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# 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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# Legislation

## Canada

### 2022 Federal Fall Economic Statement

The Canadian federal government released the 2022 Federal Fall Economic Statement (the economic statement) on 3 November. The economic statement did not contain any proposed changes to the corporate tax rates in Canada.

The economic statement proposes to introduce a corporate-level 2% tax that would apply on the net value of all types of share buybacks by public corporations in Canada; this would be similar to a recent measure introduced in the United States. The details of this new tax will be announced in the 2023 federal budget, and the tax would come into force on January 1, 2024.

The economic statement provided a brief update on Pillar One (reallocation of taxing rights) and Pillar Two (global minimum tax).

Pillar One: The economic statement states that significant progress has been made in establishing the technical rules of the new system and the OECD continues to conduct public consultations. The Inclusive Framework's intention is to complete multilateral negotiations so that the treaty to implement Pillar One can be signed in the first half of 2023, with entry into force in 2024.

Pillar Two: The economic statement affirms Canada's commitment to the global minimum tax and that Canada continues to work closely with its international partners to develop a coordinated implementation framework, to be implemented in a timely manner.

For more information on the economic statement, see our Tax Insight 2022 Federal Fall Economic Statement – Tax highlights.

In addition to the economic statement, the Department of Finance released significant revisions to the draft excessive interest and financing expense limited (EIFEL) rules, based on comments received following the initial consultation period last spring. The proposed EIFEL rules will limit the amount of net interest and financing expenses that certain taxpayers may deduct in computing their taxable income, based on a fixed percentage of earnings before interest, taxes, depreciation and amortization. The rules are now proposed to be effective for taxation years beginning after September 30, 2023 (previously for taxation years beginning after 2022).

For more information on the changes to the EIFEL rules, see our Tax Insight, Updated legislation — Excessive interest and financing expenses limitation (EIFEL) regime.

While the economic statement provided an update on Pillar One and Pillar Two, it is still unclear when these rules will come into force in Canada. The deferral of the commencement date of the EIFEL rules is a welcome development for taxpayers with taxation years starting between January 1, 2023 and September 30, 2023. Although the application of the rules has been deferred, taxpayers should use this additional time to prepare for their impact and consider restructuring their financing arrangements to limit the adverse implications of the EIFEL rules.

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# Legislation

## Australia

### Australia's Federal Budget includes significant changes for multinationals

The Australian Federal Budget, released on 25 October, announces Australia's fiscal outcomes and spending initiatives, as well as significant proposed tax changes. The fiscal outcomes show that Australia's economy remains robust. The tax changes and spending measures could significantly impact businesses investing into Australia. These include proposed amendments to the thin capitalization regime, restrictions on the deductibility of cross-border payments for intangibles, increased transparency obligations for multinational groups, and increased budget for the Australian Taxation Office (ATO) to undertake compliance activities directed toward multinational groups.

For more information see our PwC Insight.

Taxpayers should monitor the progress of the announced tax measures and consider how these measures might impact existing Australian operations or prospective investments. The multinational tax measures generally would apply to income tax years beginning on or after July 1, 2023, or to payments made on or after July 1, 2023. Before the effective date of these measures, draft legislation and ongoing consultation are expected.

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# Legislation

## Belgium

### Belgian budget includes temporary minimum tax; abolishes NID for some; amends FTC on royalties

The Belgian Government recently agreed on the federal budget. Key topics that shaped the agreement include addressing the ongoing energy crisis, limiting the budgetary deficit, and stimulating employment. The budget contains several important tax, energy, and business competition measures.

The tax provisions would:

- Enact a temporary Belgian minimum tax. After the delay in implementing the OECD's Pillar Two global minimum tax for one year (expected entry into force on January 1, 2024 instead of January 1, 2023), Belgium will introduce a one-time measure that reduces the use of the tax assets in the current 'basket system' from 70% to 40% (above the EUR 1 million minimum threshold). This measure would apply until Belgium implements the Pillar Two Model Rules.
- Abolish the notional interest deduction (NID) regime for large companies. The regime would remain available for small and medium enterprises.
- Change the lump sum foreign tax credit on royalties of 15% to a credit based on the actual foreign withholding tax applied.

