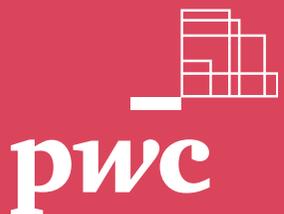


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# International Tax News

Edition 80  
October 2019



## 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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### Featured articles

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# Legislation

## Australia

### New thin capitalisation valuation rules become law

The 2018-19 Federal Budget measure to amend the thin capitalisation rules to require the alignment of asset values with the value included in financial statements has entered into law (Treasury laws amendment bill 2019). The law is effective for all purposes for any income year commencing on or after July 1, 2019.

This bill included amendments to ensure that foreign-controlled Australian tax consolidated groups and multiple-entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities for income years beginning on or after July 1, 2019.

### PwC observation:

Taxpayers that previously relied on thin capitalisation only asset revaluations will be required to align their asset values for thin capitalisation purposes with the values in their financial statements. Taxpayers should consider whether this change results in permanent denial of any interest deductions.

## Belgium

### Belgium ratified MLI / Circular Letter 30% EBITDA rule / State aid

Belgium recently had the following tax updates:

**MLI ratification:** The MLI will enter into force in Belgium and apply to withholding taxes levied on or after January 1, 2020 and for other taxes, for taxable periods beginning on or after April 1, 2020.

**Circular letter 30% EBITDA rule:** A new Circular letter provides guidance regarding the grandfathering provision of the Belgian 30% EBITDA rule (effective January 1, 2019), which applies to loans issued before June 17, 2016 and that have not fundamentally been modified.

**State aid:** The European Commission (EC) has opened in-depth investigations into individual excess profit rulings and appealed the General Court's judgment, which stated that the EC failed to establish the existence of a scheme.

### PwC observation:

Businesses should consider the MLI's consequences for their international flows and structures as the MLI will impact a significant number of tax treaties. Without proper monitoring of the MLI effect, multinational groups likely will be confronted with increased double taxation exposure and lengthy discussions with tax authorities. In addition, the new Circular letter may support a more appropriate analysis of the potential tax liability in relation to the Belgian 30% EBITDA rule. Finally, companies with an excess profit ruling should consider whether to respond directly to the EC as an interested party (as the EC is obliged to consider additional information provided by interested parties for its final decision).

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## Denmark

### Proposal to amend the Danish CFC rules

A new draft bill was presented, in September 2019, to ensure implementation of the requirements to the ATAD directive's CFC rules. The new rules will take effect from the income year commencing on or after January 1, 2020.

The Danish CFC rules generally will apply to all subsidiaries of Danish parent companies. There are no substance or low-tax tests.

The proposal includes:

- The subsidiary's financial income must account for only 33% of the subsidiary's total taxable income (lowered from 50%) to become a CFC.
- CFC income will be extended to include 'other income from intangible assets.' This means that income from the sale of goods or services would need to be decomposed into sub-elements to establish what parts relate to IP – so called 'embedded royalties.'
- IP would need to be split into 'good' and 'bad' IP depending on who developed the IP and where the IP was developed (which country).

- If the 1/3 threshold is exceeded it is possible to opt for taxation of CFC income only and avoid taxation of the company's entire income.
- Certain rules on fictive disposal of all assets and liabilities are introduced when shares are transferred out from under Denmark.

#### PwC observation:

Groups with non-Danish subsidiaries held directly or indirectly by Danish entities should assess their structure for CFC purposes. This is especially relevant for such subsidiaries with intangible property, earning high margins, or in countries with corporate tax rates lower than 22%.

## France

### 2020 draft French budget includes ATAD II and corporate tax rate provisions

The French government on September 27 released its draft budget for fiscal year 2020. The draft budget includes corporate tax measures designed to transpose EU anti-tax avoidance directives (ATAD) I and II into French law. France also addressed other EU-compliant measures and proposes to postpone, for large companies, the scheduled reduction of the corporate income tax rate. The French Parliament will now review, debate, and amend the entire draft budget. This legislative phase will last several weeks before Parliament votes on and enacts a final budget. If enacted as proposed, most of the measures will apply for tax years beginning on or after January 1, 2020, and could affect multinational enterprises with French operations or subsidiaries.

ATAD I and II Directives were introduced as part of the 2015 OECD BEPS report, Action 2, on neutralizing the effects of hybrid mismatch arrangements. The draft budget proposes to transpose ATAD II into French law under new Articles 205 B, C, and D of the French Tax Code – essentially focusing on double deductions and deduction without inclusion situations that would apply not only between EU Member States, but also in situations involving third countries.

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

#### PwC observation:

MNEs operating in France should consider the draft budget's impact on to their international flows, structure, and tax obligations. Enactment of such proposed provisions could occur by the end of December 2019.

