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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.

Bernard Moens
Global Leader International Tax Services Network
T: +1 703 362 7644
E: bernard.moens@pwc.com

In this issue

Legislation

Argentina

New Argentine tax imposed on exportation of services in 2019 and 2020

Decree No. 1201/2018 introduces a new temporary tax of 12% on the exportation of services.

The 12% tax applies to services rendered in Argentina where (1) there is no employment relationship between the supplier and recipient of the service and (2) the service is used or exploited abroad. This includes the exportation of software-related services, as well as consulting services rendered in Argentina and used abroad. The use or exploitation refers to the immediate use or exploitation, or the first act of disposition made by the recipient of the service.

The exportation tax is effective January 1, 2019 for services rendered and invoiced as of that date, even if the contract was signed before that date. This new tax applies temporarily through December 31, 2020. Please see our PwC Insight for more information.

PwC observation:

Multinational enterprises receiving services from Argentine taxpayers should evaluate how this new tax will affect their business operations and whether this new tax should be taken into account when negotiating contracts with Argentine service providers.

Ignacio Rodríguez
Argentina
T: +5411 4850 6714
E: ignacio.e.rodriguez@ar.pwc.com

Jose Leiman
United States
T: + 1 305 381 7616
E: jose.leiman@pwc.com

Ramon Mullerat
Europe
T: +34 91 568 5534
E: ramon.mullerat@es.pwc.com

Belgium

Corporate income tax developments in Belgium

Belgian MLI implementation:

Belgium published a draft law for MLI implementation withdrawing its initial reservation regarding the new dependent agent concept. The MLI still needs to be approved by all six legislative authorities before it can be ratified and enter into force.

30% EBITDA implementation:

The 30% EBITDA rule entered into force in Belgium retroactively as of January 1, 2019 (assessment year 2020). The specific technical details were previously approved in the July 30, 2018 law, which is described in PwC's earlier communication.

PwC observation:

Taxpayers involved in transactions involving Belgium should assess the MLI's impact and consider whether changes to group structures, locations of people or transactional flows would be advisable. Additionally, in light of the 30% EBITDA rule, groups should carefully monitor how they finance their activities to avoid undesired consequences.

Evi Geerts
PwC Belgium
T: +32 3 259 3161
E: e.geerts@pwc.com

Tamara Geboers
PwC Belgium
T: : +32 3 259 3170
E: t.geboers@pwc.com

Bolivia

Bolivia extends application of financial transactions tax

The Bolivian government approved the 2019 Budget Law in late December, introducing a key tax measure that extends application of the financial transactions tax, which was set to expire on December 31, 2018.

The newly enacted law extends its application until December 31, 2023.

Please see our **PwC Insight** for more information.

PwC observation:

Multinational enterprises with current or future operations in Bolivia should evaluate how this extension may impact their operations.

Eduardo Aramayo
Bolivia
T: +591 3 344 4311
E: eduardo.armayo@bo.pwc.com

Jose Leiman
United States
T: + 1 305 381 7616
E: jose.leiman@pwc.com

Ramon Mullerat
Europe
T: +34 91 568 5534
E: ramon.mullerat@es.pwc.com

China

China implements generalized preferential tax treatment for small and thin-profit enterprises

In order to support start-ups and innovation, China lowered the threshold for qualifying as a small and thin-profit enterprise (STE) and further reduced the annual taxable income subject to the STE statutory 20% corporate income tax (CIT) rate, effective as of January 1, 2019.

Previous tax incentives provided that an entity whose annual taxable income did not exceed a RMB 1,000,000 cap qualified as an STE and was allowed a 50% reduction on its annual taxable income subject to the STE statutory 20% CIT rate (i.e., an effective CIT rate of 10%).

Effective January 1, 2019, China relaxed the annual taxable income cap for qualifying as an STE and introduced a progressive tax rate calculation for STEs with the following provisions:

- STEs are granted a 5% effective tax rate on taxable income amounts below RMB 1,000,000 (reduction from the STE 20% statutory CIT rate by 75% on amounts below RMB 1,000,000)
- STEs are granted a 10% effective rate on taxable income amounts between RMB 1,000,000 and RMB 3,000,000 (the new annual taxable income cap for qualifying as an STE, which represents a reduction from the former STE 20% statutory CIT rate by 50%).

PwC observation:

China is increasingly focused on small and medium-sized enterprises in order to implement its innovation-driven strategy. The tax preferential initiative will foster STE growth, with a low effective CIT rate compared to the 25% statutory CIT rate.

As China continues to improve its business environment, foreign investors should determine whether they qualify for the STE tax initiatives.

Matthew Mui
China
T: +86 10 6533 3028
E: matthew.mui@cn.pwc.com

Costa Rica

Costa Rican government issues draft resolution requiring disclosure of ultimate beneficial owners

The Costa Rican Ministry of Finance, the Costa Rican Drugs Institute, and the Costa Rican Central Bank published a draft resolution in November 2018 requiring affected taxpayers to provide certain identification to the Registry of Transparency and Ultimate Beneficial Owners by the close of 2019's first quarter.

Moreover, an informative tax return that discloses the Costa Rican entity's ultimate beneficial owners (UBOs) must be filed between March and December 2019, depending on the Costa Rican entity's tax ID number. The final resolution is expected to be published soon.

Please see our **PwC Insight** for more information.

PwC observation:

To meet the proposed deadlines, multinational enterprises with entities in Costa Rica should start preparing the required documents in order to comply with the identification rules, including obtaining the digital signature.

Carlos Barrantes
Costa Rica
T: +1 506 2224 1555
E: carlos.barrantes@cr.pwc.com

Jose Leiman
United States
T: + 1 305 381 7616
E: jose.leiman@pwc.com

Ramon Mullerat
Europe
T: +34 91 568 5534
E: ramon.mullerat@es.pwc.com

Italy

1. Italy's 2019 budget law introduces a digital service tax

The 2019 Italian budget law ('Law') introduces a 'new' digital service tax (DST), repealing the previous one which never entered into force due to the lack of implementing secondary legislation.