For more information see our PwC Insight.

The agreed-upon measures now must be enacted into law and go through the required parliamentary procedure before they can be published into the Official Gazette (Belgisch Staatsblad/Moniteur belge) and enter into force on January 1, 2023.

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# Legislation

## China

### China expands 'Encouraged Catalogue' to facilitate foreign investment

China issued the Encouraged Industry Catalogue for Foreign Investment ('2022 Catalogue') on October 28, 2022. Similar to the 2020 Catalogue, the 2022 Catalogue comprises two sub-catalogues: the revised catalogue of encouraged industries for foreign investment nationwide and the revised catalogue of preferential industries for foreign investment in central and western regions. Compared to its 2020 version, 167 items were revised and 239 items were newly added, including 39 items for the sub-catalogue nationwide and 200 items for the sub-catalogue in central and western regions.

- The 2022 nationwide catalogue continues to encourage foreign investment in manufacturing sectors to upgrade China's industrial and supply chains. The modifications of the national items mainly target promoting the integration of services and manufacturing sectors. For instance, new or revised national items in the catalogue cover sectors including aviation equipment manufacturing, key industrial components used in autonomous driving, and high-performance raw materials. They also cover advanced integration technologies and services for low-carbon environmental protection, energy and water conservation, professional design, human resources management, etc.
- The regional catalogue has added or expanded relevant items catering to the specific advantages of China's central, western, and north-eastern regions, such as labour force availability, distinctive resources, and need for investment.

The 2022 Catalogue will become effective 1 January 2023, when the 2020 Catalogue will be abolished. Foreign-invested enterprises (FIEs) in the listed sectors will enjoy favourable treatments, including tariff exemptions on imported equipment, access to preferential land prices, and looser regulation of land uses. In addition, qualified FIEs in the western regions and Hainan province have a reduced CIT rate of 15%.

The government used the 2022 Catalogue to promote foreign investment. It will help boost investment in key industries like advanced manufacturing, high tech, modern services and environmental protection. The 2022 Catalogue also will facilitate greater inflow of foreign capital into China's central and western regions.

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# Legislation

## Australia

### Consultation paper for designing a public register of beneficial ownership

Treasury released a consultation paper, on November 7, seeking comments on the design of a public register of beneficial ownership in Australia. This proposal is focused on tax transparency, and aims to support stronger regulatory and law enforcement responses to tax and financial crime, assist foreign investment applications, and facilitate the enforcement of sanctions.

The government has proposed a phased approach to introducing a public register of beneficial ownership in Australia. Initially, the proposed changes will only require entities regulated under the Corporations Act 2001 (Corporations Act), including unlisted companies, to maintain a register (some parts of which will be available to the public) of certain natural persons, companies, registered managed investment schemes (MISs), Corporate Collective Investment Vehicles (CCIVs) and trusts that satisfy certain criteria to be registered as a beneficial owner.

In future phases, additional entities and legal vehicles woud be subject to these requirements, and the information would be centralised in a single public register.

This consultation paper is the first step on a long journey towards establishing a centralised register of beneficial ownership in Australia. Regulated entities now have an initial indication of their future obligations under this regime, although many questions - particularly relating to the practical steps to collect and maintain beneficial ownership information, and the privacy issues and security attached to that information - remain unanswered. Comments on the consultation paper can be made until 16 December 16, 2022.

The consultation paper provides an opportunity for interested stakeholders to raise concerns and engage with Treasury as it continues to develop the framework for this new regime. Since there is no proposed timeframe, we recommend that all (potentially) affected entities monitor these proposals as they continue to develop.

