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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.

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Legislation

China

China further expands the accessible fields for foreign investment

In order to further liberalize market access for foreign investment, on June 30, 2019 the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOC) jointly released the Special Administrative Measures for Foreign Investment (SAMFI), the SAMFI in the Pilot Free Trade Zones (PFTZs), as well as the Encouraged Industry Catalogue for Foreign Investment (EICFI).

- At the national level, the SAMFI list sets forth 40 special administrative measures among 13 categories. Compared with the 2018 version, it extensively shortens the SAMFI list by removing eight measures. Specifically, it relaxes the access restriction on foreign capital for several sectors such as manufacturing, mining and agriculture, and promotes further opening of the service sector. The SAMFI list enters into effect on July 30, 2019, and the 2018 version will terminate on the same date.
- The 2019 SAMFI PFTZs list simplifies the 2018 version by setting forth 37 special administrative measures among 13 categories. Furthermore, it removes eight measures from the 2018 version. The 2019 SAMFI PFTZ list enters into effect on July 30, 2019. The 2018 version will terminate on the same date.

The 2019 EICFI is comprised of two sub-catalogues: nationwide and regionalized (central and west). The catalogue continues to focus on manufacturing industry and productive service industry, while the one applicable to central and western regions adds some new items in labor-intensive and electronic industry. The catalogue enters into effect on July 30, 2019. Both the 2017 Industry Catalogue Guide for Foreign Investment and the Preferential Industry Catalogue for Foreign Investment in the Central and Western Regions will terminate on the same date.

PwC observation:

China approved and released its foreign investment law on March 15, 2019. It stipulates that foreign investment will be subject to the pre-establishment national treatment in addition to a negative list administration system. This signifies that China has abolished the case-by-case approval system in foreign investment administration. This significant change indicates that China's foreign investment legal system reform is moving towards a more open and flexible direction by adapting to economic globalization and changes in international investment rules.

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India

India 2019 budget: Impact on foreign investors and multinationals

The Indian Finance Minister presented the initial Union Budget 2019 (Budget 2019) of the Modi government 2.0 on July 5. Budget 2019 provides the blueprint for helping India reach a USD five trillion economy by 2024.

Budget 2019 reflects a vision for the next three to five years to make India an investment-driven economy. The budget encompasses some key focus areas – it aims to strengthen India's infrastructure, uplift the rural economy (with a focus on agriculture), create a world-class education system, support micro, small, and medium enterprises (MSMEs), foster gender inclusiveness by empowering women, and revive the banking and non-banking financial company (NBFC) sectors. It also emphasizes the importance of collaborating with industry, striving for an all-round development. The Finance Minister has proposed further liberalization of foreign direct investment (FDI) limits in the aviation, media, and insurance sectors and relaxation of 'sourcing norms' in the single-brand retail trading sector, with a view towards promoting overseas investments into India.

Budget 2019 includes a proposal to extend the reduced corporate tax rate of 25% (excluding applicable surcharge) to certain companies that had a prescribed turnover in tax year 2017-18, but there has been no rationalization of the Dividend Distribution Tax (DDT) and Minimum Alternate Tax (MAT) rates. The budget introduces a new regime for tax on the buyback of listed shares, encourages start-ups, and provides select tax incentives. In addition, the budget proposes certain digitalization measures relating to pre-filled tax return forms and faceless e-audits, which are steps that taxpayers may find helpful. Budget 2019 proposals would take effect after it passes both houses of Parliament and obtains Presidential assent.

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

PwC observation:

The Budget 2019 proposal aims to provide a foundation for the Indian economy to become more resilient and to achieve a high growth rate. While the interim budget presented in February 2019 set the vision statement for India, Budget 2019, although incremental in nature, intends to make India a more competitive economy by facilitating foreign investment and supporting the overall development of the country.

