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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In this issue

Legislation

Administrative

EU/OECD Updates

Treaties

Legislation
Denmark

Implementation of Anti-tax Avoidance Directive in Danish tax law

On May 31, 2018, the Danish Ministry of Taxation published a draft bill implementing Anti-tax Avoidance Directive (ATAD) 1 & 2.

Most of the anti-avoidance rules set out in ATAD, such as rules on interest limitation, exit taxation, CFCs, hybrid mismatches and a general anti-avoidance rule (GAAR), already apply in Danish tax law. The rules are nevertheless being adjusted in connection with the ATAD implementation.

The existing Danish rules on hybrid mismatches have been abolished and the Ministry of Taxation has proposed new detailed rules.

The existing GAAR only covers cross-border transactions, whereas the new GAAR will cover all tax arrangements.

The Danish EBIT rule that allows for a deduction of net financing expenses of up to 80% of EBIT will change to a 30% EBITDA rule.

The broadening of the Danish CFC rules implies that, in the future, CFC income also will cover embedded royalties, such as royalties included in the payment of goods and services.

The provisions regarding interest limitation, CFCs and the GAAR will enter into force on January 1, 2019. The provisions regarding exit taxation and hybrid mismatches enter into force on January 1, 2020.

PwC observation:
Clients with activities in Denmark should be aware of the new rule, as their CFC taxation and the possibility to deduct interest expenses may change. Furthermore, many new arrangements may be considered hybrid mismatches and the GAAR is unpredictable.

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China

China extends the CIT preferential treatment for qualified Technology Advanced Service Enterprises (TASEs) nationwide

In November 2016, the Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOC), Ministry of Science and Technology (MOST) and National Development and Reform Commission (NDRC) jointly issued Caishui [2016] No.122. This provided a reduced CIT rate of 15% from the PRC statutory CIT rate of 25% for qualified TASEs in 15 Pilot Areas. These areas include Tianjin, Shanghai, Hainan, Shenzhen, Hangzhou, Wuhan, Guangzhou, Chengdu, Suzhou, Weihai, Harbin New Area, Jiangbei New Area, Liangjiang New Area, Gui'an New Area and Xi'an New Area. The reduced rate applied from January 1, 2016 to December 31, 2017.

In May 2018, the MOF, SAT, MOC, MOST and NDRC issued Caishui [2018] No. 44 to extend this CIT preferential treatment for qualified TASEs nationwide effective January 1, 2018. The scope of TASE's eligible services includes cross-border licensing of intellectual properties, digitalization of cultural products, and medical care of traditional Chinese medicine.

PwC observation:
The circular will allow for more high-tech and high value-added service enterprises across the country to enjoy the preferential CIT policies for TASEs. This will help promote the innovation and development of service trade and optimize foreign trade structures in China.

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Germany

Germany expected to change RETT rules for share deals

After much debate, the Ministers of Finance of the Federal States agreed on June 21 on several measures that would tighten the German real estate transfer tax (RETT) rules. Although no formal draft document has been issued, we expect changes regarding German RETT rules for share deals in the near future. Investors should monitor the legislative process. In Germany, share sales of less than 95% of the shares in real estate companies owning German real estate broadly are not subject to the RETT.

The Ministers of Finance of the Federal States will ask a committee to draft a bill that we believe will cover:

- extending the monitoring period for transfers of partnership interests to 10 years
- introducing a new RETT triggering event for share transfers in corporations
- lowering the hurdle from 95% to 90%
- extending claw back periods for certain privileges applicable to partnerships only.

There is no clear commitment on when the regime will enter into force, but we expect it to be by January 1, 2019.

PwC observation:
The changes to the German RETT rules for share deals are expected to reduce their attractiveness. Investors should monitor the legislative process and become familiar with the details of the envisaged new law.

