www.pwc.com/its

International Tax News

Edition 76

June 2019

Launch

Welcome

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

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

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

In this issue

Legislation

Japan

Amendment to the 'earnings stripping rules'

The earnings stripping rules introduced under the 2012 tax reform were revised in the 2019 tax reform in order to align with BEPS Action item 4. The main amendments that apply to fiscal years commencing on or after 1 April, 2020 include:

Scope of interest

An expansion of the scope of non-deductible interest, which includes interest paid to third parties, but excludes interest that is subject to Japanese income tax in the hands of the recipient. Net interest expense subject to the earnings stripping rules would be the interest expense (other than 'excluded interest expense' discussed below) that exceeds interest income.

Excluded interest expense

The following types of interest expense would not be subject to the earnings stripping rules:

1. Interest expense on specified bonds (issued to a limited number of unrelated parties and not to the public), where
   - the interest payment is subject to Japanese taxation in the hands of the recipient, or
   - 95% of the interest expense is for bonds issued in Japan, or 25% of the interest expense is for bonds issued outside Japan.
2. Other interest expense
   - Interest payments subject to Japanese taxation in the hands of the recipient or paid to qualifying public service corporations
   - Interest on back-to-back repurchase agreements.

Lowering of the benchmark fixed ratio from 50% to 20%

'Net interest expense' that exceeds 20% (currently 50%) of 'adjusted taxable income' will not be deductible in a taxable year.

Limitations on application (de minimis and group basis)

Application of the earnings stripping rules is limited where:

1. net interest expense in a fiscal year is 20 million yen or less; or
2. the aggregated net interest expense on a Japanese corporate group basis (where there is more than a 50% capital relationship) is 20% or less of the aggregated adjusted income on a same group basis.

Adjusted taxable income

Modification of the calculation of 'adjusted income,' based on which non-deductible interest will be calculated, as well as the calculation of the non-deductible interest amount.

- Exempted dividends will no longer be included, while withholding tax claimed as tax credits will be added.
- Adjusted income for entities that operate under tokumei kumiai contractual arrangements will be modified.

Carryover of non-deductible interest expense

Similar to the current rules, non-deductible interest incurred in the past seven years will be deductible up to 20% (currently 50%) of the current adjusted taxable income.

PwC observation:

The revisions to the earnings stripping rules could impact Japanese corporations (especially subsidiaries of foreign corporations) that have either foreign related party or external borrowings. For example, in an M&A transaction, a corporation of a foreign subsidiary may want to acquire another corporation by borrowing from its foreign related party. Reduction in the benchmark ratio to 20% may impact the interest deductibility for such acquiring corporation. Further, if an acquiring corporation is a holding corporation (or just an acquisition vehicle) which is anticipated to recognize just dividends, the holding corporation would not have a sufficient amount of adjusted income since dividends (excluded) would no longer be added back to the adjusted income. We recommend analyzing the limitation of the interest deduction when an acquisition structure is formulated.

Yoko Kawasaki
Tokyo, Japan
T: +81 0 3 5251 2450
E: yoko.kawasaki@pwc.com

Shintaro Yamaguchi
Tokyo, Japan
T: +81 0 3 5251 2503
E: shintaro.yamaguchi@pwc.com

Naoya Uchiyama
Tokyo, Japan
T: +81 0 80 4104 5481
E: naoya.a.uchiyama@pwc.com

Switzerland

Swiss tax reform approved in public vote

With a majority 66.4% vote, Swiss voters affirmed the Swiss tax reform in a public vote on May 19. As a result, Switzerland introduces new, internationally compliant tax measures, and its tax law will align with current international standards. Switzerland's current tax regimes for holding, domiciliary, and mixed companies, as well as the principal company status and the tax rules for so-called 'finance branches,' will be abolished effective January 1, 2020. The tax reform introduces transitional measures to ease the movement from the current tax regimes to the new tax measures. With implementation of Swiss tax reform, Switzerland will meet OECD and EU requirements, therefore avoiding inclusion on a 'black' or 'grey' list.

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

PwC observation:

In order to adapt to the new tax environment, companies need to make some decisions in 2019, so need to act soon. They should:

- Review the applicable effective tax rate post-tax reform in their canton of residence and monitor the cantonal implementation of the Swiss tax reform.
- Review the impact of Swiss tax reform on existing structures, analyze and model the application of transition rules upon abolition of tax regimes, and, if necessary, interact with tax authorities as soon as possible.
- Analyze and model how the company can benefit from the new measures such as the patent box, R&D super deduction, or notional interest deduction (applicable in Zurich).
- Review tax accounting implications.
- Consider whether a transfer of activities to Switzerland could be beneficial under the new Swiss tax law.

Pascal Buehler
United States
T: +1 917 459 8031
E: buehler.pascal@pwc.com

Martina Walt
Switzerland
T: +41 0 58 792 6884
E: martina.walt@ch.pwc.com

Monica Cohen-Dumani
Switzerland
T: +41 0 58 792 9718
E: monica.cohen.dumani@ch.pwc.com

Administrative

Australia

ATO guidance on similar business test for accessing losses

The Australian Taxation Office (ATO) released Law Companion Ruling LCR 2019/1, which provides guidance on the application of the new similar business test. This test is relevant to companies (and certain widely held trusts) seeking to deduct losses following a majority change of ownership.

Under the similar business test (SiBT), a company will be able to utilize tax losses incurred in carrying on a business against income derived from carrying on a similar business following a change in ownership or control.

