International Tax News

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Start

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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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- Pillar Two in Hong Kong: Not yet a sticky wicket? (August 23)

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PwC's Pillar Two Country Tracker Our Pillar Two Tracker provides the status of Pillar Two implementation in various countries and regions to help you get #PillarTwoReady.

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Legislation

Canada

Canada releases draft Global Minimum Tax Act to implement Pillar Two

The Department of Finance released for public comment draft Pillar Two legislation on 4 August. The Pillar Two legislation, released as the Global Minimum Tax Act, includes rules for computing the Top-up Tax for each jurisdiction as well as the application of the Income Inclusion Rules (IIR) and Canadian Qualified Domestic Minimum Top-up Tax (QDMTT). The IIR and QDMTT will apply to fiscal years of a qualifying MNE group that begin on or after 31 December 2023. While this legislation includes a placeholder for the Under-taxed Profits Rules (UTPR), no UTPR legislation was released. The UTPR will apply to fiscal years of a qualifying MNE group that begin on or after 31 December 2024.

The Pillar Two legislation includes a provision that the legislation should be interpreted consistently with the model rules and administrative guidance released by the OECD, as amended from time to time. Furthermore, this legislation includes the Permanent QDMTT Safe Harbour as well as the Transitional CbCR Safe Harbours previously released by the OECD. Finally, the legislation includes a provision that the Canadian general anti-avoidance rules in Section 245 of the Canadian Income Tax Act should apply to amounts determined pursuant to the Pillar Two legislation. Comments on the legislation are due by 29 September 2023.

For more information see our *Tax Insight* .

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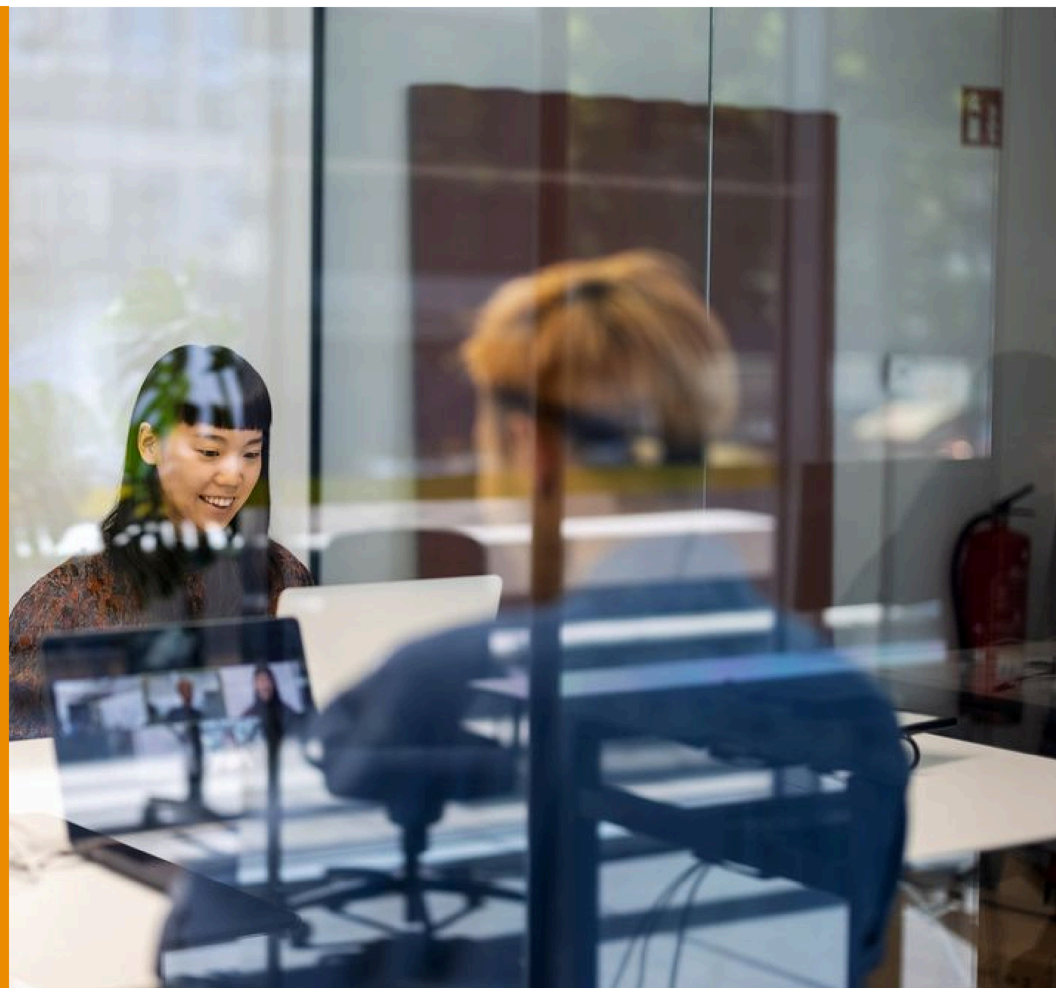
Generally, the Pillar Two Legislation, including the permanent and temporary safe-harbour rules, are consistent with the OECD model rules. However, the structure and drafting of the draft legislation differs from the model rules in many respects, so a careful review of the draft legislation is warranted to confirm how the Canadian Pillar Two Legislation will apply to an MNE.