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## Ireland

### Publication of the 2019 Finance Bill

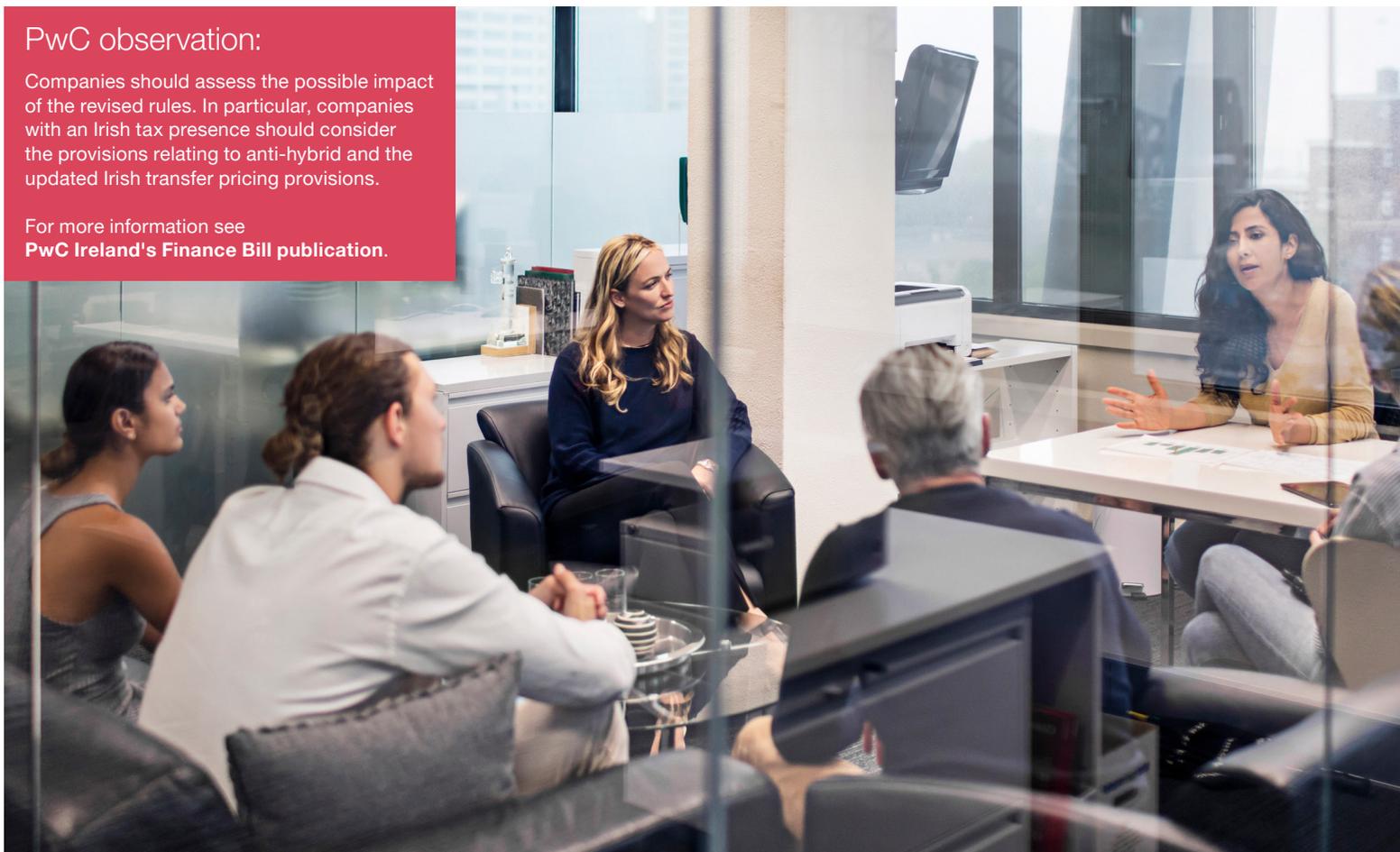
Ireland's 2019 Finance Bill, published on October 17, sets out the legislative changes required to implement many of the Budget day announcements from October 9. The most significant measures are the extension of transfer pricing rules to non-trading transactions and the transposition of the anti-hybrid rules as required by ATAD II. The Bill also proposes significant changes to the Irish Real Estate Funds (IREF) and the Real Estate Investment Trust (REIT) regimes. The R&D tax credit relief for companies also has been enhanced.

The Bill introduces measures aimed at maintaining the status quo for certain corporation tax measures or reliefs in the event of a disorderly Brexit. The stamp duty changes announced on Budget day with respect to non-residential property and 'schemes of arrangement' are included. The EU mandatory disclosure rules imposing reporting obligations on taxpayers and advisers are being transposed into Irish law under the Bill. Other housekeeping measures include final stage ratification steps to update the Dutch and Swiss tax treaties, targeted anti-avoidance measures and amendments to the provisions governing the tax appeal procedure. In addition, the Minister announced an increase in the dividend withholding tax rate from 20% to 25%.

### PwC observation:

Companies should assess the possible impact of the revised rules. In particular, companies with an Irish tax presence should consider the provisions relating to anti-hybrid and the updated Irish transfer pricing provisions.

For more information see [PwC Ireland's Finance Bill publication](#).



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## Kenya

### Kenya proposes increase in capital gains tax for property transfers

Finance Bill 2019, introduced through Kenya Gazette Supplement No.104, proposes to increase the capital gains tax rate from 5% to 12.5%, effective October 1, 2019. Kenya reintroduced its capital gains tax on transfers of property situated in Kenya, effective January 1, 2015, after previously suspending it in 1985. The tax, payable by the transferor, currently is imposed at a 5% rate (final tax) on net gains from such transfers.

#### Finance Bill 2019

For purposes of the tax:

- Property owned by corporations has the definition assigned in the Interpretation and General Provisions Act, and includes land and every description of property, whether movable or immovable, shares, or property held for investment.
- Property owned by individuals means land situated in Kenya, any right or interest in or over that land, and a marketable security situated in Kenya.

- The tax is imposed on direct transfers of property situated in Kenya. The Income Tax Act does not contain any specific tax rules on indirect transfers of property.
- Certain transactions are exempt from the tax, including the issuance by a company of its own shares and debentures, transfers of machinery subject to wear and tear allowance, and transfers of shares traded on any securities exchange licensed by the Capital Markets Authority.

#### Group transactions

The bill proposes to exempt from the capital gains tax property and share transfers by entities for internal restructuring purposes within a group, provided that the restructuring does not result in a transfer to a third party.

#### PwC observation:

The proposed capital gains tax exemption is designed to ease the internal restructuring process when there is no beneficial ownership change.

Taxpayers may appreciate the ongoing reforms in Kenya, particularly the tax reforms and government efforts to increase internally generated revenue and attract foreign direct investment. Multinationals should keep abreast of these and other relevant changes.



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## Mexico

### Mexico tax reform limits interest expense deductions

Mexico's tax reform for 2020 will bring significant changes effective January 1, 2020. The narrow window of time between legislation and effective date requires companies to understand the potential changes, monitor them, and be ready to comply beginning January 1. The reform imposes a new limitation on interest expense deductibility, a provision that is similar to BEPS Action 4.

