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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

Colombian tax reform passed

The Colombian Congress on December 28 passed tax reform legislation that includes major changes to Colombian tax law. Highlights include:

- Reduction of the general corporate income tax rate to 32% for 2020, 31% for 2021, and 30% for 2022 and beyond.
- Reduction of the minimum presumptive tax rate to 3% for 2019, 1.5% for 2020, and 0% for 2021 and beyond.
- Thin-capitalization rules will apply only to related-party debt transactions (local and cross-border), and should observe a 2:1 debt:equity ratio.
- Indirect transfers of Colombian assets (including shares) will become taxable for Colombian tax purposes, with certain exceptions. The local entity whose shares are indirectly transferred and the non-resident seller will be jointly liable for the tax due.
- Creation of a new 'Holding Entity Regime' which, if certain requirements are met, provides participation exemption benefits for dividends paid to and from Colombia, as well as an exemption for capital gains on the disposition of the Colombian holding entity shares (when there are no Colombian activities) and its subsidiaries.
- Creation of a preferential tax regime for large taxpayers that meet certain job creation and investing requirements. The special tax regime provides a reduction of the corporate income tax rate to 27%, and exemption from both the dividend tax and the re-introduced equity tax.
- General income tax withholding rate on cross-border payments increased to 20% (from 15%).
- Income tax withholding rate on cross-border payments related to administrative services increased to 33% (from 15%).
- Branches and permanent establishments are now taxed on attributable domestic and foreign-source income.
- Minimum pricing on the sale of goods and services increases to 85% of fair market value on the date of the transaction (up from 75%).

PwC observation:

Multinational enterprises with employees, operations, or investments in Colombia, as well as subsidiaries of Colombian companies, should consider how the new legislation may affect them from both tax and operational perspectives. Multinational enterprises with employees, operations, or investments in Colombia, as well as subsidiaries of Colombian companies, should consider how the new legislation may affect them from a tax and operational perspective.

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France

The French patent box regime reform

In line with OECD recommendations (BEPS Action 5), the Finance Act modifies the existing French patent box regime and sets out the principle of a ‘nexus’ approach. The preferential tax regime applies to royalties and capital gains realized on the disposal of patents and assimilated IP rights.

A nexus approach consists of using expenditures as a proxy for substantial activity, and ensures that taxpayers can benefit from a preferential IP regime on the income generated from eligible assets if they actually engage in the corresponding R&D activities and incur the expenditures on such activities.

Prior to enactment of the Finance Act, income and gains from patents and assimilated IP rights benefited from a reduced 15% tax rate for entities subject to corporate income tax. No requirement applied with respect to the location of the R&D activities.

Under the new rule, the preferential corporate tax rate decreases to 10%.

Income and gains from patentable inventions (not patented) are still eligible for the preferential regime, but their patentability must be certified by the French National Institute of Industrial Property (INPI). However, the regime is now only available to small-and-medium-sized companies.

A significant change relates to copyrighted software, which is now eligible for the new regime.

The regime is subject to a formal election in the annual tax return for each asset, good, service, or category of good or service.

