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International Tax News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

Featuered articles

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China

China implemented consolidated corporate income tax filing for non-tax resident enterprises

According to China's corporate income tax (CIT) Law, where a non-tax resident enterprise (TRE) has two or more establishments or places in China and meets certain criteria, then one of its main establishments or places may file a consolidated CIT return. This return filing had been subject to tax authority approval. However, the Standing Committee of the National People's Congress (NPC) decided on December 29, 2018, to remove the approval requirement.

In March 2019, the State Taxation Administration issued Public Notice [2019] No.12, setting forth the administrative requirements for the consolidated CIT filing, as well as the revised forms and filing instructions of the provisional CIT returns for non-TREs. Going forward, non-TREs no longer need tax authority approval when having their headquarters carry out consolidated CIT filing for all their establishments or places in China in accordance with the prevailing tax regulations. In order to get this benefit, non-TREs must meet the conditions stipulated in the above public notice.

Income and losses derived by different establishments or places can be netted against each other, thereby reducing the China tax burden for non-TREs. The relevant collection and administration process for the consolidated CIT filing of Non-TREs closely follows the consolidated CIT filing of TREs with headquarter and branches across provinces or municipals.

PwC observation:

Non-TREs meeting the criteria stipulated in the CIT Law and relevant circulars can now apply the consolidated CIT filing method without having to obtain approval from the tax authorities. Considering that the consolidated CIT filing method is much more complicated, management of non-TREs need to be aware of the impacts and adjust the internal compliance process in several aspects (e.g. staffing, timing, funding, etc.) to ensure the smooth and timely completion of the annual CIT filing at all establishments or places in China.

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China

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Cyprus

Cyprus first implementation of the EU anti-tax avoidance directive

Cyprus's Parliament voted on April 5, 2019, to implement the European Union's (EU's) anti-tax avoidance directive (ATAD). This includes the interest limitation rule, the controlled foreign company (CFC) rule, and the general anti-abuse rule (GAAR). The first ATAD implementation law will enter into force on the date it is published in the Cyprus Government Gazette and will be effective from January 1, 2019 (i.e., for tax years 2019 and onwards).

The first ATAD implementation law impacts only Cyprus CIT taxpayers and more specifically (i) Cyprus tax-resident companies and (ii) Cyprus permanent establishments (PEs) of non-Cyprus tax-resident companies.

Cyprus is expected to implement the remaining measures provided in the ATAD in a second law, which is expected to pass later this year. The second law should be effective no earlier than the effective dates provided for in the EU ATAD:

- Exit taxation provisions – January 1, 2020
- Hybrid mismatch rules – January 1, 2020 (exception: certain reverse hybrid mismatch provisions – January 1, 2022

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

PwC observation:

The Cyprus ATAD first implementation law demonstrates Cyprus's commitment to comply fully with the EU tax initiatives and to adapt fully to a 'post – BEPS' international tax environment. The Cyprus Tax Authority (CTA) is expected to issue clarifying interpretative circulars in the coming months to provide more practical guidance. Multinational entities should consider how Cyprus's first implementation of ATAD might affect their operations and legal organizations.

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Greece

Incentives for the establishment of shared services centres in Greece

Greece recently expanded its favorable regime for shared service centres in order to capture a broader range of activities. These activities include, in addition to consulting, accounting, marketing and other services, software development, data storage and various logistics services. In addition, eligible entities may now benefit from a number of incentives, including cash grants.