During the Italian government and EU Commission negotiations for defining the 2019 Italian budget, the DST was identified as a revenue raiser (estimated at 150 million EUR for 2019 and 600 million EUR for each of 2020 and 2021).

Although details about the new DST have not been released, the new DST is expected to employ a structure similar to the EU Commission proposal (2018/0073 (CNS) "Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services").The DST will become effective 60 days after the Minister of Economy and Finance issues secondary legislation implementing the decree.

We expect issuance of this secondary legislation around the end of April; therefore, we expect the DST to become effective around the end of June 2019.

Please see our **PwC Insight** for more information.

PwC observation:

The recently introduced DST features: (i) a definition of services falling within the category of digital taxable service; (ii) an identification of taxable revenues obtained from the taxable digital services; (iii) a definition of taxable person (at the individual or group level); (iv) specific sourcing rules for each taxable digital service/taxable revenue; (v) the DST collection process; and (vi) obligations and penalties. Considering that the DST is likely to enter into force around the end of June, multinational entities that derive a significant portion of their revenues from providing digital services should begin assessing the extent to which the Italian DST could potentially affect their operations. Such assessment includes determining whether the digital services they provide fall within the definition of taxable digital services, as well as determining which obligations should be fulfilled and which procedures should be implemented.

Emanuele Franchi
United States
T: +1 646 574 0998
E: emanuele.f.franchi@pwc.com

Alessandro Di Stefano
Italy
T: +39 348 840 8195
E: alessandro.di.stefano@pwc.com

Marco Vozzi
Italy
T: +39 346 623 9449
E: marco.vozzi@pwc.com

Italy

2. Italy adopts legislative decree implementing EU anti-tax avoidance package

The Italian Legislative Decree n. 142/2018 (the Italian ATAD Decree) enacting the EU anti-tax avoidance package was published in the Italian official gazette on December 28, 2018.

The Italian ATAD Decree transposes EU Directive 2016/1164 (ATAD 1), as amended by EU Directive 2017/952 (ATAD 2), into the Italian legal system by providing rules against erosion of taxable bases in the internal market and profit shifting out of the Italian market.

The Italian ATAD Decree contains the ATAD 1 and ATAD 2 provisions covering (i) interest limitation rules; (ii) exit taxation; (iii) entry taxation; (iv) controlled foreign company (CFC) rules; (v) a new set of criteria for identifying 'tax havens;' and (vi) EU and extra-EU anti-hybrid rules. According to the Italian ATAD Decree, most of the provisions apply starting in fiscal year 2019.

The Italian Legislator did not transpose the general anti-abuse rule under Article 6 of ATAD 1, since the current Italian general anti-abuse provision, which was enacted in 2015 (art. 10-bis of Law no. 212/2000), generally aligns with the EU rule.

Most of the Italian ATAD Decree provisions triggered amendments in the Italian tax code (ITC).

Please see our **PwC Insight** for more information.

PwC observation:

Given the main Italian ATAD Decree amendments, multinational enterprises should consider the potential impact of the Italian ATAD Decree, analyze their position for Italian tax purposes, and consider the relevant anti-avoidance rules that have been introduced beginning in fiscal year 2019.

Maarten Maaskant
United States
T: +1 646 471 0570
E: maarten.p.maaskant@pwc.com

Franco Boga
Italy
T: +39 02 9160 5400
E: franco.boga@pwc.com

Alessandro Di Stefano
Italy
T: +39 348 840 8195
E: alessandro.di.stefano@pwc.com

Netherlands

Dutch State Secretary of Finance announces transitional tax law in case of a 'no-deal Brexit'

A majority of the UK Parliament voted against Theresa May's Brexit deal on January 15, 2019, thus opposing approval of the withdrawal agreement between the United Kingdom and the European Union. In order to reduce uncertainty in the event of a 'no-deal Brexit,' the Dutch State Secretary of Finance announced transitional measures for tax purposes.

The tax treatment of certain provisions in the Dutch tax code differ depending on whether a taxpayer is established in an EU Member State or in a third country. In the event of a no-deal Brexit, the United Kingdom will become a 'third country' for tax law purposes. This means that a no-deal scenario will result in different tax treatment for certain citizens and businesses as of the date of its withdrawal.

Given this development, the Dutch State Secretary of Finance announced transitional measures to give individuals time to prepare in the event of a no-deal Brexit. The transitional arrangement, during which the United Kingdom will be deemed an EU Member State, will likely apply for the current Dutch tax year. In many cases, this will be 2019, but different terms may apply for broken financial years. The details of the transitional measures are still unknown.

Although the State Secretary expects companies to prepare for a no-deal Brexit, transitional measures to prevent adverse tax consequences are still desired to prevent immediate adverse tax consequences and administrative burdens. For example, if a cross-border Dutch fiscal unity with a top UK company dissolves by operation of law as a result of the UK's withdrawal, the Dutch State Secretary expects the introduction of legislation for avoiding the application of certain anti-abuse provisions that would otherwise result from such break-up during the year. The transitional measures will be specified in a policy decision.

Once completed, the draft of the policy decision will be sent to the Dutch House of Representatives, which will have two weeks to respond. The policy decision will only be final and published when it becomes clear that the United Kingdom will leave the European Union without a deal.

PwC observation:

The initiative to implement a transitional tax law in the event of a no-deal Brexit demonstrates the willingness of the Dutch government to prevent Dutch taxpayers from being subject to uncertainty caused by external events. Although this appears to be a positive development, companies should still prepare for adverse tax consequences upon a no-deal Brexit scenario.