The Pillar Two Legislation does not include amendments to the Income Tax Act with respect to the interaction between the Pillar Two rules and our existing international tax regimes that deal with controlled foreign companies (e.g., foreign accrual property income, foreign accrual tax, and foreign affiliate surplus rules). These amendments are required to ensure integration between the existing controlled foreign company regime in Canada and the Pillar Two Legislation.

The effective date for the Pillar Two Legislation is approaching quickly. Therefore, MNE groups should take action to analyze the potential impact on their group, as well as whether their current data, systems, technology, and processes can support the requirements of the Pillar Two Legislation.



Legislation

Poland

CJEU finds Polish tax ordinance that limits interest recovery on tax overpayment breaches EU law

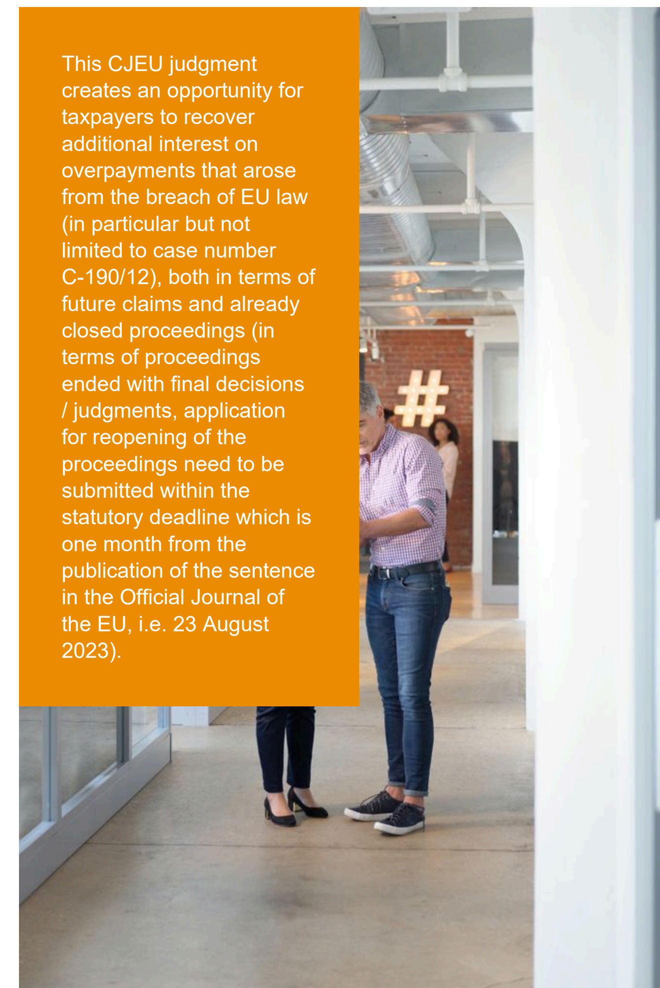
The Court of Justice of the European Union (CJEU) in its judgment dated 8 June, 2023 (Case Number C-322/22) claimed that the article 78 § 5 of the Act of 29 August 1997 – Tax Ordinance ('Polish Tax Ordinance'), which provides for limitations in obtaining interest recovery on tax overpayment, is in breach of EU law.