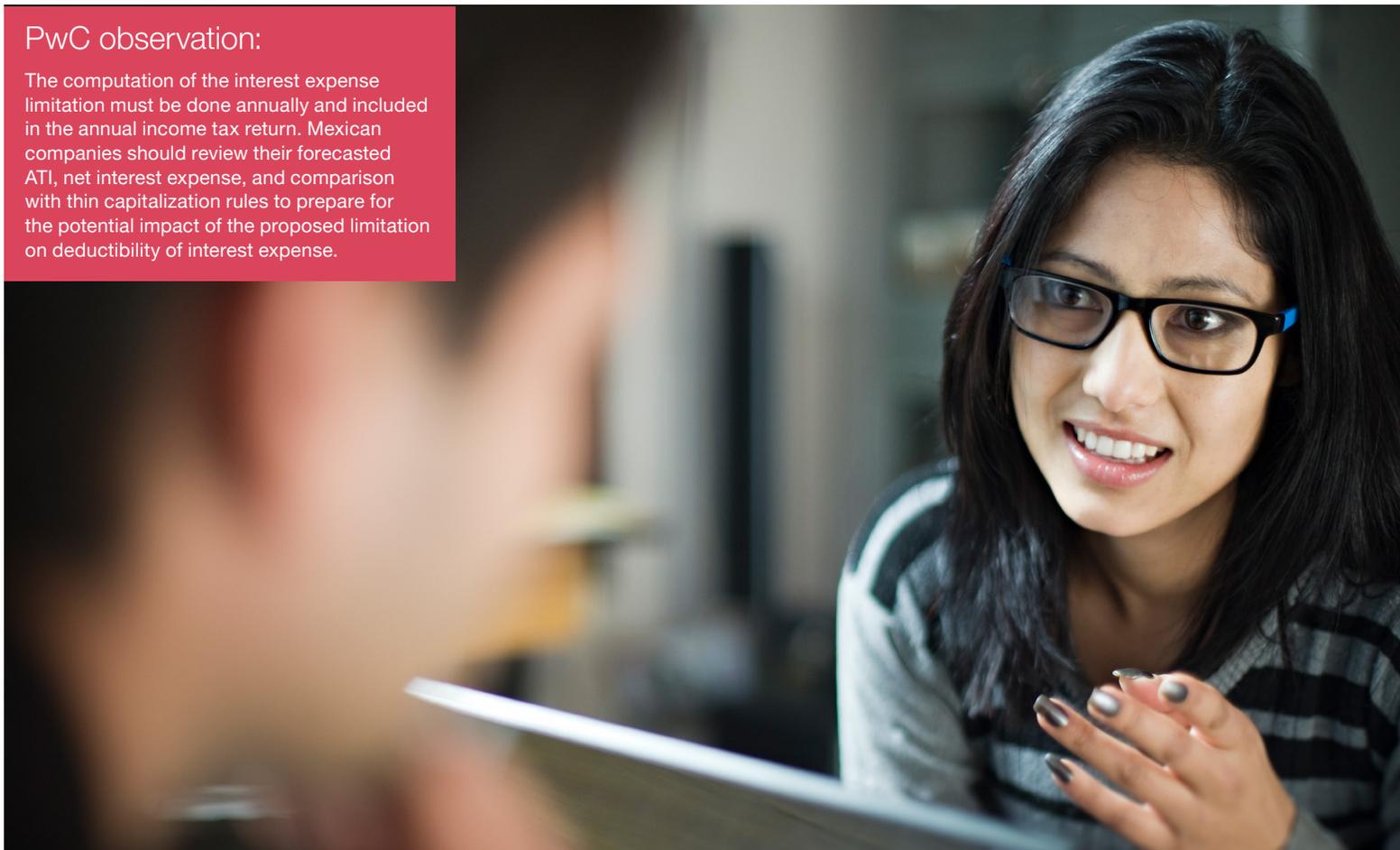
#### Limitation on interest

In addition to existing thin capitalization rules, under the passed reform companies would need to calculate a second limitation and apply the more unfavorable of the two limitations. The new rule would restrict a Mexican entity's net interest expense to 30% of the entity's adjusted taxable income (ATI). ATI is calculated similarly to EBITDA. Notably, inflationary income related to the underlying debt, foreign exchange gain or loss, and withholding tax would not be mitigated when there is an applicable limitation on the interest deduction.

For more information see our [PwC Insight](#).

#### PwC observation:

The computation of the interest expense limitation must be done annually and included in the annual income tax return. Mexican companies should review their forecasted ATI, net interest expense, and comparison with thin capitalization rules to prepare for the potential impact of the proposed limitation on deductibility of interest expense.



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## Mexico

### Mexico tax reform denies deductibility of payments to preferred tax regimes

Mexican tax reform 2020 will deny, under a broad set of circumstances, the deductibility of payments made by Mexican residents to foreign-related parties subject to a preferred tax regime, regardless of whether the payment is made on an arm's-length basis.

#### Payments to preferred tax regime

Previously, Article 28, paragraph XXIII of the Mexican Income Tax Law (MITL) provided that payments by a Mexican-resident entity to a foreign entity or other legal vehicles that are subject to a preferred tax regime ('REFIPRE') were not deductible unless the payment was made on an arm's-length basis. This rule was not discussed widely as, in practice, most intercompany payments were arm's length and fell outside of the limitation's scope. However, the passed 2020 tax reform modified significantly Article 28, XXIII to deny Mexican tax deductibility for a wider range of payments.

Effective January 1, 2020, Article 28, XXIII will deny the deductibility of payments made by Mexican residents to foreign related parties subject to a REFIPRE regardless of whether the payment is made on an arm's-length basis. The MITL considers two parties to be related parties if one

participates in the capital or management of the other or a third entity participates, directly or indirectly, in the capital or management of the two parties. There is no minimum level of participation required to be deemed a related party for purposes of the MITL. The deductibility denial also applies to payments made to a third party subject to a REFIPRE if the third party is interposed between the related parties through a structured agreement.

For more information see our [PwC Insight](#).

#### PwC observation:

Article 28, XXIII is a complex rule that requires an analysis of payments by Mexican entities to foreign related parties and, in many cases, an analysis of payments made by the foreign recipient. Mexican companies should examine the nature of payments made to foreign related parties, the taxable treatment of the foreign recipients in their country of tax residency, the level of substance and activity of the foreign recipient, and the relationship of this substance to the value paid by the Mexican-resident entity.



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## Norway

### Norwegian national budget 2020: Corporate tax changes

The Norwegian government, on October 7, published its proposal for the 2020 national budget, which is expected to be approved in December 2020. The main proposals are amendments and clarifications to the Norwegian interest cap rules, covering which entities are within the scope of the rules and providing special rules for companies that have been part of a merger during the taxable year. Certain amendments are proposed to the R&D tax incentive regime (SkatteFUNN).

The national budget proposes the following amendments to the interest cap rules effective with the 2019 tax year:

- Currently, the interest cap rules only apply to companies that are included in the group financial statements. However, there are exceptions to consolidation under international financial reporting standards. The proposal abolishes this option, so all group companies may be subject to interest cap rules.
- Companies that have acquired assets as a result of a merger would not be entitled to apply the equity escape rule at the company level during the year of the merger.

- The interest cap rules also will apply to group companies with net interest expenses to related parties outside the group below the threshold of NOK25 million.
- The national budget proposes the following changes to the SkatteFUNN regime effective with the 2020 tax year:
- Purchases of R&D services from third parties would have an annual limit within the scheme, reduced from NOK50 million to NOK25 million (the same as for internal R&D). The requirement that the entity is an accredited and preapproved research institution is removed.
- The maximum hourly chargeable rate for internally developed R&D would be increased from NOK600 to NOK700.
- The R&D services deduction is limited to the purchase of R&D services from countries within the European Economic Area (EEA) and from countries with which Norway has a tax treaty or exchange of information.

#### PwC observation:

The Norwegian national budget 2019 proposes changes to the Norwegian interest cap rules, covering which entities are within scope. Certain amendments are proposed to the R&D tax incentive regime SkatteFUNN. This may substantially increase the attractiveness to Norwegian companies of purchasing R&D services from abroad, including in particular from smaller private companies.



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## Norway

### Proposed amendments to the group contribution rules

The Norwegian Ministry of Finance, submitted a proposal on August 13, to amend the group contribution rules. The proposal would expand the rules to include group contributions covering final losses in a foreign subsidiary resident in an EEA state. The proposal is in line with the ruling of the EFTA Court in the Yara case (September 17, 2017) and the subsequent ruling of the Norwegian Supreme Court (January 28, 2019).