Jeroen Schmitz
Amsterdam
T: +3 1 612 692 042
E: jeroen.schmitz@pwc.com

Pieter Ruige
Amsterdam
T: +3 1 613 691 255
E: pieter.ruige@pwc.com

Tim Theunis
Amsterdam
T: +3 1 630 964 508
E: tim.s.theunis@pwc.com

Norway

Change in tax residency rules and in the interest deduction limitation rules in Norway

The National Budget was approved on December 19, 2018, and several Norwegian tax changes were passed. The changes generally aligned with the government proposal published in October 2018. Two of the main changes are the tax residency rules for companies and the interest limitation rules.

Changes to the tax residency rules for companies

To avoid profit shifting and increase investments in domestic business and industry, changes to the Norwegian residency rules have been introduced effective January 1, 2019.

Pursuant to Income Tax Act section 2-2, a Norwegian resident company is subject to tax in Norway on its worldwide income. Previously, residency was determined by focusing primarily on the place of management at the board level.

Under the newly implemented rules, all companies incorporated under Norwegian company law are treated as tax resident in Norway. That is, the new rules apply to companies incorporated after the new rules went into effect, as well as companies that were historically incorporated under Norwegian law. As such, a company that was not previously treated as Norwegian resident for tax purposes because its place of management at the board level was outside Norway will therefore be considered resident in Norway as of January 1, 2019, provided it was originally incorporated under Norwegian company law. However, the law provides an exception for companies treated as resident in another country based on a tax treaty with Norway. Since some treaties do not contain clearly defined terms for place of tax residency, a mutual agreement procedure (MAP) may need to be initiated in some cases to determine residency under the relevant treaty.

For foreign companies that are not incorporated under Norwegian law, the place of management will continue to be the main criteria for residency. However, the determination will no longer be based only on the place of management at the board level, but will entail a broader assessment that considers the location of management of day-to-day operations, along with the location of other items, such as offices, general meetings, business activities, etc.

Changes in the interest deduction limitation rules

In accordance with OECD recommendations under BEPS action 4, Norway made changes to the interest limitation rules. The amended rules became effective on January 1, 2019.

The previous rules only limited related party interest expense deductions and limited the annual deduction for net interest expense to 25% of taxable EBITDA, provided that net interest expense exceeded MNOK 5 per company. However, the new interest limitation rules apply to interest on both internal and external party debt. Also, interest deductions will be limited if total net interest expenses in the Norwegian part of the group exceeds MNOK 25. As before, deductions are limited to 25% of taxable EBITDA in each company when the threshold is exceeded.

The new rules include an escape clause that allows a company to completely avoid the interest deduction limitations. The escape clause applies if the taxpayer can demonstrate that the equity ratio in either the company in question, or ii) the Norwegian part of the group is equal to or less than two percentage points below that of the consolidated group. Therefore, a group comprised solely of Norwegian companies will be fully exempt from the interest deduction limitations under the revised rules. Note that the equity ratio under the escape clause is calculated based on the prior year's closing balance.

PwC observation:

Companies formerly incorporated in Norway should be aware of the change in tax residency rules if they were not taxed in Norway prior to 2019. Also, multinational enterprises should review possible relevant tax treaties to determine appropriate steps to mitigate double taxation. Note that a MAP to determine residency can take up to two years and should therefore be initiated immediately.

With respect to the interest limitation rules, businesses with operations in Norway should review the impact of the changes on their investments in Norway and consider their options.

Hilde Thorstad
Oslo
T: +47 95 26 05 48
E: hilde.thorstad@pwc.com

Linn Hansen
Oslo
T: +47 95 93 05 01
E: linn.hansen@pwc.com

Oman

Executive regulations amend income tax law

Ministerial Decision No. 14/2019, issued by the Ministry of Finance and published in the Official Gazette on February 10, 2019, provided clarity on a number of provisions and regulations introduced by amending the income tax law (ITL) vide Royal Decree No. 9/2017 dated February 27, 2017. Major amendments to the executive regulations include the following:

Withholding Tax (WHT)

In line with earlier amendments to the ITL, the amendments to the executive regulations (effective February 11, 2019) widened the categories of payments subject to WHT to include dividends, interest and service fees. The amendments defined dividends and interest and confirm the position that Omani tax authorities already follow. Under the amended executive regulations, WHT on dividend distributions will apply only to joint stock companies and mutual funds. Therefore, WHT is not applicable to dividends distributed by limited liability companies.

Interest has been defined to include any amounts obtained through debt, advances or any arrangement of financial nature, with or without a profit sharing guarantee.

It includes income accrued from bonds, instruments and amounts obtained as a compensation on interest. However, it excludes the following payments with respect to the Omani government and banks, which in principle results in relaxed withholding tax obligations:

- interest paid on amounts deposited in Oman-based banks
- returns on bonds and sukuk issued by the government or Oman-based banks
- interest on inter-bank transactions and facilities with the purpose of providing and managing liquidity or finance (the loan's term not to exceed five years).

The amendments also excluded the following categories of payments from being treated as service payments subject to withholding tax:

A) participation in organizations, seminars, conferences, or exhibitions

B) training

C) freight charges and related insurance

D) air tickets and reimbursement

E) board of director meetings

F) reinsurance payments

G) any services related to an activity or property outside Oman.

Tax exemptions

Along with the ITL amendments, the amendments replaced existing provisions of the executive regulations related to tax exemptions for companies that conduct certain activities with new provisions limiting the tax exemptions to companies whose primary activity is in the manufacturing sector. The amendments also cancelled respective provisions related to tax exemption renewals, thereby limiting the tax exemption period to five years.

Special provisions related to tax on enterprises

In order to stimulate small business activity, the amendments include special provisions clarifying the rules and conditions that small and medium enterprises (SMEs) must follow in order to be taxed at lower rates (i.e., 0% or 3%). These provisions include rules on cost and expense deductibility, as well as the introduction of a deemed profit regime for enterprises where maintaining a separate book of accounts is not feasible. The adopted deemed profit margin will be subject to tax authority approval and shall not be less than 5% of total revenue earned during the tax year.

The amendments also introduced a specified Income Tax Form 17 to be used by SMEs subject to special rules for submitting tax returns.