The regime's main benefits include:

a. taxable profits are determined based on the cost-plus method

b. the applicable mark-up is pre-approved

c. all expenses are tax deductible

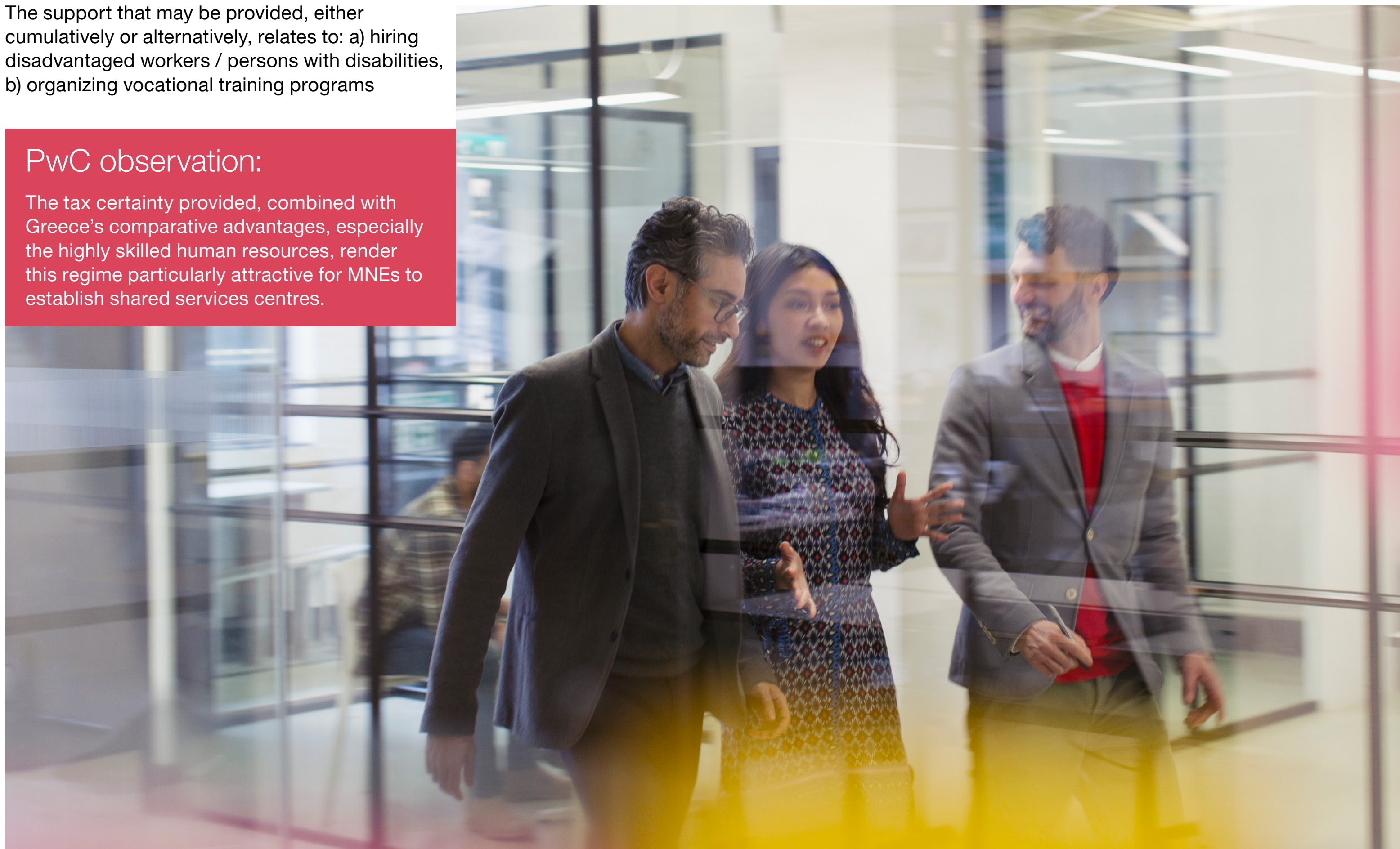
d. no further obligation for the documentation of inter-company transactions exists.

In addition to the above-mentioned benefits, companies that opt for the regime may also receive financial support in the form of grants, covering part of the eligible expenses under certain conditions.