Under group contribution rules, companies in the same group can transfer funds and offset taxable results by means of group contributions. Currently, the group contribution rules only apply to transfers between Norwegian companies, or companies with a liability in Norway. The EFTA Court, on September 17, 2019, ruled that the restriction on Norwegian parent companies based on where their subsidiary is located constitutes an obstacle to freedom of establishment in the EEA. In accordance with the EFTA Court's opinion, the Norwegian Supreme Court, on January 28, 2019, ruled that an exception must be made in cases where there is a final loss in a foreign subsidiary.

According to the Ministry, access to free use of group contributions across the EEA would give multinational groups freedom to decide what percentage of profits earned in Norway will be taxed here. This would provide an opportunity to reduce the Norwegian tax base by moving profits from Norway to countries with lower taxation. Therefore, the Ministry maintains the general starting point that group contributions should only be available for Norwegian companies and some companies with a Norwegian taxable presence.

The Norwegian Ministry of Finance has now submitted a proposal to introduce an exception provision in the tax act. The proposal suggests expansion of the group contribution rules to allow group contributions to foreign subsidiaries resident in an EEA country. Another proposal would limit the group contributions to cases where the contributions cover a final loss in the foreign subsidiary.

#### PwC observation:

The Ministry's proposal provides some more predictability for Norwegian groups that have invested in EEA-based subsidiaries and wish to liquidate their investment. The Norwegian parent company must, however, be prepared for extensive documentation requirements in order to ascertain that there is a final loss in the foreign subsidiary.



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# Spain

## New rules on tax residency of pension funds and UCIs

An amendment to the Non-resident Income Tax Act was published in the Official Gazette on September 19. The amendment includes new requirements for proving the tax residency of foreign EU pension funds and collective investment undertakings to access the Spanish withholding tax exemptions for interest payments and capital gains.

Key aspects of the amendment include:

### 1. Scope

A withholding tax exemption on interest payments or capital gains to:

- i. pension funds equivalent to the pension funds under Legislative Royal Decree 1/2002 and Directive 2016/2341
- ii. undertakings collective investment in transferable securities (UCITs) regulated under Directive 2009/65/CE and
- iii. undertakings collective investment (UCI) subject to authorization, registration or supervision, and managed by Alternative Investment Fund Manager (AIFM) regulated under Directive 2011/61/CE.

## 2. Particularities on the tax residency

The new rule distinguishes two potential scenarios:

1. Pension funds and UCIs treated as opaque entities for Spanish tax purposes:
  - For pension funds regulated under Directive 2016/2341, the tax residence would be proven through a certificate issued by the competent body/regulator of the jurisdiction in which the pension fund is located.
  - Other pension funds, equivalent to the Spanish pension funds, should prove tax residency through a general statement issued by the representative of the pension fund via the form to be published by the Ministry of Finance. This general statement would be valid for one year.
  - UCITs: the tax residence should be proven by a certificate issued by the competent authority in the State of the institution's origin.
  - UCI: the tax residence should be proven through one of the following means:
    - i. certificate issued by the competent authority of the State where the institution is established, or
    - ii. statement from the institution's representative or its manager (e.g., AIFM)

2. UCIs treated as look-through entities for Spanish tax purposes:

For UCITs and UCIs treated as look-through entities for Spanish tax purposes, the withholding tax exemption would apply at the level of their members considering certain criteria.

### 3. Entry into force

These new rules are currently in force, since the entry into force has been immediate.

### PwC observation:

Taxpayers should comply with new rules that deal with the residence of foreign pension funds and UCITs/UCIs in order to ensure qualification to the domestic withholding tax exemption on interest payments and capital gains.

These new rules comply with EU law, i.e., free movement of capital, in case of European pension funds and European UCITs and UCIs. However, the same treatment, i.e., access to the withholding tax exemption, also should be available to non-EU pension funds and non-EU UCITs/UCIs as long as they are equivalent to Spanish and EU pension funds and Spanish and EU UCITs/UCIs, respectively.

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## Turkey

### Turkey publishes draft legislation on digital services tax

The Bill presented to Parliament on October 24, proposes to introduce a 7.5% tax on revenues deemed to have been generated in Turkey by digital companies, wherever they are established, which make annual supplies of taxable digital services of more than TRY 20 million in Turkey and EUR 750 million worldwide. If enacted as proposed, the digital services tax (DST) will start to apply from the beginning of the third month following the enactment of the law.

Please see our **PwC Tax Bulletin** 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 physical presence. Companies which may be within the scope of the Turkish DST should begin assessing the extent to which this new tax potentially could affect their operations. Such assessment includes determining whether the digital services they provide fall within the definition of taxable digital services, as well as determining which obligations should be fulfilled and which procedures should be implemented.

## Venezuela

### Venezuela amends high-net worth tax recently introduced

The law that introduced an annual net wealth tax for special or major taxpayers, which was published July 3, has been republished in the Venezuelan Official Gazette No. 41,696, published on August 16, 2019, with the amendment of substantive errors. In addition, Venezuelan Official Gazette No. 41,697 published on August 19, 2019, included an administrative ruling with details on this net wealth tax, specifically regarding the reporting requirements.

According to the re-printed constitutional law, individual and corporate special taxpayers are subject to tax when their worth is equal to or higher than 150.000.000 Tax Units (approximately USD 358,000). Venezuelan residents are subject to the tax on their worldwide net worth. Non-residents in turn are subject to the tax on property located – or with rights enforceable – in the country (including in rem rights on real estate and shares issued by Venezuelan companies). The tax basis is the value of the property at the end of the taxable year minus encumbrances on that property and excluding liabilities. Specific valuation rules apply depending on the type of asset. The tax applies at a 0.25% rate over the net wealth. The tax is triggered on September 30 each year, being the

taxable period from October 1 to September 30. The first taxable period will be the period ending this September 30, 2019. The Law includes a transitory rule applicable to the valuation of property and rights in the first taxable period.

In alignment with the reprinted constitutional law, administrative ruling SNAT/2019/00213 provides that, for the first tax period, ending September 30, 2019, taxpayers shall report the equity value available at the time of the return for those cases in which a transition has been provided for the first taxable period. The return filing and payment of the tax shall be executed from October 1 and November 30 of each year. The tax shall be reported pursuant to the standards provided for in the tax authorities' website. The period for the return filing and payment of the tax corresponding to the first taxable period is that between October 1 and November 30, 2019.

### PwC observation:

Considering the residence and domicile definitions provided in the constitutional law, individual and corporate taxpayers qualified as special or major taxpayers must evaluate the terms of subjection to the tax. In addition, taxpayers must review information and documentation available on the values to be reported for the first tax period.

