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International Tax News

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Launch

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Welcome

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

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

Featuered articles

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In this issue

Legislation

Colombia

Colombia unveils tax reform

The Colombian government on October 31 released a draft tax bill that proposes major changes to the current Colombian tax law. Congressional debate is expected to commence immediately, with passage and enactment of the law anticipated before year-end.

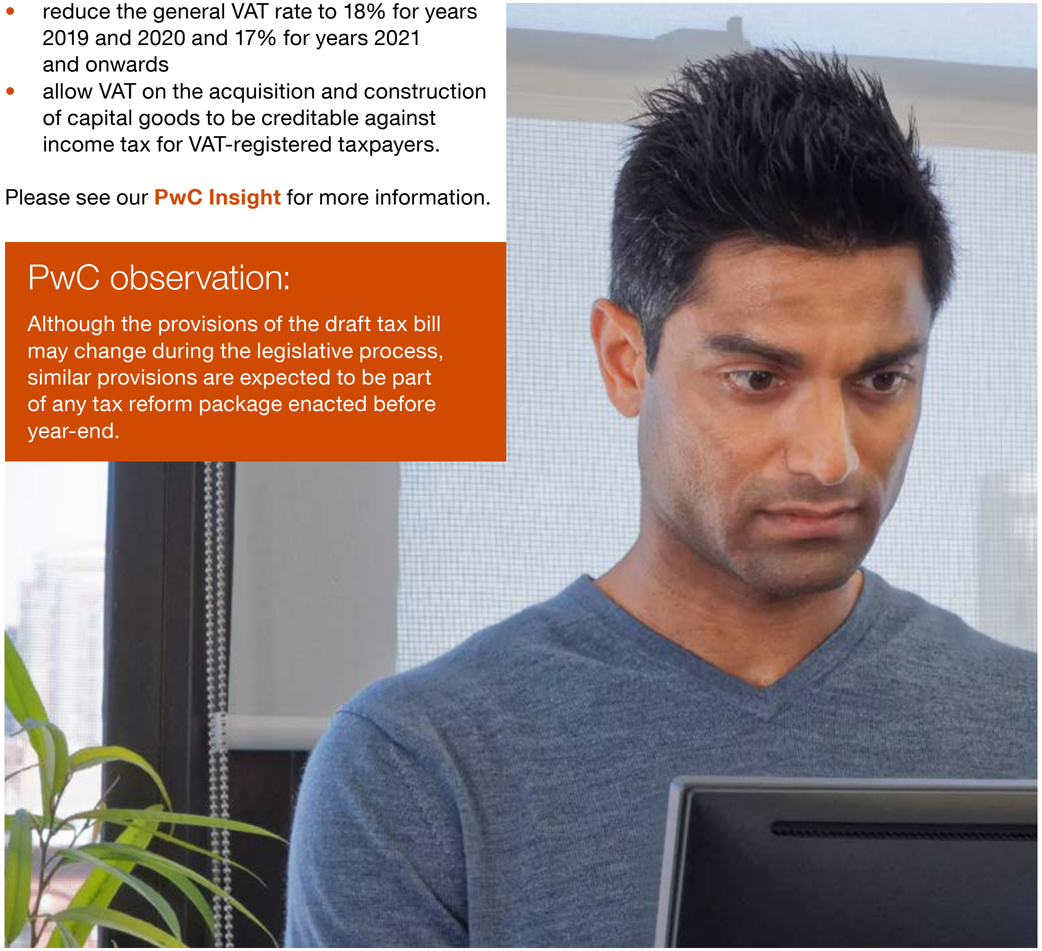
Some key provisions of the proposed bill would:

- reduce the general corporate income tax rate to 32% for FY 2020, 31% for FY 2021, and 30% for FY 2022 and onwards
- create a new 'holding entity regime' if certain requirements are met; the regime would provide participation exemption benefits for dividends paid into and out of Colombia, as well as an exemption for capital gains on the disposition of the shares of both the Colombian holding entity (when there are no Colombian activities) and its subsidiaries
- create a preferential tax regime for large taxpayers that meet certain job creation and investing requirements; the special tax regime would reduce the corporate income tax rate to 27% and provide exemptions from the 5% dividend tax and the re-introduced equity tax (see below)
- increase the general income withholding tax rate to 20% (up from 15%)
- tax the indirect transfer of Colombian assets (including shares), with certain exceptions
- tax branches and permanent establishments on their attributable domestic and foreign source income
- increase the minimum pricing on the sale of goods and services to 85% of fair market value on the transaction date (currently 75%)
- apply the 5% dividend tax on distributions to domestic entities (not only for cross-border distributions)
- re-introduce the equity tax for FYs 2019 through 2022; the tax would apply at a rate of 0.75% or 1.50%, and the taxable base would be net equity in excess of COP$3 billion (approximately USD 1 Million) as of January 1, 2019
- introduce a tax amnesty (applicable during FY 2019 only); it would include a 13% complementary tax introduced for taxpayers that disclose under-reported assets or unsupported liabilities as of January 1, 2019
- allow a full deduction for taxes and levies, other than income and equity tax, for income tax purposes (currently only a limited number are deductible)
- provide a new tax credit for 50% of the industry and trade tax (a city tax on gross receipts) and 50% of the banking tax
- reduce the general VAT rate to 18% for years 2019 and 2020 and 17% for years 2021 and onwards
- allow VAT on the acquisition and construction of capital goods to be creditable against income tax for VAT-registered taxpayers.

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

PwC observation:

Although the provisions of the draft tax bill may change during the legislative process, similar provisions are expected to be part of any tax reform package enacted before year-end.



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Hong Kong

Hong Kong government publishes bill modifying certain loss-absorbing capacity requirements of debt instruments

In order to align with international standards on banks' loss-absorbing capacity (LAC) requirements, the Hong Kong government published the financial institutions (resolution) (loss-absorbing capacity requirements – banking sector) rules (the Rules) and the Inland Revenue (amendment) (No. 6) bill 2018 (the 'bill') on October 19, 2018 to clarify the tax treatment of LAC debt instruments. The bill introduced, among others, the following key provisions:

1. New definitions for the 'banking LAC requirement' and 'LAC banking entity' would be added to the Inland Revenue ordinance. In addition, a LAC banking entity would not be eligible as a qualifying corporate treasury center for the purpose of profits tax concession under the proposed bill.
2. A new deeming provision on interest income received by a LAC banking entity in respect of a regulatory capital security, or in connection with its business from the sale or other disposal, or on the redemption, of a regulatory capital security would be applied; and
3. Interest payable on money borrowed by a LAC banking entity by way of issuing a regulatory capital security would be deductible from the chargeable profits upon the bill's enactment.

After the negative vetting process of the Legislative Council, the rules would commence operation on December 14, 2018. We expect that the bill would also take effect on or after the same date.

