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.

Featured articles

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Responding to the potential business impacts of COVID-19
COVID-19 can cause potentially significant people, social and economic implications for organisations. This link provides information on how you can prepare your organisation and respond.

In this issue

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Denmark

Danish implementation of defensive measures against EU – blacklisted jurisdictions

Effective July 1, 2021, Denmark implemented two new tax defensive measures against countries on the EU list of non-cooperative jurisdictions. Broadly, these measures provide that:

1. No tax deduction (and no tax basis for acquired assets) will be allowed on payments made directly or indirectly to beneficial owners in a blacklisted jurisdiction. The measure is limited to payments between related parties.
2. An increased withholding tax of 44% will generally be levied on dividends if the beneficial owner is a tax resident in a blacklisted jurisdiction and the shareholder holds at least 10% of the shares in the Danish entity (or if the group has control).

The rules will currently apply on payments to the following 11 jurisdictions on the EU blacklist:

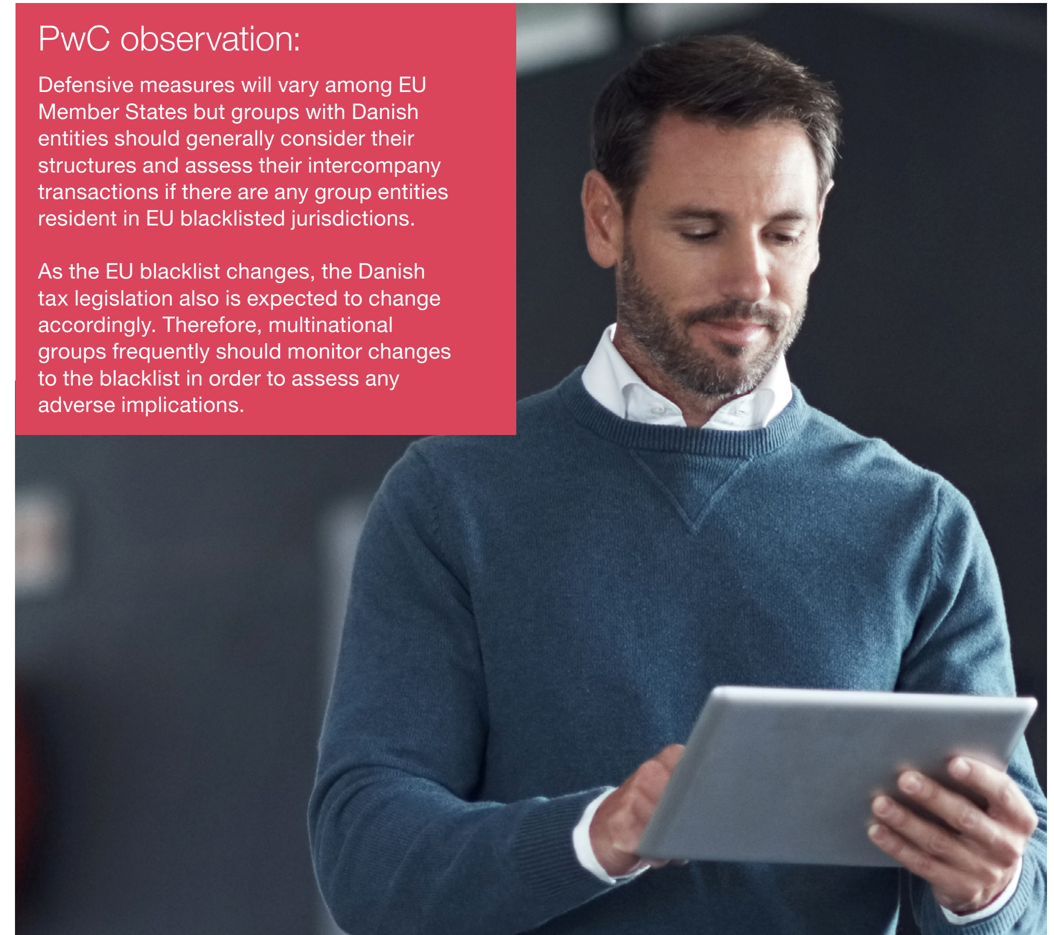
- American Samoa
- Anguilla
- United States Virgin Islands
- Dominica
- Fiji
- Guam
- Palau
- Panama
- Samoa
- Seychelles, and
- Vanuatu

Denmark has a tax treaty with Trinidad and Tobago (which is also on the list), so the rules do not apply on payments to Trinidad and Tobago until January 1, 2022 at the earliest (when the tax treaty is set to expire), unless the Danish domestic tax law changes.

