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
Hong Kong

Proposed enhancement in profits tax exemption for certain offshore venture capital funds

The Inland Revenue Ordinance (Amendment of Schedule 16) Notice 2018 (the Notice) was gazetted on April 27, 2018. The Notice seeks to add 'a transaction in an investee company that is co-invested by a non-resident fund and the Innovation and Technology Venture Fund Corporation' as one of the tax-exempt specified transactions in Schedule 16. The proposed amendment aims to address the 'tainting concern' of offshore venture capital funds investing in a Hong Kong start-up under the Innovation and Technology Venture Fund (ITVF) Scheme. The goal is to encourage more private investment in innovation and technology (I&T) start-ups in Hong Kong.

Under the ITVF, selected partner venture capital (VC) funds would co-invest with the government in local I&T startups at an overall 2:1 ratio. Currently, an offshore fund's tax-exempt status may be tainted by the captioned co-investments because an offshore fund is not permitted to invest in (i) private Hong Kong companies, or (ii) overseas companies with substantial Hong Kong business or holding substantial Hong Kong real estate. In order to address the tainting concern, the government has proposed to amend the 'specified transactions' definition in Schedule 16 so that it will cover such co-investments with the ITVF. The other existing conditions under the offshore funds profits tax exemption would continue to apply. However, note that the offshore VC fund must directly invest in the investee company, i.e., without using a special purpose vehicle.

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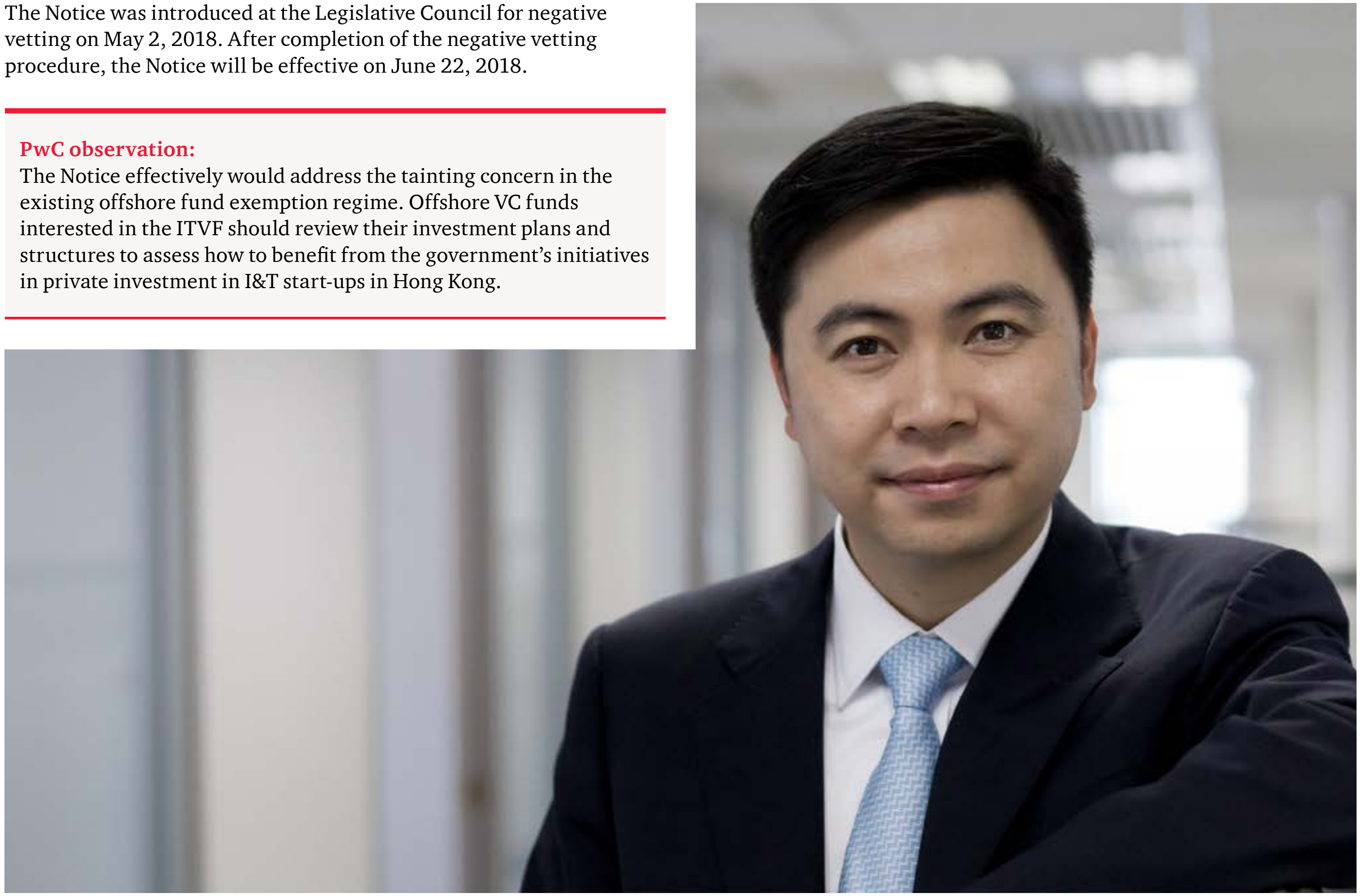
The Notice was introduced at the Legislative Council for negative vetting on May 2, 2018. After completion of the negative vetting procedure, the Notice will be effective on June 22, 2018.