The support that may be provided, either cumulatively or alternatively, relates to: a) hiring disadvantaged workers / persons with disabilities, b) organizing vocational training programs

PwC observation:

The tax certainty provided, combined with Greece's comparative advantages, especially the highly skilled human resources, render this regime particularly attractive for MNEs to establish shared services centres.



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Oman

UAE and Oman added to the EU blacklist

Following the European Council meeting on March 12, 2019, the United Arab Emirates (UAE) and Oman (in addition to eight other jurisdictions) were added to the EU's) list of non-cooperative jurisdictions for tax purposes (the 'EU blacklist'). The Council confirmed that the UAE and Oman were added to the EU blacklist for:

- **UAE:** not make sufficient progress in implementing economic substance regulations by the agreed December 31, 2018 deadline.
- **Oman:** not making sufficient progress in signing up to / implementing exchange of information protocols:

EU countries can choose to apply certain defensive measures against the UAE, Oman and /or other countries on the EU blacklist. Further, certain transactions between associated enterprises in the EU and the blacklisted countries would trigger a reporting obligation and automatic exchange of information under the EU's Directive on Administrative Cooperation in the field of taxation (DAC6).

The UAE publicly confirmed that a timeline of actions currently being implemented has been shared with the EU, and we expect that the UAE's economic substance regulations will be issued shortly. We also expect Oman to update their domestic legislation to facilitate the automatic exchange of financial information with other jurisdictions, and to sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance (as amended).

The Council will continue to regularly review and update the EU blacklist, and is committed to removing countries from the EU blacklist once they have addressed the areas identified and their tax regimes have sufficient governance criteria.

PwC observation:

The impact of being included on the EU blacklist is that entities in the UAE and Oman may face increased monitoring and audits, special documentation requirements, increased withholding taxes and other defensive measures in EU Member States. The UAE publicly confirmed that a timeline of actions currently being implemented has been shared with the EU, and we expect that the UAE's economic substance regulations to be issued shortly. We also expect Oman to update their domestic legislation to facilitate the automatic exchange of financial information with other jurisdictions, and to sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance (as amended).

In addition, increased DAC6 reporting obligations would apply to related party transactions between the EU and the UAE and/or Oman while the UAE and Oman remain on the EU blacklist. Both the UAE and Oman have expressed their disappointment with the Council's decision, along with their commitment to continue cooperating with the EU and fulfill any remaining requirements to be removed from the EU blacklist.

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EU

EC announces final State aid decision on financing income exemption within UK's CFC rules

The European Commission (EC) announced in an April 2 press release that the Group Financing Exemption (GFE) within the UK CFC rules is 'partly justified.' The UK CFC rules broadly allow the United Kingdom to tax the income of overseas subsidiaries controlled by a UK corporate parent where that income is regarded as artificially diverted from the United Kingdom. The EC focuses on the two ways in which income might be regarded as related to the United Kingdom:

1. Where the loans are financed with funds or assets that derive from capital contributions from the United Kingdom
2. Where lending activities relevant to managing the financing activities are located in the United Kingdom.

The EC finds that where the GFE provides an exemption for arrangements that fall into the first category, this is justified since the exemption avoids a complex and burdensome intragroup tracing exercise.

However, where the GFE has been applied to arrangements in the second category, the EC states that the exemption is not justified and instead constitutes unlawful State aid.

For more information see our **PwC Insight**.

PwC observation:

The EC will require the UK government to determine affected taxpayers and the quantum of tax due. Multinationals should understand how HMRC will implement the decision and whether this will impact them.