PwC observation:

Defensive measures will vary among EU Member States but groups with Danish entities should generally consider their structures and assess their intercompany transactions if there are any group entities resident in EU blacklisted jurisdictions.

As the EU blacklist changes, the Danish tax legislation also is expected to change accordingly. Therefore, multinational groups frequently should monitor changes to the blacklist in order to assess any adverse implications.



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Mexico

Mexican tax authorities publish effective tax rates to measure tax risks for large taxpayers

Mexican tax authorities recently released effective tax rates (ETRs) intended to serve as parameters for measuring tax risks that correspond to over 200 economic activities.

The stated objective is to facilitate and encourage voluntary tax compliance by inviting taxpayers to analyze the applicability of the ETRs, compare them with their own and consider self correcting their tax positions, if appropriate. According to the authorities, this should reduce the need for in-depth tax reviews to verify that taxpayers have complied with their tax obligations.

As part of the 2021 tax reform, Mexico amended its Federal Tax Code to help Mexican tax authorities properly exercise their powers. Per the amendments, they are to provide free assistance to taxpayers and employ their best efforts to let income taxpayers know, on a regular and general basis, of parameters that may serve as reference with regard to profits, deductible items, or ETRs shown by other entities or legal figures earning income or profit margins from their activities, based on the economic sector or industry to which they belong.

Publication of ETRs

In mid – June 2021 the Mexican tax authorities published the first batch of expected. ETRs for measuring tax risks. These risks correspond to 40 economic activities of 'large taxpayers' in economic sectors such as mining, manufacturing, retail and wholesale, financial and insurance services, automotive, and pharma, covering fiscal years 2016 to 2019. In August 2021, ETRs for 84 additional economic activities were published, including sectors such as construction, oil and gas, and transportation. The third batch, published in early September, includes 79 industries related to manufacturing of certain goods, manufacturing and bottling of beer and soft drinks, employment services, private sector hospitals, real estate brokers, advertising agencies, and accounting services.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

Even though different internal and macroeconomic factors impact the ETRs, taxpayers should analyze this information and diagnose their financial and tax calculations. In addition, they should document any deviations and seek to demonstrate the commercial and business rationales driving their profitability, particularly where a significant deviation exists.

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Mexico

Changes to the Mexican international taxation framework from the 2022 budget proposal.

The Mexican Ministry of Finance submitted the tax bill for fiscal year 2022 on September 8.

Includes, among others, the Federal Revenue Law and other proposals to amend relevant tax laws such as the Mexican Income Tax Law (MITL) and the Federal Tax Code (FTC), with an emphasis on reinforcing Mexican anti-abuse rules framework in order to access certain tax benefits. The bill must be approved no later than October 31, 2021 by the Mexican Congress. Key proposals include:

- A transfer pricing analysis requirement to sustain the fair market value in connection with capital gains taxes derived from related-party transactions.
- Business substance requirements to keep the benefits on the transfer shares at cost basis or tax deferral authorizations derived from intra-group business reorganizations and to perform tax neutral mergers or spin-offs.
- Financing transactions that lack business substance may be considered back-to-back loans, and therefore interest may be reclassified as deemed dividends.
- Maquiladoras can no longer comply with transfer pricing obligations through Advance Price Agreements, and may only determine their profit margins under the existing safe-harbor rules in order to not create a permanent establishment for the principal.
- Legal representatives appointed in Mexico would assume joint and several liability for the taxes to be paid by the non-residents and must have sufficient assets to respond for such liability.
- New rules that would compute thin capitalization, and new restrictions for amortization of tax losses due to changes in control.
- Certain amendments to the Mexican CFC rules (REFIPRE) calculations.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

The introduction of new business substance thresholds, rules to limit the use of losses in changes of control and new situations where the joint liability would apply, align with the government's commitment to not increase or create new taxes. These proposals also allow the Mexican Tax Authorities to seek a higher assessment and collection approach. Given the proposed bill's broad nature, multinationals should analyze how the proposals might impact their operations in Mexico.

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Netherlands

Netherlands 2022 budget includes tax proposals of limited scope

Dutch Budget Day was September 21, and since the Netherlands does not yet have a fully authorized new government (elections were held earlier this year), the 2022 proposals are limited in scope.

As a result, the impact on multinational entities (MNEs) may not be significant. Since the current temporary government does not hold a majority in the second chamber, that entire chamber needs to individually vote on each proposal. Parties are not bound to a government agreement, so the second chamber may not agree upon all the proposals as presented. Furthermore, amendments are likely within the next few months.