PwC observation:
The Notice effectively would address the tainting concern in the existing offshore fund exemption regime. Offshore VC funds interested in the ITVF should review their investment plans and structures to assess how to benefit from the government's initiatives in private investment in I&T start-ups in Hong Kong.



United States

Business decision-making in the post-reform world: early observations

The 2017 tax reform reconciliation act (the Act) is impacting multinational taxpayers substantially. This impact goes well beyond the tax function into broader business decision-making, necessitating close collaboration between tax executives and the C-Suite. Combined with global BEPS-related developments, US tax reform is having a pronounced impact on three types of business decisions: Investments, business footprint and transactional models.

Global tax reform is changing the return on investment of many strategic and operating model decisions. Further, the effect of these new tax provisions often is counterintuitive. Holistic modeling and scenario planning are a must for a starting point. Tax departments are expected to work more closely with the business than before, providing real-time inputs on the economics of business decisions. Given the magnitude of change, executives will have to make important business decisions operationally and from a tax standpoint that will have long-term effects.

Please see our PwC Insight for more information.

PwC observation:
The business decision criteria highlighted earlier — footprint, transactional, and investment — will have lasting impacts for companies as they adapt to the changing US and international landscape. Companies should be nimble with these strategies so they can respond to additional regulatory guidance as well as future global business and tax developments.

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United States

Interactions of international tax reform provisions

The 2017 tax reform reconciliation act (the Act) is having a substantial impact on US taxpayers. Among the most significant areas of impact are the international tax reform provisions and their interactions with each other.

These provisions include Section 965 (the ‘toll charge’ on the deemed repatriation of foreign earnings); the Section 951A provisions on global intangible low-taxed income, or GILTI; the Section 250 provisions on foreign deemed intangible income, or FDII; the new Section 163(j) interest deduction limitations; and the Section 59A base erosion and anti-abuse tax, or BEAT. Foreign tax laws and pending changes thereto, including changes to treaties, also are important variables to consider, as is the possible impact of certain tax attributes of US shareholders, such as an overall domestic loss (ODL).

Please see our PwC Insight for more information.

PwC observation:
The international provisions of the Act interact in numerous ways, often leading to unexpected results. Taxpayers should take a holistic approach when modeling the possible impact of the provisions. Furthermore, when considering the impacts of the US provisions, taxpayers should take into account changes in the global tax landscape and their impact on their foreign tax profile as these changes also will interact with and impact the application of the US rules.

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Administrative
Spain

Spain proposes a digital services tax

During the week of April 30, the Spanish Minister of Finance announced that the government will propose a new digital services tax (DST). The DST would align with the draft EU Directive presented by the EC on March 21, 2018. The government's hopes that the new tax will be in force before the end of 2018.

Please see our PwC Insight for more information.

PwC observation:
This announcement follows a trend of unilateral measures taken by countries around the world in response to digitalization and globalization. Multinational enterprises with operations in Spain, particularly those relying on digital interactions, should consider the potential impact of the proposed DST on their current and future service offerings.