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Japan

Controlled Foreign Corporation (CFC) amendment

Japan recently amended its CFC regime through 2019 tax reform. Following are the key amendments:

i. narrowed the definition of ‘paper company’ by excluding specified holding companies, real estate holding companies and resource development project companies
ii. expanded the definition of ‘cashbox company’
iii. relaxed the threshold for the unrelated entity test (a component of the CFC ‘economic activity test’) applicable to foreign-related corporations primarily engaged in the insurance industry
iv. for foreign-related corporations under a consolidated tax return system or subject to pass through tax treatment, clarified (a) the calculation of income for entity-based aggregation, (b) the calculation of the threshold effective tax rate, and (c) the use of foreign tax credits
v. revised the scope of passive income aggregation.

Amendment (ii) above applies to CFCs with tax years beginning on or after April 1, 2019. The remaining amendments apply to CFCs with tax years beginning on or after April 1, 2018 for Japanese parent corporations’ aggregated taxable income for tax years ending on or after April 1, 2019.

Scope of paper company

A paper company is a company that does not maintain a fixed placed of business necessary to conduct its main business or function with its own control and management. Due to tax reform, a foreign related corporation (FRC) of the type below that satisfies certain conditions is excluded from the definition of a paper company:

1. a holding company
2. a real estate holding company
3. a resource development project company
4. a FRC of an insurance holding company

Scope of a cashbox company

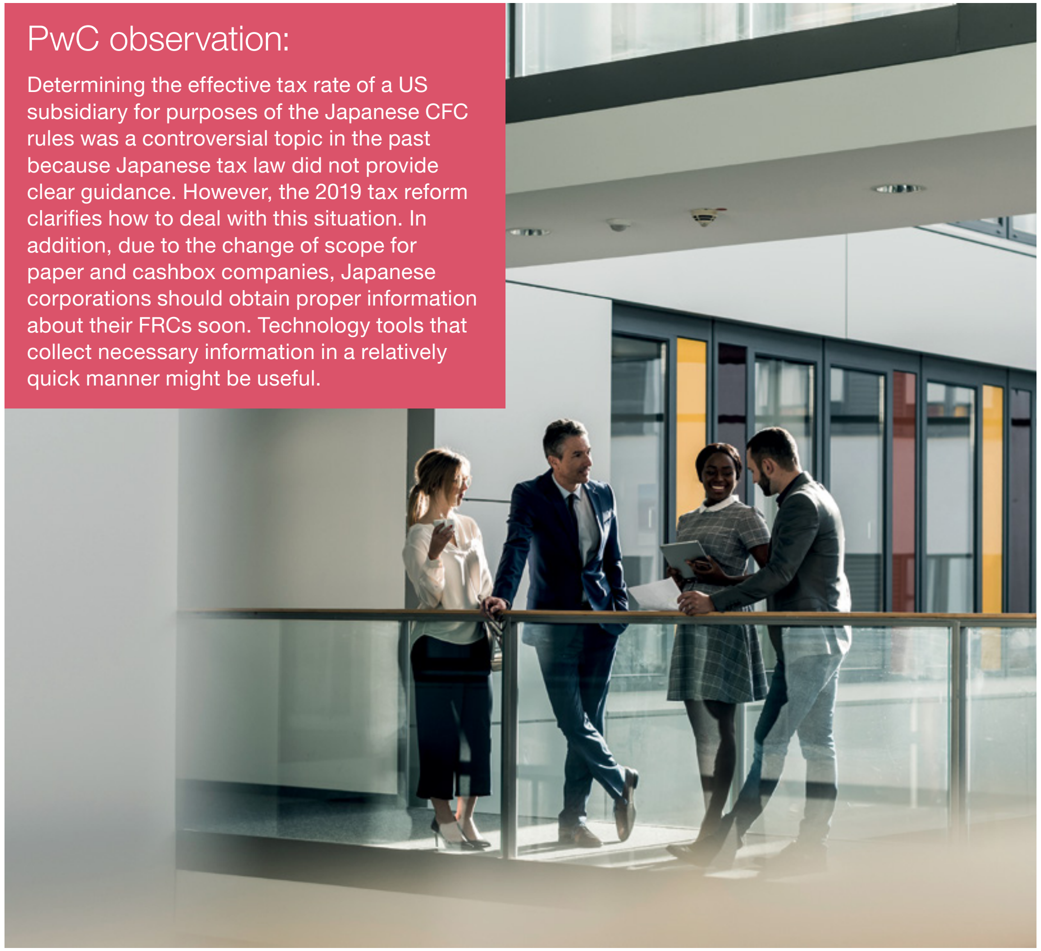
The definition of a cashbox company will be expanded to include a FRC with insurance premiums from unrelated parties of less than 10% of gross premiums.