The case concerned an American investment fund ('Fund'), which in 2017 applied for a refund of tax withheld on dividends from Polish companies based on the CJEU judgment dated 10 April 2014 in case number C-190/12. This judgment stated that the Polish regulations were incompatible with EU regulations as they discriminate against funds from third countries – this case constitutes a basis for third country funds to recover withholding tax (WHT) in Poland as the local provisions in this regard remain unchanged, i.e. the breach was not removed. The Fund received a WHT refund in 2018 however, it did not receive all the interest on the tax unduly withheld.

In the decision in the first instance, the Polish tax authority refused to pay any interest on the unduly withheld tax. The decision was appealed to the Director of the Tax Administration Chamber, who confirmed the Fund's entitlement to obtain interest on overpayments incurred in the years 2012-2013, for the period from the date when the overpayment had arisen to the 30th day from the date of publication in the Official Journal of the EU of the sentence in case number C-190/12. The Director of the Tax Administration Chamber however refused to pay interest on overpayments made in 2014 as the overpayment had arisen (and the claim covering it had been submitted) after the publication of the CJEU judgment in the Official Journal of the EU.

The same position was presented by the Provincial Administrative Court in Wrocław in the judgment dated 13 March, 2019 (signature I SA/Wr 1080/18). The Fund appealed to the Supreme Administrative Court (SAC), which requested a preliminary ruling from the CJEU. The SAC aimed to determine whether the limitation of interest recovery on the overpayment payable to the taxpayer to the 30th day after publication of the CJEU's sentence in the Official Journal of the EU (in a situation where the application for confirmation of the overpayment was submitted after that 30th day), and even excluding any interest where that overpayment has arisen after that 30th day, aligns with the main principles of EU law (in particular with the principle of effectiveness in conjunction with the principle of loyal cooperation and equivalence).

In the CJEU's view, domestic rules governing the reimbursement of charges imposed in breach of EU law, in particular concerning limitation periods, need to align with the EU principles of effectiveness and loyal cooperation. Therefore, the period for calculating the interest should not be limited to 30 days from the date of publication of the sentence in the Official Journal of the EU.



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Legislation

Finland

Finland moves forward with Pillar Two

The draft government proposal for the Finnish Pillar Two legislation was published on 15 August 2023 for public consultation, which is open until 8 September 2023. The proposal would implement the Income Inclusion rule (IIR), the Undertaxed Profits Rule (UTPR) and the Qualified Domestic Minimum Top-up Tax (QDMTT). The IIR and QDMTT would be applied for financial years starting on or after 31 December 2023, and the UTPR for financial years starting on or after 31 December 2024. The proposal does not include any details on the QDMTT rules, which will be covered in a separate proposal. However, the proposal stated that the QDMTT calculation rules should closely follow the calculation rules under IIR and UTPR.

The government proposal closely follows the EU Directive and the GloBE Model Rules. Further, the central role of the OECD's (existing and future) guidance is clearly acknowledged in the proposal as a key to ensure harmonious implementation globally and to avoid differing interpretations across jurisdictions. However, only some of the Administrative Guidance, which was released by the OECD in February 2023, is reflected in the proposal, whereas the Administrative Guidance released in July 2023 has not been covered at all. Further, while the Transitional CbCR Safe Harbour rules are included in the proposal, the rules for the Transitional Penalty relief are not.

Finland not covering the July Administrative Guidance in the draft Pillar Two proposal may be due to the short timeframe between the two documents. As for the other topics, it is hard to know whether those were intentionally omitted from the proposal. Some of the missing guidance may be incorporated into the final Pillar Two proposal.

The Finnish constitution requires that a tax law should include a sufficient level of detail to allow taxpayers to calculate their tax liability and leave little room for interpretation. These constitutional restrictions may cause uncertainties with respect to application of specific rules based on the OECD guidance where those deviate from the Finnish Pillar Two legislation.

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Legislation

Luxembourg

Luxembourg releases draft law to implement Pillar Two

As an EU member, Luxembourg must implement the Pillar Two rules in line with Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. Luxembourg released the draft law to implement the global minimum tax on 4 August 2023. The implementation of the EU Pillar Two Directive would be through a separate law which would implement three new taxes in Luxembourg. These include an Income Inclusion Rule (for fiscal years starting on or after 31 December 2023), an Undertaxed Profits Rule (for fiscal years starting on or after 31 December 2024) and a Qualified Domestic Minimum Top-up Tax (for fiscal years starting on or after 31 December 2023).