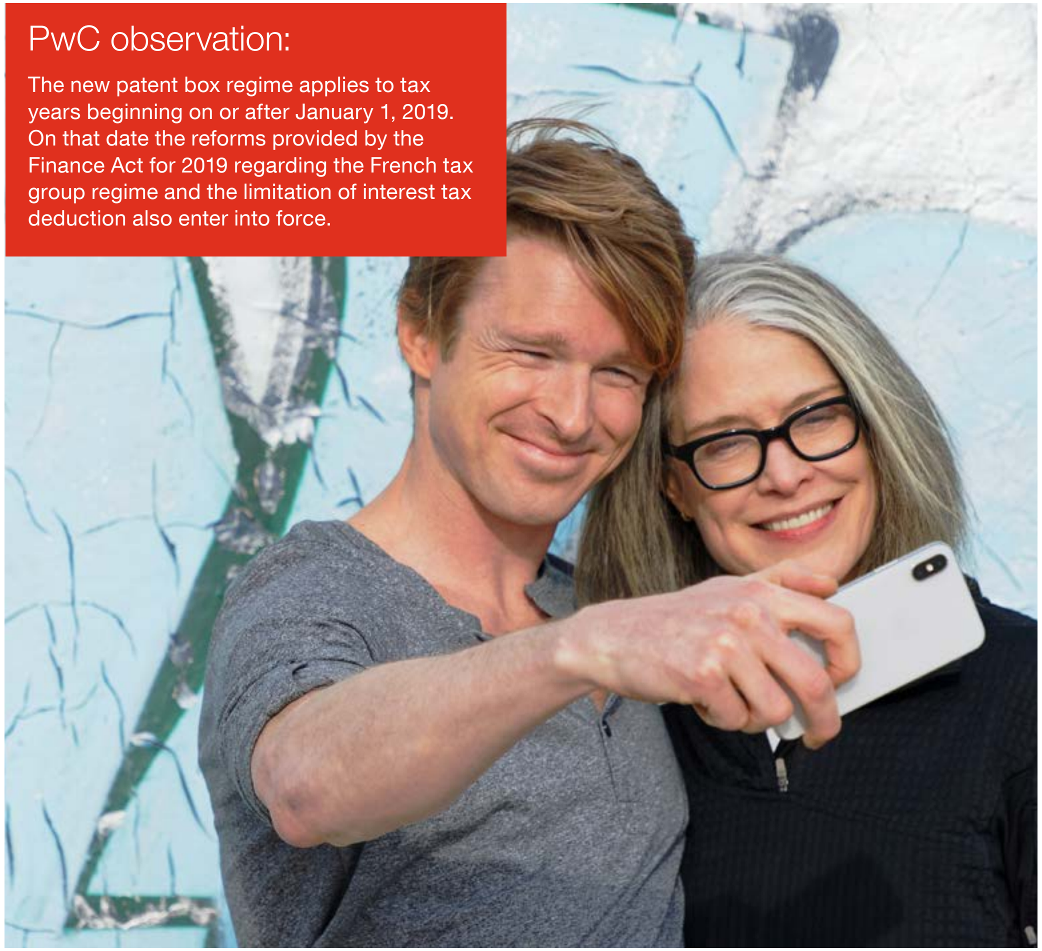
The Finance Act also provides that eligible royalties paid to related parties that are not located in an EU / EEA Member State and benefit with regard to the royalties from a tax regime that the OECD regards as harmfu, must be subject to tax at an effective rate of at least 25% in the same tax year. Otherwise, a portion of the royalty is not deductible.

The Finance Act includes corporate tax measures that transpose into French law Articles 4 and 6 of EU anti-tax avoidance directive no. 2016/1164 dated July 12, 2016 (ATAD) with respect to interest limitations and general anti-abuse rules.

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

PwC observation:

The new patent box regime applies to tax years beginning on or after January 1, 2019. On that date the reforms provided by the Finance Act for 2019 regarding the French tax group regime and the limitation of interest tax deduction also enter into force.



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Hong Kong

Profits tax exemption for debt instruments issued in Hong Kong by the People's Bank of China