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United States

Government officials provide insights on forthcoming tax reform guidance

Speaking at an American Bar Association (ABA) tax conference in Washington, DC on May 10 - 12, officials from Treasury and the Internal Revenue Service (IRS) commented on developing administrative guidance following the 2017 tax reform legislation. While the officials provided some guidance on key issues under the Act, taxpayers still are left to interpret a number of ambiguous provisions. The ABA conference is one of the first public forums for providing taxpayers with insight as to Treasury and the IRS' current thinking related to the Act.

Taxpayers affected by the Act should consider, ideally through modelling scenarios, how the Treasury and IRS officials' comments might impact their operations. As guidance is released, taxpayers also should consider commenting on the proposals or other issues that arise because of such guidance.

Please see our PwC Insight for more information.

PwC observation:
ITreasury and IRS comments at the ABA conference provided insights into administrative considerations following enactment of the Act. While Treasury continues to study a number of outstanding issues, it anticipates the release of 25 to 30 pieces of new administrative guidance within the current year. Such guidance includes release of proposed toll tax and global intangible low tax income (GILTI) regulations by the end of the summer with the anticipated release of Base Erosion Anti-Abuse Tax (BEAT) and Foreign Derived Intangible Income (FDII) proposed regulations by the end of December.

Importantly, Treasury and IRS officials clarified that the anticipated GILTI regulations will require taxpayers to include the Section 78 gross-up amount in the GILTI basket. Other comments provided at the ABA conference indicate Treasury is considering rules under Section 965(h) related to the sale of a specific foreign corporation to an unrelated buyer and determining the appropriate method of allocation for Section 163(j).

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United States

Recent IRS guidance clarifies key international tax issues

The 2017 tax reform reconciliation act (the Act) is having a substantial impact on US taxpayers. Among the most significant areas of impact are the international tax reform provisions, including Section 965 (the 'toll charge' on the deemed repatriation of foreign earnings); the new Section 163(j) interest deduction limitations; and Section 1446(f), which imposes withholding on gain treated as effectively connected income (ECI) on certain transfers of partnership interests.

The IRS recently issued guidance on these provisions: Notice 2018-26 on Section 965, Notice 2018-28 on Section 163(j), and Notice 2018-29 on Section 1446(f).

Please see our PwC Insight for more information.

PwC observation:
While these Notices provide significant guidance and clarity as to implementation of the international tax provisions of the Act, further guidance is needed to address many issues. Taxpayers should continue to monitor subsequent guidance to determine the tax impact on their arrangements and may want to be proactive and provide comments on proposed regulations or other guidance implementing the Act.

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EU/OECD Updates
EU

DAC6 adoption means taxpayers should start documenting reportable transactions

On May 25, 2018, the Economic and Financial Affairs Council (ECOFIN), which is responsible for EU tax policy, formally adopted the Council Directive that amends Directive 2011/16/EU on administrative cooperation in the field of taxation with regard to mandatory automatic exchange of information (EoI) related to reportable cross-border arrangements.

The main purpose of this 'Directive on Administration' (commonly referred to as 'DAC6') is to strengthen tax transparency and deter aggressive tax planning. Although 'aggressive tax planning' is not defined, the Directive references a number of pre-determined 'hallmarks.' These hallmarks could render a cross-border arrangement reportable. DAC6 provides for mandatory disclosure of cross-border arrangements by intermediaries, or individual or corporate taxpayers, to tax authorities. It also mandates automatic exchange of this information among EU Member States.