The draft law closely follows the EU Pillar Two Directive and the Transitional Safe Harbour Rules issued by the OECD in December 2022. However, only some of the Administrative Guidance which was released by the OECD in February 2023 is reflected in the draft law, whereas the Administrative Guidance which was released by the OECD in July 2023 has so far not been covered in the draft law, specifically on points where the guidance may deviate from the EU Pillar Two Directive.

For more information see our PwC Newsalert.

The draft law will be reviewed by the Luxembourg Council of State and relevant industry organizations may share comments on the content of the draft law. While the draft law may still be subject to certain changes and clarifications, it is expected that the text of the law would remain close to the EU Pillar Two Directive.

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Legislation

Hong Kong

Updates on Hong Kong's proposed refinements to the FSIE regime and tax certainty enhancement scheme for onshore equity disposal gains

Earlier this year, the Hong Kong SAR Government launched two consultation exercises on legislative proposals to (i) refine the foreign-sourced income exemption (FSIE) regime for foreign-sourced disposal gains; and (ii) introduce a tax certainty enhancement scheme for onshore equity disposal gains (Enhancement Scheme).

In late July, the Inland Revenue Department organized engagement sessions with stakeholders providing updates on the changes to these legislative proposals in response to comments received during the consultation exercises. Updates on the proposed refinements to the FSIE regime include (i) scope of covered assets; (ii) determination of the source of disposal gains; (iii) computation of disposal gains or losses; and (iv) other exemption and relief measures. On the other hand, updates on the proposed Enhancement Scheme include (i) eligible investor entity; (ii) eligible income; (iii) holding period and ownership interest thresholds; and (iv) enhancements of exclusions.

For more information see our Tax Alert.

The government adopted several stakeholder recommendations to boost the attractiveness of the Enhancement Scheme and mitigate the impact of the refined FSIE regime to covered taxpayers. The government is in the process of drafting the respective legislative bills implementing the two proposals, which are planned to be submitted to the Legislative Council after the summer recess in October 2023. Meanwhile, the government will continue its dialogue with the European Union with regard to refinements to the FSIE regime, as well as with stakeholders on the two proposals. As such, there may be further changes following feedback from the ongoing discussions.

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Legislation

Slovenia

Updates to Pillar Two and ATAD interest limitation

Pillar Two

The Slovenian Ministry of finance on 23 June 2023, issued a draft wording of the Minimum Tax Act, in light of the upcoming deadline for implementation of Council Directive (EU) 2022/2523 on the global minimum level of taxation for multinational groups. The Ministry of Finance identified more than 400 multinational entities (MNEs) with parent companies in Slovenia or parent companies abroad that have subsidiaries in Slovenia, that annually exceed the EUR 750 million consolidated revenue threshold for Pillar Two reporting/taxation.

Anti-tax Avoidance Directive (ATAD)

While most of the ATAD rules previously were implemented into the Slovenian tax law, adoption of the interest limitation rule was deferred until 2024, as Slovenia already had an equivalent domestic rule (a 4:1 thin capitalization safe-harbor provision). Slovenia is obliged to transpose the EBITDA interest limitation rule into the Slovene legislation by 2024.

While the general perception is that the upcoming Pillar Two rules will only affect a handful of Slovene companies, companies should review the list identified by the Ministry of Finance and model the impact of the legislation as well as administrative compliance costs.

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Administrative

Italy

Italian Revenue Agency Resolution recognized WHT exemption on dividends paid to Swiss companies benefiting from partial tax exemptions

The Italian Revenue Agency (IRA) in July published Resolution No. 46/2023 on the applicability of the withholding tax exemption provided by the Parent-Subsidiary Directive (PSD) and enacted by Article 9 of the EU-Switzerland Agreement to dividends paid by Italian companies to Swiss entities benefiting from the Swiss mixed holding companies regime.

This resolution expressly overcomes Resolution no. 93, a 2007 IRA position in which the WHT exemption was deniable if the Swiss company deriving an Italian-sourced dividend benefited from an exemption, at the least, at one of the three taxation levels (municipal, cantonal, federal). The mixed holding companies regime provided a tax exemption at the cantonal level.

Since then, the European Court of Justice (ECJ) published its decision on C-448/2015, in which it stated that the WHT dividend exemption under the PSD should be denied only in case of full tax exemption, while the WHT exemption should be granted in case of partial tax exemption of the parent company. Separately, the Swiss mixed holding companies regime was repealed effective 1 January 2020, following enactment of the Swiss tax reform, thus eliminating the cantonal tax exemption. In response to ruling No. 135/2021, the IRA recognized the WHT exemption, from fiscal year 2020 onwards, to a Swiss dividend recipient that previously benefited from the mixed holding companies regime.