Scope of passive income

Certain insurance premiums will be added to the definition of passive income (not applicable to foreign financial income subsidiaries).

PwC observation:

Determining the effective tax rate of a US subsidiary for purposes of the Japanese CFC rules was a controversial topic in the past because Japanese tax law did not provide clear guidance. However, the 2019 tax reform clarifies how to deal with this situation. In addition, due to the change of scope for paper and cashbox companies, Japanese corporations should obtain proper information about their FRCs soon. Technology tools that collect necessary information in a relatively quick manner might be useful.



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Netherlands

Dutch ATAD II implementation proposal presented to the Dutch parliament

The Dutch Bill implementing the so-called Anti-Tax Avoidance Directive II (ATAD II) was submitted to the Dutch parliament on July 2. The Bill introduces measures addressing the tax effects of ‘hybrid mismatches.’ Such mismatches may result, for example, due to a difference in tax characterization of an entity or a financial instrument between two countries. This may result in a deductible payment that is not taxed at the recipient’s level. The Dutch ATAD II Bill – which mainly aligns with the ATAD II Directive – aims to prevent this outcome and to implement ATAD II fully into Dutch legislation.

The new legislation is intended to be effective January 1, 2020, other than the so-called ‘reverse hybrid rule’ which is intended to be effective January 1, 2022.

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

PwC observation:

The Dutch Parliament will discuss the ATAD II proposal and is expected to act on it prior to January 1, 2020. In addition to determining whether the proposal may affect existing arrangements, taxpayers should understand the documentation requirements and put processes in place to comply.

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United Kingdom

UK publishes draft legislation and guidance on digital services tax

The UK tax authorities published draft legislation and draft guidance on July 11 for a digital services tax (DST) that will become effective on April 1, 2020. The draft legislation and draft guidance are available for public consultation until September 5, 2019. The DST is expected to be 2% of deemed UK revenues derived in excess of £25m, where the group's total global revenues from in-scope activities exceed £500m.

Revenues are determined based on in-scope activities if derived in connection with providing users with search engine, online marketplace, or social media services, and include revenues from associated advertising businesses. Thus, UK revenues in scope are those linked to UK users but may not be derived from UK sources, and businesses conducting in-scope activities may need to perform complex allocations. A safe-harbor exists and lowers the 2% rate where applicable.

The definitions included in the legislation differ from the government's November 2018 consultation and could include activities of businesses that do not consider themselves pure search engine, marketplace, or social media platforms.

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

PwC observation:

The DST is a novel tax that calls for businesses to analyze where they digitally interact with other businesses and individuals and not only where they have a physical presence or financial relationships. Businesses that do not consider themselves a social media platform, search engine, or online marketplace may still conduct some in-scope activities and therefore will need to consider these rules in order to comply.

The United Kingdom has made clear that it intends to introduce the DST and retain it until it reaches an acceptable international agreement reforming the international corporate tax rules.

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Uruguay

Tax credit for R&D activities

The Uruguayan Parliament approved Law No. 19,739, which provides power to the executive to provide a tax credit to companies that carry out R&D activities to the extent the National Agency of Innovation and Research properly certifies them.