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## Administrative

### Australia

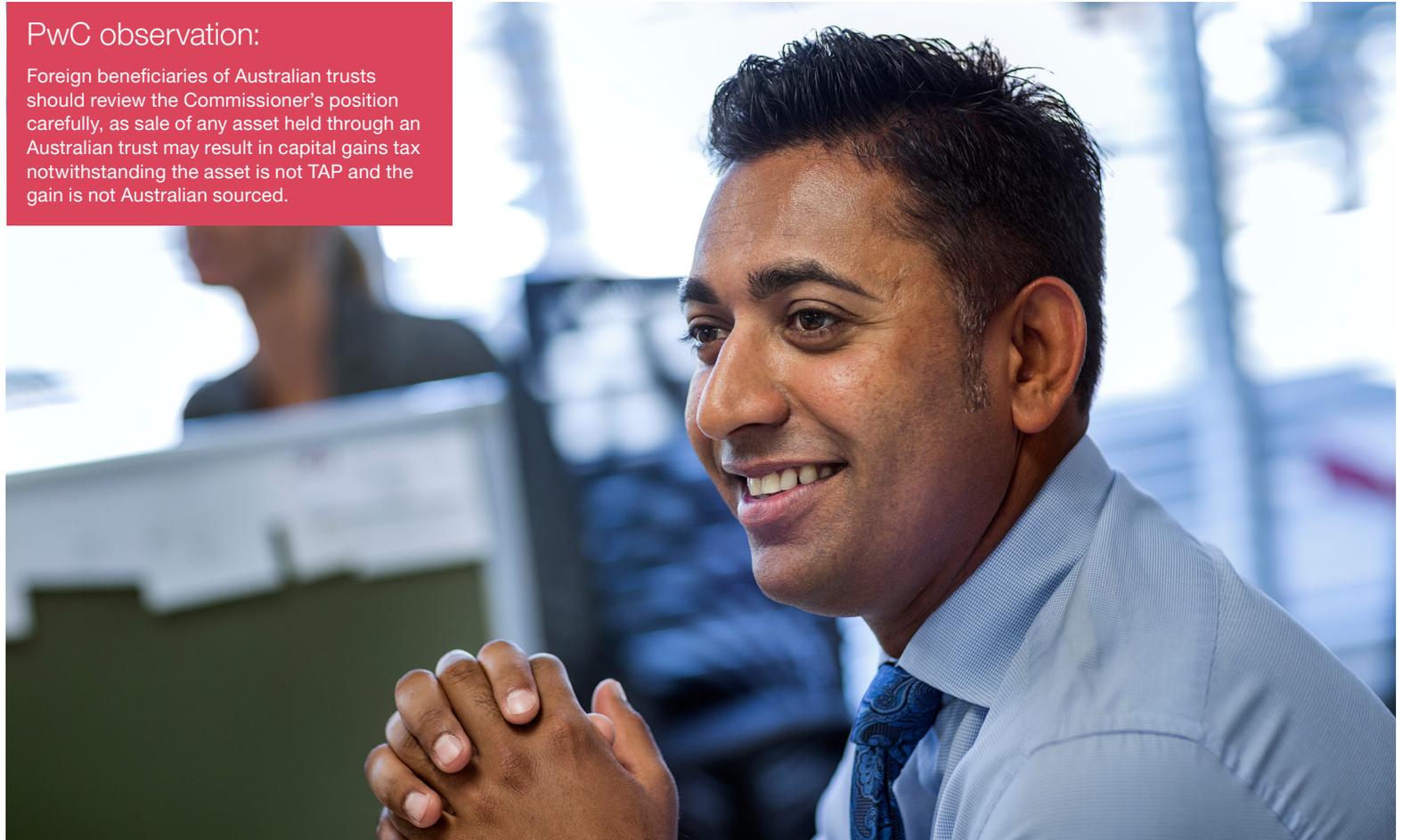
#### Distribution of foreign-sourced capital gains to non-resident trust beneficiaries

The Australian Tax Office (ATO) released two draft tax determinations which provide its preliminary views on the treatment of distributions of foreign-sourced capital gains distributed to non-resident beneficiaries of a discretionary trust.

- TD 2019/D6 sets out the commissioner's preliminary view that subdivision 855-A (or s768- 915(1)) of the Income Tax Assessment Act 1997 (Cth) (ITAA 1997) does not disregard a capital gain that a foreign resident (or temporary resident) beneficiary of a resident non-fixed trust makes from a non- 'taxable Australian Property' (TAP) asset because of s115-215(3).
- TD 2019/D7 sets out the commissioner's preliminary view that the source concept in Division 6 of Part III of the Income Tax Assessment Act 1936 (Cth) (ITAA 1936) is not relevant in determining whether a non-resident beneficiary of a resident trust (or trustee for them) is assessed on an amount of a trust capital gain. The same view applies in relation to a non-resident beneficiary's share of TAP gains of a non-resident trust and a trustee's share of a capital gain.

#### PwC observation:

Foreign beneficiaries of Australian trusts should review the Commissioner's position carefully, as sale of any asset held through an Australian trust may result in capital gains tax notwithstanding the asset is not TAP and the gain is not Australian sourced.



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## Australia

### ATO's compliance approach on thin capitalisation arm's length debt test

The ATO has issued draft Practical Compliance Guideline PCG 2019/D3 which sets out its draft views on practical aspects of the arm's length debt test which is relevant for Australia's thin capitalisation purposes.

The draft guideline also provides a risk assessment framework that outlines the ATO's compliance approach to an application of the arm's length debt test in certain circumstances that are identified as low risk. The ATO is of the view that Australian businesses do not usually have debt in excess of the safe harbour debt amount. Therefore the 'choice' to apply the arm's length debt test requires undertaking a more robust analysis to demonstrate the commerciality of debt capital in the entity as the maximum allowable debt under Australia's thin capitalisation provisions.

### PwC observation:

The draft guideline is proposed to have a July 1, 2019 effective date and will apply where the arm's length debt test has been used to establish an entity's maximum allowable debt from this date. Comments on the draft were due by October 9, 2019. Taxpayers should evaluate their go-forward arm's length debt test positions against Australia's thin capitalisation legislation and the ATO's compliance approach.

## Australia

### Title: Board of taxation reviews corporate tax residency

The Board of Taxation has released its consultation guide on its review of corporate tax residency.

The purpose of the review is to ensure that the residency rules are operating appropriately in light of modern, international and commercial board practices and international tax integrity rules. The consultation paper includes observations on the current corporate residency rules, and poses questions about the ongoing viability of these rules for stakeholder consideration. Submissions were due on October 4, 2019.