With Resolution no. 46/2023, the IRA explicitly acknowledged its 2007 Resolution as obsolete and, for the sake of compliance with the EU jurisprudence and the spirit of the Agreement, recognized that the WHT exemption under the PSD also should be granted in cases when a Swiss dividend recipient benefitted from partial tax exemption

Resolution No. 46 overcomes one of IRA's previous positions and also is consistent with recent EU case law. By limiting misapplication of the WHT exemption to the cases of full tax exemption, it considerably broadens the range of applicability of the EU PSD benefits to Swiss entities that benefit from special tax regimes granting partial tax exemptions.

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Judicial

India

Indian Administrative Tribunal adjudicates on management support fee as non-taxable under India-UK treaty

Under the existing corporate structures of various multinational groups, there are arrangements wherein, *inter alia*, one group entity provides centralized support functions such as finance, technical, sales and legal support to the other group entities, for which relevant consideration is charged by the group entity providing the support. In a recent ruling in the context of services provided by a non-resident entity, the Indian Administrative Tribunal analyzed the taxability of centralized services provided under the India-UK tax treaty.

On the perusal of agreements, email correspondences and other documents, the Tribunal observed that the services offered included maintaining invoice records, reviewing legal agreements, providing technical support to the associated enterprise's (AE's) customers, etc. These services were rendered from the United Kingdom and delivered through email to AE and provided year after year on a continuous basis –which indicated that the service recipient cannot perform such services independently. The Tribunal observed that such services are ancillary to the functioning of corporate management of recipient entities, and hence, are in nature of managerial services outside the scope of the meaning of fees for technical services (FTS) under the tax treaty. The Tribunal further concluded that even if the services are categorized as technical or consultancy services, the condition of 'make available' under the tax treaty is not satisfied, since the taxpayer has not made available any technical knowledge, experience, or skill by way of rendering the above support services to the recipient entity.

For more details see the Tax Insight.

The Tribunal's ruling reaffirms the position that centralized support services should not be taxable, considering the narrower definition of FTS available under most tax treaties. Taxpayers are required to substantiate that the services do not make available any technical knowledge or skill by maintaining adequate supporting factual documentation, including email correspondences, etc.

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Judicial

India

Indian court rules favorably on taxability of interconnectivity and bandwidth charges under tax treaties

The taxability of international telecommunication connectivity and bandwidth usage charges has been a contentious issue between tax authorities and taxpayers for a long time. In a recent decision, the Indian court dealt with the taxability of international connectivity and bandwidth services provided by a taxpayer to its customers, whereby the services are obtained by the taxpayer from non-resident third party service providers.

In this context, the Indian court took note of certain undisputed facts in the taxpayer's case, including the fact that the equipment and submarine cable systems were located outside India, the non-resident service provider did not have a permanent establishment in India, etc. In view of the facts and relying on various judicial pronouncements, the Indian court, inter alia, held the following:

- A taxpayer can resort to the beneficial provisions under a tax treaty to determine its obligation to deduct tax.
- Retrospective amendment with respect to the scope of definition of a royalty under the domestic Indian tax law cannot impact the definition under the tax treaty. Accordingly, the court held that 1) the taxpayer was not required to deduct tax based on the expanded scope of the royalty definition under the Income-tax Act, 1961 (the Act); 2) the taxpayer cannot be expected to perform the impossible; and 3) benefits under the tax treaty were available to the taxpayer.
- Tax authorities in India will have no jurisdiction to bring to tax the income arising from extraterritorial sources, given that all facilities are outside India and non-resident service providers do not have any presence in India.
- Once tax is deducted as per the provisions of the applicable tax treaty, the higher rate prescribed under the domestic tax law cannot be applied.

For more information see our Tax Insight.

This Indian court decision reaffirms the principle laid out by previous court decisions that amendments to domestic provisions of the Act cannot impact the relevant provisions under a tax treaty, as it is a sovereign document between two countries. The court also concurs with the settled principle of *lex no cogit ad impossibilia*, i.e., the law does not demand the impossible, and consequently, a taxpayer cannot be fastened with the obligation to deduct tax on account of a retrospective amendment.