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Hong Kong

The open-ended fund company regime will take effect on July 30, 2018

The enactment of the Securities and Futures (Amendment) Ordinance 2016 in June 2016 and the Inland Revenue (Amendment) (No. 2) Ordinance 2018 in March 2018 introduced the legal, regulatory and tax framework for an open-ended fund company (OFC) regime in Hong Kong and extended the profits tax exemption to onshore privately held OFCs. The following three pieces of subsidiary legislation were gazetted on May 18, 2018 and enable the implementation of the OFC regime in Hong Kong:

1. the Securities and Futures (Amendment) Ordinance 2016 (Commencement) Notice (the Commencement Notice);
2. the Securities and Futures (Open-ended Fund Companies) Rules (the OFC Rules); and
3. the Securities and Futures (Open-ended Fund Companies) (Fees) Regulation (the Fees Regulation).

The Commencement Notice set July 30, 2018 as the commencement date of the Securities and Futures (Amendment) Ordinance 2016. The OFC Rules set out the detailed statutory operational requirements of the OFC regime and the Fees Regulation prescribes the fees to be collected by the Securities and Future Commission and the Registrar of Companies with respect to OFCs.

Subject to the completion of the negative vetting procedure, the Securities and Futures (Amendment) Ordinance 2016, including its provisions on amending the Inland Revenue Ordinance, will come into effect on July 30, 2018.

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In addition, since the commencement date of the Inland Revenue (Amendment) (No. 2) Ordinance 2018 (except for the definition of the Over-the-Counter derivatives products under the permissible asset class for the purpose of this Ordinance) is set as the commencement date of the Securities and Futures (Amendment) Ordinance 2016, the Inland Revenue (Amendment) (No. 2) Ordinance 2018 (except the part mentioned above which has not yet come into force as of this article date*) also will take effect on July 30, 2018.

*Note: This article was based on tax legislation gazetted, enacted or entered into operation up to June 5, 2018.

PwC observation:
Business groups in the fund market should review their restructuring and potential investment fund structuring to see how they may benefit from the OFC regime, which should begin operating very soon.

New Zealand

New Zealand enacts changes to its domestic tax regime for cross-border relationships

The changes to New Zealand's cross-border tax regime are now effective and will affect all international groups that operate in New Zealand. The newly enacted legislation is effective for income years starting on or after July 1, 2018. The changes:

- update the method that related-party debt (exceeding NZD$10m) is priced, moving away from arm's-length principles to a formulaic credit rating approach, and removing 'exotic' terms from arrangements;
- tighten the transfer pricing regime with the effect that New Zealand-specific transfer pricing documentation is expected, while also extending the scope of companies that the rules apply to;
- make it more likely that groups with a physical presence or fly-in fly-out arrangements in New Zealand will be taxable on sales revenue, including under a deemed PE anti-avoidance rule;
- eliminate tax advantages arising from hybrid and branch mismatches through the enactment of the full set of OECD recommendations with some New Zealand modifications;
- further restrict interest deductibility under the thin capitalization regime, including by amending the threshold test from assets to net assets; and
- give Inland Revenue greater power to investigate large multinationals.

PwC observation:
The changes in many cases will be significant, so it is critical for all businesses operating in New Zealand to consider carefully the new rules' potential effect. With recent enactment and possibly a very short lead time to effective dates, business should consider the potential impact of these proposals now.

For more information on the changes to New Zealand's tax regime for cross border relations, please refer to our local *May 2018 Tax Tips article*

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United States

Tax reform readiness: Six months in...looking back and looking ahead

PwC on June 27 hosted a webcast featuring PwC specialists who discussed the state of international tax in the wake of US and global tax reforms. Watch the webcast replay and register for future webcasts in PwC's Tax Reform Readiness series, which addresses other areas affected by tax reform.

Please see our PwC Insight for more information.

PwC observation:
Some practical things for tax directors to do while awaiting guidance include:

- Talking to people in treasury and financial planning & analysis Many business units will have in-flight situations that will be impacted by tax reform, such as ERP updates and technology initiatives.
- Looking at risk management from a non-tax perspective and considering global banking and payment processing.
- Being compliant. Review old models, in particular, around procurement and IP and understand how these new rules impact them.
- Communicating broadly within the organization. Make a partner out of the business and educate as this new system is more difficult than the old system.