The ruling is substantially similar to the previous draft Law Companion Guideline LCR 2017/D6. In summary, the ruling indicates that it will be more difficult to satisfy the SiBT if substantial new business activities and transactions do not evolve from, and complement, the business carried on before the test time. This is in contrast to the case where a company might develop a new product or function from the business activities already carried on, and this development opens up a new business opportunity or allows the company to fill an existing gap in the market.

PwC observation:

Due to the fact-specific nature of the SiBT, affected loss companies should exercise caution and seek advice to assess whether their particular facts and circumstances satisfy the test.

Peter Collins
Sydney
T: +61 0 438624700
E: peter.collins@pwc.com

David Earl
Melbourne
T: +61 3 8603 6856
E: david.earl@pwc.com

Australia

New international dealings schedule questions for 2019

The ATO has released details of the new or modified questions that will apply to the 2019 International Dealings Schedule (IDS). The IDS must be completed as part of the annual tax return compliance obligations by a business that is engaged in international dealings with related parties of more than AUD2 million.

The new disclosures include onerous details with regard to hybrid arrangements and requires considerably more detail for the CFC disclosures. For example, CFC calculations will need to be performed for white-listed CFCs regardless of whether the entity has any concessionally taxed income.

There are a number of new questions relating to the hybrid mismatch rules which broadly apply to income years commencing on or after January 1, 2019, Additionally, taxpayers are required to identify any restructurings in the two years prior to the rules' introduction.

PwC observation:

Taxpayers should evaluate their historical CFC positions and be prepared for the additional compliance burden in filling out the IDS disclosures.

Peter Collins
Sydney
T: +61 0 438624700
E: peter.collins@pwc.com

David Earl
Melbourne
T: +61 3 8603 6856
E: david.earl@pwc.com

Australia

CFC rules and money lending

The ATO has released Taxation Determination TD 2019/8, which clarifies the term 'a business whose income is principally derived from the lending of money' in the definition of 'financial intermediary business.' This is relevant for applying the CFC rules.

In applying the 'active income test' under the CFC rules, Australian financial institution subsidiaries are able to exclude their 'tainted interest income' from their 'passive income' if their sole or principal business is a financial intermediary business. The determination provides, among others, that:

- the concept of 'a business whose income is principally derived from the lending of money' is concerned with the character of the business that is being conducted and contemplates a commercial or profit-making operation that involves scale, repetition and continuity of money-lending,
- it requires a qualitative, rather than merely quantitative, analysis of how the business earns its income. This analysis involves consideration of the extent to which the assets and activities of the company are concerned with lending money, and
- while the actual proportion of income earned from money-lending is relevant, a mere mathematical comparison of types of income at a particular point in time is not in itself decisive.

PwC observation:

In light of the increased focus on CFC calculations, relevant taxpayers should carefully consider their status as a financial intermediary business for the purpose of the CFC rules.

Peter Collins
Sydney
T: +61 0 438624700
E: peter.collins@pwc.com

David Earl
Melbourne
T: +61 3 8603 6856
E: david.earl@pwc.com

Italy

The Italian Revenue Agency (IRA), on 29 May 2019, issued Principle of Laws:

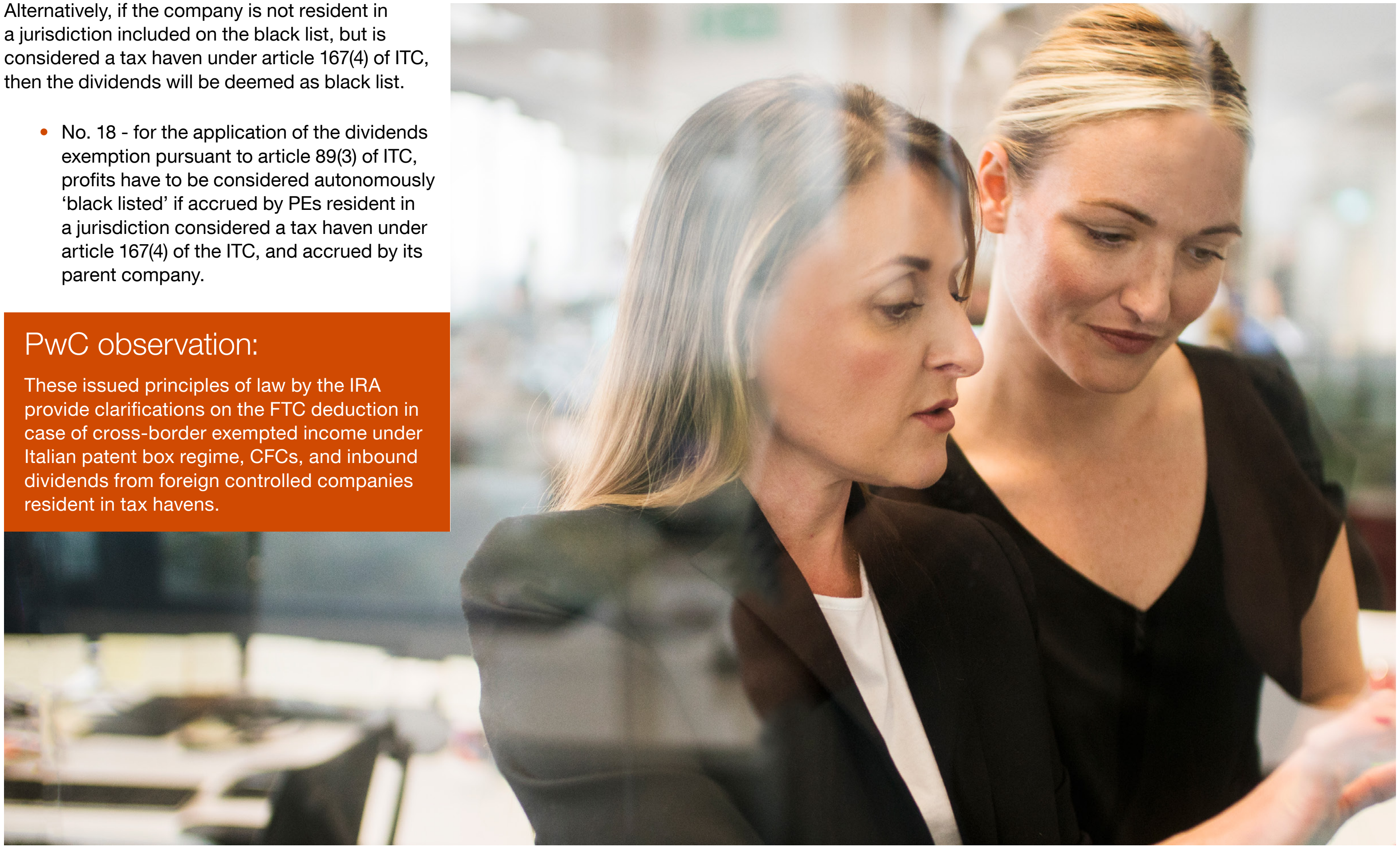
- No. 15 - the definition of the maximum deduction of the Foreign Tax Credit, following Article 23(3) of the tax treaty between Italy-US and article 165(1) of ITC, Italian persons should net the exempted income under the Italian patent box regime.
- No. 16 - pursuant to article 167(4) of ITC for the identification of low-tax jurisdictions, the test may consider taxable income gained by the controlling entity in its country of tax residence or other countries.
- No. 17 - dividends are not considered on the ‘black list’ if they are received by an Italian resident corporation and paid out as profits. They must also be:
  - i. accrued before 2014 and distributed starting from 2015 by a company which was resident in a jurisdiction included on the black list of the Decree, (issued on November 21,2001), but not considered to be a tax haven under article 167(4) of ITC
  - ii. accrued starting from 2015 by a company not considered to be a tax haven under article 167(4) of ITC.