PwC observation:

This bill would effectively stabilize Hong Kong's financial system. The rules and the bill were introduced into the legislative council and are subject to the Legislative Council's scrutiny and approval before coming into force.

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Hong Kong

Enactment of enhanced tax deduction for qualifying R&D expenditure

Inland Revenue (amendment) (No. 7) ordinance 2018 (the R&D Ordinance) on tax deduction of research and development (R&D) expenditures in Hong Kong was published on November 2, 2018. Under the new R&D tax deduction regime, there are two types of qualifying R&D expenditures: Type A and Type B.

The respective tax deductions available for these two types of R&D expenditures, subject to certain conditions and application procedures, are as follows:

- Type A expenditure (R&D expenditure other than Type B expenditure): a 100% normal deduction
- Type B expenditure (R&D expenditure on in-house qualifying R&D activities (limited to direct staff costs and expenditure on R&D consumable items) or payments to a designated local research institution for qualifying R&D activities): a 300% deduction for the first HK$2 million and a 200% deduction for the remaining amount, without any limit on the amount eligible for the 200% deduction.

The new regime is retroactive and covers qualifying expenditures and payments made on or after April 1, 2018.

For further details of the new regime, please refer to our **Hong Kong Tax News Flashes**

1. **November 2018, Issue 13**
2. **April 2018, Issue 7**

PwC observation:

The R&D Ordinance passage symbolizes the government's encouragement of local R&D activities through tax incentives. Taxpayers who wish to benefit from the new R&D tax deduction regime should revisit their current R&D arrangement and assess how to best structure R&D activities in order to benefit from the enhanced R&D tax deduction in Hong Kong. Management should also scrutinize their existing financial reporting system to ensure that it can capture proper documentation to substantiate a concessionary tax deduction claim.

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Hong Kong

The Bill on adoption of the fair value basis for taxation purposes, refinements of AEOI provisions and other matterswas gazette

The Inland Revenue (amendment) (No. 7) bill 2018 (the Bill) was gazetted on November 2, 2018. The Bill proposes, among other amendments, the following tax measures:

1. Align the tax and accounting treatment of financial instruments in certain circumstances

The current accounting standard requires certain entities to account for financial instruments on a fair value basis, but a recent case established that accounting revaluation gains on marketable instruments are not taxable until realized. Therefore, in order to align the tax and accounting treatment of financial instruments, several provisions in the Inland Revenue Ordinance (IRO) have been proposed that would allow taxpayers to elect to follow the accounting treatment for taxation proposes under certain circumstances. Under the Bill, taxpayers could make an election that is irrevocable (except upon the Commissioner of Inland Revenue's approval), for taxation of their financial instruments based on the accounting treatment. Upon the Bill's enactment, the relevant provisions would apply to an assessment year for which the basis period begins on or after January 1, 2018.

2. Refine the provisions on automatic exchange of financial account information in tax matters ('AEOI') / Common Reporting Standard (CRS) in the IRO

The Bill includes refinements to the AEOI / CRS regime in effect since 2017. Under the proposed refinements, the terms 'controlling person' in relation to a trust, 'investment entity' and residency rules in relation to financial institutions have been amended to better align the IRO with OECD requirements. Upon the Bill's enactment, the relevant amendments on AEOI and CRS would come into effect beginning January 1, 2020.

3. Allow a tax deduction for interest expense payable to overseas export credit agencies

The Bill proposes a tax deduction for interest expense payable to certain overseas export credit agencies that are owned, established and operated by overseas government bodies. The tax deduction would apply to interest accruing on or after the commencement date of the enacted Bill.

PwC observation:

Allowing taxpayers to follow the accounting treatment for taxation purposes is the Hong Kong government's response to comments from taxpayers, especially those in the financial sectors. Revisions to the AEOI/CRS regime and the amendment to the interest expense deduction rules reflect the Hong Kong government's custom of revisiting tax provisions regularly to align with international practices. The Bill will be subject to the scrutiny and approval of the Legislative Council before coming into force.

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Hungary

Tax law changes related to Anti-tax Avoidance Directive implementation

The Hungarian Parliament on November 13, 2018 enacted a number of significant changes to the regulation of the Hungarian corporate income tax (CIT), effective January 1, 2019.

Amended controlled foreign company (CFC) rules

Almost two years ago (effective January 18, 2017), Hungary implemented to a great extent the CFC rules as set forth in EU Council Directive 2016/1164 (ATAD). Hungary initially opted to tax CFC passive income streams (as per option a) of Article 7 (2) of the ATAD).

With the statutory implementation deadline approaching, the current changes will complete the precise implementation and switch to the transfer pricing based approach (as per option b) of Article 7 (2) of the ATAD.

Therefore, effective from January 1, 2019, Hungary will no longer treat foreign passive income streams as tainted. Instead Hungary will target foreign income arising from non-genuine arrangements generated by significant people functions exercised by a Hungarian controlling taxpayer.

Thus, amongst other changes:

- A foreign entity or permanent establishment (PE) will only qualify as a CFC, if, in addition to the conditions connected to voting rights / equity / profit participation and the level of corporate tax paid, it realizes income from non-genuine arrangements. Non-genuine arrangements are arrangements that satisfy these two conditions:
  - an arrangement put in place for the essential purpose of obtaining a tax advantage and
  - the foreign entity or PE only owns the asset or undertakes risks (generating the income in question) because a Hungarian taxpayer carries out the significant people functions instrumental in generating the foreign income.
- The recognized stock exchange carve-out rule will be abolished (currently under which CFC status can be avoided if on each day of the business year there is at least a 25% shareholder in the foreign entity or foreign PE who (or whose related party) has been listed on a recognized stock exchange for at least five years on the first day of the business year).
- Respecting double tax treaties concluded by Hungary, non-EU and non-EEA PEs will only give rise to CFC status if they do not qualify as PEs when applying a tax treaty that obliges Hungary to exempt their income from taxation.

If the CFC test is met, the Hungarian taxpayer must include in its tax base the undistributed profit of the foreign entity or PE proportionate to the significant people functions carried out by the Hungarian taxpayer (and calculated on an arm's length basis).

Under a grandfathering rule, for tax years starting in 2019, taxpayers may continue to opt to apply the CFC rules that were in effect on December 31, 2018.

Modification of the interest limitation rules

Also in light of the ATAD, domestic thin capitalization rules will be amended. Instead of the current debt-to-equity ratio test (3 to 1), interest expense deductibility will be linked to a company's EBITDA.

Accordingly, taxpayer's excess borrowing costs (with the exception of financial institutions) will only be deductible up to 30% of their EBITDA.

Note that interest on bank loans did not have to be considered under the previous thin capitalization regime. However, such borrowing costs will be taken into account under the new rule.