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Judicial

Italy

The Italian Supreme Court extends the Italian participation exemption regime to non-residents

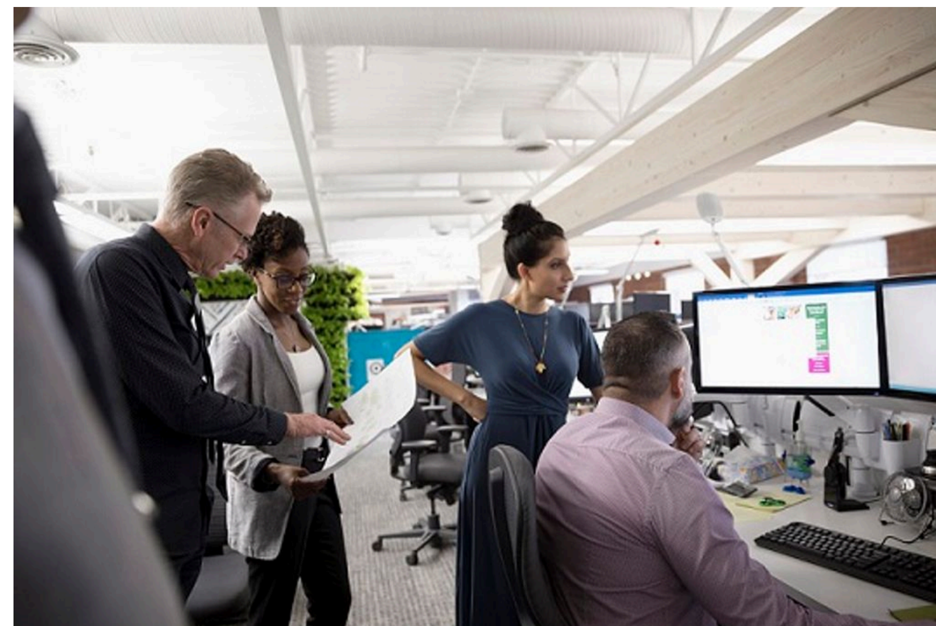
The Italian Supreme Court (ISC), in July 2023, published decision No. 21261/2023 concerning the Italian tax regime applicable to capital gains realized by a French company upon the sale of an Italian subsidiary's shares and the compatibility of the non-Italian resident capital gain tax (NRCGT) with the EU principles.

According to the Italian regime, non-Italian resident companies (with no Italian PE) are subject to a 26% NRCGT (13.67% ETR according to the law in force at the time of the case) upon the disposal of Italian shares - unless a tax treaty provides for an exemption. The participation exemption (PEX) regime, according to which only 5% of the capital gain is subject to corporate income tax, only applies to Italian tax-resident companies (or Italian PEs).

While most of the tax treaties signed by Italy provide for taxation of the capital gain only in the State of the seller, the treaty between Italy and France (the Protocol) lays down a concurrent taxation on certain shareholdings both in Italy and France. The ISC recognized that the PEX and the Italian dividend exemption regime (providing for 95% exclusion of dividends) have the same *rationale, i.e.,* the elimination of economic double taxation. Recalling what the European Court of Justice ruled on the past Italian tax regime governing outbound dividends (see case C-540/07), the ISC stated that the taxation of capital gains realized by non-Italian companies tr economic double taxation that shall be removed in order to grant to non-residents the same tax treatment applicable to residents (i.e. PEX regime, if required conditions are met) under Art. 49–63 of Treaty on the Functioning of the European Union.

The ISC also stated that the tax credit relief provided by the tax treaty is not *per se* sufficient to ensure the removal of the double economic taxation. Therefore, if a detrimental tax treatment of the non-resident still occurs, the domestic provision (and the applicable tax treaty) shall be interpreted and applied in a way to be compliant with the EU law.

The ISC decision represents an important innovation for the cross-border capital gain taxation regime. A few tax treaties (e.g. signed with France, China, South Korea, Israel) provide the concurrent taxation in the State of source, while most of them grant exclusive taxing rights to the State of residence of the seller. However, actual chances to ask for a refund of the higher taxes on capital gain paid in Italy should be considered by both treaty and non-treaty sellers, and a case-by-case analysis should be conducted for future disposals (also in case of non-treaty jurisdictions).