Alternatively, if the company is not resident in a jurisdiction included on the black list, but is considered a tax haven under article 167(4) of ITC, then the dividends will be deemed as black list.

- No. 18 - for the application of the dividends exemption pursuant to article 89(3) of ITC, profits have to be considered autonomously ‘black listed’ if accrued by PEs resident in a jurisdiction considered a tax haven under article 167(4) of the ITC, and accrued by its parent company.

PwC observation:

These issued principles of law by the IRA provide clarifications on the FTC deduction in case of cross-border exempted income under Italian patent box regime, CFCs, and inbound dividends from foreign controlled companies resident in tax havens.



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

Alessandro Di Stefano
Milan, Italy
T: +39 02 9160 5401
E: alessandro.di.stefano@pwc.com

Giuseppe Fortunato
Milan, Italy
T: +39 02 9160 5876
E: giuseppe.fortunato@pwc.com

New Zealand

New Zealand's government releases discussion document 'Options for taxing the digital economy'

The New Zealand Government has released a discussion document outlining two options for taxing digital multi-nationals going forward:

- A separate 'digital services tax' (DST) of 2-3% on gross turnover of certain highly digitalized businesses attributable to New Zealand; or
- Change in the current international income tax rules through an OECD led process.

While the Government acknowledges that an internationally agreed solution led by the OECD would be the preferred approach, it outlines that should there not be sufficient progress in 2019 with respect to the OECD proposals, it will seriously consider a unilateral DST.