With limited official guidance available until later this year, communicating the anticipated impact of the new laws with the business and the C-Suite is more important than ever. As companies are doing this analysis, modeling various scenarios is critical to everyone understanding the interrelated impacts of tax reform on their organizations.

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United States

Tax reform readiness: GILTI mechanics impacting multinational entities

The 2017 tax reform reconciliation act (the Act) is having a substantial impact on MNEs, with the new concept of global intangible low-taxed income (GILTI) proving to be one of the Act's most important provisions. The Act made broad, fundamental changes to the US international tax system. GILTI applies to virtually every business that maintains its foreign operations in corporate form and may cause the foreign income to be reported on the domestic entity's US federal income tax return on a current basis.

Please see our PwC Insight for more information.

PwC observation:
Modeling is essential to understand the actual impact of GILTI. Numerous issues remain unresolved and taxpayers must make assumptions on how some of these provisions ultimately will be interpreted. Taxpayers should build 'optionality' into their models forecasting the possible impact other provisions may have on GILTI if they ultimately are determined to apply.

Taxpayers should review their foreign tax credit (FTC) profile in light of these new provisions and consider strategies to optimize FTC utilization:

- Expense apportionment and FTC limitation
- Different income categories and related taxes (e.g., Subpart F versus. GILTI versus branch income; Section 901 versus Section 960 taxes)
- Reduction of foreign tax

Taxpayers also need to consider the impact of GILTI on structuring decisions related to internal restructurings and third-party deals. M&A transactions should take into account:

- Structural flexibility to react to legislative/regulatory changes
- Contractual language that accounts for the GILTI tax liability of the buyer or the seller
- Basis consequences related to asset acquisitions whether actual or through a Section 338(g) election.

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Administrative
Argentina

Argentina establishes nonresident capital gains tax payment mechanism

The Argentine tax authority on April 12, 2018, issued General Resolution No. 4227 (the General Resolution), establishing a mechanism for non-residents to pay the capital gains tax on transfers of Argentine shares and other securities. The General Resolution, which took effect April 26, 2018, applies to taxable transactions entered into after September 23, 2013, the date on which the capital gains tax was introduced.

Please see our PwC Insight for more information.

PwC observation:
Withholding tax agents and non-resident taxpayers should consider reviewing transactions involving the sale of Argentine securities going back to September 23, 2013 to determine whether they owe tax and, if so, report it and pay it via the new mechanism prior to June 13, 2018.

See also: *Argentine Congress passes comprehensive tax reform*

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Netherlands

Dutch government proposes changes to corporate income tax fiscal unity regime

In line with earlier communications, the Dutch Ministry of Finance submitted a legislative proposal on June 6, 2018, to change the Dutch fiscal unity regime with retroactive effect to October 25, 2017 (see November 2, 2017, Tax Insight and February 23, 2018, Tax Insight).

If the proposal is accepted, some provisions of the Dutch Corporate Income Tax Act (CITA) will apply as if there were no fiscal unity. The proposal could affect the tax positions of MNEs whose Dutch entities currently are included in a fiscal unity.

Please see our PwC Insight for more information.

PwC observation:
The Dutch Parliament will discuss the proposal in the coming months. The new rules will become final only if both the Lower House and the Senate approve the bills.

The Dutch Ministry of Finance announced earlier that the Dutch fiscal unity regime eventually will be replaced by a tax grouping system that is more sustainable and may not feature a tax consolidation. Replacing the current fiscal unity regime is expected to take several years.

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United States

Section 987 branch currency transaction regulations delayed another year

In Notice 2018-57 (Notice), Treasury and the IRS announced delay of the applicability date of the Section 987 branch currency transaction regulations by one additional year. The Notice, released on June 13, also delayed the applicability dates for certain related final and temporary regulations for an additional year.

