secondment
+1 646-901-1289
ramaswamy.sriram@pwc.com

Chengappa Ponnappa
India
+91 98451 88834
chengappa.ponnappa@pwc.com

EU/OECD

European Union

European Commission consults on the application of the Tax Disputes Resolution Directive

The Directive on Tax Dispute Resolution Mechanisms (Directive (EU) 2017/1852) came into force on 1 July 2019. By providing i) mandatory and binding dispute resolution mechanisms with improved access and increased involvement for the taxpayer, ii) clear and shorter timeframes and iii) an obligation for the EU Member States to reach a solution, the Directive provides a significant improvement of the existing rules on the avoidance of double taxation. This can happen, for example, due to a mismatch in domestic rules or different interpretations of the transfer pricing rules in a tax treaty. For more information on the Directive, see our PwC EUDTG Alert.

The deadline for submission to this consultation is 10 May 2024. Note that this consultation is mandatory, as the Directive mandates that the European Commission evaluate its application. Should the need arise, potential legislative amendments to the Directive could be tabled by the Commission. However, the prevailing sentiment suggests little anticipation for substantial amendments to the Directive.

Edwin Visser
Netherlands
+ 31 88 792 36 11
edwin.visser@pwc.com

Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

Contact us

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

Douglas McHoney
Global Leader - International Tax Services Network
+1 314-749-7824
douglas.mchoney@pwc.com

Geoff Jacobi
International Tax Services
+1 202 262 7652
geoff.jacobi@pwc.com

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