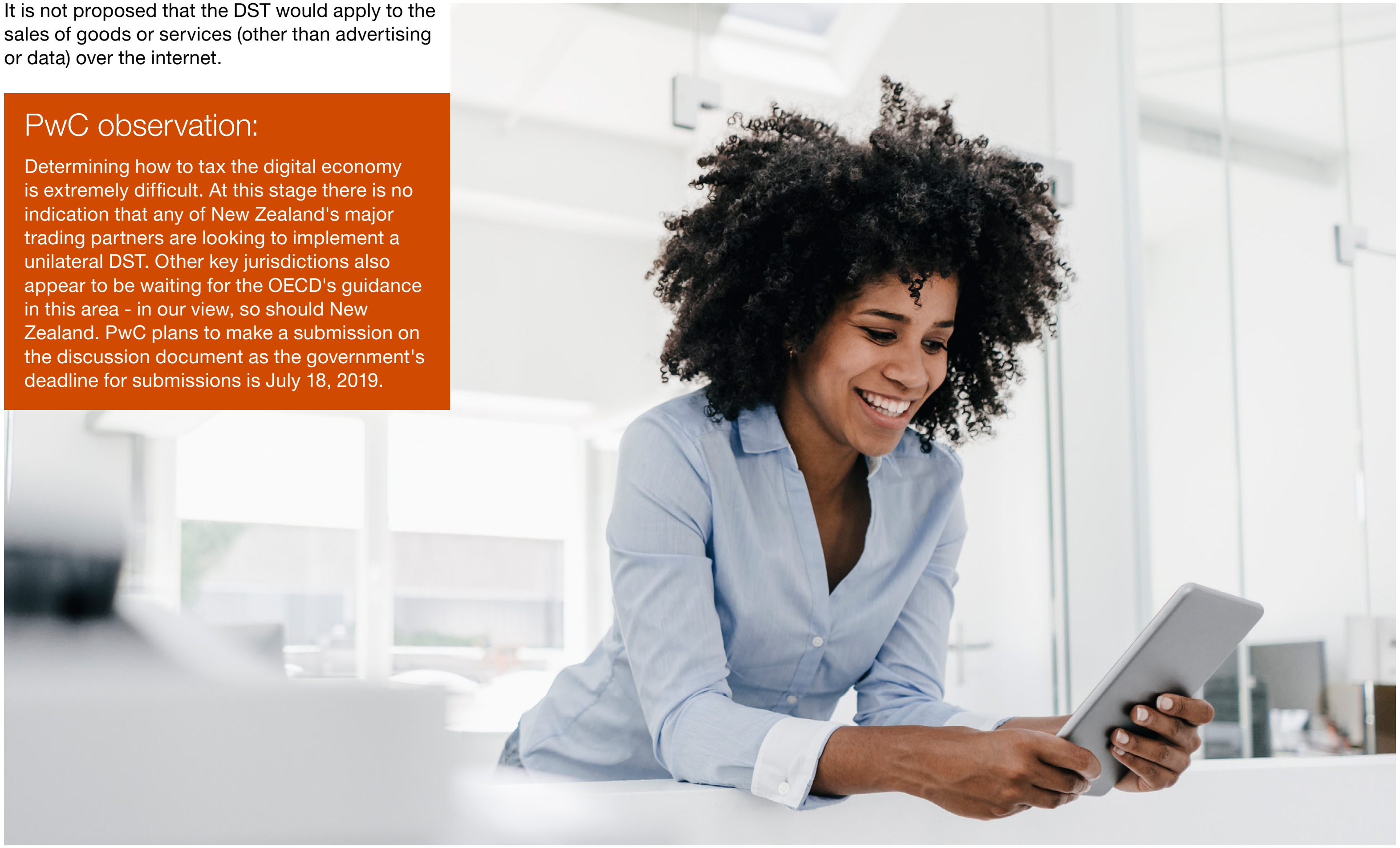
Should a DST be implemented, it is proposed that it would apply to gross turnover attributable to New Zealand from:

- intermediation platforms which facilitate the sale of goods or services between people;
- social media platforms;
- content sharing sites (photos, videos etc); and
- search engines and the sale of user data.

It is not proposed that the DST would apply to the sales of goods or services (other than advertising or data) over the internet.

PwC observation:

Determining how to tax the digital economy is extremely difficult. At this stage there is no indication that any of New Zealand's major trading partners are looking to implement a unilateral DST. Other key jurisdictions also appear to be waiting for the OECD's guidance in this area - in our view, so should New Zealand. PwC plans to make a submission on the discussion document as the government's deadline for submissions is July 18, 2019.



Helen Johnson
Auckland, New Zealand
T: +64 093558501
E: helen.n.johnson@pwc.com

Alisson Curle
Auckland, New Zealand
T: +64 093558942
E: allison.x.curle@pwc.com

Singapore

Publication of advance ruling summaries

The Inland Revenue Authority of Singapore will publish summaries of advance rulings applied for on or after May 1, 2019, with applicants' consent.

Under the Income Tax Act, taxpayers can apply to the Comptroller of Income Tax for a ruling on how the tax legislation will apply to a prospective transaction. The ruling would bind the Comptroller to apply the law's relevant provisions in the manner set out in the ruling.

Previously, the content of advance rulings was not shared with the public. For applications submitted on or after May 1, 2019, the Inland Revenue Authority of Singapore (IRAS) may, with the applicant's consent, publish a summary of the advance rulings to provide greater certainty and transparency, as well as to enhance taxpayers' understanding of IRAS' interpretation of the tax legislation. The summary of the ruling will include the relevant background, tax issues involved, and the tax treatment determined by the Comptroller. It will not disclose the identity of the applicant, the arrangement or the parties to the arrangement, or date of transaction(s) or transaction value(s). The IRAS will publish the summary of its advance rulings on its website no earlier than six months after the ruling is issued, provided that the taxpayer consents to the publication and that the issue does not relate to an advance pricing arrangement.

PwC observation:

While the publication of advance rulings will provide greater transparency and thus benefit the taxpaying community, it remains to be seen if individual taxpayers will consent to sharing their rulings. Taxpayers who agree to publish their ruling summary will need to review the draft summary prepared by the IRAS carefully to ensure that, among other things, all commercially sensitive information is appropriately redacted.

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

Chris Woo
Singapore
T: +65 9118 0811
E: chris.woo@sg.pwc.com

Paul Lau
Singapore
T: +65 8869 8718
E: paul.st.lau@sg.pwc.com

Paul Cornelius
Singapore
T: +65 8876 9887
E: paul.cornelius@sg.pwc.com

United States

Treasury issues Final and Proposed GILTI rules under Section 951A

Treasury and the IRS on June 14, 2019 released **Final Regulations** and **Proposed Regulations** under Section 951A as enacted by the **2017 tax reform legislation** (the Act) and provisions related to implementing Section 951A. The Final and Proposed Regulations provide guidance relating to a US shareholder's pro rata share of its global intangible low-tax income (GILTI).