This 30% limit only applies if the excess borrowing costs are higher than the HUF equivalent of EUR 3 million per year (in the case of group taxation, on a group level). In addition, Hungary has opted for applying the derogation possibilities' vast majority, including those connected to stand-alone entities, loans concluded before June 17, 2016, and loans used to fund long-term infrastructure projects. Also allowed is the carrying forward of excess borrowing costs and unused interest capacity. Additionally, members of a consolidated group for financial accounting purposes are granted both the group equity and the group EBITDA carve-out possibility (i.e., Article 4 point 5 of the ATAD).

Introduction of group taxation

Hungary is introducing a group taxation regime, effective January 1, 2019.

Hungarian taxpayers may opt to apply group taxation if (i) the level of direct or indirect voting rights is at least 75% (in which sense a common controlling company also must be considered); (ii) they apply the same GAAP for statutory purposes; (iii) they apply the same balance sheet date (or the same tax year if the balance sheet date does not apply); and (iv) they have the same functional currency.

In such case, group members still have to quantify their stand-alone tax bases per the general rules. Note that 50% of the positive individual tax bases total may be offset by the negative individual tax bases within the group. The negative individual tax bases may be utilized in the year of occurrence and in the five consecutive tax years within the group. In a given tax year, the utilized tax losses carried forward on an individual and group level cannot exceed 50% of the total of the positive individual tax bases.

PwC observation:

The draft bill is expected to trigger significant changes in the Hungarian tax legislation. Careful review of existing structures is recommended, since CFC status and thin capitalization have to be reconsidered in light of the new rules. Furthermore, companies should consider alternative potential scenarios under the group taxation regime.

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Ireland

Irish government initiates public consultation to improve corporate anti-tax avoidance measures

The Irish government launched a public consultation on the hybrid mismatch and interest limitation measures to be introduced as part of implementing ATAD and ATAD2.

In October 2017, the Department of Finance launched a public consultation paper "Review of Ireland's Corporation Tax Code" which contained a number of questions about implementing ATAD and ATAD2. The tax policy issues arising from that public consultation formed part of the Minister for Finance's considerations on the recommendations provided in the Coffey review of Ireland's corporation tax code and the implementation of the ATADs. This culminated in the government's publication of Ireland's corporation tax roadmap in September 2018.

The Roadmap acknowledged that, due to the complexity of the anti-hybrid rules, it was desirable to have a further public consultation that focused on the technical aspects of the anti-hybrid and anti-reverse hybrid rules. It further noted that, given that a number of Ireland's domestic interest limitation rules are hybrid or anti-hybrid in nature, it would be expedient to consider implementing both the anti-hybrid rules (contained in ATAD2) and the interest limitation rules (contained in Article 4 of ATAD) in tandem.

The consultation period runs from November 14, 2018 to January 18, 2019.

PwC observation:

The feedback on the tax policy issues raised in this public consultation will form part of the Minister's considerations for transposing the ATADs into national law. Commenting on the public consultation, the Minister for Finance said:

"Ireland remains committed to tax reform implemented at the international level, to address mismatches between jurisdictions and to continue the implementation of new robust global standards that are sustainable in the long run. This public consultation marks another step in delivering the programme of corporate tax reform detailed in Ireland's Corporation Tax Roadmap and is an opportunity for interested parties to contribute to the development of new policy in what is a complex area."

Interested or affected taxpayers should consider participating in the consultation process.

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Singapore

Income tax (amendment) act 2018

The income tax (amendment) act 2018 was gazetted on November 12, 2018 and contains tax changes announced in the 2018 budget. The income tax act 2018 also includes a number of measures that address to new accounting standards introduced in recent years and to the shift in the international tax landscape through the work promulgated by the OECD.

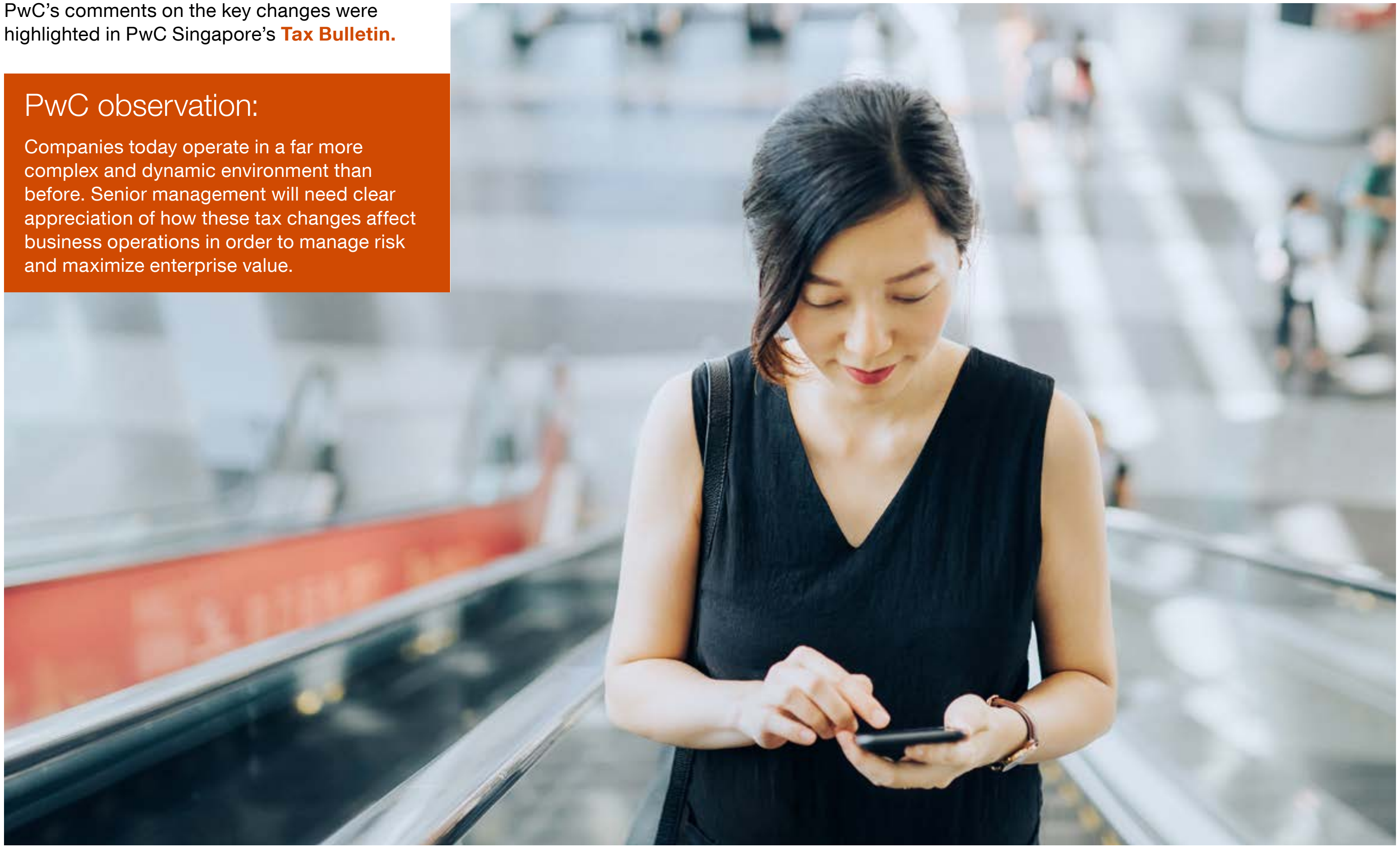
Below are the key amendments to the income tax act:

- tax changes announced in the 2018 budget statement have been legislated
- a new section has been introduced in the income tax act for the intellectual property development incentive
- the tax treatment for leases arising from the adoption of financial reporting standards 116 leases has been clarified
- the Inland Revenue Authority of Singapore's powers have been enhanced to strengthen a whole-of-government approach to law enforcement
- the secondary mechanism for country-by-country reporting has been introduced into the income tax act

PwC's comments on the key changes were highlighted in PwC Singapore's **Tax Bulletin.**

PwC observation:

Companies today operate in a far more complex and dynamic environment than before. Senior management will need clear appreciation of how these tax changes affect business operations in order to manage risk and maximize enterprise value.



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United Kingdom

Autumn Budget 2018

In his annual Autumn Budget on October 29, 2018, the Chancellor of the Exchequer outlined the UK government's vision for the UK economy. He followed up on November 7, 2018 with publication of a draft finance bill and certain consultation documents. The following key announcements are particularly relevant to multinational groups:

- Digital services tax (DST) – Beginning April 2020, pending an appropriate international solution, a new 2% tax will apply to the revenues of certain digital businesses to reflect the value they derive from the participation of UK users. The government will consult on the DST's detailed design and legislate in Finance Act 2020. The tax will apply to annual 'UK' revenues above £25m from activities relating to search engines, social media platforms and online marketplaces (of businesses with in-scope annual global revenues of more than £500m). Loss-makers will be exempt and businesses with very low profit margins will be subject to a reduced effective rate. This is designed as an interim response, pending global reform, to the challenges that digital businesses create for the international corporate tax system, as set out in the government's previous position papers.
- Offshore receipts in respect of intangible property - Building on previous proposals for a 'royalty withholding tax', this new tax will be effective April 6, 2019 and will include a targeted anti-avoidance rule that will apply to arrangements put in place from October 29, 2018.

Thus, there will be an income tax charge:

- on the gross amount of capital and revenue receipts
- in respect of the enjoyment or exercise of rights that constitute intangible property (broadly defined)
- where the enjoyment or exercise of those rights enables, facilitates or promotes UK sales of goods, services or other property
- the recipient of the income is not resident in the United Kingdom and not resident in a territory with which the United Kingdom has a double tax treaty with a non-discrimination provision, and
- none of the exemptions (limited UK sales, high tax and substance in territory) apply.

This wording appears sufficiently broad such that it catches receipts paid under almost any license, but not outright sales of IP or pre-existing licenses.

The draft legislation includes the following exclusions for companies:

- for which the associated UK sales of goods, services or other property are less than £10m in the tax year
- where the tax levied in the country of residence on the relevant income is at least half of the UK tax (but note that UK tax is on gross receipts so this test may be hard to meet)
- when the creation, development and maintenance activities, and the activities undertaken for the purpose of generating receipts for the company in question, have always been undertaken in the company's territory of residence and the IP has not been acquired or derived from a related party.

The provisions, as drafted, do not provide certain protection against economic double taxation where there are license / sub-license flows through more than one entity that does not benefit from a treaty with a non-discrimination provision.

- **Changes to the finance company partial exemption (FCPE) regime** – In order to make the regime ATAD compliant, the government proposes to tighten the rules so that the reduced tax rate will no longer be available for profits attributable to UK significant people functions (SPFs).
- **Profit fragmentation** – As previously announced, the United Kingdom will introduce legislation to prevent UK businesses from avoiding UK tax by arranging for their UK-taxable business profits to accrue to entities resident in territories where significantly lower tax is paid than in the UK. The taxable UK profits will be increased to the actual, commercial level.
- **Intangible fixed assets** – There will be relief for the cost of goodwill in acquiring businesses with eligible intellectual property from April 2019, although the exact scope of the relief is unknown. The de-grouping charge rules will no longer apply when a group sells a company that owns intangibles and the disposal of the shares qualifies for the Substantial Shareholdings Exemption. When enacted, this change will apply to disposals from November 7, 2018.

PwC observation:

With the new DST, the government is proceeding with caution. This is clearly proposed as an interim measure. It's narrowly targeted, structured to catch only technology giants, and restricted to revenues generated by UK users. As careful as the government has been, this may well be seen as an anti-competitive measure at a time when the Chancellor is keen to portray the UK as 'open for business'.

The proposed changes to the intangible fixed assets rules are welcomed.

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Uruguay

Tax benefits for R&D activity in biotechnology and bioinformatics

New regulations establish a legal framework for obtaining a tax exemption with respect to certain R&D activities in the biotechnology and bioinformatics. In order to be exempt, the assets resulting from such R&D activities must be registered in accordance with the intellectual property protection and registration regulations.

The exemption applies if assets are developed at least partly in Uruguay. The exemption amount is calculated by comparing the relative direct development costs incurred in Uruguay with the costs incurred in the rest of the world. Assets resulting from such activities can be used abroad or locally.