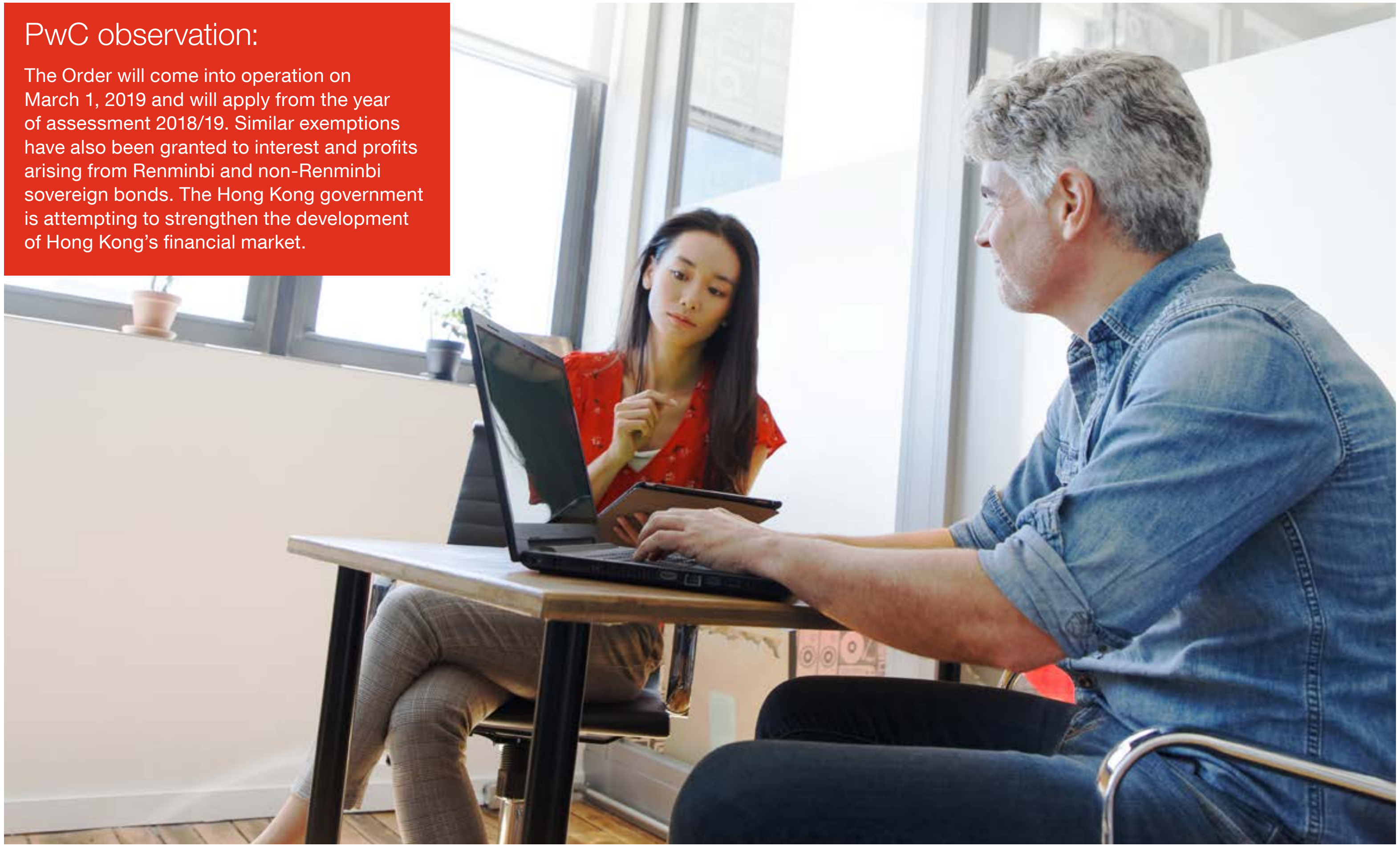
The Exemption from Profits Tax (People's Bank of China Debt Instrument) Order was gazetted on December 21, 2018. The Order provides a profit tax exemption for the following income derived from a debt instrument issued in Hong Kong by the People's Bank of China (PBoC debt instrument):

A. interest income derived from a PBoC debt instrument and

B. profits from (a) sale or other disposal of a PBoC debt instrument, or (b) on redemption, on maturity or presentment of a PBoC debt instrument

PwC observation:

The Order will come into operation on March 1, 2019 and will apply from the year of assessment 2018/19. Similar exemptions have also been granted to interest and profits arising from Renminbi and non-Renminbi sovereign bonds. The Hong Kong government is attempting to strengthen the development of Hong Kong's financial market.