To a large extent, the proposed changes included in the 2022 budget can be traced back to the European Commission's continuing efforts for fair and transparent taxation. This means that some of the Dutch rules would be aligned with the anti-tax avoidance directives applicable to all EU Member States. Also, the long-standing informal capital concept would align with rules applied in other large EU Member States.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

The key rules have been out for consultation and are not new, although some of the details may have changed. Although the impact on MNEs is not expected to be significant, MNEs still should follow the legislative process, and consider how the proposals could impact their operations.

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United States

House Ways and Means Committee approves reconciliation tax bill – key business provisions

The House Ways and Means Committee on September 15 approved tax increase and tax relief proposals that the House of Representatives are to act on as part of 'Build Back Better' reconciliation legislation (the bill).

House and Senate tax proposals are being considered under a fiscal year 2022 budget resolution that provides reconciliation instructions for a package that currently adds up to about $3.5 trillion of spending and tax relief provisions, offset in part by corporate and individual tax increases.

The bill includes significant business and international provisions, including changes to the corporate tax rate, limitations on interest expense of international financial reporting groups, modifications to inbound and outbound international provisions – including global intangible low-taxed income (GILTI), foreign derived intangible income (FDII), foreign tax credit rules, base erosion and anti-abuse tax (BEAT), and subpart F income, and the extension of expensing (i.e., current deduction) of research and experimental costs under Section 174.

Differences between the House tax proposals and forthcoming Senate tax proposals that are expected to be considered in coming weeks will have to be resolved before final legislation can be put to a vote in each chamber. Senate Finance Committee Chairman Ron Wyden (D-OR) and other Finance Committee Democrats have recently released a series of discussion drafts on business, international, and individual tax proposals. Congressional Democratic leaders are seeking to complete action on the legislation so it can be signed into law by President Biden before the end of this year.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

Multinational and domestic companies should model these new provisions to understand the potential tax implications and consult with advisors on which provisions will most likely be enacted as part of final legislation. Most of the business tax reform provisions are proposed to be effective for tax years beginning after December 31, 2021. In addition, businesses also should consider the potential effects of global tax policy proposals that they OECD is developing.

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Uruguay

Tax measures in response to the pandemic

The Uruguayan Parliament extended certain pandemic relief tax measures. Corporate Income Tax (CIT) taxpayers whose main activity is included on the list below, will not have tomake the minimum CIT advanced payments from July thru October 2021.

House and Senate tax proposals are being considered under a fiscal year 2022 budget resolution that provides reconciliation instructions for a package that currently adds up to about $3.5 trillion of spending and tax relief provisions, offset in part by corporate and individual tax increases.

Companies that carry out any of the following activities qualify for such relief:

- Organization and celebration of events and parties, in or out of venues.
- Organization and holding of national and international congresses or fairs.
- Travel agencies.
- Specific cases of land transport.
- Movie theaters, film distribution, and theaters.
- Lodging and meals
- Artists and related non-publicity activities
- Rental, service and support of film equipment, and provision of audiovisual services for non-advertising events
- Sports and recreational education, management of other sports facilities, and sports club activities

PwC observation:

These measures are taken with the aim of mitigating the economic impact caused by the pandemic.

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Portugal

Unexpected DAC6 reporting obligations may arise in Portugal

Portugal transposed the EU DAC6 rules into law on July 21, 2020. This EU Directive covers the mandatory automatic exchange of tax information related to reportable cross-border arrangements.

Following this implementing law, the Portuguese tax authorities (PTA) published guidelines on the practical implementation of DAC6 in Portugal. The PTA's guidelines may create unexpected reporting obligations in Portugal for a 'relevant taxpayer' regarding cross-border arrangements when a Portuguese nexus exists.

Under the PTA's guidelines on the implementing law, a 'relevant taxpayer' must report in Portugal either a cross-border or domestic arrangement, regardless of its place of tax residence, whenever there is a connection with Portugal, as follows:

- an intermediary does not intervene in the reportable arrangement.
- although an intermediary intervenes in the reportable arrangement, the intermediary has no Portuguese nexus.
- an intermediary with Portuguese nexus invoked the legal professional privilege or a confidentiality agreement.