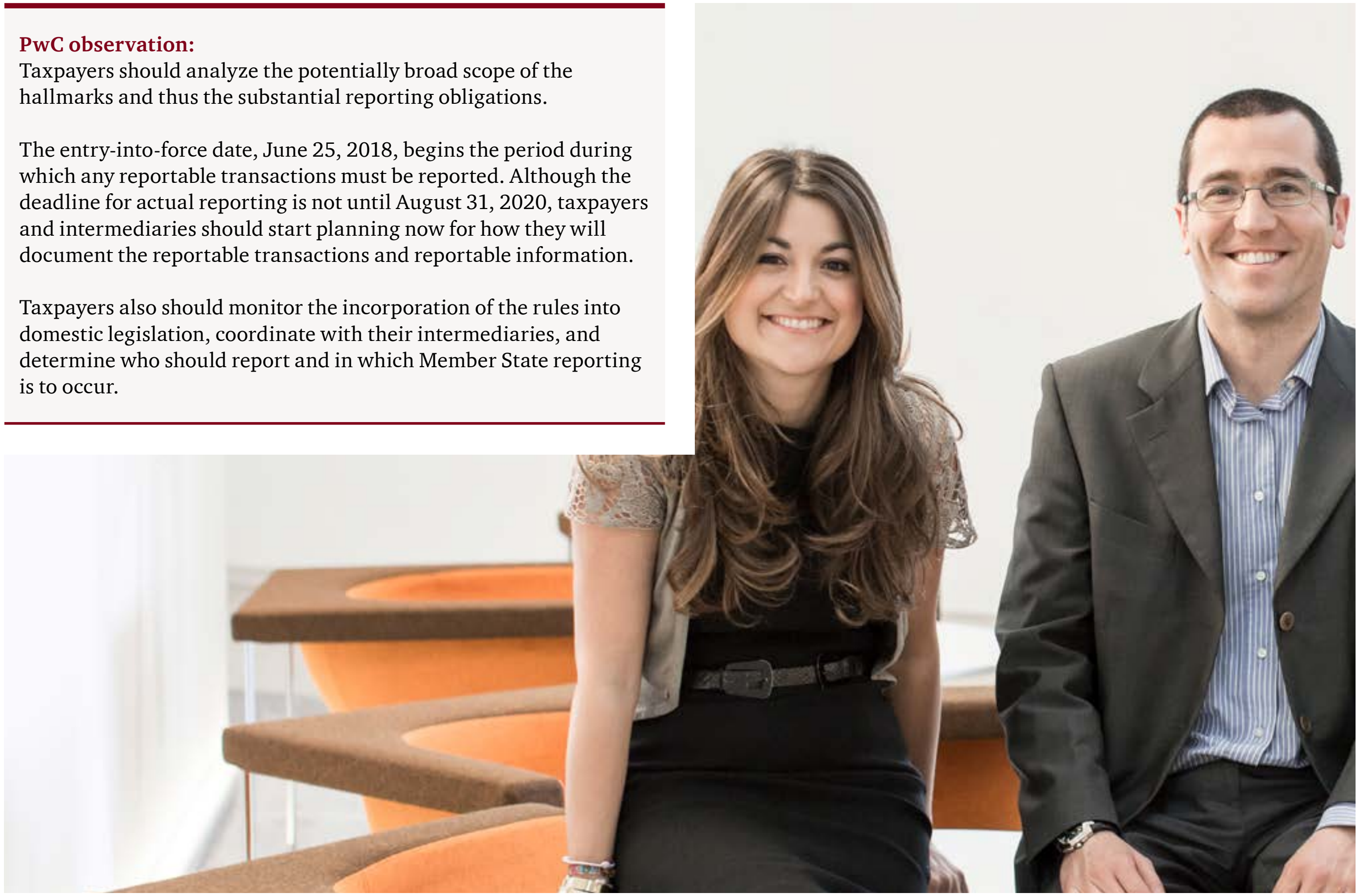
DAC6 entered into force on June 25, 2018. EU Member States have agreed to apply these rules beginning January 1, 2020.

Please see our PwC Insight for more information.

PwC observation:
Taxpayers should analyze the potentially broad scope of the hallmarks and thus the substantial reporting obligations.

The entry-into-force date, June 25, 2018, begins the period during which any reportable transactions must be reported. Although the deadline for actual reporting is not until August 31, 2020, taxpayers and intermediaries should start planning now for how they will document the reportable transactions and reportable information.

Taxpayers also should monitor the incorporation of the rules into domestic legislation, coordinate with their intermediaries, and determine who should report and in which Member State reporting is to occur.