Background

On December 8, 2016, Treasury and the IRS published final Section 987 regulations relating to the determination of the taxable income of a taxpayer with respect to a qualified business unit (QBU) that is a Section 987 QBU and the determination of Section 987 foreign currency translation gain or loss. On the same date, Treasury and the IRS also published temporary regulations under Section 987 which provided related rules, including the deferral event and outbound loss rules of Temp. Treas. Reg. sec. 1.987-12T.

Effective and applicability dates–final and temporary regulations

The final and temporary regulations generally were effective on December 7, 2016. However, the 'applicability dates' differed from the effective date. The applicability date for the final Section 987 regulations, other related final regulations under Sections 861, 985, 988, and 989, and for most of the temporary regulations was taxable years beginning on or after one year after the first day of the first tax year following December 7, 2016. For a calendar-year taxpayer, the regulations would apply on January 1, 2018. However, the temporary regulation provisions relating to the annual deemed termination election of Temp. Treas. Reg. sec. 1.987-8T(d), and the deferral event and outbound loss rules of Temp. Treas. Reg. sec. 1.988-12T and Temp. Treas. Reg. sec. 1.988-2T(b)(16) regarding deferral of loss on related-party debt instruments, had earlier, more immediate, applicability dates.

Notice 2017-57

On October 16, 2017, Treasury and the IRS published Notice 2017-57. Notice 2017-57 deferred the applicability date of the final and related temporary regulations (but not Temp. Treas. Reg. secs. 1.987-8T(d), 1.988-12T, and 1.988-2T(b)(16)) by one year. For a calendar-year taxpayer, the regulations generally would be applicable on January 1, 2019.

Notice 2018-57

Notice 2018-57 defers the applicability date of the final and related temporary regulations (but not Temp. Treas. Reg. secs. 1.987-8T(d), 1.988-12T, and 1.988-2T(b)(16)) by an additional year. For a calendar-year taxpayer, the regulations generally would be applicable on January 1, 2020.

Observations: The temporary regulations will expire on December 6, 2019. Presumably, Treasury and the IRS will issue a new set of temporary regulations before that date. Note that a taxpayer may choose under Treas. Reg. sec. 1.987-11(b) to apply the final regulations and the related temporary regulations to a tax years beginning after December 7, 2016, as specified in Notice 2018-57.

PwC observation:
Notice 2018-57 defers the applicability date of the final and related temporary Section 987 regulations (but not, as mentioned above, Temp. Treas. Reg. secs. 1.987-8T(d), 1.988-12T, and 1.988-2T(b)(16)) by another year.

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United States

Tax reform readiness: The global company perspective

The 2017 tax reform reconciliation act is having a substantial impact on multinational taxpayers, both those based in the United States and those based in other countries.

Of the many business tax provisions in the Act, several domestic and international provisions generally impact global companies the most. On the domestic side, these include the corporate rate reduction, more restrictive earnings stripping rules, full expensing for qualifying assets, and changes to the net operating loss (NOL) provisions. International tax provisions of particular importance to global companies include those related to BEAT, GILTI and foreign-derived intangible income (FDII).

Observations: Some of the Act's business tax provisions – such as the reduced corporate tax rate, full expensing, retention of the research credit, FDII, and a territorial tax system for foreign dividends – generally are viewed as favorable incentives to invest in the United States, while others – such as the interest deductibility limit – may reduce those benefits. On balance, the Act could be viewed as making the United States more attractive for investment by non-US companies, but how much incremental investment will take place remains to be seen.

Please see our PwC Insight for more information.

PwC observation:
Global MNEs generally are aware of US tax reform implications and are assessing next steps. Modeling the Act's impact will be key, while specific implications remain unclear until the US government issues more guidance. The BEAT in particular seems to be raising issues for many MNEs.

Financing and treasury arrangements need to be reviewed carefully from an overall global perspective. Another important issue companies are facing is whether to move IP to, or develop it in, the United States.

Clearly, some businesses benefit from US tax reform while others do not. Overall, uncertainty for global companies continues as countries react to the Act while trying to remain competitive themselves.

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Uruguay

Uruguay tax regulatory decree affects digital services

The Uruguayan Ministry of Economy and Finance on May 29, 2018, published in the Official Gazette a decree (Decree 144/018) providing tax regulations on the provision of services through the internet, technological platforms, computer applications (apps), or similar means.