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Puerto Rico

Puerto Rico amends its income tax code

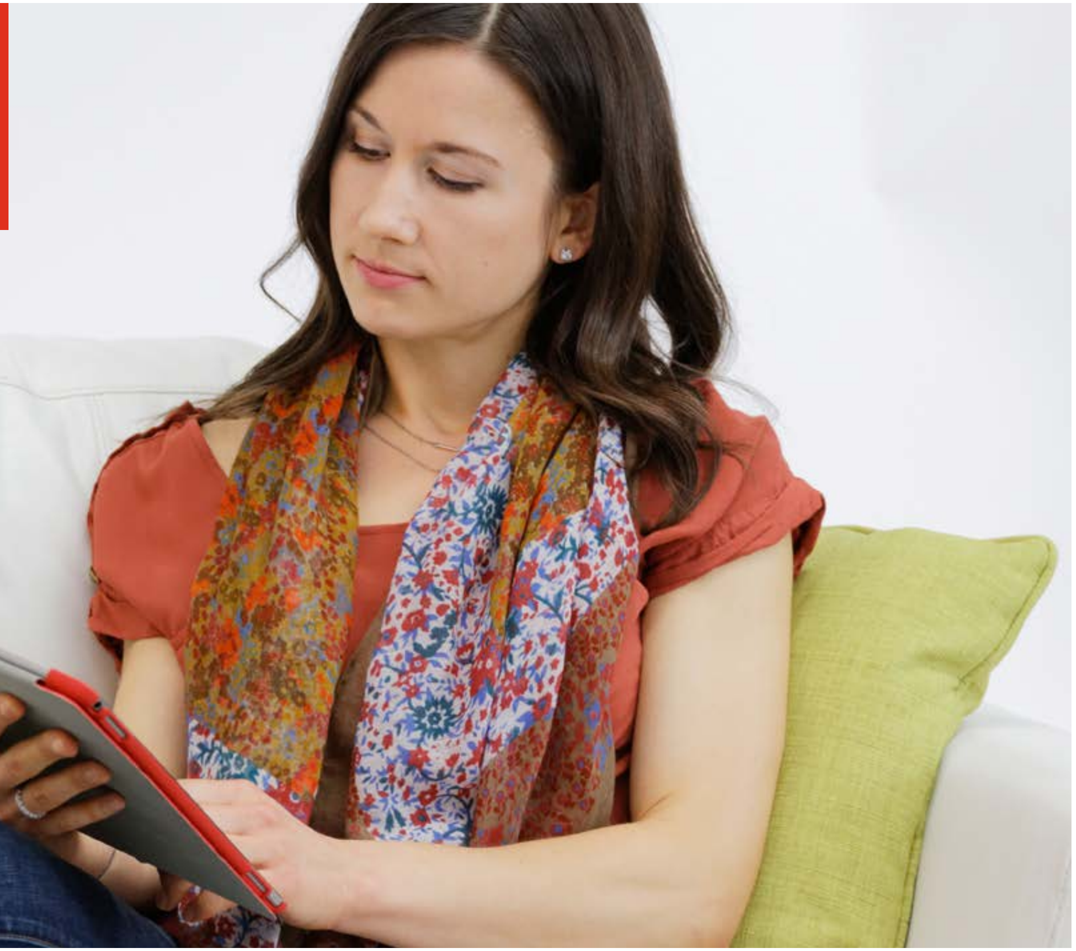
Puerto Rico's Governor signed into law House Bill 1544 as Act 257-2018 (Act 257) on December 10, 2018. Act 257 amends numerous provisions of the Puerto Rico Internal Revenue Code of 2011 (PRIRC), including reducing the corporate and individual income tax rates, introducing a new earned income credit, limiting certain deductions, subjecting the gain on the sale of a PR partnership interest to PR income tax, changing certain sourcing rules, and amending the information reporting requirements. Act 257 also amends certain sales and use tax (SUT) provisions.