### PwC observation:

This review is much needed since the ATO's Taxation Ruling TR 2018/5 and final practical compliance guideline PCG 2018/9, which caused many taxpayers to revisit their governance, systems and processes in relation to foreign incorporated companies in a short time frame before the transitional period ended on June 30, 2019.

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## Belgium

### EU Commission to investigate 39 excess profit exemption tax rulings in Belgium

The European Commission (EC) announced on September 16 the opening of a formal investigation into 39 individual tax rulings granted by the Belgian tax authorities to multinational companies in relation to the 'excess profit' tax exemption.

The announcement follows a chain of events that started with the EC opening an investigation in February 2015 into the Belgian 'excess profit' tax provision, applicable since 2005. The investigation concerned the Belgian tax provision, which was laid down in article 185, section 2, b) BITC, and which codified the 'arm's length' principle. This provision considers (cross-border) intra-group relations for assessing corporate income tax on an arm's length basis. Based on this article, (i) the taxable basis of a Belgian company can be increased to the extent it is lower than the 'at arm's length profit', and (ii) the taxable basis can be reduced to the extent it exceeds the arm's length profit.

In January 2016, the EC concluded that the Belgian 'excess profit' provision constituted a State aid scheme and amounted to unlawful State aid and required, as a result, the immediate recovery of the aid granted to the companies that benefited from the scheme.

The Belgian State, along with many of the companies impacted by the decision, filed an appeal with the General Court of the European Union (GC). The GC annulled the EC's decision in February 2019 stating that the 'excess profit' provision does not constitute a State aid scheme and that the EC's decision erred on this point. This GC judgment was appealed before the European Court of Justice (ECJ)

In addition to these proceedings, the EC has decided to open individual investigations into the tax rulings granted on the basis of the 'excess profit' provision. The tax rulings concerned are in fact also part of the rulings that were within the scope of the 2016 State aid decision. The EC believes that these rulings provided selective tax benefits, even if they would not pertain to a tax scheme.

### PwC observation:

This step in the procedure relates to the opening of a formal investigation. The EC has thus not yet drawn a final conclusion whether the individual rulings also constitute unlawful State aid. At the end of the formal investigation, the EC will adopt its final decision. There are three possible outcomes: a positive decision, a conditional decision, or a negative decision. In the event of a negative decision (i.e., if one or more of the individual rulings is found to constitute unlawful State aid), the Belgian government, together with the concerned parties, could appeal the decision before the GC.

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## Norway

### Proposal for disclosure of tax arrangements

The Norwegian government appointed a committee, on June 21, 2017, to investigate tax advisers' duty of disclosure and confidentiality. The report was published on June 27, 2019. The report's assessments and proposals are largely based on the Norwegian Tax Administration's description of the information needed about taxpayers. The committee provides recommendations on how to meet the need for further information that is not already covered under applicable law.

The committee has proposed introducing a disclosure obligation on tax arrangements for tax advisers (lawyers, accountants, auditors, banks and others) and clients. The proposed obligation is largely similar to the EU Council's directive 2018/822/EU (DAC 6) to implement recommendations in OECD/G20's BEPS project Action 12 on disclosure requirements for tax advisers and clients on aggressive tax planning. The proposal is adjusted to Norwegian law and applies to both domestic and cross-border tax arrangements.

The committee has concluded that disclosure obligations generally should be imposed on the taxable persons themselves, not on tax advisers, except for certain tax arrangements. This information should be unsolicited. No general restrictions are imposed on tax advisers' duty of confidentiality according to law.

The person responsible for the disclosure must identify herself/himself and others involved. Information should be provided on the event characteristics that cause the information disclosure and event description. If the event involves cross-border transactions, it should state which jurisdictions are involved and the relevant foreign law rules. The taxable person should describe the tax benefit sought or the event's value. They also should provide information about the event's date or planned execution.

In the event of a breach of the duty of disclosure, a violation fee or an additional tax may be imposed.

### PwC observation:

The report on tax advisers' duty of disclosure and confidentiality proposes to introduce disclosure requirements on domestic and cross-border tax arrangements in order to prevent aggressive tax planning. The proposal is broadly in line with OECD and EU rules, and is now out for public consultation until December 2, 2019. We expect a draft bill in spring 2020.

Taxpayers should analyze the potential impact on their businesses, and the outstanding challenges outlined above – for the impact of both prospective tax liability and increased compliance and filing burden. Given this project's wide-ranging implications, taxpayers should consider sharing their views with the OECD and national governments as the project moves forward in order to achieve a stable and sustainable consensus agreement.

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## OECD

### OECD proposes to rewrite international profit allocation rules

On October 9, the OECD **Secretariat published Secretariat Proposal for a 'Unified Approach' under Pillar One** (the 'Pillar 1 Unified Approach') that, if ultimately agreed, would fundamentally alter the international tax regime. The Pillar 1 Unified Approach represents the OECD's effort to bring together three proposals for consideration by the 134 countries of the OECD Inclusive Framework under the OECD/G20 'tax challenges of the digitalisation of the economy' project. The proposal does not ringfence the so-called 'digital economy.' Instead it seeks to allocate a greater share of taxing rights to the countries where consumers are located – regardless of a business' physical presence there.

Together with proposals on a global minimum tax coupled with the denial of deductions on 'insufficiently taxed' payments, this would represent the biggest change in the international tax regime since the 1920s, should the Inclusive Framework countries agree to the Secretariat's proposals. The proposal would impact many consumer-facing businesses; not just technology or online platform businesses.

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

### PwC observation:

The proliferation of unilateral measures targeting interaction between 'users' and businesses (e.g., digital services taxes) has increased the urgency among policymakers to agree on fundamental multilateral reforms. Many large countries desire a swift agreement, and the G20 has committed to such timeline.

While the approach is described as unified, the process of reaching consensus remains in an early stage, and many key elements require further work. In particular, defining with specificity what business activities are 'consumer facing', the profits attributable to them, and the rates of return deemed to be 'routine' (for Amount B) and 'excess' (for Amount A) remain significant policy decisions. Regarding nexus, the type of threshold (e.g., volume of sales) and the degree of local flexibility will need to be agreed in order to develop an appropriate new treaty article. Finally, developing the method for legally implementing the proposals (including dispute resolution mechanisms) is a critical workstream.

These proposals could result in greater certainty for taxpayers if they reduce the likelihood of disputes through a) dispute prevention caused by commonly agreed rules and b) robust dispute resolution mechanisms. However, the additional complexity of the new formulaic Amount A, and how it interacts with Amounts B and C, could increase the compliance burden, and if not applied uniformly it could create additional dispute and double taxation risks. Reallocation percentages not grounded in an objective principle such as the 'arm's length principle' could be subject to constant pressure for change.

Taxpayers should analyse the potential impact on their businesses, and the outstanding challenges outlined above – in terms of the impact of both prospective tax liability and increased compliance and filing burden. Given this project's wide-ranging implications, taxpayers should consider sharing their views with the OECD and national governments as the project moves forward in order to achieve a stable and sustainable consensus agreement.