PwC observation:

Amendments to the executive regulations clarify a number of matters and improve tax administration. Companies will need to consider immediately the impact of the clarifications on withholding taxes, director's remuneration, and several other matters, including emphasis on e-filings, as well as ways in which they may help ameliorate the compliance obligations. Provisions empowering tax authorities to restrain auditors from taking incorrect positions for clients may also have far-reaching impact.

Hilde Thorstad
Oslo
T: +47 95 26 05 48
E: hilde.thorstad@pwc.com

Linn Hansen
Oslo
T: +47 95 93 05 01
E: linn.hansen@pwc.com

Venezuela

Venezuela issues rules on payment of taxes in foreign or cryptocurrencies

Under Presidential Decree No. 3,719, published in the Venezuelan Official Gazette on December 28, 2018, taxpayers authorized to carry out operations in foreign or cryptocurrencies in Venezuela must calculate and pay their tax obligations in those currencies. Regulations for reporting and paying taxes in such manner are expected to be published soon.

Please see our **PwC Insight** for more information.

PwC observation:

Multinational enterprises with current or planned operations in Venezuela should evaluate how Decree No. 3,719 impacts their operations. In any case, the impact of current tax rules on the Decree should be analyzed in detail, particularly in connection with rules dealing with the calculation of the taxable base.

Hilde Thorstad
Oslo
T: +47 95 26 05 48
E: hilde.thorstad@pwc.com

Linn Hansen
Oslo
T: +47 95 93 05 01
E: linn.hansen@pwc.com

Administrative

Brazil

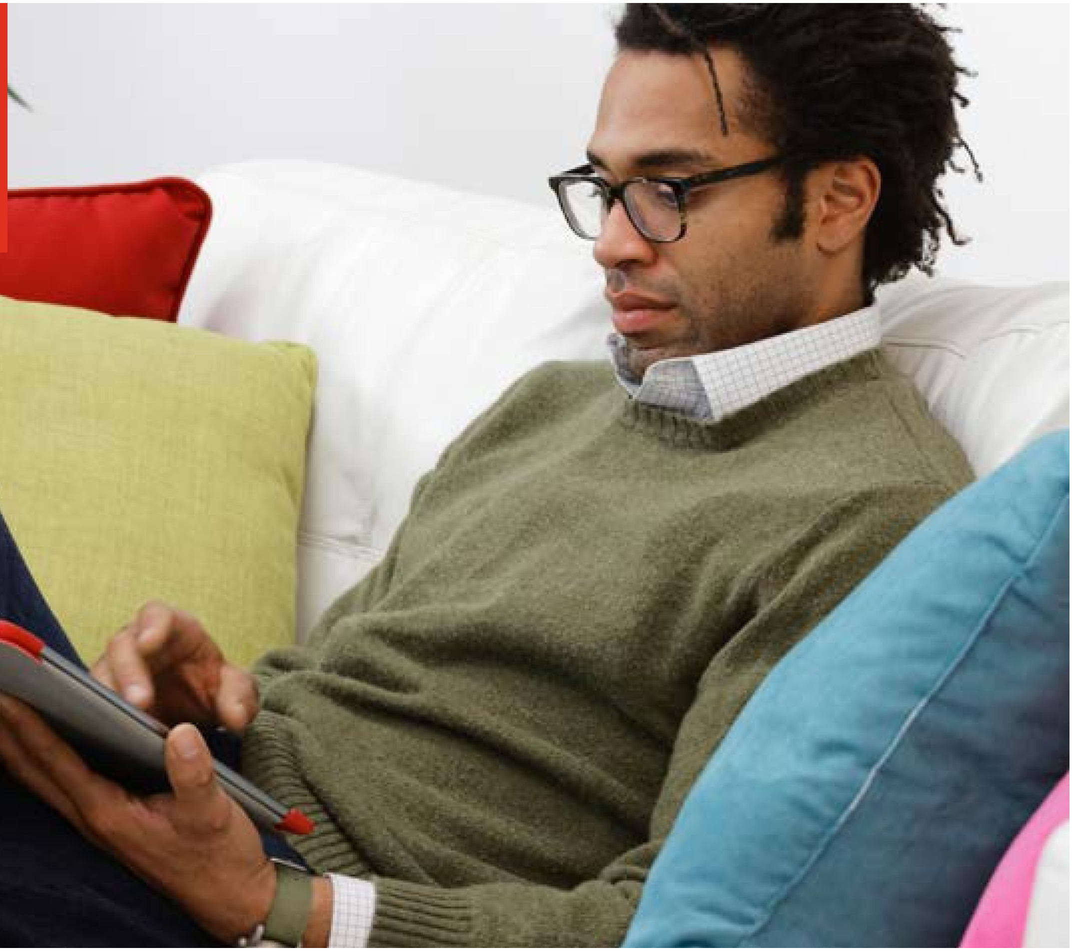
Title: Brazilian tax authorities issue regulation on disclosure of ultimate beneficial owners

The Brazilian tax authorities on December 28, 2018, published Normative Instruction (NI) 1,863. The NI provides guidance about disclosing the foreign beneficiaries of certain Brazilian and foreign corporations registered before the Brazilian corporate taxpayer identification registry ('Cadastro Nacional das Pessoas Juridicas' in Portuguese, or CNPJ).

The NI revokes prior regulations on the matter, provides detailed rules on the disclosure of ultimate foreign beneficial owners, and extends the deadline to report such information to the Brazilian tax authorities. Specifically, the NI requires, among other items, disclosure of the full chain of corporate shareholders up to the level of individuals characterized as final beneficiaries. Please see our PwC Insight for more information. While a Solução de Consulta does not represent law or legal precedent, it does indicate to Brazilian entities how the RFB are treating such arrangements

PwC observation:

TMultinational enterprises currently investing in Brazil should review their existing structures to determine whether they must comply with the new regulations requiring ultimate beneficiary disclosure by June 2019.