In addition, the law establishes the following tax credit caps:

- 35% of the R&D expenses if executed wholly within the company
- 45% of the R&D expenses if executed with technological centers or universities that are properly certified.

The executive power will determine the concept of R&D, the eligible expenses, caps, and other necessary provisions to apply the benefit. Furthermore, the executive power will determine the maximum amount of benefits that this law can grant. The tax credit request shall be granted once regulations are issued.

PwC observation:

Multinational enterprises that carry out R&D activities or envision undertaking them should determine how this tax incentive will be implemented in order to benefit from it.

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Judicial

France

French Administrative Supreme Court issues ruling on eligibility of treaty tax credits

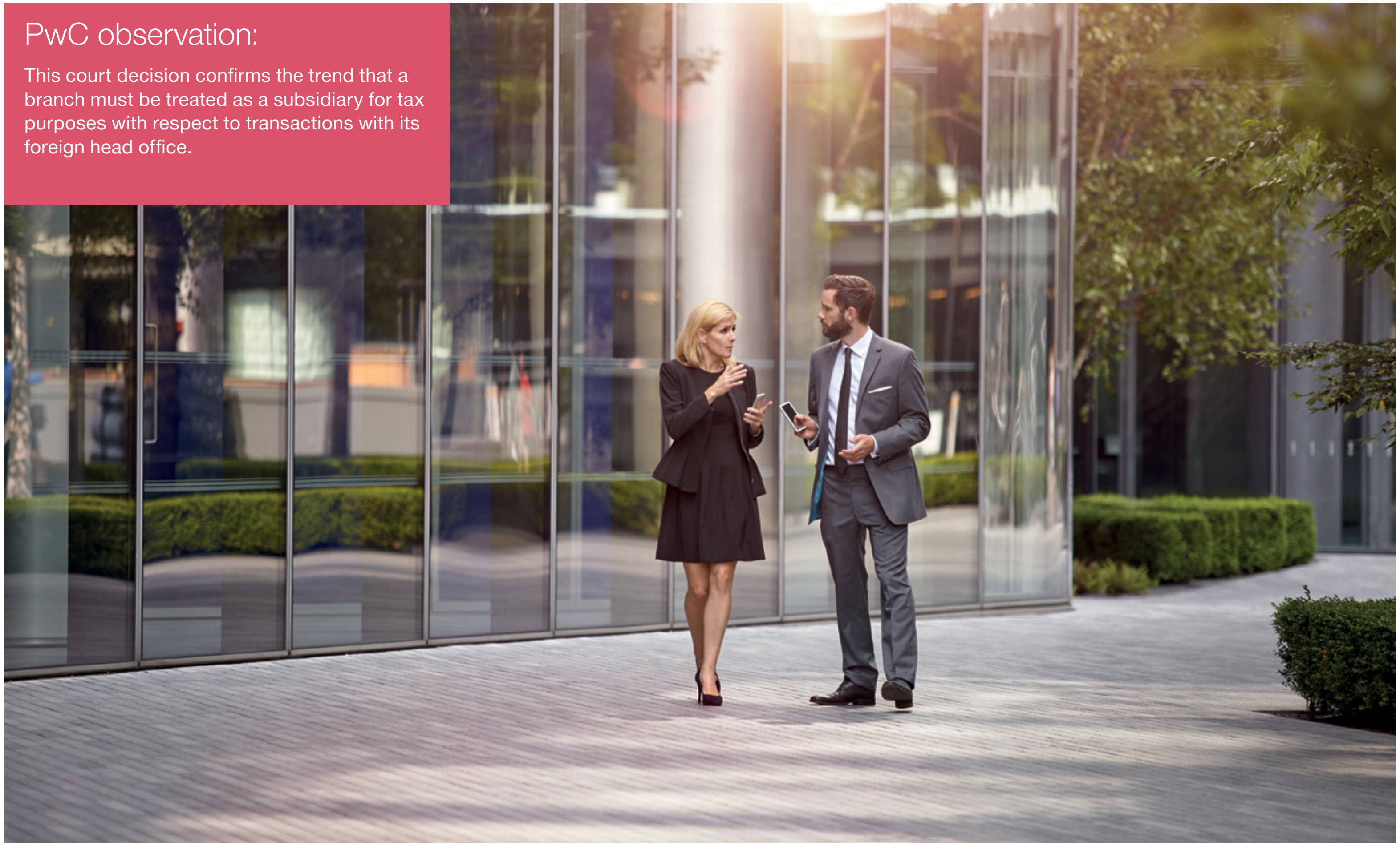
The French Administrative Supreme Court ruled on July 10, 2019 that withholding tax on interest payments from the foreign branches of banks to their French head office and which are taxable at the head office level, give right to treaty tax credits that the head office can offset against its French CIT liability.