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# Treaties

## Cyprus

### Cyprus and Egypt sign new tax treaty

Cyprus, on October 18, 2019, ratified the new tax treaty with the Arab Republic of Egypt, signed October 8, 2019. Certain legal procedures now need to take place following which the new tax treaty will enter into force. Once the tax treaty enters into force it will be effective January 1 of the next calendar year, and it will replace the existing tax treaty between Cyprus and the Arab Republic of Egypt (signed in 1993, effective from 1995).

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### Key provisions:

#### Dividends

A maximum 5% withholding tax (WHT) rate applies on payments of dividends if the recipient is a company (other than a partnership) that directly or indirectly holds at least 20% of the capital of the payer company throughout a 365-day period that includes the dividend payment date. In all other cases, the new tax treaty provides for a 10% WHT rate on dividends.

Note that irrespective of the new treaty's 5% or 10% WHT rates, as per the domestic Cyprus tax legislation no Cyprus WHT applies on dividend payments to non-Cyprus tax residents.

Also note that the new tax treaty provides for an additional tax/ branch tax not exceeding 5% imposed on the profits of a company attributable to a foreign permanent establishment.

#### Interest

A maximum 10% WHT rate applies on interest payments.

Note that irrespective of the new treaty's 10% WHT rate, as per the domestic Cyprus tax legislation no Cyprus WHT applies on interest payments to non-Cyprus tax residents.

#### Royalties

A maximum 10% WHT rate applies on royalty payments. Royalty payments are made in consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph and video films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. Royalty payments do not include payments for the use of, or the right to use, ships or aircrafts.

Note that irrespective of the new treaty's 10% WHT rate, as per the Cyprus domestic tax legislation no Cyprus WHT applies on royalty payments to non-Cyprus tax residents (except in the case of royalty payments earned on rights used domestically in Cyprus).

#### Capital gains

Cyprus retains the exclusive taxing rights on share disposals made by Cyprus tax residents except in the following cases:

- non-listed shares which derive, at any time during the 365 days prior to the disposal, more than 50% of their value, directly or indirectly, from immovable property situated in the Arab Republic of Egypt, and,

- where the disposal is out of a participation of shares in a non-listed company tax resident in the Arab Republic of Egypt holding directly or indirectly at least 20% of the capital of the disposed-of company at any time within 365 days prior to the disposal.

The new tax treaty incorporates the OECD/G20 BEPS project Action 6 report 'Principal Purpose Test' (PPT), which is a minimum standard under the BEPS project.

### PwC observation:

Cyprus continues to update and expand its tax treaty network. This treaty opens the way for new investment opportunities and trade relations between these countries. Taxpayers also should consider the impact of this treaty.

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## Cyprus

### Cyprus ratifies tax treaty and amending protocol with the United Kingdom

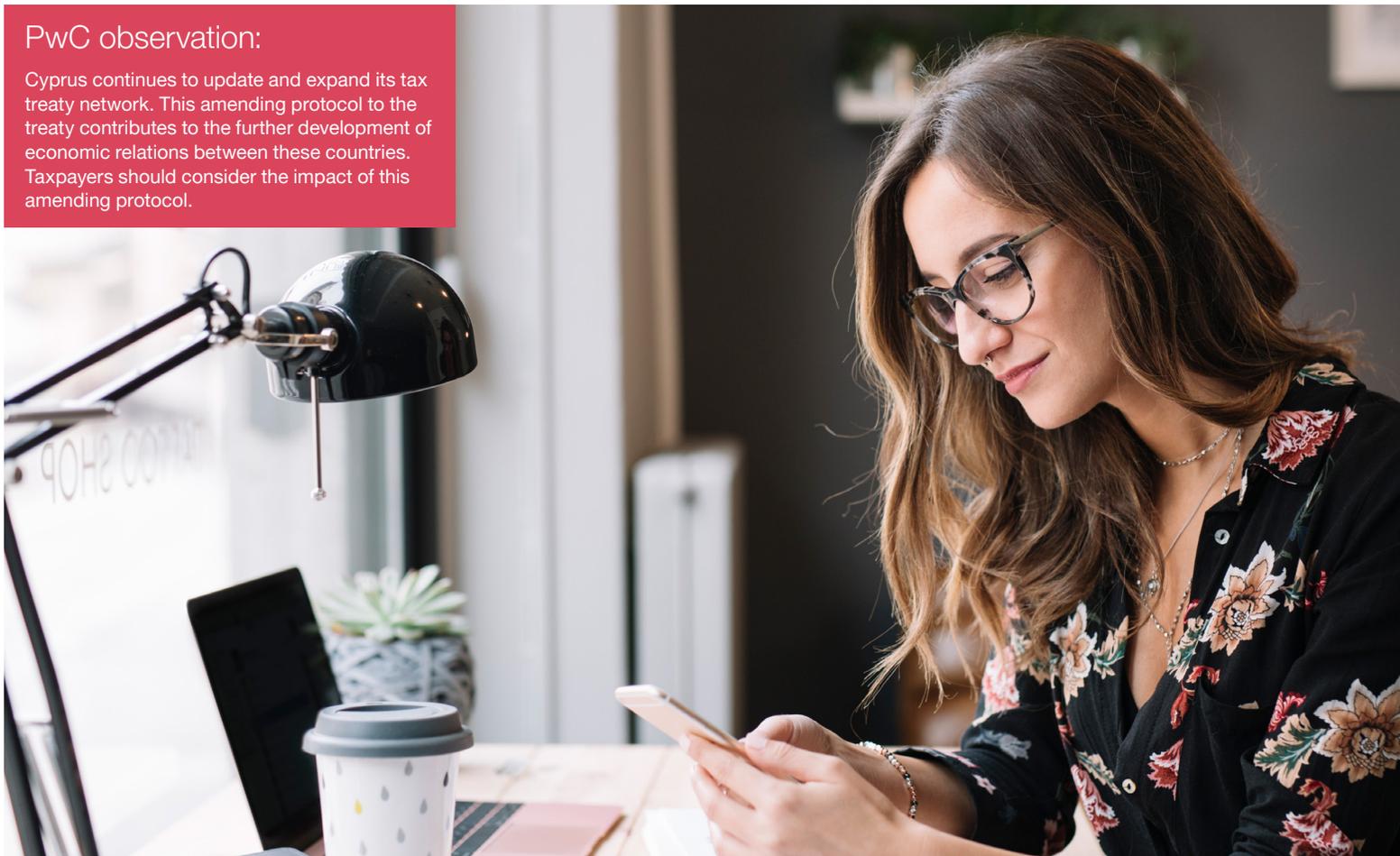
The amending Protocol, signed December 19, 2018, to the new tax treaty between Cyprus and the United Kingdom of Great Britain and Northern Ireland effective from January 1, 2019, entered into force on October 2, 2019.