The decree explains the conditions that these services should meet for tax purposes and the criteria to locate the service supplier and user for determining the Uruguayan-source income subject to tax.

The regulations took effect on January 1, 2018, the date the law that introduced the new tax provisions affecting digital services (Law 19,535) came into force. However, the decree declares July 1, 2018, as the effective date for certain local taxpayers to start withholding the taxes on audio-visual service fee payments and the suspension of withholding obligations with regard to mediation and intermediation services.

Please see our PwC Insight for more information.

PwC observation:
Domestic and multinational enterprises with a Uruguayan presence and non-residents that have transactions with Uruguayan entities or individuals should determine their obligations under these new tax regulations.

In particular, companies operating in the film, TV broadcasting, internet, and audio-visual sectors should analyze carefully the potential effect of these provisions on their transactions and monitor expected Tax Office developments.

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EU/OECD Updates
Denmark

CJEU rules against Danish withholding tax on dividend payments to non-resident investment funds

The Court of Justice of the European Union (CJEU) issued its judgment in Fidelity Funds (C-480/16) *on June 21, 2018. The case's underlying question was whether, in accordance with the free movement of capital, non-resident investment funds are subject to withholding tax on dividends received from their Danish portfolio investments, while resident investment funds are exempt from withholding tax on such dividend payments. In its ruling, the court concluded that the Danish rules were in breach of EU law.*

Please see our PwC Insight for more information.

PwC observation:
TBased on the CJEU's judgment, non-resident investment funds – both UCITS and non-UCITS – should be entitled to reclaim taxes withheld on dividend payments from Danish portfolio shares. Since the CJEU judgment concerns the free movement of capital, investment funds resident in third countries should also, in principle, be able to file a claim. The case is scheduled for a hearing before the Danish High Court in February 2019.

In the meantime, foreign investment funds should file protective claims in order to avoid potential claims from being statute barred. Such claims could be filed for years back to 2008.

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Luxembourg

Luxembourg draft bill reveals proposed ATAD measures

The EU Anti-tax Avoidance Directive (ATAD 1) was published in July 2016. EU Member States have until December 31, 2018 to incorporate ATAD 1 into their domestic laws. For more background on ATAD 1, please see our PwC Insight.

On June 19, 2018, the Luxembourg government introduced a draft Bill (n°7318) (the Draft Law) before the Luxembourg Parliament that would implement ATAD 1 as Luxembourg domestic law. This Draft Law still needs to go through the Luxembourg legislative process, and may be subject to amendments before the final vote by the Luxembourg Parliament.

In some areas, ATAD 1 gives EU Member States different options and choices for incorporating. The Draft Law reveals the Luxembourg government's choices. Assuming final approval by the Luxembourg Parliament, the Draft Law will come into force on January 1, 2019 with respect to the following measures:

- interest limitation rules (BEPS AP 4) – Article 4 of ATAD 1
- controlled foreign company (CFC) rules (BEPS AP 3) – Articles 7 and 8 of ATAD 1
- intra-EU anti-hybrid rule (BEPS AP 2) – Article 9 of ATAD 1
- general anti-abuse rule (GAAR) – Article 6 of ATAD 1.

The exit tax rules (Article 5 of ATAD I) will come into force on January 1, 2020.

The Draft Law also includes two additional amendments to the domestic law, both not directly linked to the ATAD 1 text. These measures concern tax neutral exchanges, and the domestic definition of permanent establishment.

The Directive amending ATAD 1 for hybrid mismatches with third countries (ATAD 2) is not part of the Draft Law, but will be implemented at a later stage. These measures do not have to come into force in Luxembourg until January 1, 2020.

Most of the rules are aimed primarily at inter-European situations. However, many non-EU companies might fall under the scope of this new legislation through their use of Luxembourg as their European gateway into other EU jurisdictions.

Please see our PwC Insight for more information.