The Final Regulations incorporate with modifications the rules described in prior **proposed regulations** (the 2018 Proposed Regulations) under Section 951A and set forth additional guidance on a range of issues relating to the implementation of that provision. Among the changes, the Final Regulations clarify the interaction of subpart F and GILTI for purposes of determining tested income, modify anti-abuse rules for property transactions taking place prior to the effective date of Section 951A, and modify the treatment of domestic partnerships for purposes of determining a domestic partner's GILTI inclusion. The Final Regulations also include final rules under Sections 78, 861, and 965 which were originally proposed in a separate proposed regulation package relating to **foreign tax credits**. These rules finalize the rules under Prop. Reg. sec. 1.78-1 including the provision to treat Section 78 dividend relating to taxable years of foreign corporations beginning before January 1, 2018 as ineligible for the dividends-received deduction under Section 245A, modify certain rules under Prop. Reg. sec. 1.861-12(c) relating to basis adjustments to controlled foreign corporation (CFC) stock taking into account Section 965 basis adjustment elections, and finalize rules related to the Section 965(n) election to forgo use of a net operating loss in the toll charge year.

The Proposed Regulations provide guidance on carving out an exception from GILTI gross tested income for certain income subject to 'high tax' in a foreign jurisdiction, as well as amending the treatment of domestic partnerships for purposes of determining a foreign corporation's status as a CFC and computing a US shareholder's subpart F and GILTI inclusion.

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

PwC observation:

Although the Final Regulations generally follow the structure and approach set forth in the 2018 Proposed Regulations, there are significant modifications that are likely to impact a taxpayer's GILTI tax calculation. Taxpayers should also consider the modifications proposed in the Proposed Regulations as they could have a significant impact in the future.

Taxpayers should immediately review the Final Regulations and Proposed Regulations to determine whether their GILTI and Section 965 tax liability may be affected.

Michael DiFronzo
United States
T: +1 202 603 5419
E: michael.a.difronzo@pwc.com

Marty Hunter
United States
T: +1 646 471 1874
E: martin.p.hunter@pwc.com

Ninee Dewar
United States
T: +1 646 471 5187
E: ninee.dewar@pwc.com

United States

Treasury issues Proposed DRD rules under Section 245A

Treasury and the IRS on June 14, 2019, released Temporary Regulations under Section 245A as enacted by the 2017 tax reform legislation (the Act). The regulations seek to limit the benefits of Section 245A where “the literal effect of section 245A would reverse the intended effect of the subpart F and GILTI regimes.”

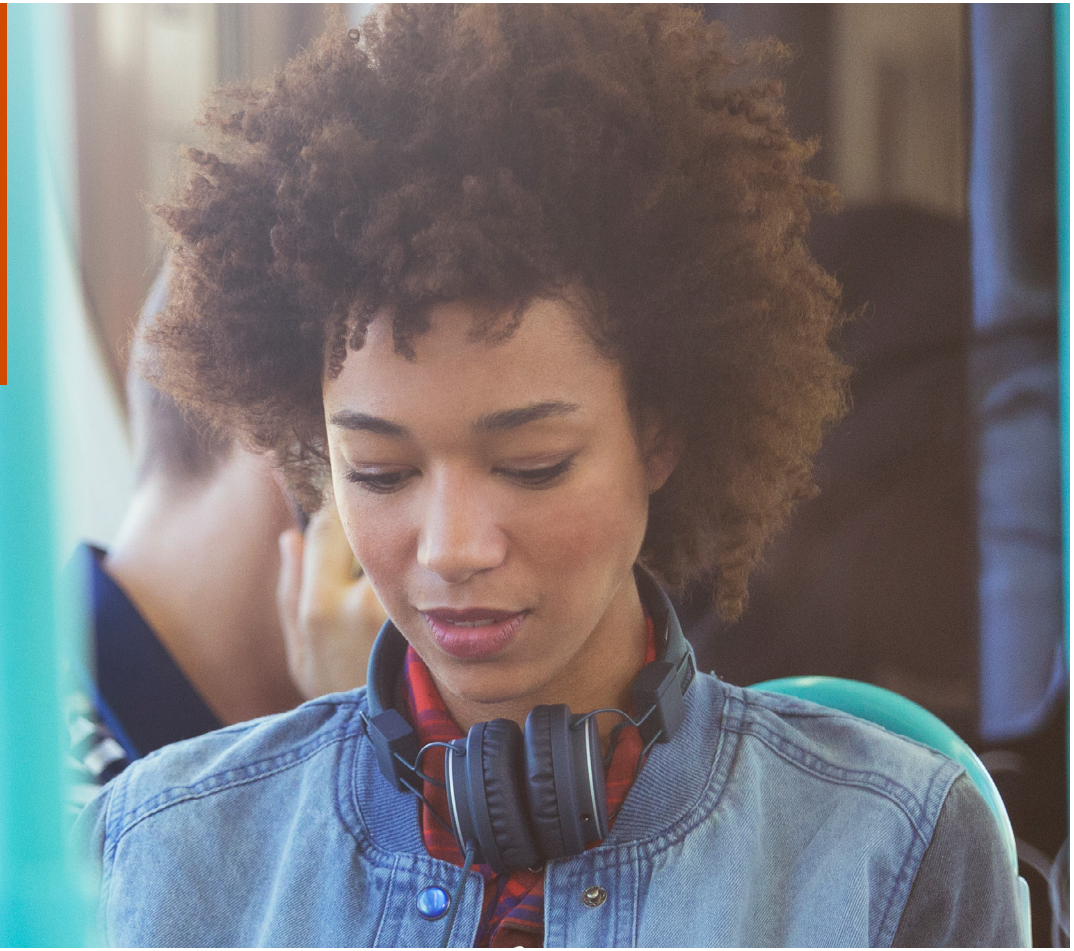
In particular, the Temporary Regulations limit the otherwise available dividends received deduction (DRD) under Section 245A for certain dividends received from current or former controlled foreign corporations CFCs where: (i) a related-party extraordinary transaction was executed by the CFC on or after January 1, 2018, in a tax year to which Section 951A did not apply to such CFC, or (ii) a transfer or issuance of stock on or after January 1, 2018, resulted in a reduction in a US shareholder’s pro rata share of the CFC’s subpart F or tested income. The Temporary Regulations also limit the applicability of the look-through exception to foreign personal holding company income for certain dividends received by upper-tier CFCs from lower-tier CFCs in similar circumstances.