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Kenya

Kenya High Court declares tax treaty void on procedural grounds

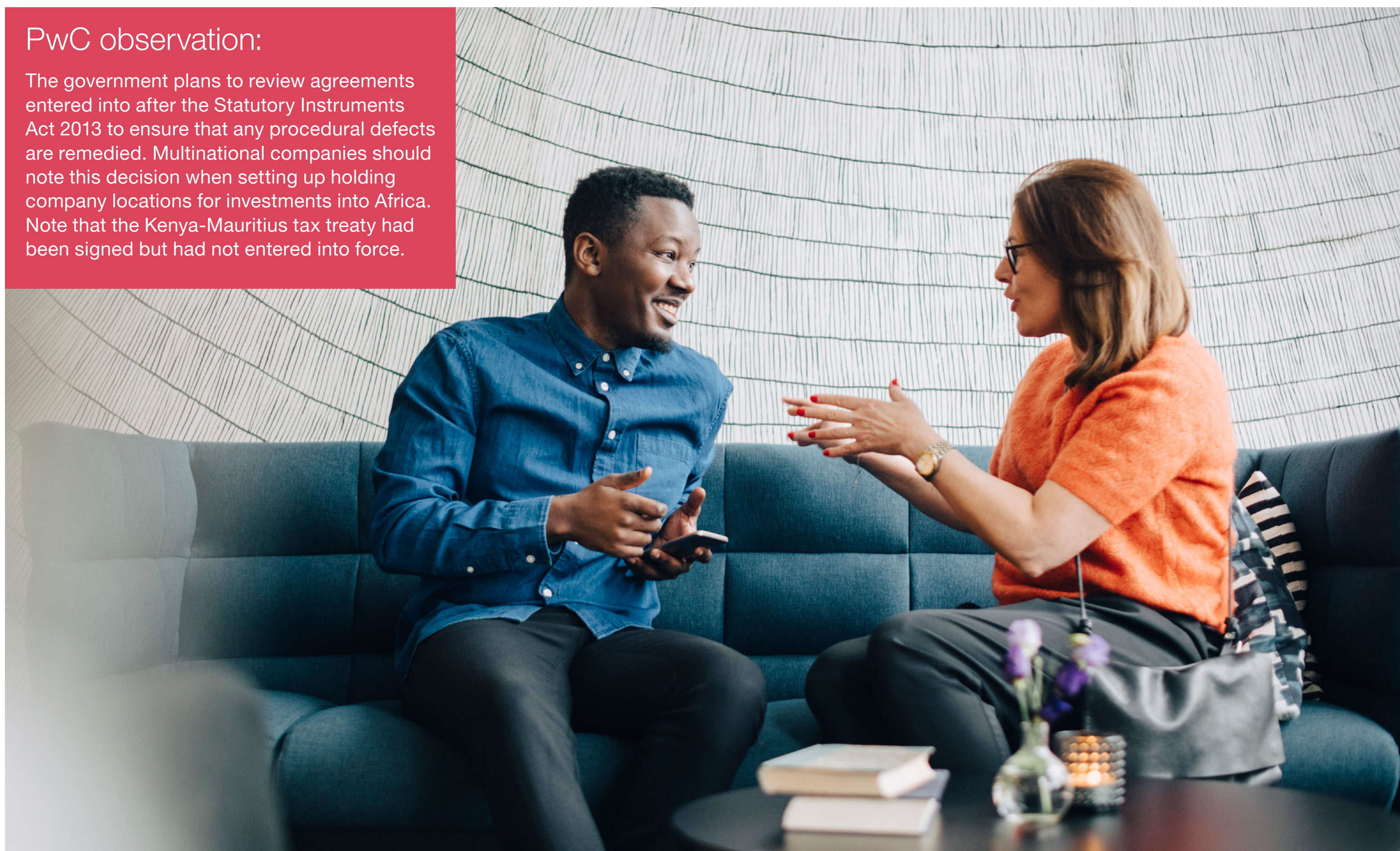
The Kenyan High Court on March 15 rendered judgment on the requisite due process for ratifying treaties and bilateral agreements. The judgment holds that when ratifying a treaty or bilateral agreement, the Cabinet Secretary must present the treaty or agreement to Parliament in accordance with the Statutory Instruments Act, 2013, In this case, the Tax Justice Network Africa (TJNA) challenged the constitutionality and validity of the Kenya–Mauritius tax treaty, signed on May 11, 2012, on the following grounds:

- The tax treaty would result in tax revenue leakage for the Kenya Revenue Authority (KRA) and would have negative economic effects for Kenya.
- The government failed or neglected to subject the Kenya-Mauritius tax treaty to the due process ratification in line with the Treaty Making and Ratification Act, 2012.