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# Legislation

## Hong Kong

### Hong Kong gazettes bill on significantly changed FSIE regime

Hong Kong's SAR's Government on 28 October gazetted the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Bill 2022 (the Bill). The Bill introduced significant refinements to Hong Kong's foreign source income exemption (FSIE) regime for four types of offshore income: interest, dividends, disposal gains from the sale of equity interests, and income from intellectual property (IP) (collectively, 'specified foreign-sourced income'). The Bill is expected to become effective January 1, 2023.

The Inland Revenue Department (IRD) also published (on a dedicated webpage) administrative guidance on the refined FSIE regime, including frequently asked questions, illustrative examples, and procedures for applying for a Commissioner's Opinion on the compliance with the proposed economic substance requirement.

For more informaton see our PwC Insight.

Given that the draft tax legislation contained in the Bill remains subject to final agreement by the European Union and scrutiny in the Legislative Council, MNEs currently in Hong Kong and those exploring business opportunities in Hong Kong should monitor the latest developments of the refined FSIE regime, and prepare before the refined FSIE regime becomes effective on January 1, 2023. The refined FSIE regime presents unprecedented and significant changes to Hong Kong's tax system; complex rules may apply depending on the circumstances of each case.

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# Legislation

## Hungary

### Hungary proposes tax law changes

The Government submitted, on October 18, the draft bill (No. T/1614) to Hungary's Parliament covering the tax law changes for 2023.

The most significant change is the implementation of the EU Public CbC reporting Directive (2021/2101) into domestic law (applicable to both EU-headquartered MNEs and non-EU-headquartered MNEs doing business in the European Union through a subsidiary or branch with a total consolidated revenue of more than EUR 750 million). Based on the proposal MNEs would be required to disclose the following information broken down by EU Member States, non-cooperative jurisdictions and all other jurisdictions on an aggregated level:

- Name of the ultimate parent entity or the standalone entity, the financial year concerned and the currency used in the report;
- Short description of the activities;
- Number of employees;
- Net turnover;
- Profit before tax;
- Income tax due;
- Income tax actually paid; and
- Accumulated earnings.

In line with the EU Directive, the Hungarian legislation would require multinational groups to publicly disclose the above tax-related information for financial years starting on or after June 22, 2024. Accordingly, the first financial year subject to disclosure will be 2025 for companies with a fiscal year end of 31 December. The information should be accessible on the public registry of the relevant EU Member State and on the company website.

International groups falling under the scope of the EU Directive should carefully consider the information to be disclosed prior to the effective date of the disclosure obligation.

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# Legislation

## Poland

### Poland amends 'diverted profits' provision

The Act of October 7, 2022 amending the CIT Act also introduced changes to the provision on diverted profits that will apply as of January 1, 2023. Some of the introduced changes were defined as clarifying ones. As a result, it seems reasonable to consider the impact of the amendments not only on future but also on current settlements, i.e., for tax year 2022.

If a given cost meets the definition of diverted profit, the Polish taxpayer is obliged to treat it as its additional income and collect 19% tax. The deadline for payment of the tax on 'diverted profits' coincides with the date of CIT payment of a given taxpayer.

For more information see our Tax Insight.

Since January 1, 2022, the provisions on the so-called 'diverted profits' have been in force. The aim of those provisions is to eliminate the possibility of obtaining tax benefits through the transfer of profits to a tax jurisdiction with a marginal effective tax rate. The new regulations on diverted profits replace the existing provisions on the limitation of costs incurred towards related entities.

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# Legislation

## Spain

### Spain introduces new measures regarding reverse hybrid mismatches implementing ATAD II

The Spanish Government approved Royal Decree-Law 18/2022 (RDL), on October 18, which introduced provisions implementing the reverse hybrid mismatches rules set out in the Council Directive 2017/952 of 29 May 2017 ('ATAD II').

The RDL introduced a new paragraph in Article 15 bis of the Spanish Corporate Income Tax (CIT) Law, whereby entities under the income attribution regime incorporated or established in Spanish territory (considered as look-through for Spanish tax purposes) become CIT taxpayers for certain income when one or more related non-Spanish entities:

1. participate directly or indirectly, on any day of the year, in the capital, equity, results or voting rights in a percentage equal to or greater than 50%; and
2. are resident in countries or territories that qualify the entity under the income attribution regime as a taxpayer for a personal income tax.