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

PwC observation:

The Temporary Regulations limit the application of Sections 245A and 954(c)(6) for distributions received from current or former CFCs as a result of the execution of certain transactions.

Taxpayers should immediately review the Temporary Regulations to determine whether transactions executed on or after January 1, 2018, could impact application of Sections 245A or 954(c)(6).



Michael DiFronzo
United States
T: +1 202 603 5419
E: michael.a.difronzo@pwc.com

John Harrell
United States
T: +1 203 517 8635
E: john.harrell@pwc.com

Martin Collins
United States
T: +1 301 326 6440
E: marty.collins@pwc.com

Judicial

France

Favorable decisions regarding the definition of 'low-tax jurisdiction'

Article 238A of the French tax code defines the concept of 'low-tax jurisdiction' for anti-abuse purposes.

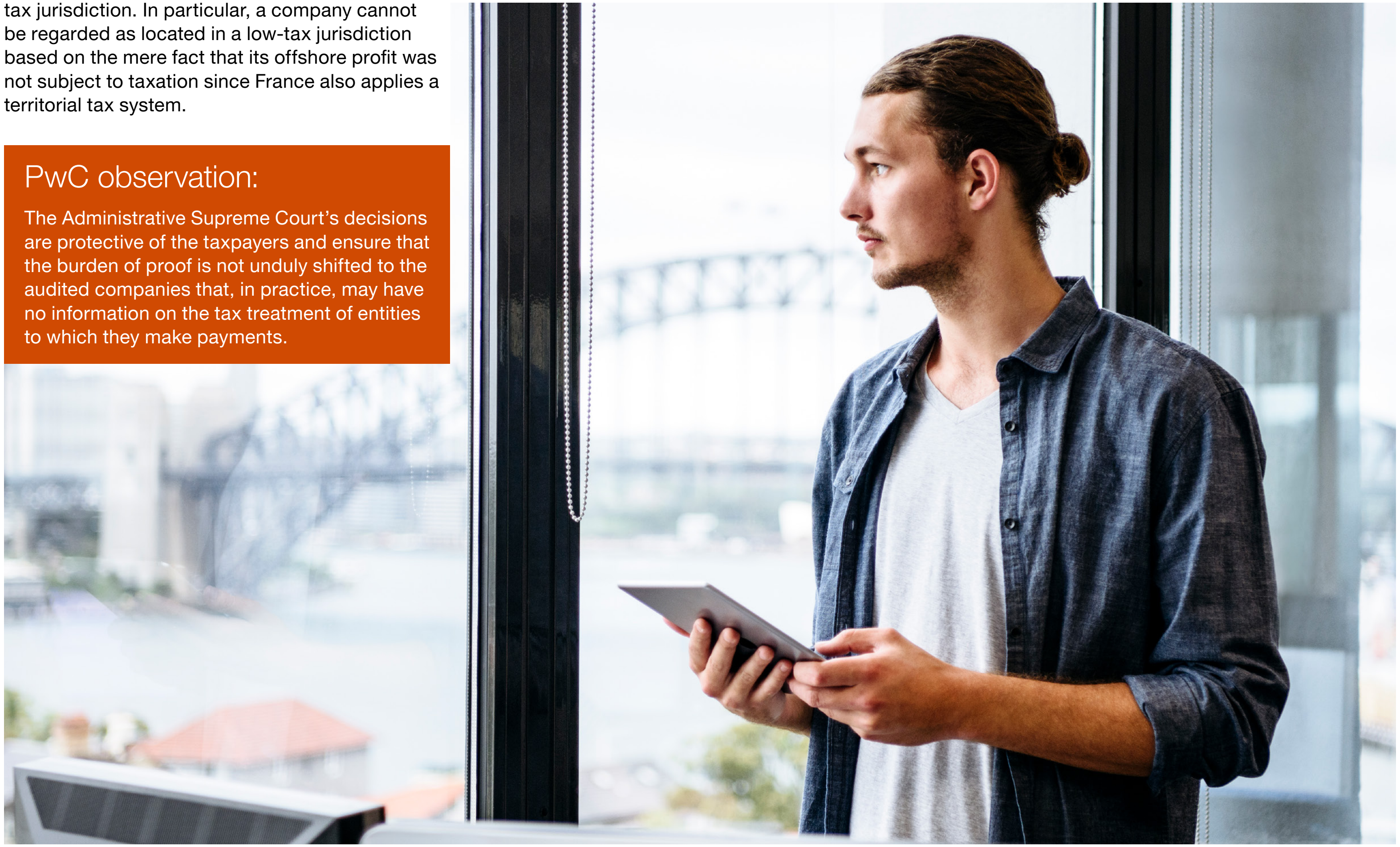
This provision first limits the deductibility of commissions and other payments paid to entities located in a low-tax jurisdiction. A company is deemed to be located in a low-tax jurisdiction when the difference between the foreign corporate tax and the tax that would have been paid in France exceeds 50%. Besides, the concept of 'low-tax jurisdiction' defined by Article 238A also determines the scope of anti-abuse regulations governing controlled foreign corporations (CFC).