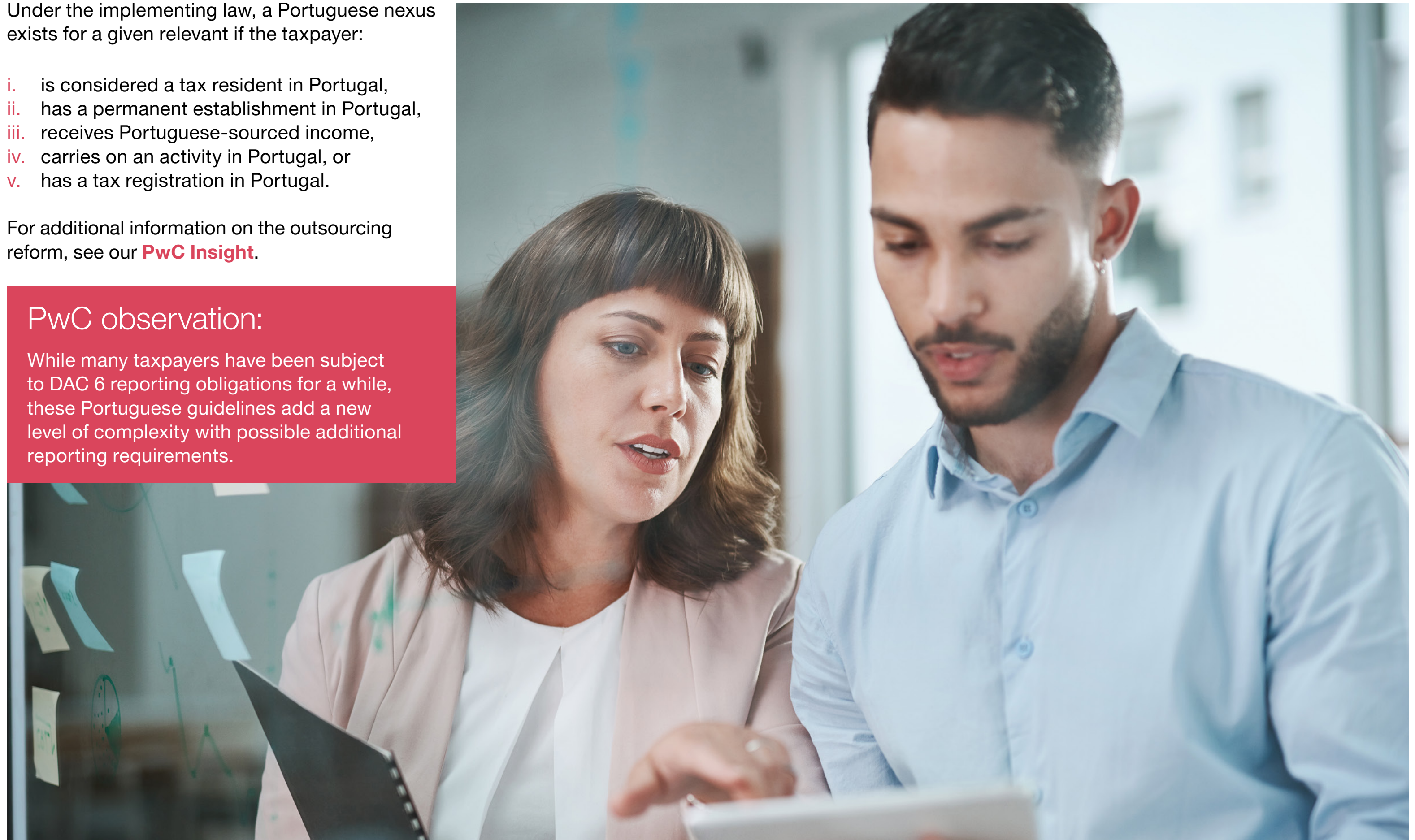
Under the implementing law, a Portuguese nexus exists for a given relevant if the taxpayer:

i. is considered a tax resident in Portugal,
ii. has a permanent establishment in Portugal,
iii. receives Portuguese-sourced income,
iv. carries on an activity in Portugal, or
v. has a tax registration in Portugal.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

While many taxpayers have been subject to DAC 6 reporting obligations for a while, these Portuguese guidelines add a new level of complexity with possible additional reporting requirements.



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China

Protocol to China – Qatar tax treaty enters into force

China and Qatar signed the Protocol to the tax treaty on March 11, 2021. Recently, China's State Taxation Administration (STA) issued Public Notice [2021] No.27 to announce that the protocol entered into force on August 24, 2021, and will apply to income derived on and after April 1, 2021.

For income derived from international air transport business by enterprises in either contracting state, the Protocol grants a tax exemption from VAT or similar taxes in the other contracting state. Other key features of the China – Qatar tax treaty (already entered into force on January 1, 2009) include:

- The time threshold for constituting a construction PE is nine months.
- For passive income, on the premise of meeting the prescribed requirements, withholding tax (WHT) rates on dividends, interests and royalties paid to qualified beneficial owners will be restricted to 10%.
- Capital gains arising from the transfer of property–rich company shares and shares that represent a participation of at least 25% in a company in the source state may be taxed in the source state. In other cases of share transfers, the taxing right lies with the residence state.