PwC observation:
This Draft Law further indicates Luxembourg's willingness to comply fully with the EU tax initiatives and to adapt to the 'post-BEPS' international tax environment.

Even though most rules are aimed primarily at inter-European situations, many non-EU companies might fall under the scope of this new legislation through their use of Luxembourg as their European gateway into other EU jurisdictions. In light of the Draft Law, multinational companies should analyze any European financing structures that rely on complex financial instruments and leverage Luxembourg businesses.

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Luxembourg

EU Commission treats certain Luxembourg tax rulings as 'State aid'

On June 20, the European Commission (EC) issued a press release concerning its final decision in the State aid investigation into tax rulings granted by the Luxembourg tax authorities to GDF Suez group (now Engie) (the Group), in relation to the treatment of certain financing transactions. The EC considered that the Group received an undue advantage and requested recovery of up to EUR 120 million of tax.

Please see our PwC Insight for more information.

PwC observation:
The decision is the latest in a number of high-profile cases concerning the EC's approach to State aid and taxation. While a number of the recent cases involve transfer pricing matters, the GDF Suez decision appears to focus on the analysis that the arrangement gives rise to a deduction of an expense without a corresponding income inclusion. The EC's concerns may echo BEPS Actions and matters that have been further addressed through the European Union's anti-tax avoidance directives (ATAD I and ATAD II). As with the prior cases, we expect that Luxembourg will appeal the decision to the General Court of the European Union. In the meantime, note that the General Court will hear appeals from some of the earlier cases over the next few weeks.

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New Zealand

New Zealand ratifies the Multilateral Convention to implement tax treaty related measures to prevent BEPS

New Zealand has completed its domestic processes to ratify the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. New Zealand's approach was to adopt as many of the provisions as possible, so long as they are seen to be in line with its overall treaty policy. It was deposited with the OECD on the June 27, 2018. This convention will enter into force on October 1, 2018, applying to withholding tax beginning on January 1, 2019 and other taxes for accounting periods starting from April 1, 2019, depending on the timing of the deposits by New Zealand's covered treaty partners.

PwC observation:
New Zealand has elected for 37 agreements of its 40 to be covered by this Convention. At this stage, it is likely that about 29 of its agreements will be amended by the treaty.

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Treaties
Cyprus

Latest Cyprus double tax treaty developments

1. Cyprus – Andorra first time tax treaty signed and ratified
The first tax treaty between Cyprus and Andorra was signed on May 18, 2018. Cyprus ratified the treaty on June 1, 2018. Certain further legal procedures in the two countries need to take place before treaty will enter into force, and it will be effective on January 1, 2019.

The treaty provides for a 0% WHT rate on payments of dividends, interest and royalties.

For capital gains, Cyprus retains the exclusive taxing rights on disposals of shares 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 disposals of shares that are listed, provided that the disposer held, directly or indirectly, not more than 25% of the capital of the disposed-of company at all times during the 12-month period prior to the disposal. Listed shares means listed on a recognized stock exchange of Andorra, Cyprus or on another EU/European Economic Area (EEA) Member State.

2. Cyprus – Luxembourg first time tax treaty now ratified
The first tax treaty between Cyprus and Luxembourg entered into force on May 21, 2018 for Cyprus. The treaty will be effective on January 1, 2019.

The treaty provides for a 0% WHT rate on payments of interest and royalties. For dividends, a 0% WHT rate applies for corporate investors holding directly at least 10% of the capital of the paying company, and a 5% WHT rate applies for all other dividends.

For capital gains under the treaty, Cyprus retains the exclusive taxing rights on disposals of shares in Luxembourg companies except in those cases where more than 50% of the value of the shares is derived directly from immovable property situated in Luxembourg.

The treaties between Cyprus and these two countries incorporate the OECD/G20 BEPS project Action 6 report Principal Purpose Test, which is a minimum standard under the BEPS project.

3. Cyprus – Mauritius ratified an amending Protocol to the existing treaty
The amending Protocol signed October 23, 2017 to the existing treaty between Cyprus and Mauritius, signed in 2000, entered into force on April 30, 2018.