The Legal Notice No. 59 of 2014 , which provided for the Kenya–Mauritius tax treaty, was invalid because it was not properly presented to Parliament.

PwC observation:

The government plans to review agreements entered into after the Statutory Instruments Act 2013 to ensure that any procedural defects are remedied. Multinational companies should note this decision when setting up holding company locations for investments into Africa. Note that the Kenya-Mauritius tax treaty had been signed but had not entered into force.



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Korea

Korea's Supreme Court reaffirms that withholding tax does not apply to royalties for certain payments

Korea's Supreme Court has reaffirmed its previous position that payments made for the use of patents registered outside Korea do not constitute Korean-source income under the Korea-US tax treaty.

Korea's Supreme Court previously ruled in November 2014 that royalty payments made by a Korean company to a US company would not be considered Korean-source royalty income under the Korea-US treaty if the relevant patents were not registered in Korea, regardless of whether the patent is used in manufacturing or sales activities in Korea. In its latest ruling, the Supreme Court has reaffirmed this position explaining that:

- Notwithstanding certain amendments to the Korean tax law, the Korea-US treaty takes precedence over domestic tax law with respect to the classification of Korea-source income;
- Considering the context and ordinary meaning of the terms of the Korea-US treaty, and given the nature of patents, patent rights are effective only in the territory of the country where they are registered; and
- Only the portion of royalty payments attributable to the use of patents registered in Korea would constitute Korean-source income. Since patents not registered in Korea are not considered to be 'used' in Korea, such royalty payments are not considered to be Korean-source income and should not be subject to Korean tax.

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

PwC observation:

US taxpayers licensing the use of patents to Korean licensees should confirm whether the patents are actually registered in Korea. Since Korea's Supreme Court has reaffirmed that royalty payments associated with the license of patents not registered in Korea do not constitute Korean-source income and should not be subject to withholding tax in Korea, US taxpayers that have received royalty payments that were subject to withholding tax (or received consideration from Korea for the transfer of patents registered outside Korea and treated such payment as royalty income subject to withholding tax) should consider reviewing the feasibility of claiming a refund of Korean tax.

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China

China and New Zealand signed a tax treaty onApril 1, 2019 and an accompanying protocol

On April 1, 2019, China and New Zealand entered into a new tax treaty. It will enter into force on the 30th day following the day on which both sides complete the respective legal procedures. The new treaty has the following key changes as compared to the previous 1986 tax treaty:

Persons covered

The treaty clarified treatment on income derived by or through an entity or arrangement that is treated as fiscally transparent.

Permanent Establishment (PE)

- The time threshold for constituting a construction PE increases from 6 months to 12 months.
- The time threshold for constituting a service PE changed from 6 months to 183 days within any twelve-month period.
- The time threshold for the exploration or exploitation of natural resources to become a PE is extended from 1 month to 183 days within any twelve-month period.
- The situations which constitute agency PE are extended.

Dividends

The restricted tax rate on dividends paid to a beneficial owner meeting the prescribed requirements is reduced from 15% to 5%.

Alienation of property

- New provisions are added to the 'Alienation of Property' article.
- In the 1986 tax treaty, taxing right on gains derived from the alienation of shares was allocated to the source state. In the new tax treaty, only taxing rights on (1) gains derived from the alienation of property rich shares, and (2) gains derived from the alienation of non-property rich shares, if the alienator has, at any time during the twelve-month period preceding the alienation, owned, directly or indirectly, at least 25% of the shares of that company, are allocated to the source state.
- Gains other than the aforementioned and those stated in the tax treaty shall be taxable only in the resident state. In the 1986 tax treaty, such taxation right was allocated to the source state.