Jaime Andrade
Brazil
T: +55 21 3232 6003
E: priscila.vergueiro@pwc.com

Jose Leiman
United States
T: + 1 305 381 7616
E: jose.leiman@pwc.com

Ramon Mullerat
Europe
T: +34 91 568 5534
E: ramon.mullerat@es.pwc.com

Germany

Title: Some German tax auditors view online advertising payments as royalties

Royalties paid by German taxpayers to nonresidents generally are subject to German nonresident taxation (i.e., withholding taxes) and limited tax deductibility. Some German tax auditors recently have taken the position that payments for online advertising qualify as royalties under German tax law.

Please see our **PwC Insight** for more information.

PwC observation:

Multinational enterprises with operations in Germany making payments for digital advertising should analyze their payment streams and consider appropriate remedial measures in order to reduce any potential withholding tax, as some German tax auditors have recently treated such payments as royalties.

Thomas Loose
United States
T: +1 212 671 839
E: thomas.x.loose@pwc.com

Michael Oskamp
United States
T: +1 332 999 7365
E: michael.x.oskamp@pwc.com

Volker Käbisch
Germany
T: +49 211 981 1527
E: volker.kaebisch@pwc.com

Peru

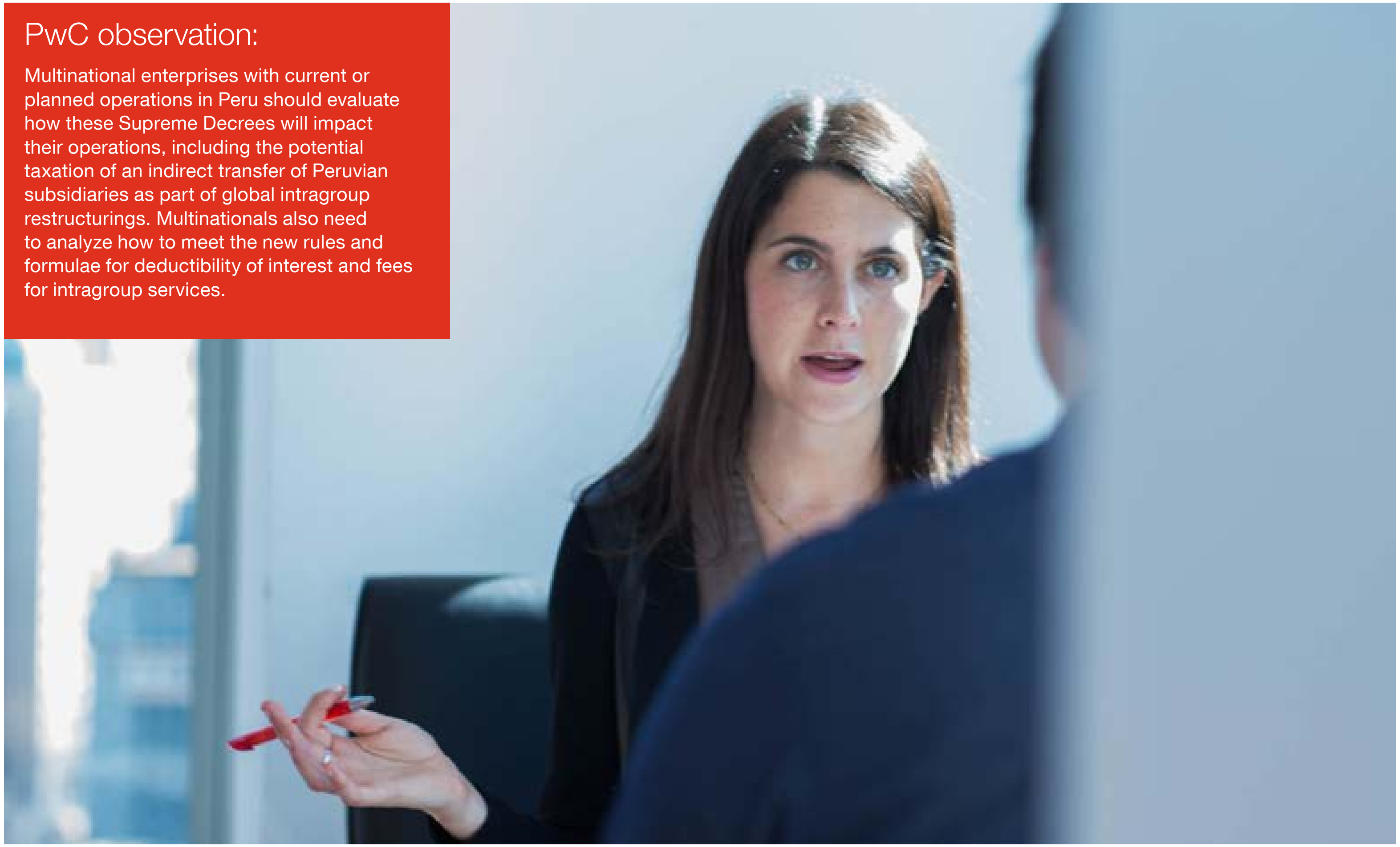
Title: Peruvian regulations address expense deduction limitations and taxation of indirect share transfers

Supreme Decrees Nos. 337, 338, and 339, published in the Peruvian Official Gazette on December 30, 2018, contain regulations on a number of provisions that were amended in the September 2018 tax reform. These regulations, effective January 1, 2019, address limitations on the deductibility of expenses from intragroup services, taxation of capital gains from indirect transfers of shares, and the new definition of 'accrual' for business income.

Please see our **PwC Insight** for more information.

PwC observation:

Multinational enterprises with current or planned operations in Peru should evaluate how these Supreme Decrees will impact their operations, including the potential taxation of an indirect transfer of Peruvian subsidiaries as part of global intragroup restructurings. Multinationals also need to analyze how to meet the new rules and formulae for deductibility of interest and fees for intragroup services.