The Protocol revises the provisions of Article 27 Exchange of Information' to align completely its wording with the OECD Model Convention. This new article will take effect as of July 1, 2018 in Mauritius and as of January 1, 2019 in Cyprus.

PwC observation:
Cyprus is rapidly updating and expanding its tax treaty network. These further expand the Cyprus treaty network and open the way for new investment opportunities and trade relations between the countries. Taxpayers also should consider how they may be impacted by amendments to the treaties.

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Hong Kong

Hong Kong-Finland tax treaty signed

Hong Kong signed a tax treaty with Finland on May 24, 2018. The Hong Kong-Finland tax treaty has not yet entered into force due to pending completion of ratification procedures by both sides.

As Hong Kong does not impose WHT on dividends or interest paid to non-residents, one of the major benefits under the Hong Kong-Finland tax treaty for Finnish resident corporations is the reduced WHT rate of 3%, as opposed to the domestic rate of 4.95%, on royalties derived from Hong Kong. In particular, where the domestic two-tier tax rates apply, the rate will be further reduced to 2.475% on the portion of the first HK$2 million assessable profits, subject to certain conditions.

On the other hand, the Hong Kong-Finland tax treaty considers a company as a Hong Kong resident if it is (i) incorporated in Hong Kong or (ii) incorporated outside Hong Kong but being centrally managed and controlled in Hong Kong. This adopted the more stringent residence test of 'centrally managed and controlled' as compared to 'normally managed or controlled' test appearing in other tax treaties signed by HK.

PwC observation:
Hong Kong continues to expand its tax treaty network. Collectively, Hong Kong has now signed 40 tax treaties, and 16 of them with member states of the European Union.

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United Kingdom

The United Kingdom ratifies the MLI

The United Kingdom deposited its MLI ratification instrument and final positions with the OECD on June 29, 2018. The MLI therefore will come into force for the United Kingdom on October 1, 2018. It will apply, for example, in relation to withholding tax, from January 1, 2019 to the UK's double tax agreements (DTAs) with those territories that have also ratified, or that do so before October 1, 2018, where those are covered tax agreements. The precise dates of when the MLI is effective for other purposes or in relation to other DTAs will depend upon when other treaty partners submit their instruments of ratification with the OECD and which options and reservations are chosen.

PwC observation:
The MLI is now in the process of being ratified and coming into effect around the world. It will have a fundamental impact on how taxpayers access DTAs, so now is the time to prepare for its impact. The UK's final positions show that it has identified 121 treaties to which it is prepared to apply the MLI. The Faroe Islands, Kyrgyzstan and the United Arab Emirates have been added and Germany was removed from the UK's original draft position submissions to the OECD on signature of the MLI. Of those, we currently expect half to be covered tax agreements as the remainder are either not listed by the other treaty partner (in draft positions submitted by the 73 other current signatories and final positions deposited by the nine current ratifiers/depositors) or relate to countries that have not yet signed the MLI.

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Glossary

Acronym	Definition
Act	2017 tax reform reconciliation act
ATAD	Anti-tax Avoidance Directive
BEAT	base erosion and anti-abuse tax
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CITA	Corporate income tax account
CJEU	Court of Justice of the European Union
DTA	Double tax agreements
EC	European Commission
ECI	effectively connected income
EU	European Union
FDII	foreign derived intangible income
FTC	foreign tax credit
GAAR	general anti-avoidance rule
GILTI	global intangible low tax income
IRS	Internal Revenue Service

Acronym	Definition
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Based Erosion and Profit Shifting
MNEs	Multinational enterprises
MOC	Ministry of Commerce
MoF	Ministry of Finance
MOST	Ministry of Science and Technology
NDRC	National Development and Reform Commission
NOL	net operating loss
OECD	Organisation for Economic Co-operation and Development
OFC	Open ended fund company
PE	permanent establishment
QBU	qualified business unit
RETT	real estate transfer tax
SAT	State administration of taxation
TASE	Technology Advanced Service Enterprises
WHT	withholding tax

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