In such cases, the entity under the income attribution regime will be taxed as a CIT taxpayer, for the following positive items of income:

- income obtained in Spanish territory that is subject to and exempt from taxation under the Non-Resident Income Tax (NRIT); and
- foreign source income that is not subject to or is exempt from taxation by a tax required by the country or territory of the entity or entities paying such income.

For this income, the tax period will coincide with the calendar year in which the income is obtained. The remaining items of income obtained by the entity under the income attribution regime will be allocated to its members and will be taxed following the tax rules contained in the Spanish Personal Income Tax Law (that regulate these types of entities).

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# Judicial

## Spain

### Remuneration for a cross-border data transfer must be characterized as a royalty under the spain-germany treaty

The Spanish Supreme Court in its judgment (rec. n. 5441/2020), on 24 June 2022, analysed the transfer of client and operational data from a German entity to a Spanish entity to determine whether it may qualify as royalties, and thus, is subject to withholding tax in Spain, or as capital gains or a provision of services.

The Supreme Court found the underlying agreement did not refer to a mere list of client data that may be extracted from a public database, but rather the assignment of operational and client data obtained from the commercial experience of the seller. The Court reasoned that even though the parties have qualified the transaction as a 'sale and purchase' of client data, it is not an obstacle to characterise the payment derived from such sale as a royalty.

In line with previous case law, the Court adopted a restrictive position regarding the recognition of transactions that determine a 'full transfer' of certain rights over intangibles such as know-how or the transfer of technology, for the purposes of applying the tax treaty. The Court held the payment should be qualified as a royalty, subject to withholding tax in Spain, as it is included in the concept of know-how: “payments of any kind received as a consideration for information concerning industrial, commercial or scientific experience.”

The judgment supplements and reinforces the previous Spanish Supreme Court case law, whereby dynamic interpretation of tax treaties or of the OECD MTC should only be allowed when the commentaries do not substantially modify the provisions of a tax treaty, but rather introduce mere clarification of the provisions agreed by the parties.

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# EU/OECD

## European Union

### European Finance Ministers approve a revised Code of Conduct for Business Taxation

While meeting for the monthly ECOFIN meeting on 8 November, the European Member States' Finance Ministers agreed to revised text to the European Code of Conduct for Business Taxation. The Code of Conduct plays an important role in determining which tax regimes are assessed for purposes of the EU list of non-cooperative jurisdictions for tax purposes.

The revision extends the scope of the Code of Conduct to cover both preferential tax measures and tax features of general application (referred to as 'tax measures') which affect, or may affect, in a significant way the location of business activity in the Union. The latter element, the general features of a regime, is new and will assess whether that general feature leads to lower tax liability, including no tax liability, other than the nominal tax rate or deferred taxation as a feature of a distribution tax system. The additional measures in the Code of Conduct will apply from 1 January 2023. For more information see our Tax Policy Alert.

While the Group will continue to assess countries on the basis of objective criteria in relation to tax transparency, fair taxation, and implementation of anti-BEPS measures, the revision of the Code of Conduct will ultimately impact how countries' tax regimes are assessed for the purposes of determining whether they might be 'blacklisted' or 'greylisted'. This revision does not go as far as it might have to encompass more general features of tax regimes, but it represents a shift towards examination of favourable tax regimes more generally.

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# EU/OECD

## Australia

### Global work continues on OECD Pillar One and Two

The Australian Treasury consultation paper on the implementation of the OECD's Pillar One and Pillar Two was released in early October 2022 for comment by 2 November 2022.

The consultation paper raised a number of questions regarding implementation of these rules in Australia, including interactions with the existing corporate tax system, ways to minimise compliance costs, and the potential implementation of a domestic minimum tax to complement Pillar Two.