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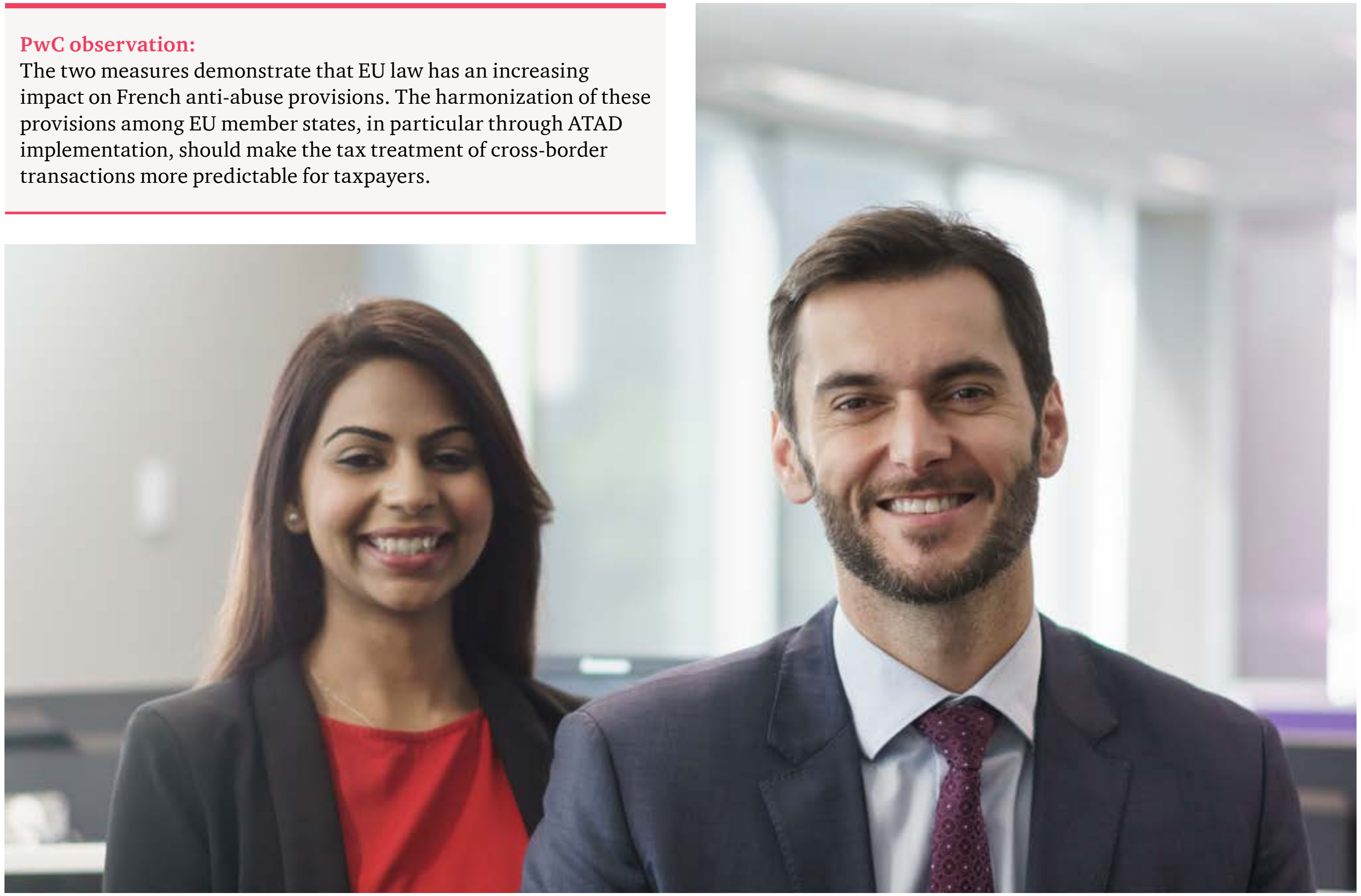
France

Public consultation on measures relating to tax avoidance

The Anti-tax Avoidance Directive (ATAD) was adopted on July 12, 2016 and introduces particular measures relating to the tax deductibility of loan interest. In addition, the EC is scrutinizing patent box regimes as potential sources of tax avoidance. These topics should be included in the Finance Law for 2019, which will be enacted in December 2018. In this context, the French Ministry of Finance (MoF) launched a public consultation on April 24, 2018 regarding the corporate income tax reform.

Another measure is the contemplated extension of the non-cooperative countries list. Currently, France considers as 'non-cooperative' the following countries: Brunei, Nauru, Niue, Panama, Marshall Islands, Guatemala and Botswana. In particular, increased WHT and non-tax deductibility rules apply to companies dealing with entities located in these countries. Based on a bill against tax fraud, this list should also include the countries blacklisted by the European Union, as updated on March 13, 2018. Currently, the countries blacklisted by the European Union are the following: American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago and the US Virgin Islands.

PwC observation:
The two measures demonstrate that EU law has an increasing impact on French anti-abuse provisions. The harmonization of these provisions among EU member states, in particular through ATAD implementation, should make the tax treatment of cross-border transactions more predictable for taxpayers.