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Judicial

Italy

The Italian Supreme Court includes IRAP under Italy-France tax treaty's covered taxes for FTC purposes

The Italian Supreme Court (ISC) has published decision no. 21047/2023 on the deductibility of the foreign tax credit (FTC) for Italian Regional tax (IRAP) purposes. The case concerned an Italian taxpayer willing to deduct for IRAP purposes the excess foreign taxes paid in France on capital gains realized on the sale of a building located in France. IRAP taxable income shall be determined according to specific provisions and the IRAP rate is generally 3.9%, even though it can be slightly changed (depending on the business activity and the Region).

In principle, the Italian law recognizes an FTC only for Corporate Income Tax (CIT) purposes. However, the ISC recalled the general principle according to which tax treaty rules prevail over corresponding domestic rules, thus foreign taxes may be deducted for IRAP purposes as the latter is included among the taxes covered by the tax treaty.

The ISC clarified that in order to verify if IRAP is included among the taxes covered by a tax treaty, a case-by-case assessment is required since older treaties include among the covered taxes the ILOR, which was the previous Italian Regional tax. Automatic substitution of the IRAP following ILOR repeal was questionable, but the ISC took the view that ILOR and IRAP are equivalent and therefore the latter is included among the tax treaty's covered taxes. In fact, (i) the tax treaty extends the application of treaty rules to taxes that are introduced after its signature; (ii) the Italian Revenue Agency communicated to the French tax authorities the introduction of the IRAP and proposed it as substitute to ILOR for treaty purposes; and (iii) French tax authorities accepted and recognized IRAP as a treaty-covered tax.

In a nutshell, the ISC decision recognized the possibility, under the Italy-France tax treaty to deduct foreign taxes paid in France for IRAP purposes, even if the Italian domestic tax law only allows the FTC to be set off against the CIT.

The ISC decision may have broader applicability outside of the French jurisdiction, to the extent that other tax treaties included IRAP among the covered taxes and followed the procedure of substituting ILOR with IRAP.

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EU/OECD

European Union

The UN Secretary-General releases early Report on promotion of inclusive and effective international tax cooperation

On 8 August 2023, the UN Secretary-General published an advance unedited version of a Report analysing options/next steps around UN international tax cooperation. The Report follows the approval and adoption of the draft resolution from certain African countries in late 2022. The official version will be released before the next session of the UN General Assembly in September, during and after which discussions will occur on what parts of the Report to adopt. The options – which are not mutually exclusive – are: (1) a multilateral convention on tax, (2) a framework convention on international tax cooperation, and (3) a framework for international tax cooperation.

Read the full Tax Policy Alert here.

Given the apparent fracturing of international tax multilateralism, and the wishes of the Global South and civil society to promote the UN, the UN's agenda on tax matters should be considered. Whatever the views of the G7 and other large economies, the possibility of a larger role in international tax for the UN, as indicated by the Report's options, should be taken seriously.

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Treaties

Israel

Israeli tax circular addresses MAPs for tax treaties

The Israel Tax Authority (ITA) issued on 7 August Income Tax Circular 01/2023, which addresses the Mutual Agreement Procedures (MAPs) for tax treaties. The Circular specifically addresses the policy for submitting the application and the handling of such a procedure. The Circular's purpose is to clarify the nature of the MAPs, in accordance with the ITA's interpretation of the MAP article in treaties in which Israel is a party, and to establish a policy for Israeli taxpayers contacting the competent authority with a request to open a mutual agreement procedure. In addition, the Circular, which replaces previous Income Tax Circular 23/2001, is more comprehensive and contains several clarifications. The Circular does not constitute official legislation or binding interpretations.

For more information see our PwC Insight.

In recent years there has been an increase in cross-border tax disputes on issues of transfer pricing, withholding tax, and residency. The MAP is a tool that may help settle tax disputes related to these issues, which refer to determinations already made by the tax authorities (in Israel and other treaty countries). Before submitting the MAP application, a taxpayer should consider its nature and the date of its submission, for the effective implementation of the procedure. Taxpayers also should consider advance pricing agreements (APAs) as a future-looking agreement in transfer pricing.

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Treaties

Mexico

Pacific Alliance Agreement effective for Mexico, Chile, Colombia and Peru on January 1, 2024

After Mexico, Chile, Colombia and Peru concluded their internal legal procedures for legislative ratification on July 2, 2023, the Convention which standardizes the tax treatment provided for in the international tax treaties to avoid double taxation entered into force between the parties to the Pacific Alliance Framework Agreement. The provisions of this Convention, signed on October 14, 2017 in Washington, D.C., will be effective on January 1, 2024.