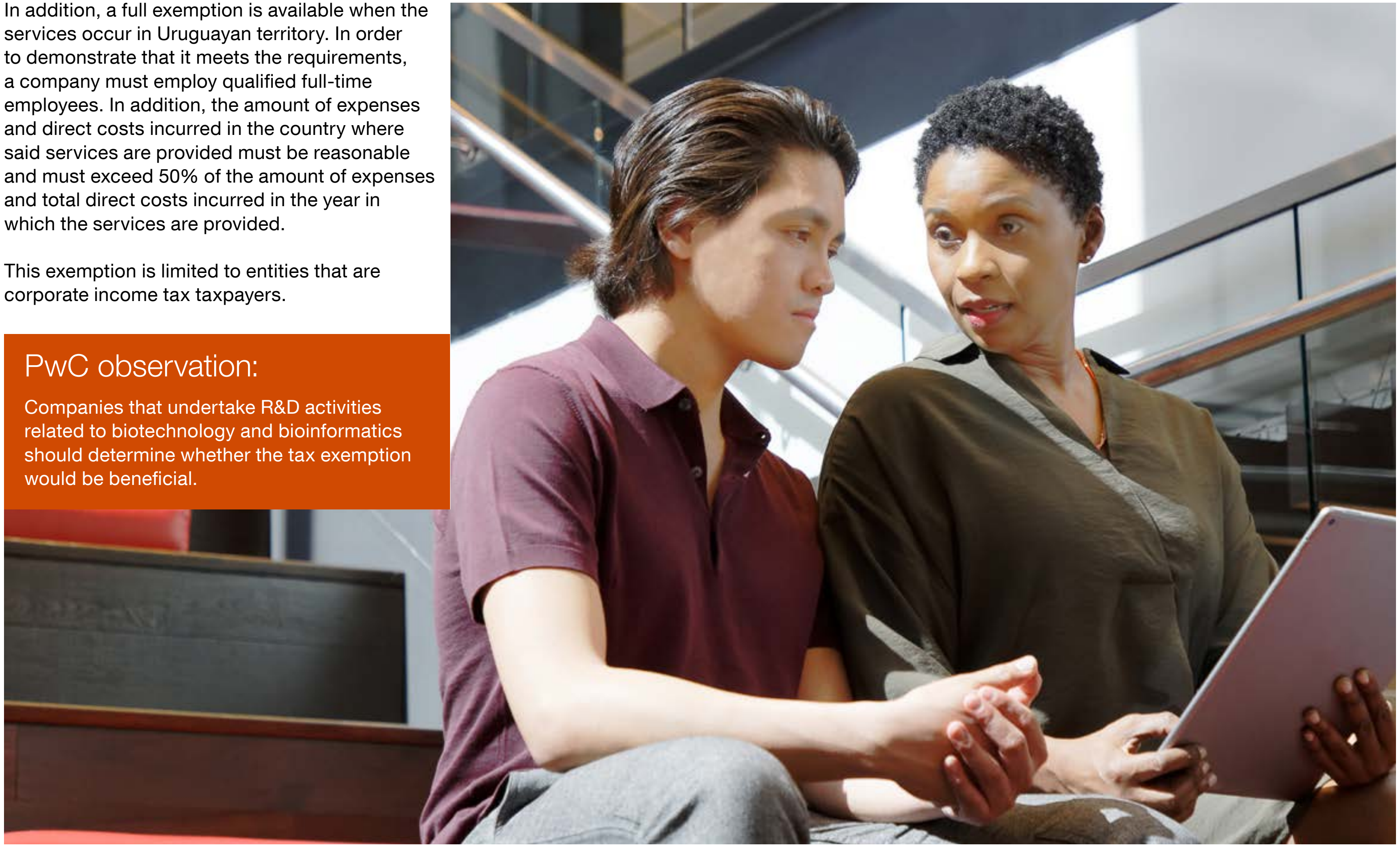
The legislation also clarifies that technical advice services in biotechnology and bioinformatics qualify if they are provided by entities that carry out R&D activities in relation to certain products.

In addition, a full exemption is available when the services occur in Uruguayan territory. In order to demonstrate that it meets the requirements, a company must employ qualified full-time employees. In addition, the amount of expenses and direct costs incurred in the country where said services are provided must be reasonable and must exceed 50% of the amount of expenses and total direct costs incurred in the year in which the services are provided.

This exemption is limited to entities that are corporate income tax taxpayers.

PwC observation:

Companies that undertake R&D activities related to biotechnology and bioinformatics should determine whether the tax exemption would be beneficial.



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Administrative

Brazil

Tax authorities provide guidance for the reduced 0% income withholding tax rate on international charter leasing payments

The Federal Brazilian Tax Authorities (RFB) on September 28, 2018 published Solução de Consulta – Cosit 166/2018 (dated September 26, 2018), which provided that the reduced 0% rate income withholding tax may apply to amounts paid as consideration for international charter leasing of boats/vessels, provided that the beneficiary is not located in a jurisdiction that is considered a tax haven. Further, the reduced 0% rate may still apply where the international remittance is made directly by a third party located in Brazil rather by than the entity that is performing the leasing.

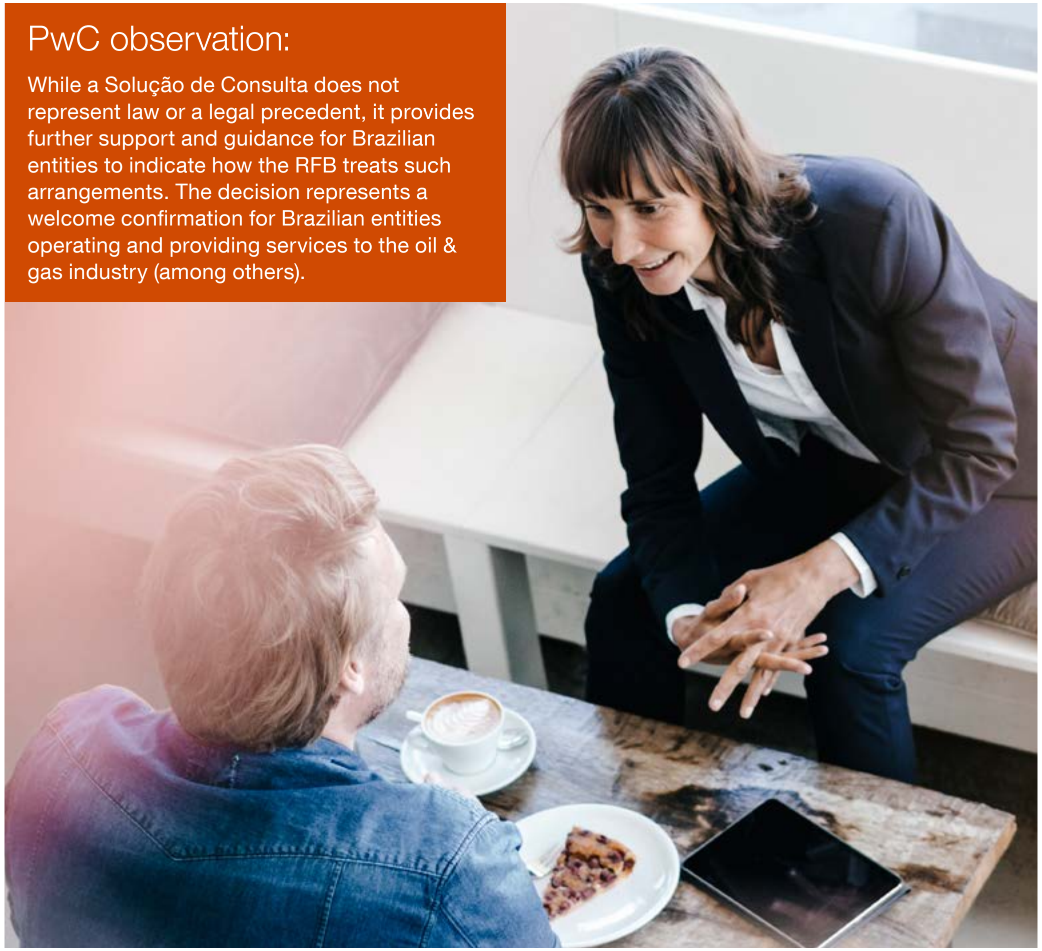
Broadly, the RFB identified four requirements for determining whether a reduced 0% rate should apply to remittances abroad made in consideration for charter leasing of vessels:

- the value of the remittance should correspond to the effective receipt of charter, freight, rental or leasing of foreign maritime and inland waterway vessels, arising in Brazil
- the charter, leasing, etc., should be made by companies and should be approved by the competent authorities
- the company remitting the amount (source payee) should be situated in Brazil, and
- the beneficiary of the income cannot be resident or domiciled in a jurisdiction that the RFB considers a tax haven.

In the present case, both the service provider (taxpayer) and the 'Empresa Brasileira de Navegação' (EBN, the contracted entity leasing the vessel) were situated in Brazil. In applying the above-mentioned criteria, the RFB concluded that the tri-partite arrangement (where the EBN would be the lessee of the vessel and the payment would be made directly by the service provider to the beneficiary located in the United States) had the effect of shifting the withholding tax requirement to the Brazilian service provider. Further, it determined that there was no impediment or restriction in the service provider being entitled to benefit from the reduced rate of 0% withholding tax provided under the legislation, despite the fact that this entity was not (and, from a regulatory perspective, could not be) the actual lessee under the tri-partite agreement.

PwC observation:

While a Solução de Consulta does not represent law or a legal precedent, it provides further support and guidance for Brazilian entities to indicate how the RFB treats such arrangements. The decision represents a welcome confirmation for Brazilian entities operating and providing services to the oil & gas industry (among others).



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United States

Proposed Regulations would reduce Section 956 amounts for domestic corporations

The Treasury released proposed regulations under Section 956 (the Proposed Regulations) on October 31. For certain US shareholders, the Proposed Regulations would reduce the amount otherwise determined under Section 956 with respect to a US shareholder to the extent the US shareholder would be allowed a deduction under Section 245A if it had received a distribution from the controlled foreign corporation (CFC) in an amount equal to the amount otherwise determined under Section 956.

Section 956 was enacted to provide that untaxed earnings of a foreign corporation would be subject to US federal income tax when repatriated to the United States other than as a taxable distribution.

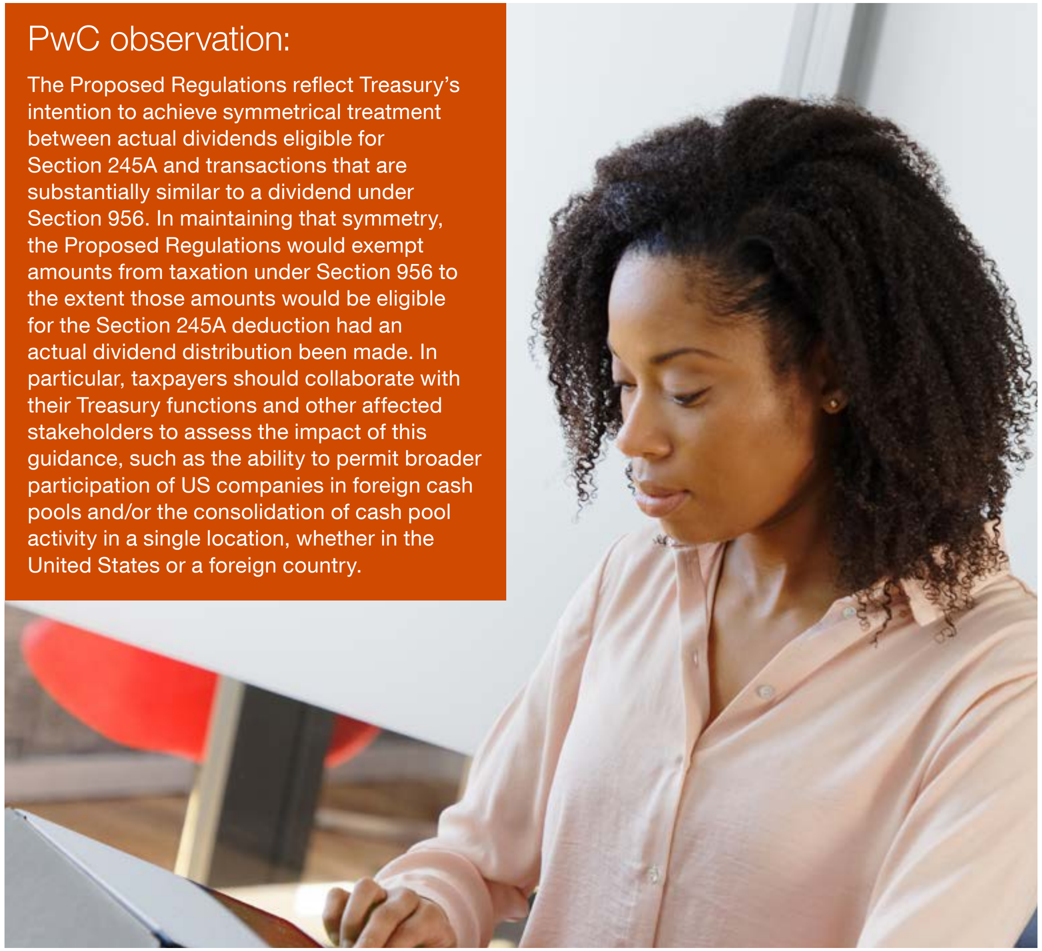
Under the 2017 tax reform legislation, Congress enacted Section 245A, which generally provides a 100% dividends received deduction for the foreign-source portion of dividends received by a US corporation from foreign corporations with respect to which it is a US corporate shareholder. As explained in the preamble to the Proposed Regulations, Treasury determined that the current broad application of Section 956 to corporate US shareholders would be inconsistent with the purposes of Section 956 and the scope of transactions it is intended to address as a result of Section 245A.

Therefore, the Proposed Regulations, if finalized, would exclude corporate US shareholders from the application of Section 956 to the extent necessary to maintain symmetry between the taxation of actual repatriations and the taxation of effective repatriations pursuant to Section 956. Furthermore, the preamble states that taxpayers may apply the Proposed Regulations, prior to promulgation of final regulations, for tax years of a CFC that begin after December 31, 2017, provided the Proposed Regulations are consistently applied to all related CFCs.