At the same time, the Financial Oversight and Management Board for Puerto Rico (the Oversight Board) indicated that it has not received enough evidence from the government to conclude that Act 257 will not negatively impact the PR government's Fiscal Plan. Therefore, Act 257 could be amended to accommodate mandates from the Oversight Board.

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

PwC observation:

Companies should monitor the interactions between the Puerto Rico's government and the Oversight Board concerning Act 257 and its impact on the PR approved Fiscal Plan. Such activity could result in changes to Act 257.



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Switzerland

Swiss tax reform is to be voted on May 19, 2019

The Swiss Federal Parliament on September 28, 2018, approved the Swiss Corporate Tax and Old Age Insurance reform, previously called Tax Proposal 17 (TP17) and renamed it the Tax Reform and AHV Financing bill (TRAF). Even though a strong majority in the Swiss Federal Parliament approved the bill, a coalition including the young green-liberal and the young Swiss people's party (young SVP) collected more than the necessary 50,000 signatures from Swiss citizens, thus requiring a public vote. The Swiss Federal Council previously set the date for the Swiss public vote as May 19, 2019.

TP 17 intends to ensure international acceptance of the Swiss corporate tax system. With the amendments in the Federal Act on Direct Federal Tax (DBG) and the Tax Harmonisation Act (StHG), the cantonal tax regimes for holding, mixed and domiciliary companies, as well as the federal taxation rules for principal companies and Swiss Finance Branches will be abolished. With regard to the two federal regimes, the Federal Tax Authorities on November 15, 2018 closed the federal regimes for new entrants, while allowing existing companies to temporarily continue benefitting from these regimes. Along with abolishing the current regimes, the bill introduces internationally recognized measures to substitute the previous regimes.

The Cantons, independent of the above federal vote, have begun to implement the new rules into their cantonal tax laws. Depending on the Canton, the procedure is more or less advanced. Already, partial reforms have been approved in the Cantons of Vaud and Ticino. Another Canton, Basel-Stadt, on February 10, 2019, approved the local tax reform in a public vote. The Basel-Stadt legislation contains a corporate income tax rate reduction resulting in an overall ETR of some 13%. Thus, we expect several Cantons to pass rate reductions within 2019 independent of the federal bill, resulting in total effective income tax rates of 12%-14%. The Basel Cantonal government has yet to decide the entry into force date of the amended Cantonal law. Some of the new rules may become retroactively applicable as of January 1, 2019.

PwC observation:

This also demonstrates that the Cantons stand behind the federal tax bill and will support it during the voting process. Accordingly, and despite the federal vote on the Swiss tax reform package, Switzerland remains a highly attractive tax jurisdiction.

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United Kingdom

Reform of tax relief for goodwill and customer intangibles

A consultation was announced in February 2018 for reform of the corporate intangibles regime, with the stated objective of examining whether there was scope for simplifying the rules and making them more effective in supporting economic growth. Draft legislation has now been published relating to two aspects of this regime, and it has been incorporated into the current Finance Bill, which is expected to gain Royal Assent before the end of March 2019.

Goodwill relief changes

The consultation included strong support for reinstating tax relief for certain goodwill and other intangibles, which had been removed in the Summer Budget of 2015. The government accepted that the absence of such relief did not align with the practice in many other advanced economies, and that the blanket removal of goodwill relief may have had an undesired effect on some commercial transactions. Draft legislation has therefore been introduced to address this, but there are a number of limitations and complexities in the new rules. Taxpayers will therefore need to proceed with caution in order to ensure they receive the relief.

If passed in its current form, the draft legislation would reintroduce targeted tax relief for certain goodwill and other intangibles ('relevant assets') created or acquired on or after April 1, 2019 as part of the acquisition of a business that includes the acquisition of 'qualifying IP assets' for use on a continuing basis in the course of business (subject to a number of conditions). Relief will be available on a straight-line basis at 6.5% per year (i.e., over approximately 15 years). The relief is capped at six times the value of qualifying IP acquired as part of the same business acquisition (although the Treasury will be given power to amend this percentage and multiplier at a later date if required). This entitlement is subject to anti-avoidance rules to prevent the recycling of goodwill / customer intangibles between related companies within the charge to UK tax, and from individuals and partnerships to related companies.