For example, the tax treaty between France and China provides that when a French tax resident's permanent establishment (PE) makes interest payments on indebtedness to the French tax resident, such interest shall be deemed to have arisen in China. The tax treaties signed with the Philippines, India, Thailand, and Singapore adopt similar language, which corresponds to the OECD's Model Tax Convention.

This decision is linked to the French Administrative Supreme Court's November 9, 2015 decision, according to which a foreign company's French branch must charge interest for intra group loans granted to the foreign head office.

PwC observation:

This court decision confirms the trend that a branch must be treated as a subsidiary for tax purposes with respect to transactions with its foreign head office.



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Treaties

Cambodia

Hong Kong-Cambodia tax treaty signed

The tax treaty between Hong Kong and Cambodia was signed on June 20, 2019 in Cambodia, and June 26, 2019 in Hong Kong, bringing the number of tax treaties signed by Hong Kong to 41.

Cambodian domestic legislation provides for a 14% withholding rate on dividends, interest, royalties and fees for technical services. The tax treaty reduces the withholding tax rates on such payments from Cambodia to a Hong Kong resident company as follows:

- dividends = 10%
- interest = 10% generally, and 0% for interest paid to the HKSAR government and certain governmental institutions
- royalties = 10%. The definition of 'royalties' under the Hong Kong-Cambodia tax treaty includes payment for use or right to use any industrial, scientific or commercial equipment (e.g., payment for the operating lease of aircraft)
- fees for technical services = 10%. 'Fees for technical services' is defined under the Hong Kong-Cambodia tax treaty as payments received for any managerial, technical or consultancy services.