In two separate decisions, the French Administrative Supreme Court, on April 24, 2019, ruled that the fact that a company is located in a jurisdiction where the standard corporate income tax rate is 50% lower than the tax rate in France (31% currently), is not sufficient on its own to characterize it as a low-tax jurisdiction.

The Administrative Supreme Court reminded that the burden of proof lies on the tax authorities. They must demonstrate that, based on the activities carried out by a company, it would have paid more than 50% of the corporate income tax if it would have been located in France. An in concreto analysis is therefore necessary to demonstrate that a company is located in a low-tax jurisdiction. In particular, a company cannot be regarded as located in a low-tax jurisdiction based on the mere fact that its offshore profit was not subject to taxation since France also applies a territorial tax system.

PwC observation:

The Administrative Supreme Court's decisions are protective of the taxpayers and ensure that the burden of proof is not unduly shifted to the audited companies that, in practice, may have no information on the tax treatment of entities to which they make payments.



Guilhem Calzas
Paris
T: +33 0 1 56 57 15 40
E: guilhem.calzas@pwcavocats.com

Julie Copin
Paris
T: +33 0 1 56 57 44 17
E: julie.copin@pwcavocats.com

Renaud Jouffroy
Paris
T: +33 0 1 56 57 42 29
E: renaud.jouffroy@pwcavocats.com

Italy

Recent Supreme Court decisions

Place of effective management

The Italian Supreme Court, on May 28, 2019, issued the decision no. 14527 concerning the effective place of management of a Dutch holding company, ruling in favor of the taxpayer. The Supreme Court dismissed the appealed decision arguing that:

- the place of effective management cannot be deemed to be in Italy only on the basis of the Italian (and UK) tax residence of the Directors
- a passive holding company (which merely owns the participation, cashes in the dividend and pays the Directors fee) cannot be considered per se as not carrying on an economic activity
- the taxpayer provided evidence that the administration and management functions were performed in the Netherlands, and the shareholders and Directors meetings also were held in the Netherlands.

Italy-Switzerland tax treaty

The Italian Supreme Court, with ordinance no. 10706 issued on April 17, 2019, rejected the appealed decision and ruled in favor of the taxpayer, arguing that the royalty payment from an Italian company to a Swiss association was subject to the 5% withholding tax rate provided by the tax treaty between Italy and Switzerland.

According to the tax authority, the Swiss association was not de facto subject to income tax in Switzerland and, as such, did not qualify as a resident according to art. 4 of the tax treaty. The Supreme Court held that the definition of resident under art. 4 shall be interpreted as 'fully liability to tax,' regardless of the actual payment of taxes in the jurisdiction of the recipient.

PwC observation:

The Supreme Court decision no. 14527 (in line with past decisions) confirms that a passive holding company with a light operating structure cannot be deemed per se an artificial arrangement.

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

Alessandro Di Stefano
Italy
T: +39 3 488 408 195
E: alessandro.di.stefano@pwc.com

Giuseppe Fortunato
Milan, Italy
T: +39 02 9160 5876
E: giuseppe.fortunato@pwc.com

EU/OECD

Australia

ATO to participate in OECD ICAP

The ATO is participating in the OECD's International Compliance Assurance Programme (ICAP). ICAP involves various tax administrations undertaking cooperative multilateral risk assessments on multinational enterprises using country-by-country (CbC) reports and other information to assess transfer pricing and permanent establishment risks.

The second ICAP pilot, announced in March 2019, will include 17 participating jurisdictions (Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Spain, United Kingdom and United States).

PwC observation:

ICAP complements the ATO's Top 100 risk categorization approach and Top 1,000 tax performance program, as well as other initiatives, such as its advance pricing arrangement and advice and guidance programs.

Peter Collins
Sydney
T: +61 0 438624700
E: peter.collins@pwc.com

David Earl
Melbourne
T: +61 3 8603 6856
E: david.earl@pwc.com

OECD

OECD releases workplan for the digitalizing economy project

The OECD's Inclusive Framework (IF) on May 28 approved an ambitious workplan for the digitalizing economy project covering the next 18 months. Released May 31, the 40-page workplan notes the IF's aim of finding a consensus-based long-term solution for a new international tax architecture that addresses both the allocation of taxing rights and nexus as well as unresolved base-erosion/ profit shifting (BEPS) issues. While acknowledging the many gaps that might exist between how jurisdictions approach these issues, the workplan establishes an aggressive timeline for considering the development of rules and design standards to feed into delivering a unified framework acceptable to the IF. Important anticipated milestones include a progress report in December 2019 (in which a unified approach may be announced), ongoing Working Party discussions throughout 2019 and 2020, and a final report delivered to the G20 by the end of 2020.

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

PwC observation:

The workplan sets out an ambitious timeline: agreement of a unified approach to Pillars 1 and 2 by the end of 2019 (with a progress report in December); simultaneous parallel work by various Working Parties on embedded technical issues; and a final report by the end of 2020. Any number of obstacles to finding consensus could arise in this process, especially in achieving a unified approach.

With the depth of issues confronting the IF to possibly radically change the international taxing rights framework, it is uncertain whether the Working Parties can work through the voluminous technical questions delegated for consideration in a manner to meet political timing constraints.

The Secretariat's commitment to carrying out economic analyses and impact assessments on various proposals and issues will need to be supported by external feedback; companies should mobilize to ensure that relevant data points and operational models are considered for thorough analysis.