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

PwC observation:

The Proposed Regulations reflect Treasury's intention to achieve symmetrical treatment between actual dividends eligible for Section 245A and transactions that are substantially similar to a dividend under Section 956. In maintaining that symmetry, the Proposed Regulations would exempt amounts from taxation under Section 956 to the extent those amounts would be eligible for the Section 245A deduction had an actual dividend distribution been made. In particular, taxpayers should collaborate with their Treasury functions and other affected stakeholders to assess the impact of this guidance, such as the ability to permit broader participation of US companies in foreign cash pools and/or the consolidation of cash pool activity in a single location, whether in the United States or a foreign country.



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United States

IRS releases draft instructions for Form 8991 (BEAT) and draft Section 163(j) calculation form

The IRS on October 17 released draft instructions for Form 8991 (Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts). The instructions provide guidance for completing Form 8991, which taxpayers use to compute their Base Erosion and Anti-Abuse Tax (BEAT) liability under Section 59A.

In addition, the IRS on October 29 released draft Form 8990 (Limitation on Business Interest Expense under Section 163(j)). The form is for determining a taxpayer's current year business interest expense deduction and disallowed interest expense. The form's instructions have not yet been released.

Draft instructions for Form 8991

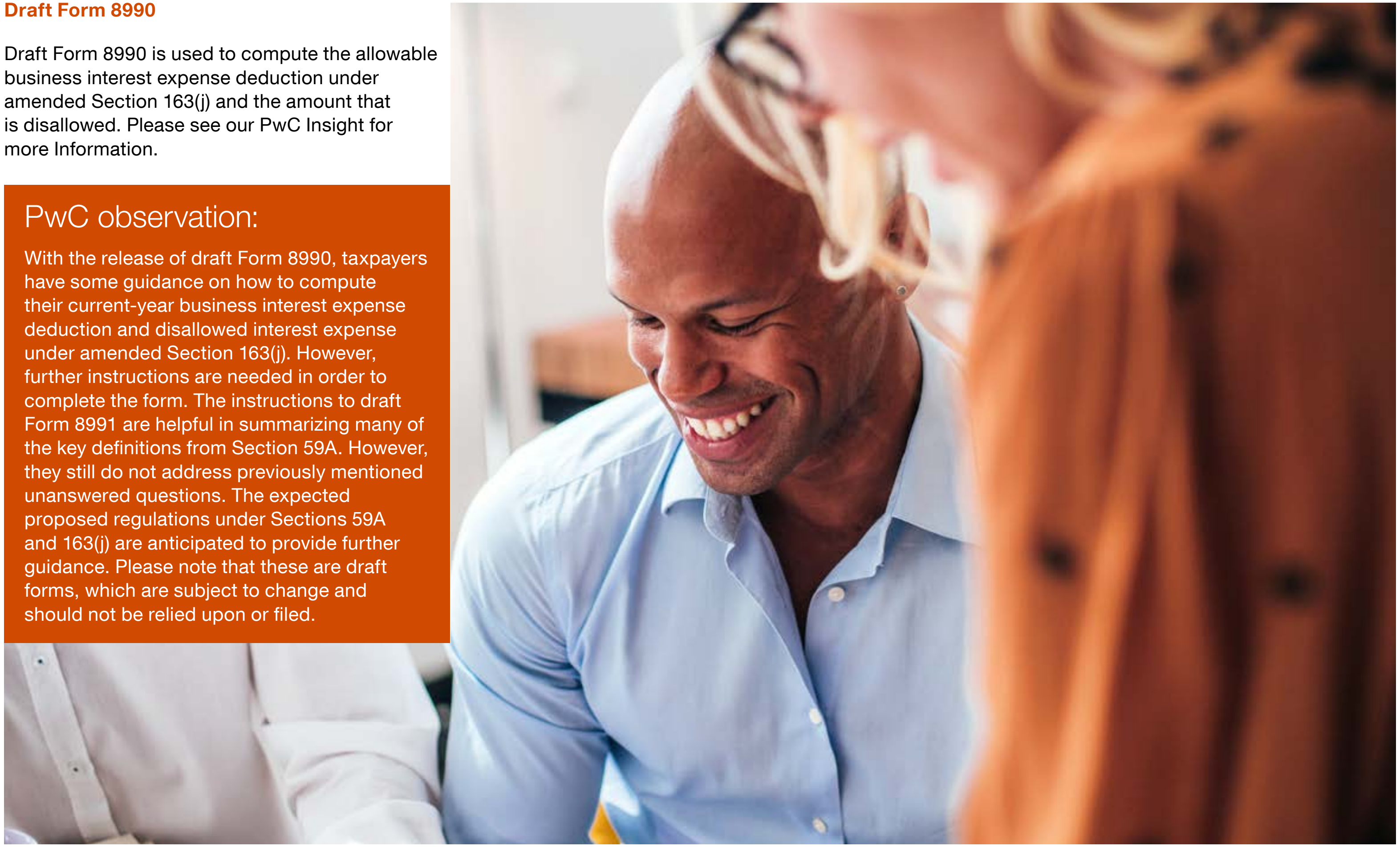
See our prior PwC Insight reporting on the major components of the draft Form 8991. The instructions provide additional guidance on how to complete the various sections of the form and its accompanying schedules.

Draft Form 8990

Draft Form 8990 is used to compute the allowable business interest expense deduction under amended Section 163(j) and the amount that is disallowed. Please see our PwC Insight for more Information.

PwC observation:

With the release of draft Form 8990, taxpayers have some guidance on how to compute their current-year business interest expense deduction and disallowed interest expense under amended Section 163(j). However, further instructions are needed in order to complete the form. The instructions to draft Form 8991 are helpful in summarizing many of the key definitions from Section 59A. However, they still do not address previously mentioned unanswered questions. The expected proposed regulations under Sections 59A and 163(j) are anticipated to provide further guidance. Please note that these are draft forms, which are subject to change and should not be relied upon or filed.



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Judicial

Australia

'Royalty' payments assessable under Australia-India Double Tax Agreement

The Full Federal Court recently found in favor of the Commissioner in Satyam Computer Services Limited (now an amalgamated entity named Tech Mahindra Limited) v. Commissioner of Taxation [2018] FCAFC 172. This was the latest in a series of tax decisions concerning an Indian IT services provider. The Court found that payments received by the Indian resident company for services performed in India for Australian clients were taxable in Australia.

In previous cases, the Courts held that payments received from Australian clients were royalties under (the somewhat unique) Article 12 of the Australia-India Double Tax Agreement (DTA), despite not being royalties under Australian domestic law.