Arturo Tuesta
Peru
T: +51 1 211 6500
E: arturo.tuesta@pe.pwc.com

Jose Leiman
United States
T: + 1 305 381 7616
E: jose.leiman@pwc.com

Ramon Mullerat
Europe
T: +34 91 568 5534
E: ramon.mullerat@es.pwc.com

Judicial

EU

EU General Court finds Belgian excess profit ruling system is compatible with EU State aid rule

The General Court of the European Union (GCEU) rendered its judgment T-131/16 and T–263/16 regarding the compatibility of the Belgian excess profit ruling system ('Belgian EPR') with the EU State aid rules. The GCEU judgment, issued on February 14, 2019, annulled the European Commission's (EC's) final decision, and found that the EC had erred in qualifying the measure as an 'aid scheme.' In addition, the decision obliged the Belgian government to recover the alleged unlawful aid provided to several economic operators, amounting to approximately EUR 700 million.

Please see our **PwC Insight** for more information.

PwC observation:

One or more parties to the case (including the EC) likely will appeal the GCEU's decision. If the appeals are considered admissible and well-founded, the Court of Justice of the EU can, in turn, annul the GCEU's decision and decide on the case itself. Otherwise, it must refer the case back to the GCEU. If that happens, expect a final decision in this case in a few years. This judgment is the GCEU's first review of a series of recent EC State aid decisions that assess whether tax rulings and transfer pricing rules can be selective and unlawful State aid. Each case has its own facts, so taxpayers will need to await each of the individual judgments. The EU State aid rules have caused significant uncertainty for taxpayers as to the correct application of tax rulings and transfer pricing rules within the EU. This judgment is only a first step in providing further clarity and guidance on the application of the State aid rules.

Pam Olson
United States
T: +202 414 1401
E: pam.olson@pwc.com

William Morris
United States
T: +202 312 7662
E: william.h.morris@pwc.com

Pieter Deré
Belgium
T: +646 471 0570
E: pieter.dere@pwc.com

Italy

Italian Supreme Court rules on domestic implementation of EU Parent-Subsidiary Directive

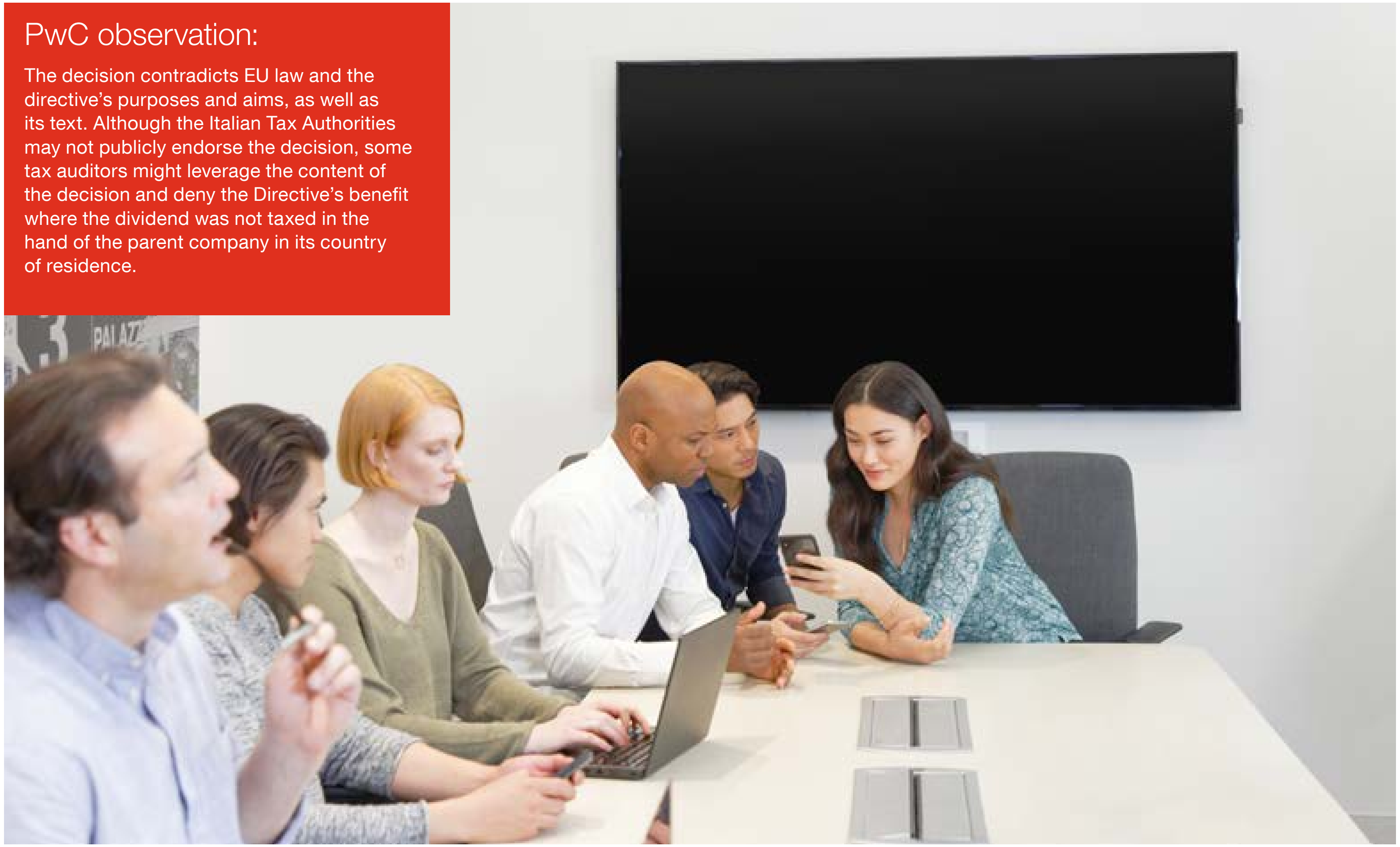
The Italian Supreme Court on December 13, 2018, issued a decision (n. 32255/2018) in a case concerning the domestic implementation of the EU Parent-Subsidiary Directive.