Pam Olson
United States
T: +703 627 8925
E: pam.olson@pwc.com

Maarten Maaskant
United States
T: +347 449 4736
E: maarten.p.maaskant@pwc.com

Will Morris
United States
T: +202 213 2372
E: william.h.morris@pwc.com

Treaties

Cyprus

Cyprus – Kazakhstan sign first time tax treaty: Cyprus ratifies

Cyprus ratified, on May 24, 2019, the first-time tax treaty it had signed with Kazakhstan on May 15, 2019. Certain legal procedures now need to take place in both states following which the tax treaty will 'enter into force'. The tax treaty will be 'in effect' on the next January 1 following the year in which the tax treaty 'enters into force'.

The tax treaty includes the following key provisions:

Dividends: A maximum 5% withholding tax (WHT) rate applies on dividend payments where the recipient is a company (other than partnership) that directly holds at least 10% of the capital of the paying company. For other cases, the tax treaty provides for a maximum 15% WHT rate on dividends. Note that the domestic Cyprus tax legislation provides for no Cyprus WHT on dividend payments to non-Cyprus tax residents.

Interest: A maximum 10% WHT rate on interest payments. For certain interest payments to the government the tax treaty provides for a 0% WHT rate. Note that the domestic Cyprus tax legislation provides for no Cyprus WHT on interest payments to non-Cyprus tax residents,

Royalties: A maximum 10% WHT rate in the case of royalty payments. Royalty payments are in consideration for: the use of, or the right to use, any copyright of literary, artistic or scientific work, software, including cinematograph films, tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know how) concerning industrial, commercial or scientific experience and payments for the use of, or the right to use, industrial commercial or scientific equipment. Royalty payments do not include payments for the use of, or the right to use, ships or aircrafts. We note that the Cyprus domestic tax legislation provides for no Cyprus WHT on royalty payments to non-Cyprus tax residents (except in the case of royalty payments earned on rights used within Cyprus).

Capital gains: For capital gains Cyprus retains the exclusive taxing rights on disposals of shares made by Cyprus tax residents, except in the following cases:

- non-listed shares which derive more than 50% of their value, directly or indirectly, from immovable property situated in Kazakhstan, and,
- shares which derive the greater part of their value from certain offshore rights and/or movable property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in Kazakhstan.

The tax treaty also incorporates the OECD BEPS Action 6 -'Principal Purpose Test' (PPT), which is a minimum standard under the BEPS project.

PwC observation:

The tax treaty signing is a considerable development for Cyprus, as it is expected to further contribute to the development of trade and economic relations between the Republic of Cyprus and Kazakhstan, while bringing new opportunities and better protection for taxpayers in both countries.

Marios Andreou
Nicosia
T: +357 225 5 5266
E: marios.andreou@cy.pwc.com

Stelios Violaris
Nicosia
T: +357 225 5 5300
E: stelios.violaris@cy.pwc.com

Joanne Theodorides
Nicosia
T: +357 225 5 3694
E: joanne.theodorides@cy.pwc.com

Luxembourg

Luxembourg and Argentina sign new tax treaty

The Luxembourg and Argentinian governments, on April 13, 2019 signed a new tax treaty, together with an accompanying protocol. This new tax treaty still has to go through the ratification process.

This tax treaty is mostly in line with the OECD post-BEPS 2017 Model Convention, and notably includes the 'Principal Purpose Test' (PPT).

The PPT article included in the tax treaty mirrors the 2017 post-BEPS OECD Model wording: "a benefit shall not be granted in respect to an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the [tax treaty]".

The Protocol also contains a "most favoured nation" paragraph. Paragraph 7 sets out several situations where Argentina has retained limited taxing rights under the treaty, as follows:

- Article 7 – 2.5% tax on gross insurance premiums
- Article 10 – 10% or 15% dividend withholding tax
- Article 11 – 12% withholding tax on interest
- Article 12 – rates of withholding tax between 3% and 10% on royalties
- Article 13 – 10% or 15% tax on gains on shares

The protocol however provides that, in each of these situations, when Argentina agrees to a lower rate, or a more favourable treatment than that provided under the tax treaty with Luxembourg through an agreement concluded with another State after the date of signature of the tax treaty with Luxembourg, then such lower rate or more favourable treatment shall automatically apply to this Luxembourg tax treaty under the same conditions.

Also, paragraph 10 of the protocol confirms that the tax treaty does not override any domestic law provisions regarding 'thin capitalisation', or interest limitation rules. Similarly, the last item of the protocol, paragraph 11, provides that nothing in the tax treaty shall prevent Luxembourg from applying Art. 164ter LITL (Luxembourg's CFC regime).

PwC observation:

The signature of this new tax treaty is welcome, and will favor exchanges and create new commercial opportunities between Luxembourg and Argentina. It also reinforces the importance of Luxembourg's treaty network.

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

Glossary

Acronym	Definition
ATO	Australian Taxation Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
DRD	dividend received deduction
DST	digital services tax
DTT	double tax treaty
EU	European Union
FTC	foreign tax credit
GILTI	global intangible low tax income
LCR	law companion ruling

Acronym	Definition
IDS	International Dealings Schedule
IF	Inclusive Framework
IRA	Italian Revenue Authority
IRAS	Inland Revenue Authority of Singapore
MNE	Multinational enterprises
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PPT	Principal Purpose Test
SiBT	similar business test
TD	Taxation Determination
WHT	withholding tax

Contact us

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

Bernard Moens
Global Leader International Tax Services Network

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

Geoff Jacobi
International Tax Services

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

Worldwide Tax Summaries:
Corporate taxes

If you're operating globally, are you aware of changes to the myriad tax rates in all the jurisdictions where you operate? If not, we can help – download the eBook of our comprehensive tax guide, or explore rates in over 150 countries using our online tools, updated daily.

www.pwc.com/its

Design Services 32079 (06/19).