The Consultation Paper details the proposed measures and provides numerous questions relating to the design features, issues associated with the interaction of existing tax laws, the impact on investment decisions, additional compliance requirements, business readiness and the timelines associated with being an early or late adopter of the reforms.

The paper indicated that Australia will continue to work with the OECD to finalise the outstanding details of the two-pillar solution and work towards implementation with further consultation necessary to assess the impacts and various implementation options available. We expect that the 2023-24 Federal Budget to be delivered next year will reference the implementation of the measures in Australia, including timing for commencement.

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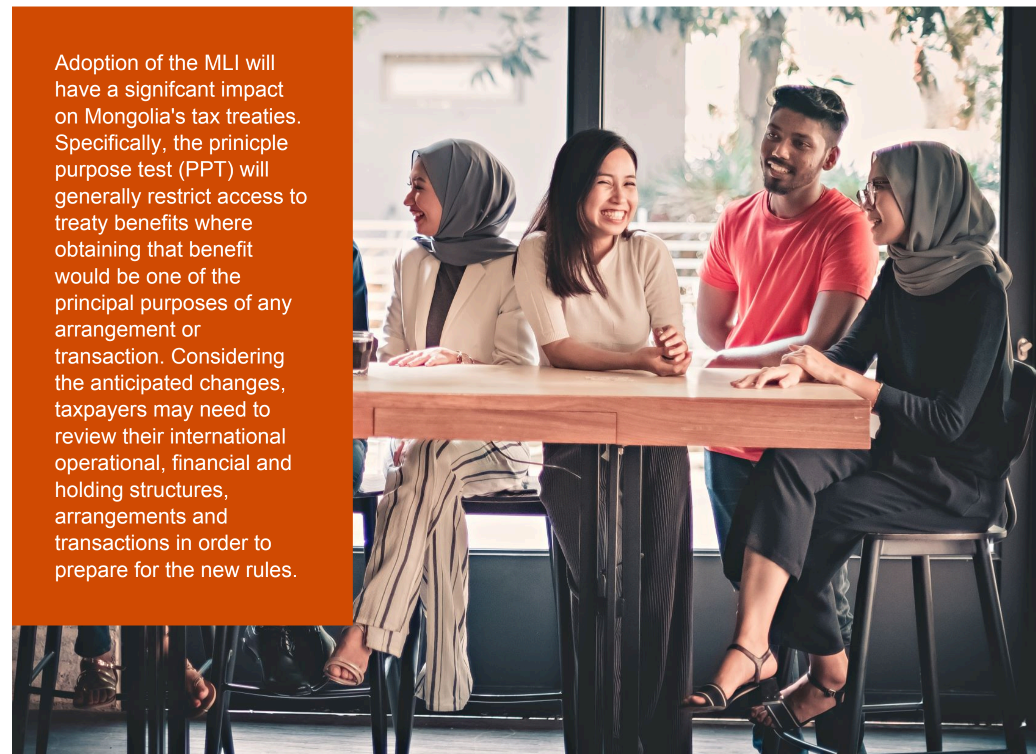
# Treaties

## Mongolia

### Upcoming modifications to Mongolian tax treaties

The Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI), is a flexible instrument which modifies tax treaties according to a jurisdiction's policy preferences with respect to the implementation of the tax treaty-related BEPS measures. On 6 October 2022, Mongolia become the 100th jurisdiction to join the BEPS Convention (by signing the MLI). The MLI now covers around 1850 bilateral tax treaties worldwide.

As a result, Mongolia's tax treaties are expected to be modified effective January 1, 2024 in the expectation that Parliament would ratify the MLI in the 2023 spring session. For more information see our PwC Insight.



Adoption of the MLI will have a signifcant impact on Mongolia's tax treaties. Specifically, the prinicple purpose test (PPT) will generally restrict access to treaty benefits where obtaining that benefit would be one of the principal purposes of any arrangement or transaction. Considering the anticipated changes, taxpayers may need to review their international operational, financial and holding structures, arrangements and transactions in order to prepare for the new rules.

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# Glossary

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

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**Worldwide Tax Summaries**

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