The Italian Supreme Court held that there must be at least partial taxation of the dividends in the Member State of the parent company in order to benefit from the withholding tax exemption provided in the EU Parent-Subsidiary Directive.

Please see our **PwC Insight** for more information.

PwC observation:

The decision contradicts EU law and the directive's purposes and aims, as well as its text. Although the Italian Tax Authorities may not publicly endorse the decision, some tax auditors might leverage the content of the decision and deny the Directive's benefit where the dividend was not taxed in the hand of the parent company in its country of residence.



Emanuele Franchi
United States
T: +1 646 574 0998
E: emanuele.f.franchi@pwc.com

Alessandro Di Stefano
Italy
T: +39 348 840 8195
E: alessandro.di.stefano@pwc.com

Franco Boga
Italy
T: +39 02 9160 5400
E: franco.boga@pwc.com

Netherlands

Dutch Supreme Courts provide guidance for coherent valuation of forward foreign exchange contracts

The Dutch Supreme Court on February 8, 2019, ruled that a taxpayer could not take into account the loss on a forward foreign exchange contract because the loss corresponded with unrealized currency gain on a receivable, which must be valued 'in coherence' with the forward foreign exchange contract. The principles of 'sound business practice' require a coherent valuation of both the receivable and the forward foreign exchange contract.

Annual Dutch tax due is determined in accordance with the principles of 'sound business practice' ('goed koopmansgebruik'). Profits and losses are attributed to years in accordance with basic principles of realization, matching, reality, prudence and simplicity.

The underlying case concerned the question of whether a realized loss on a forward dollar contract and an unrealized currency profit on a receivable should be valued separately or coherently. The obligation of a coherent valuation stems from the 'reality principle' under sound business practice.

This principle prevents taking a loss into account that has not actually been incurred if an (unrealized) gain on a coherent asset is present.

Further, this implied in the underlying case that a loss on a forward foreign exchange contract cannot be taken into account if an unrealized gain has accrued on another asset which de facto stands in a 'highly-effective' hedge relation (highly-effective in this context means the offset is in the range of 80-125%). This even applies when the (unrealized) currency gain on the receivable cannot be realized immediately or only at a discount, for example, as a consequence of the debtor's creditworthiness.

PwC observation:

The Supreme Court's decision aligns with earlier judgments on coherent valuation. In essence, the Supreme Court takes an 'economic approach' towards such hedged positions, which should be taken into account by Dutch taxpayers dealing with hedged positions.

Jeroen Schmitz
Amsterdam
T: +3 1 612 692 042
E: jeroen.schmitz@pwc.com

Pieter Ruige
Amsterdam
T: +3 1 613 691 255
E: pieter.ruige@pwc.com

Tim Theunis
Amsterdam
T: +3 1 630 964 508
E: tim.s.theunis@pwc.com

Treaties

Cyprus

1. Cyprus tax treaty developments

The first tax treaty between Cyprus and Andorra signed on May 18, 2018 entered into force on January 11, 2019. The treaty will become effective on January 1, 2020. The treaty contains the following provisions:

A) 0% withholding tax (WHT) rate on payments of dividends, interest and royalties

B) With respect to capital gains, Cyprus retains the exclusive taxing rights on share disposals made by Cyprus tax residents, except where the shares derive more than 50% of their value, directly or indirectly, from immovable property situated in Andorra. The exception does not apply to gains from listed share disposals, provided that the disposer did not directly or indirectly hold more than 25% of the disposed-of company's capital at all times during the 12 month period prior to the disposal. Listed shares means shares that are listed on a recognized stock exchange of Andorra, Cyprus or on another EU/European Economic Area (EEA) Member State.

C) The treaty incorporates the OECDBEPS Action 6 report 'Principal Purpose Test' (PPT), which is a minimum standard under BEPS.

2. Cyprus – Saudi Arabia tax treaty enters into force

The first tax treaty between Cyprus and Saudi Arabia signed on January 3, 2018 will enter into force on March 1, 2019. The treaty will become effective on January 1, 2020. The treaty contains the following provisions:

A) 0% WHT rate on payments of income from debt claims

B) 0% WHT rate applicable to payments of dividends if the recipient is a company (other than partnership) that directly or indirectly holds at least 25% of the capital of the payer company or if the recipient is the government. In all other cases, the treaty provides for a 5% WHT rate on dividends. Note that irrespective of the 5% WHT rate, Cyprus does not impose WHT on dividend payments to non-Cyprus tax residents under its domestic law.

C) 5% WHT rate on royalty payments for the use of, or the right to use, industrial, commercial or scientific equipment. In all other cases, an 8% WHT rate applies to royalties. Note that irrespective of these WHT rates, Cyprus only applies WHT under its domestic law on royalties paid to non-Cyprus tax residents where the royalties relate to rights for use within Cyprus.

D) With respect to capital gains, Cyprus retains the exclusive taxing rights on share disposals made by Cyprus tax residents, except in the following cases:

- Where the disposal is out of a substantial participation of shares in a company tax resident in Saudi Arabia (a taxpayer is considered to have a substantial participation when holding at least 25% of the disposed-of company's capital at any time within twelve months prior to the disposal). This does not apply to listed shares.

- Where the shares derive the greater part of their value from certain offshore rights relating to exploration or exploitation of the seabed or subsoil or their natural resources located in Saudi Arabia.

E) Special provisions apply to income and gains derived by the two governments, as well as insurance activities.

PwC observation:

Cyprus continues to update and expand its tax treaty network. The above-mentioned treaties, as well as amendments to the existing treaties open the way for new investment opportunities and trade relations between these countries. Taxpayers should consider how they may be impacted by these new or amended treaties.