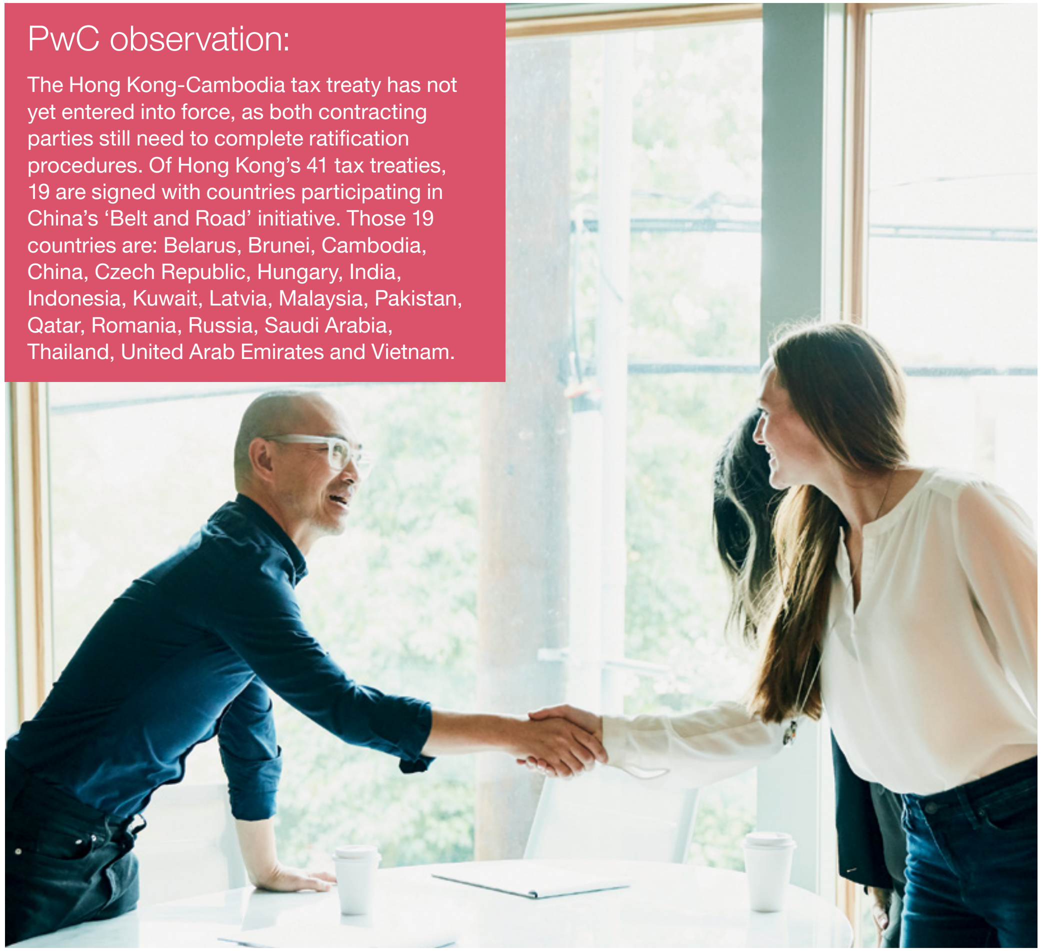
Cambodian domestic law imposes a 14% branch remittance tax on a Cambodian branch's profit transfers to its foreign head office. However, the dividends article of the Hong Kong-Cambodia tax treaty appears to eliminate this branch remittance tax.

Under the tax treaty, a Hong Kong tax resident is not taxed on gains associated with disposing its shares in a non-property holding Cambodian company, as the state of residence has the exclusive right to tax such gains. However, the tax treaty allows for the taxation in Cambodia of gains derived by a Hong Kong tax resident from its disposal of shares in a property holding company (i.e., a company deriving more than 50% of its value directly or indirectly from immovable property situated in Cambodia).

Nevertheless, the Hong Kong-Cambodia tax treaty treats a company as a Hong Kong resident if it is (i) incorporated in Hong Kong or (ii) incorporated outside Hong Kong, but normally managed and controlled in Hong Kong.

PwC observation:

The Hong Kong-Cambodia tax treaty has not yet entered into force, as both contracting parties still need to complete ratification procedures. Of Hong Kong's 41 tax treaties, 19 are signed with countries participating in China's 'Belt and Road' initiative. Those 19 countries are: Belarus, Brunei, Cambodia, China, Czech Republic, Hungary, India, Indonesia, Kuwait, Latvia, Malaysia, Pakistan, Qatar, Romania, Russia, Saudi Arabia, Thailand, United Arab Emirates and Vietnam.



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Canada

MLI receives royal assent

The legislative bill to implement the OECD's multilateral instrument (MLI) in Canada received royal asset on June 21. This is an important step towards ratifying the MLI. The final step of Canada depositing its instrument of ratification with the OECD is expected to occur in 2019.

The MLI will enter into force for Canada on the first day of the month beginning three months after Canada deposits its instrument of ratification with the OECD. If the MLI is also in force at that time for a counterparty to a covered tax convention, the MLI will apply for that covered tax convention on the first day of the next calendar year for withholding taxes, and for tax years beginning six months after the MLI enters into force for Canada for all other taxes.