The main purpose of the Pacific Alliance Framework Agreement is to improve cooperation, growth and economic integration among the four membership countries. In this regard, this Convention will modify the tax treaties subscribed among Mexico, Chile, Colombia and Peru, in order to grant residents status to pension funds, which will allow them to enjoy the benefits of the tax treaties executed between the four Pacific Alliance membership countries.

The Convention also aims to standardize the tax treatment of interest and capital gains derived from the sale of shares through a stock exchange that is part of the Latin American Integrated Market. In the case of interest, the withholding income tax rate applicable would be 10% over the gross amount of interest, while for capital gains would only be taxed in the country of residence of the pension fund selling shares of an entity.

It is important to consider that in accordance with the Income Tax Law, pension and retirement funds that are effective beneficiaries of interest income, capital gains, and the granting of the temporary use and enjoyment of land and buildings will not besubject to withholding on income from sources within Mexican territory.

The dispositions of the Convention will be reflected in benefits for pension funds affiliates since they will have access to more investment opportunities and have improved profitability options. The Convention establishes that the recognized pension funds will be considered as beneficial owners of the income they receive. In the specific case of Mexico, it will include the Investment Companies Specialized in Retirement Funds (SIEFORES) established in accordance with the Law of the Retirement Savings Systems.

The standardization of the tax treatment of interest and capital gains will result in a lower tax burden for the recognized pensions funds in each country. For example, the tax caused in the source country on income derived from interest is limited by setting a maximum rate of 10%. Note that the Convention establishes that, if under any current treaty there is a lower taxation for any particular income, that treatment will prevail and must be applied for the treaty in question.

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Treaties

United States of America (the)

Replacement of NAFTA addressed for certain income tax treaties; Russia suspends US-Russia income tax treaty

The IRS published, on 31 July, competent authority agreements with Denmark, Luxembourg, Mexico, and Malta, effective 1 July 2020, pursuant to which, on a bilateral basis, references in the respective tax treaty with the United States to the North American Free Trade Agreement (NAFTA) will be treated as references to the United States-Mexico-Canada Agreement (USMCA), which entered into effect on 1 July 2020.

In March 2023, it was reported in the press that the Russian Foreign Ministry and the Russian Finance Ministry announced an initiative to suspend tax treaties with all countries that have introduced unilateral economic restrictions against Russia. According to press reports, Russian President Vladimir Putin signed a decree on 8 August suspending the benefits of tax treaties between Russia and 38 countries, including the United States.

For more information see our PwC Insight.

For certain taxpayers claiming access to treaty benefits under the derivative benefits test or the publicly traded company test of the limitation on benefits (LOB) article, the competent authority agreements resolve an issue related to treaty eligibility that was brought about by the replacement of NAFTA with the USMCA in 2020. However, there remain US tax treaties that contain references to NAFTA where no resolution has yet been reached and with respect to which there is uncertainty as to whether residents of the United States, Mexico, and Canada still would be taken into account, in a favorable manner, for treaty eligibility purposes.

The US-Russia tax treaty contains a termination article, which requires that specific diplomatic procedures be undertaken for providing at least six months' notice of the termination, and the termination article provides specific timing for when such termination has effect (i.e., after 1 January of the year following the expiration of the six-month period). Therefore, there is a lack of clarity regarding the reported unilateral suspension. This lack of clarity may have implications, for example, for foreign tax credit considerations, such as whether taxes paid to Russia are 'voluntary' taxes for purposes of the US foreign tax credit rules.

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Glossary

Acronym	Definition
ATAD	anti-tax avoidance directive
AE	Associated Enterprise
BEPS	Base Erosion and Profit Shifting
CIT	corporate income tax
CJEU	Court of Justice of the European Union
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
EU	European Union
FSIE	Foreign-sourced Income Exemption
FTC	Foreign Tax Credit
IIR	Income Inclusion Rules
IRAP	Italian Regional Tax
ITA	Israel Tax Authority
ISC	Italian Supreme Court
LOB	Limitation on Benefits
MNE	Multinational enterprise
MAPs	Mutual Agreement Proceedures
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
PEX	Participation Exemption
QMDTT	Qualified Domestic Minimum Top-up Tax
SAC	Supreme Administrative Court
SIEFORES	Investment Companies Specialized in Retirement Funds
UTPR	Under-taxed Profits Rules
USMCA	United States-Mexico-Canada Agreement

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