This most recent decision held that the specific deeming rules in Article 23 of the DTA gave the royalties an Australian source. The Full Court stated that Article 23 was not 'merely enabling' but rather should be given effect according to the terms and the context, object and purpose of the DTA. Further, the Full Court rejected the taxpayer's 'generalisations' regarding DTAs only ever acting as 'shields not swords' and instead stated that Article 23 was the 'leading' provision and the Australian domestic law definition of 'source' was the 'subordinate provision' which 'must give way' to the former.

PwC observation:

This decision is important for all Indian IT service providers with Australian customers. In addition, the Court's interpretation of the DTA highlights the need for careful interpretation of tax treaties. This is especially the case with the MLI's introduction and the renewed focus on tax treaties by revenue authorities globally.

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EU/OECD

EU/OECD

Threading tax reform through the EU mandatory disclosure, OECD MLI needles

Multinational enterprises (MNEs) analyzing the impact of the US 2017 tax reform act (the Act) must consider the interaction of the Act's provisions with the new EU mandatory disclosure rules (DAC6) and the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument, or MLI).

EU mandatory disclosure rules (DAC6)

The main purposes of DAC6 are to strengthen tax transparency and respond to aggressive tax planning. DAC6 broadly reflects the elements of BEPS Action 12 on the mandatory disclosure of potentially aggressive tax planning arrangements. The EU mandatory disclosure rules require taxpayers to disclose to tax authorities cross-border arrangements they enter into if the arrangements fall within certain broadly defined hallmarks. There also are separate transition rules that require separate reporting for any reportable transactions occurring after the June 25, 2018, effective date.

The Multilateral Instrument (MLI)

As explained by the OECD, "in November 2016, over 100 jurisdictions concluded negotiations on the Multilateral Instrument that will swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. … The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide." The MLI is the fastest way to modify tax treaties. It implements several BEPS initiatives: Action 2 - hybrid mismatch arrangements; Action 6 - treaty abuse; Action 7 - definition of permanent establishment; and Action 14 - mutual agreement procedures (MAP) as well as arbitration. To date, 84 jurisdictions have signed the MLI (the United States has not signed), and over 1,300 treaties are set to be modified. The MLI entered into force on July 1, 2018. Further, 55 covered tax agreements have been modified by the MLI with an effective date of January 1, 2019, for withholding taxes.

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

PwC observation:

Both DAC6 and the MLI will impact significantly MNEs engaged in relevant cross-border transactions. DAC6 will require both reporting of a wide range of transactions and the collection and contemporaneous storage of even greater amounts of information about these transactions. The MLI, and particularly the principle purpose test, will affect significantly how MNEs utilize tax treaties. Although it will take years to understand the full impact on bilateral treaties, it is apparent already that the tools the MLI hands to tax authorities to question transactions can potentially be extremely broad.

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Treaties

Australia

MLI enters into force on January 1, 2019, changing several tax treaties

Australia has ratified the MLI and it will enter into force for Australia on January 1, 2019.

Subject to the processes undertaken by Australia's treaty partners, the MLI is expected to apply to:

- withholding taxes – for income derived from January 1, 2019
- all other taxes – for income years starting on or after July 1, 2019, and
- dispute resolution – after the MLI enters into force for each of the parties.

Australia's tax treaties with France, Japan, New Zealand, Poland, Slovakia and the United Kingdom are anticipated to be effective from 2019.

Importantly, regarding residency, for an MLI affected treaty, and coupled with the Australian Tax Office's change in view on 'central management and control' in Taxation Ruling 2018/5, corporate tax residency in many cases will not be decided by a treaty tie-breaker clause in the future. Instead, the location of residency will be decided between the two country representatives (i.e., the Competent Authorities) and Australia will not offer treaty relief while the question of residency remains unresolved.

PwC observation:

The date of entry for each of Australia's bilateral treaties and the extent to which the MLI will modify each of Australia's bilateral treaties will depend on matching jurisdictions' actions. Critically, as part of any MLI analysis, MNEs should carefully consider the mandatory treaty shopping article.

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Egypt

Egypt has a new tax treaty with Bahrain, effective January 1, 2019

Egypt's new tax treaty with Bahrain, which was signed in April 2016, entered into force on August 1, 2018. However, the treaty's provisions shall become effective or applicable on January 1, 2019. This treaty replaces the old treaty that was signed in September 1997.

The old treaty between Egypt and Bahrain (signed in 1997) became void on August 1, 2018 (the date of entry into force of the new Egypt-Bahrain treaty). Accordingly, any transactions taking place between August 1, 2018 and January 1, 2019 (the effective date of the application of the new treaty's provisions) shall be taxable based on each contracting states' domestic laws and will not be governed by the treaty.

The treaty will encourage investment in both countries by eliminating double taxation while preserving the taxing rights of both contracting states, depending on the transaction and the type of income derived.

Some of the new treaty's highlights include:

- updated PE and Resident definitions
- a new method for the attribution of profits to a PE
- a new 10% headline tax rate for dividends, interest, and royalties
- the removal of a specific provision on the alienation of shares, resulting in each contracting state having the right to impose capital gains tax upon the sale of local securities (including shares of real estate rich/non real estate rich companies) according to its own local tax laws
- a new specific anti-avoidance provision, 'Article 28' which prevents treaty abuse that aligns with the principal purpose test provided under the BEPS actions.

PwC observation:

The new Egypt-Bahrain treaty will become effective January 1, 2019. Accordingly, any transactions taking place on or after that date between both countries will be subject to the new provisions. Therefore, any tax exemptions provided by the old treaty such as withholding tax on interest payments, royalties and dividends will no longer apply. Hence, MNEs in Egypt and Bahrain should consider the treaty's new tax provisions, as they could impact transactions and possibly future business decisions.

Furthermore, given that there is a difference in the dates between the treaty's entry into force (August 1, 2018) and its effective date (January 1, 2019), investors and MNEs should note that any transactions carried out in the period between August 1, 2018 and January 1, 2019 will be subject solely to the domestic tax laws of each contracting state.

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Glossary

Acronym	Definition
Act	2017 tax reform reconciliation act
AEOI	automatic exchange of information
ATAD	Anti-tax Avoidance Directive
BEAT	base erosion and anti-abuse tax
BEPS	Base Erosion and Profit Shifting
CIT	Corporate Income Tax
CFC	controlled foreign corporation
DTA	double tax agreement
DAC6	EU Mandatory Disclosure Rules
EU	European Union
FAQ	frequently asket questions
FY	fiscal year

Acronym	Definition
IRS	Internal Revenue Service
IRD	Inland Revenue Ordinance
LOB	Loss aborbing capacity
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Based Erosion and Profit Shifting
MNEs	Multinational enterprises
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
RFB	Federal Brazilian Tax Authorities
R&D	research and development
SPF	signifcant people functions
VAT	value added tax
WHT	withholding tax

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Worldwide Tax Summaries:
Corporate taxes 2016/17

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

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