Entitlement to benefits

An article of Entitlement to Benefits is added, denying benefits where one of the principal purposes for entering into certain transactions or arrangements was to secure a more favorable tax position.

PwC observation:

Clauses in the new China-New Zealand tax treaty are relatively relaxed compared to the previous 1986 tax treaty, especially in terms of WHT rates for dividends and time threshold for constituting a construction PE. Moreover, the taxing right allocation for alienation of property can attract more investment inflows in both countries and yield more benefits to investors.

The new tax treaty also adopted certain recommendations proposed in the Base Erosion and Profit Shifting (BEPS) project, e.g., adding the article on 'Entitlement to Benefits'. Investors who wish to enjoy the treaty benefits for their cross-border business should be mindful of the tax treaty's anti-treaty abuse measures.

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Saudi Arabia

Saudi Arabia – UAE tax treaty enters into force

The tax treaty between the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE), signed on May 23, 2018, came into force on April 1, 2019. The treaty will become effective on January 1, 2020 for all taxes covered in the agreement.

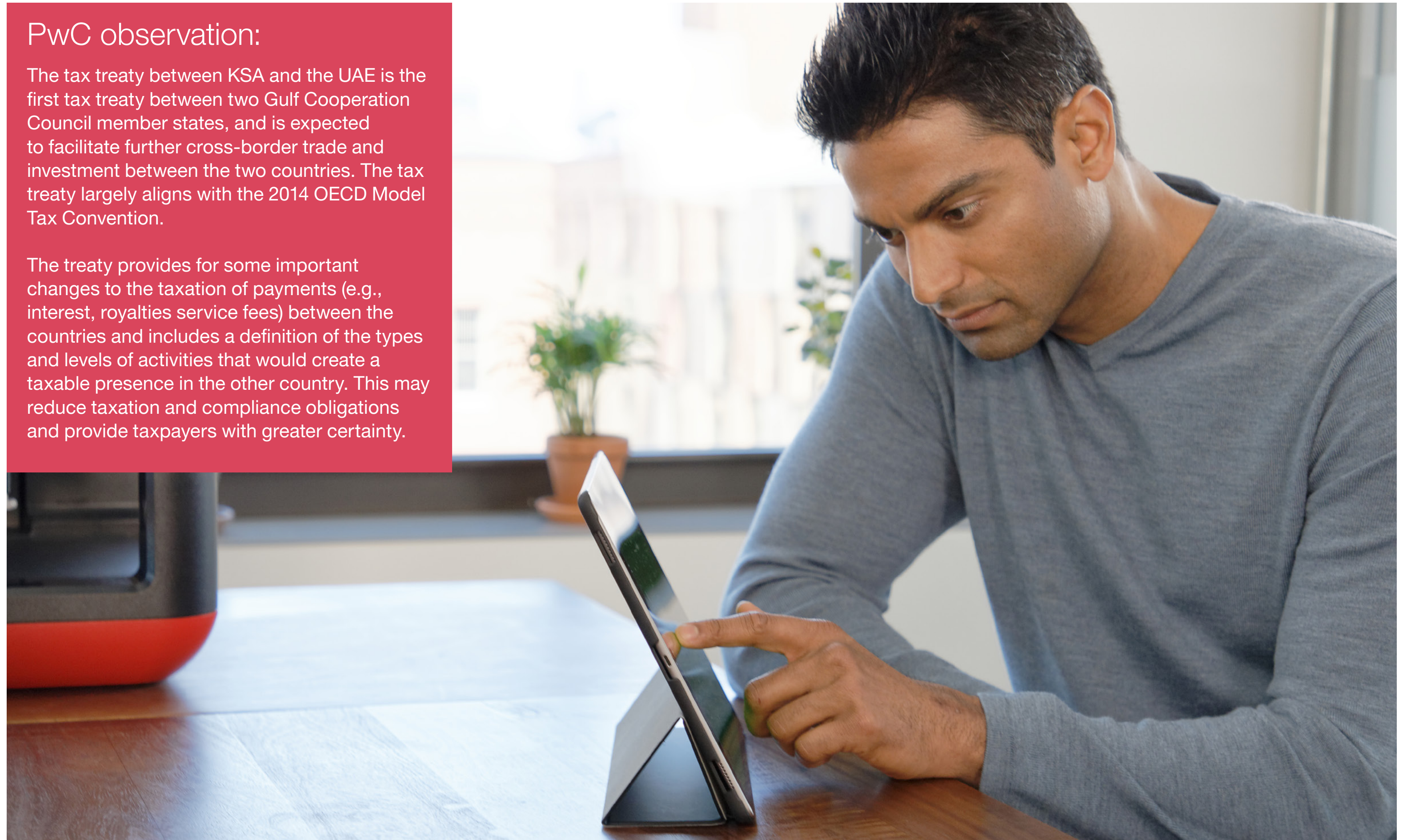
A summary of the treaty's key provisions is below:

- An exemption from withholding tax (WHT) on interest and service fees
- A reduced WHT rate of 10% on royalty payments
- A maximum 5% WHT on dividends (same as the domestic dividend WHT rate in KSA)
- No relief from non-resident taxation on the transfer of shares or immovable property
- Foreign national residents of the UAE or KSA may also benefit from the treaty
- Sovereign wealth funds and certain entities that are exempt from tax expressly qualify for tax treaty benefits.

PwC observation:

The tax treaty between KSA and the UAE is the first tax treaty between two Gulf Cooperation Council member states, and is expected to facilitate further cross-border trade and investment between the two countries. The tax treaty largely aligns with the 2014 OECD Model Tax Convention.

The treaty provides for some important changes to the taxation of payments (e.g., interest, royalties service fees) between the countries and includes a definition of the types and levels of activities that would create a taxable presence in the other country. This may reduce taxation and compliance obligations and provide taxpayers with greater certainty.



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Singapore

MLI enters into force for Singapore

Singapore signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the 'MLI', on June 7, 2017. On December 21, 2018, Singapore deposited its instrument of ratification for the MLI with the OECD. Singapore adopted the mandatory MLI provisions relating to the prevention of treaty abuse (commonly known as the Principal Purpose Test (PPT)) and dispute resolution. Singapore has also adopted the non-mandatory provisions relating to mandatory binding arbitration.

The MLI entered into force for Singapore on April 1, 2019, implementing the applicable provisions of the MLI to Singapore's treaties with Australia, Austria, France, Isle of Man, Israel, Japan, Jersey, Lithuania, Malta, New Zealand, Poland, Slovak Republic, Slovenia and the United Kingdom. Unless otherwise stated, the MLI is effective January 1, 2020 for withholding taxes levied by both jurisdictions and October 1, 2019 for all other taxes levied by both jurisdictions.

PwC observation:

The MLI will fundamentally impact how taxpayers access tax treaties. The Inland Revenue Authority of Singapore (IRAS) has clarified that taxpayers and investors with bona fide commercial transactions or operations should not be unduly concerned with the adoption of the PPT as it is not new to Singapore's tax treaties. However, the introduction of this test could create uncertainty for multinational businesses.

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Glossary

Acronym	Definition
ATAD	Anti-tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
DAC6	EU Mandatory Disclosure Rules
DTT	double tax treaty
EC	European Commission
EU	European Union
GAAR	general anti-abuse rule
GFE	Group Financing Exemption

Acronym	Definition
HRMC	Her Majesty's Revenue and Customs
IRAS	Inland Revenue Authority of Singapore
KRA	Kenya Revenue Authority
MLI	Multilateral Instrument
MNE	Multinational enterprises
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
TRE	tax resident enterprise
WHT	withholding tax

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