Marios Andreou
Nicosia
T: +357 22 555 266
E: marios.andreou@cy.pwc.com

Stelios Violaris
Nicosia
T: +357 22 555 300
E: stelios.violaris@cy.pwc.com

Joanne Theodorides
Nicosia
T: +357 22 55 3694
E: joanne.theodorides@cy.pwc.com

Ireland

Ireland ratifies the MLI

Ireland deposited its MLI ratification document with the OECD on January 29, 2019, resulting in the MLI becoming effective for Ireland as of May 1, 2019. Changes will only take effect to existing treaties where:

- the treaty partner has also deposited its MLI ratification document with the OECD and
- sufficient time has elapsed that the MLI is effective in that state.

In addition, only where the two treaty partner states have made 'matching elections' will the MLI provisions take effect. Most countries (including Ireland) are introducing a PPT into their treaties. The PPT can deny tax treaty benefits if it is reasonable to conclude that one of the principal purposes of the arrangement or transaction was to obtain a treaty benefit. Currently, 21 states have deposited ratification documents with the OECD (with 15 in effect).

States that deposited their documents before December 31, 2018 have an earlier entry in effect date than Ireland. For example, the UK deposited its ratification document with the OECD in July 2018, and their MLI entered into effect on October 1, 2018.

As the MLI only takes effect with respect to double tax agreements from the date on which the second state's MLI entered into effect, the earliest date of entry into effect for Ireland can be May 1, 2019. In the specific case of withholding taxes under tax treaties, the effective date is January 1, 2020.

PwC observation:

The ongoing evolution of the international tax landscape has necessitated the implementation of various new rules as outlined under the BEPS project. Ireland is committed to targeting base erosion and profit shifting as evidenced by its participation in the debate on the agreement of the proposed rules and their implementation. The ratification of the MLI is the latest step that Ireland has taken in this regard.

Denis Harrington
PwC Ireland
T: +353 1 792 8629
E: Denis.harrington@pwc.com

Peter Hopkins
PwC Ireland
T: +353 1 792 5512
E: Peter.hopkins@pwc.com

Luxembourg

Luxembourg ratifies the MLI

Luxembourg's Chambre des Députés on February 14, 2019, voted to approve Bill (No 7333) of law ratifying the MLI.. No changes have been made to the original list of reservations and notifications submitted to the OECD. As soon as the instrument of ratification is deposited with the OECD, Luxembourg will join the quickly growing list of countries that have fully completed the ratification process. Should Luxembourg make the deposit with the OECD within the month of March, the MLI will enter into force in Luxembourg on July 1, 2019.

Please see our **PwC Flash News** for more information.

PwC observation:

The vote in the Chambre des Députés for MLI ratification is a key step towards many tax treaties in Luxembourg's extensive network being modified by the MLI provisions. In particular, it is now likely that for many of Luxembourg's tax treaties, MLI-mandated measures applying to withholding tax rates under treaties will begin to apply with effect on January 1, 2020.

Sami Douenias
Luxembourg
T: +352 49 48 48 3060
E: sami.douenias@lu.pwc.com

Netherlands

Dutch House of Representatives approves MLI and amends position on commissionaire PEs

The Dutch House of Representatives on February 12, 2019, approved the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ('the MLI'). No major deviations from the positions taken during the MLI's initial signing in June 2017 were expected. However, the House of Representatives approved an amendment to opt out of article 12 dealing with the artificial avoidance of commissionaire permanent establishments (PEs). The Dutch Senate still needs to approve the MLI.

The MLI covers recommendations from the BEPS project that affect tax treaties. This applies both to various minimum standards and some additional recommendations. The MLI was developed under Action 15 and encompasses recommendations for Action 2 (hybrid mismatches), Action 6 (treaty abuse), Action 7 (permanent establishments), and Action 14 (dispute resolution).

Apart from the change in position with respect to Article 12, the initial positions taken by the Netherlands during the MLI signing in June 2017 were adopted.

Article 12 MLI leads to a lower threshold in relation to commissionaire arrangements. The Dutch House of Representatives argued there is still too much uncertainty regarding profit allocation to such PEs, and as such, there is a risk of double taxation.

Accordingly, there is a desire to apply Article 12 only when there is either sufficient clarity about the profit allocation rules, or an effective dispute resolution in place. The House of Representatives therefore requested the government to postpone application of Article 12 to year-end 2020 at minimum. Provided that sufficient progress is made on the outstanding points, the reservation on Article 12 MLI can then be withdrawn.

The MLI's approval by the House of Representatives takes the MLI another step closer to the final ratification, which the government intends to complete during the spring. This means that the MLI would generally become effective as of January 1, 2020.

PwC observation:

With the MLI's approval by the House of Representatives, the Netherlands is one step closer to implementing this instrument in its Covered Tax Agreements. The amendment with regard to commissionaire PEs leads to less uncertainty for taxpayers doing cross-border business. In general, we expect the MLI to significantly impact companies doing cross-border business.

Jeroen Schmitz
Amsterdam
T: +3 1 612 692 042
E: jeroen.schmitz@pwc.com

Pieter Ruige
Amsterdam
T: +3 1 613 691 255
E: pieter.ruige@pwc.com

Tim Theunis
Amsterdam
T: +3 1 630 964 508
E: tim.s.theunis@pwc.com

Glossary

Acronym	Definition
ATAD	Anti-tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CIT	corporate income tax
DST	digital services tax
DTT	double tax treaty
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortization
EC	European Commission
EPR	excess profit ruling
EU	European Union
GCEU	General Court of European Union

Acronym	Definition
ITL	income tax law
MAP	mutual agreement procedure
MLI	Multilateral Instrument
MNOk	Norway Krone
NI	normative instruction
OECD	Organisation for Economic Co-operation and Development
PPT	Principal Purpose Test
RMB	Renminbi
STE	small thin-profit enterprises
SME	small and medium enterprise
UBO	ultimate beneficial owners
WHT	withholding tax

Contact us

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

Bernard Moens
Global Leader International Tax Services Network

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

Geoff Jacobi
International Tax Services

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

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