If Canada deposits its instrument of ratification with the OECD before October 1, 2019, which is likely to occur, the MLI will apply to a number of conventions with respect to withholding taxes starting January 1, 2020.

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

PwC observation:

The MLI's entry into force in Canada could result in the loss of treaty benefits on certain transactions between Canadian taxpayers and non-residents; this could impact withholding tax rates or relief from income tax measures that would otherwise be available under a covered tax convention. Companies should review their international structure to determine the MLI's possible implications before the instrument comes into effect.

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Luxembourg

Luxembourg ratifies new tax treaty with France

Luxembourg's Parliament voted to approve Bill n° 7390 on July 2, thereby ratifying four tax treaties or protocols amending treaties.

This package includes an entirely new tax treaty and accompanying protocol between Luxembourg and France, which had been signed in March 2018. The new treaty is fully 'post-BEPS' — that is, it implements new approaches developed at the international level during the OECD/G20 BEPS project and subsequently reflected in the 2017 version of the OECD Model Tax Convention (2017 OECD Model) and in the MLI, signed and ratified by both Luxembourg and France in June 2017.

Specifically, the treaty redefines what constitutes a PE for purposes of the treaty and introduces new rules for the taxation of cross-border payments such as dividends, interest, and royalties. The treaty's protocol clarifies and potentially changes the situation of cross-border workers, and grants limited treaty access to Undertakings for Collective Investments (UCIs). France already had ratified the treaty; the approving vote in France's Assemblée nationale was on February 14, 2019. Hence, assuming that Luxembourg and France exchange the instruments of ratification during 2019 (as seems likely), this new treaty largely will enter into effect on January 1, 2020.

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

PwC observation:

The July 1, 2019 vote in the Luxembourg Parliament on the Bill regarding these treaty matters in effect confirms that the entirely new tax treaty and accompanying protocol between Luxembourg and France largely will take effect January 1, 2020.

There are significant differences between the provisions of the existing treaty and this new tax treaty, most notably concerning a departure from the 'exemption with progression' method to the 'credit' method, which in particular applies to French tax-resident individuals working mainly in Luxembourg, and also concerns the taxation of income flowing from French real estate fund vehicles (OPCIs).

This is the first Luxembourg tax treaty with a major trading partner of the country to be revised fully via bilateral negotiations, rather than through application of the MLI (which does not cover this new tax treaty), since the OECD/G20 BEPS project was completed and the 2017 OECD Model treaty text became the standard.