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OECD

Multilateral instrument coming into force to change many tax treaties from January 1, 2019

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) will enter into force on July 1, 2018, following Slovenia depositing the fifth ratification instrument on March 22, 2018. Earlier, the following jurisdictions deposited their instruments of ratification with the OECD: Republic of Austria, the Isle of Man, Jersey, and Poland.

The entry into force of the MLI for double tax treaty Parties, as defined, determines when its provisions come into effect for the treaties between them. Different dates potentially apply for withholding taxes, other taxes, mutual agreement procedures to resolve disputes, and the use of arbitration to resolve disputes, where territories have chosen to apply arbitration. We expect a significant number of the current 78 signatories to ratify the MLI and lodge the instrument of ratification with the OECD in time for many provisions to be effective January 1, 2019.

Alternative effective dates will apply to many provisions and circumstances, and careful scrutiny of the various defaults and options will be necessary.

Please see our PwC Insight for more information.

PwC observation:
TThe MLI supplements and modifies double tax agreements (if they are covered tax agreements (CTA)) and potentially changes them in a number of ways. In such cases it will no longer be appropriate merely to read the most recent tax treaty or protocol – you will need to see if/ how these have been changed by the MLI.

Although there are some minimum standards that all signatories have to accept, there is much optionality. There will be cases where these options are agreed by treaty partners, but a few where changes are not symmetrical. Working out the benefits under a treaty may be much more complex.

The MLI will have a fundamental impact on how taxpayers access double tax treaties, but are you ready for it? When it comes into force on July 1, 2018, it will start to impact dispute resolution under some CTAs immediately. WHTs are likely to be significantly impacted beginning January 1, 2019, with implication for other taxes for periods beginning shortly afterwards. Taxpayers should assess the MLI's impact and consider whether changes to group structures, locations of people or transactional flows would be advisable.

If a particular treaty benefit is currently important, taxpayers should consider the likelihood of any potential change following the MLI coming into effect. Tax authorities are accepting that double tax disputes need to be resolved more quickly and efficiently. In some cases binding arbitration may be an option. The changes may apply to existing or new disputes.

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Treaties
China

Tax treaty between China and Cambodia entered into force

The tax treaty and protocol between China and Cambodia, which was signed on October 13, 2016, entered into force on January 26, 2018. It will apply to income derived on and after January 1, 2019. The important features of the China-Cambodia treaty include:

- The time threshold for constituting a construction PE is nine months and for a PE in relation to operating heavy machinery for natural resources exploitation is 90 days within any 12 month period. There is no service PE provision in the treaty.
- For passive income, the WHT rate is 10% for dividends, interests, royalties and technical service fees paid to a beneficial owner of the said income if the requirements are met. The Cambodian statutory WHT rate for such payments to non-residents is 14%.
- The right to tax capital gains arising from the transfer of property-rich shares rests with the source state. In other cases of share transfers, the taxing right lies with the residence state.

PwC observation:
The nine month threshold for a construction PE is not commonly seen in tax treaties concluded by China as it usually is six months. It indicates the countries' interest to encourage cross-border construction activities. The technical service fees article also is uncommon in Chinese tax treaties. Under the treaty's technical service fee article, the source state has the right to tax service fee payments at not more than 10% WHT even if a PE is not created.

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Glossary

Acronym	Definition
ABA	American Bar Association
Act	2017 tax reform reconciliation act
ATAD	Anti-tax Avoidance Directive
BEAT	base erosion and anti-abuse tax
BEPS	Base Erosion and Profit Shifting
DST	Digital services tax
DAC6	Directive on Administration
ECOFIN	Economic and Financial Affairs Council
EC	European Commission
ECI	effectively connected income
EoI	Exchange of information
EU	European Union
FDII	foreign derived intangible income

Acronym	Definition
GILTI	global intangible low tax income
IRS	Internal Revenue Service
ITVF	Innovation and Technology Venture Fund
I&T	Innovation and technology
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Based Erosion and Profit Shifting
MNEs	MNEs
MoF	Ministry of Finance
OECD	Organisation for Economic Co-operation and Development
ODL	overall domestic loss
PE	permanent establishment
SFC	specified foreign corporation
VC	venture capital
WHT	withholding tax

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Worldwide Tax Summaries:
Corporate taxes 2017/2018

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