The amending Protocol is in respect of government service pensions of individuals who are not nationals of the country in which they are tax resident. Under this amending Protocol the provisions of the previous tax treaty between the two countries (1974) are grandfathered until December 31, 2024, under conditions and provided an election is made. The amending Protocol is effective retrospectively as from January 1, 2019.

For more information see our Tax Update Newsletter **N-1-2019**.

### PwC observation:

Cyprus continues to update and expand its tax treaty network. This amending protocol to the treaty contributes to the further development of economic relations between these countries. Taxpayers should consider the impact of this amending protocol.



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## Russia

### Russia ratifies protocol to Austria tax treaty

Russia has ratified the protocol amending the treaty (officially published on June 20, 2019). The amendments apply to 2020 and beyond.

To be eligible to apply the 5% withholding tax rate, a taxpayer must hold at least a 10% interest in the capital. The taxpayer is no longer required to hold a participation interest of at least USD 100,000. If the taxpayer does not meet the reduced rate eligibility criterion, dividends will be taxed at the 15% rate.

The hidden sale of immovable property, including the case of indirect ownership, will be subject to tax in the country of location. The provision will not apply to income earned from share disposal in the course of entity reorganization or from the disposal of shares listed on a registered stock exchange.

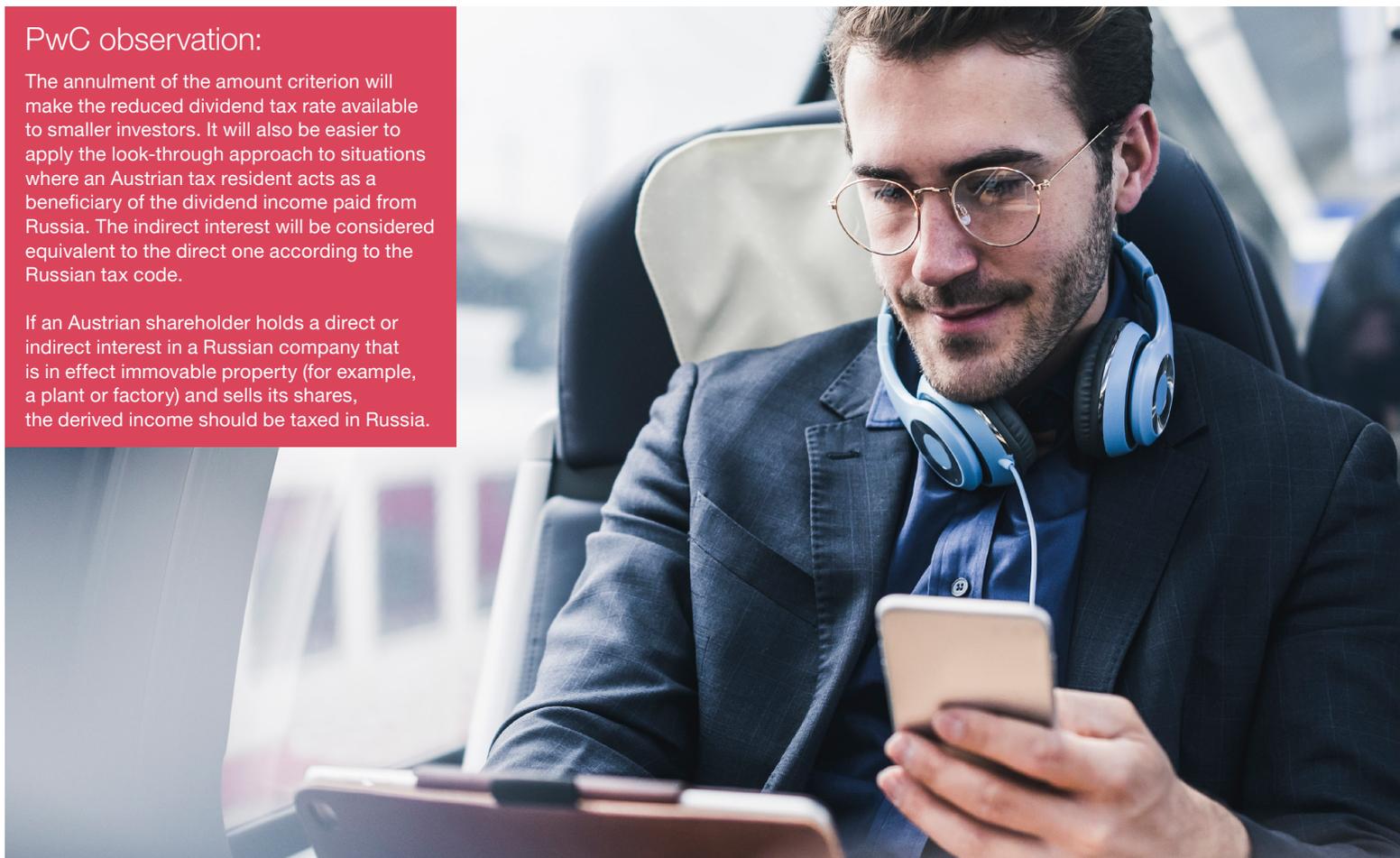
The amendments specify that an entity's place of management is where, in effect, key management and business decisions are made. An entity may have one or more places of management but, at any given moment, it may have only one place of actual management.

For more information see our [PwC Insight](#).

### PwC observation:

The annulment of the amount criterion will make the reduced dividend tax rate available to smaller investors. It will also be easier to apply the look-through approach to situations where an Austrian tax resident acts as a beneficiary of the dividend income paid from Russia. The indirect interest will be considered equivalent to the direct one according to the Russian tax code.

If an Austrian shareholder holds a direct or indirect interest in a Russian company that is in effect immovable property (for example, a plant or factory) and sells its shares, the derived income should be taxed in Russia.



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# Glossary

Acronym	Definition
AIFM	alternative investment fund manager
ATAD	Anti-Tax Avoidance Directive
ATO	Australian Tax Office
ATI	adjusted taxable income
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CJEU	Court of Justice of the European Union
CMC	Common Market Council
DST	digital services tax
DTT	double tax treaty
EBITDA	Earnings before interest, tax, depreciation and amortization
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area

Acronym	Definition
EFTA	European Free Trade Association
EU	European Union
GCEU	General Court of the European Union
IREF	Irish Real Estate Funds
ITA	Italian Tax Authorities
MITL	Mexican Income Tax Law
MLI	Multilateral Instrument
MNC	Multinational corporation
PE	permeant establishment
OECD	Organisation for Economic Co-operation and Development
REIT	Real Estate Investment Trust
UCI	undertaking collective investment
UCIT	undertaking collective investment trust
WHT	withholding tax

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