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United States

US Senate approves four treaty protocols

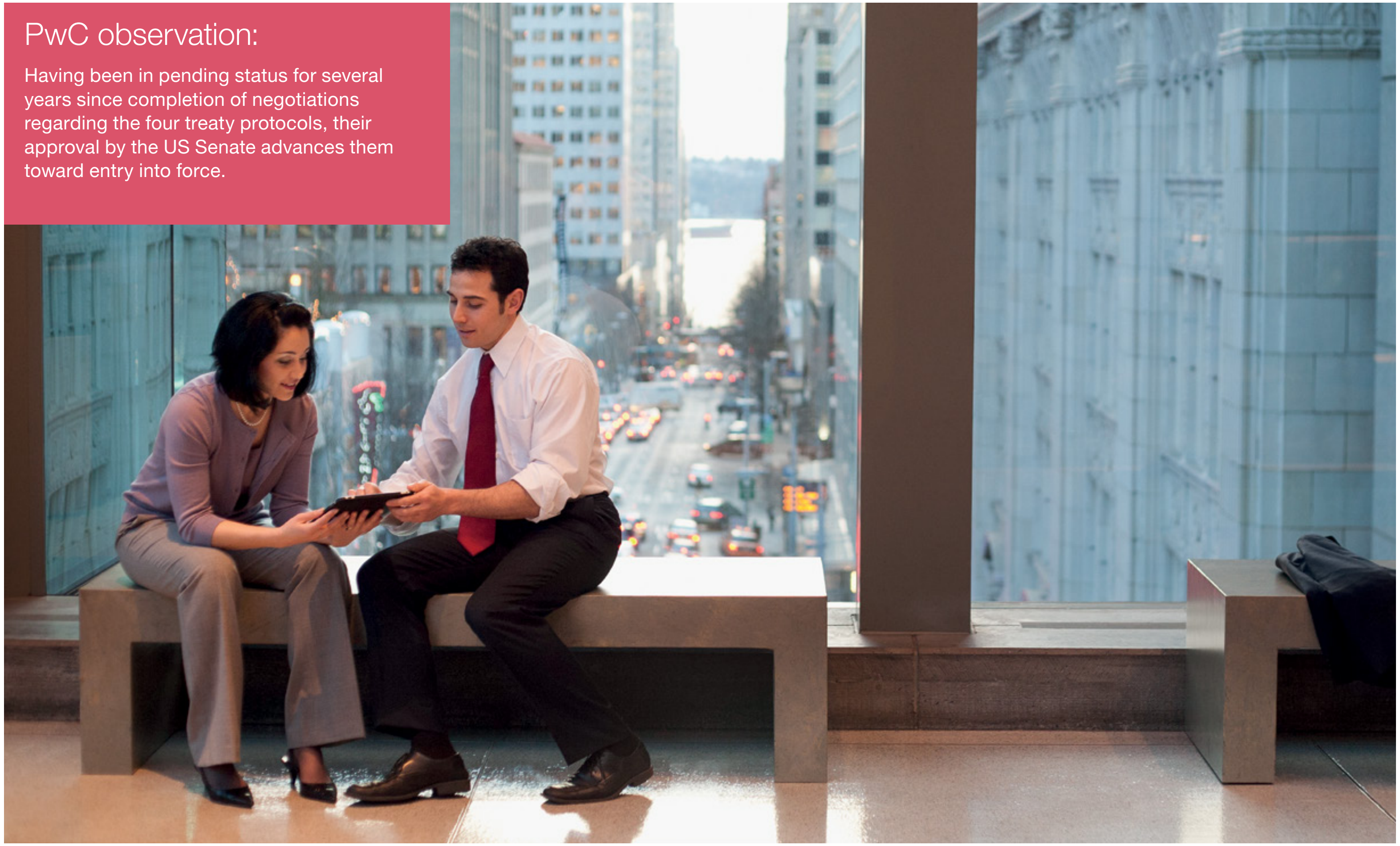
The US Senate approved by more than a 2/3 majority vote four pending protocols to the US tax treaties with Spain, Switzerland, Japan, and Luxembourg, without any reservations.

This approval advances the protocols, with the next US steps being signature by the President of the relevant instruments of ratification. The instruments of ratification of the protocols with Switzerland and Japan will also need to be exchanged with the other Contracting State, and the protocols with Spain and Luxembourg require notification through diplomatic channels that the internal procedures for entry into force have been complied with. These steps will then be followed by eventual entry into force. The US Senate approval brings resolution to a lengthy delay in the process of entry into force for these four protocols, which were agreed in 2009 and 2013.

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

PwC observation:

Having been in pending status for several years since completion of negotiations regarding the four treaty protocols, their approval by the US Senate advances them toward entry into force.



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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
DDT	dividend distribution tax
DST	digital services tax
DTT	double tax treaty
EU	European Union
EICFI	Encouraged Industry Catalogue for Foreign Investment
FDI	foreign direct investment
FRC	foreign related corporation
MAT	Minimum Alternate Tax

Acronym	Definition
MLI	Multilateral Instrument
MNE	Multinational enterprises
MOC	Ministry of Commerce
NDRC	National Development and Reform Commission
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
PFTZ	Pilot Free Trade Zones
R&D	research and development
SAMFI	Special Administrative Measures for Foreign Investment
UCI	Undertakings for Collective Investments
WHT	withholding tax

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Worldwide Tax Summaries:
Corporate taxes

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