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PwC observation:

The Protocol grants the airline industry tax exemptions on air freight and passenger transport, and strengthens efforts of two countries' governments to avoid double taxation. Overall, the Protocol aims to further encourage trade exchanges, increase capital flows, increase investment opportunities, and strengthen economic relations between the two countries.

Cyprus

Cyprus signs and ratifies first tax treaty with the Netherlands

On June 4, the first tax treaty between Cyprus and the Netherlands, which was signed on June 1, 2021, was ratified by Cyprus. Certain legal procedures now need to take place in both states, following which the treaty will 'enter into force.'

Once the treaty enters into force it will become effective on January 1 of the next calendar year. The treaty is based on the OECD Model Tax Convention on Income and on Capital. Below is an overview of the new treaty provisions, when effective:

Dividends
A 0% WHT rate applies where the recipient/ beneficial owner is:

- company that holds directly at least 5% of the capital of the company paying the dividends throughout a 365 – day period that includes the day of the payment; or
- recognized pension fund which is generally exempt under Cyprus' corporate income tax law.

Interest
A 0% WHT rate applies.

Royalties
A 0% WHT rate applies.

The term 'royalties' according to the treaty means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience.

Capital gains
Cyprus retains the exclusive taxing rights on disposals of shares made by Cyprus tax residents, except where:

a. the shares derive more than 50% of their value, directly or indirectly, from immovable property situated in the Netherlands;
b. the shares derive more than 50% of their value, directly or indirectly, from certain offshore rights/property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in the Netherlands.

Regarding point (a) above, Cyprus still retains the exclusive taxing rights on capital gains on disposal of shares:

- listed on a recognized stock exchange;
- in the course of a corporate reorganization such as a qualifying merger, division, and similar transaction;
- where the immovable property from which the shares derived their value is immovable property in which the business is carried on;
- when the alienator owns, directly or indirectly, either alone or with related persons, 25% or less of the capital or other comparable interests prior to the first alienation of shares; or
- when the alienator is a recognized pension fund of Cyprus.

Entitlement to benefits
A benefit under the treaty shall not be granted, with respect to an item of income or capital, should this benefit be one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it can be established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provision of this treaty.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

The treaty between Cyprus and the Netherlands is intended to contribute to the further development of trade and economic relations between the two states.

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United Kingdom

United Kingdom ratifies protocol to tax treaty with Germany

A new protocol to the UK – Germany tax treaty is expected to come into force shortly following its recent ratification in the United Kingdom and incorporation into domestic legislation in Germany.

The United Kingdom ratified the protocol to its tax treaty with Germany on May 26, 2021, giving UK domestic effect to the protocol, which was signed by the two countries on January 12, 2021. Germany incorporated the protocol into its domestic legislation on July 23, 2021. Exchange of instruments of ratification is therefore expected shortly. The protocol will come into force on the day that exchange takes place.

The key changes introduced by the protocol relate to tax evasion and avoidance, prevention of treaty abuse, permanent establishments, and mutual agreement procedure.

Note that the protocol does not include any reduction of WHT rates. Therefore, the 5% WHT payable on dividends remains for dividends paid by German companies to UK recipients as a consequence of UK companies being unable to benefit from the EU's Parent Subsidiary Directive as of January 1, 2021 following Brexit. HMRC is prioritising treaty discussions with Germany as a method for dealing with this outstanding issue, as discussed in their stakeholders meeting in January 2021.

For additional information on the outsourcing reform, see our **PwC Insight**.

PwC observation:

The protocol is unlikely to have significant impact in the United Kingdom or Germany, but may create additional challenges on the permanent establishment status of UK groups with large operations in Germany where selling is not being done via a local German company.

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Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CGT	capital gains tax
CIT	corporate income tax
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
EBITDA	earnings before interest, tax, depreciation and amortization
EC	European Commision
ECOFIN	EU Economic and Financial Affairs Council
EU	European Union
GAAP	generally accepted accounting principles

Acronym	Definition
HRMC	Her Majesty's Revenue and Customs
IF	inclusive framework
IP	intangible property
M&A	mergers and acquisitions
MNC	multinational corporation
NCST	non-cooperative states and territories
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
STE	Small & Thin Profit Enterprises
UTT	uncertain tax treatment
VAT	value added tax
WHT	withholding tax

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