Relevant assets include goodwill, intangible fixed assets that consist of customer information and customer relationships, unregistered trademarks or other signs used in the course of a business, or any licenses or other rights in respect of those items. The principal categories of qualifying IP assets are patents and copyright (and licenses over the same), but end user licenses over software are excluded. Other qualifying IP assets are registered designs, design rights, plant breeders' rights and plant variety rights (and licenses over the same), but the definition excludes registered trademarks and know-how. For relevant assets to qualify for relief, both the relevant assets and qualifying IP must be created or acquired from an unrelated person, on or after April 1, 2002.

As noted above, the new rules will apply with respect to acquisitions of goodwill occurring on or after April 1, 2019. Goodwill acquired prior to that date will therefore continue to be subject to the tax treatment that applied at the time it was acquired.

Changes to de-grouping charges

A de-grouping charge may be triggered where a company leaves a group within six years of an earlier transfer of assets to it on a tax-neutral basis. There are currently differences between the UK's de-grouping charge rules for capital gains and intangibles purposes, and these differences can lead to arbitrary tax outcomes depending on the nature of a company's assets or the date of their creation. They also tend to increase the complexity of M&A transactions.

HMRC have acknowledged that the policy motivation for the 2011 reforms to the capital gains de-grouping charge is equally relevant to transactions involving intangibles. Therefore draft legislation has been introduced to align the two sets of rules. If enacted, the intangibles degrouping charge (which, broadly, arises in relation to IP acquired or created post April 1, 2002) cease to apply from November 7, 2018 where a company leaves a group as a result of a share disposal that qualifies for the main substantial shareholdings exemption (or would have done so if the company making the disposal had been subject to corporation tax in the United Kingdom) - provided the disposal is not part of an arrangement under which the acquirer of the shares will dispose of them to another person.

PwC observation:

The government has listened to feedback on the 2015 goodwill restriction and alignment of the intangibles de-grouping rules with their capital gains equivalent, resulting in welcome changes. However, it missed a chance to simplify the rules by failing to abolish the difference in treatment of pre- and post-April 2002 IP, despite a broad consensus that this difference is a source of additional complexity for businesses. Indeed, the changes have in fact added more complexity as different rules apply to goodwill depending on whether it arose pre 2002, between 2002 and 2015 or 2015 and 2019, or after 2019. It seems likely that the cost of extending tax relief to all IP was considered prohibitive. However, the door has been left open to the possibility of future reforms.

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Administrative

Brazil

Brazilian tax authorities provide guidance on PIS/COFINS impacts for debt forgiveness

The Federal Brazilian Tax Authorities (RFB) published Solução de Consulta - Cosit 176/2018 (dated September 27, 2018) on October 4, 2018, stating that revenues recognized as a result of debt forgiveness (in this case, a bank loan) should be subject to PIS/COFINS at a combined rate of 4.65%.

Brazil has a variety of transaction and indirect taxes, including Contribution to the Social Integration Program ('PIS') and Contribution for Social Security Financing ('COFINS'). Broadly speaking, these contributions apply on gross revenues as well as on the importation of goods and services. The applicable rates depend on the particular transaction as well as which methodology the Brazilian taxpayer applies (i.e., the cumulative method, which does not allow for input credits, versus the non-cumulative method, which allows input credits in specific circumstances).

In 2015, Decree 8.426 reestablished that financial revenue should be subject to PIS and COFINS at the rates of 0.65% and 4%, respectively, for entities applying the non-cumulative methodology. Subsequently, Decree 8.451/2015 amended the original Decree introducing a number of scenarios where a 0% rate should apply – specifically with respect to hedging and foreign exchange transactions.

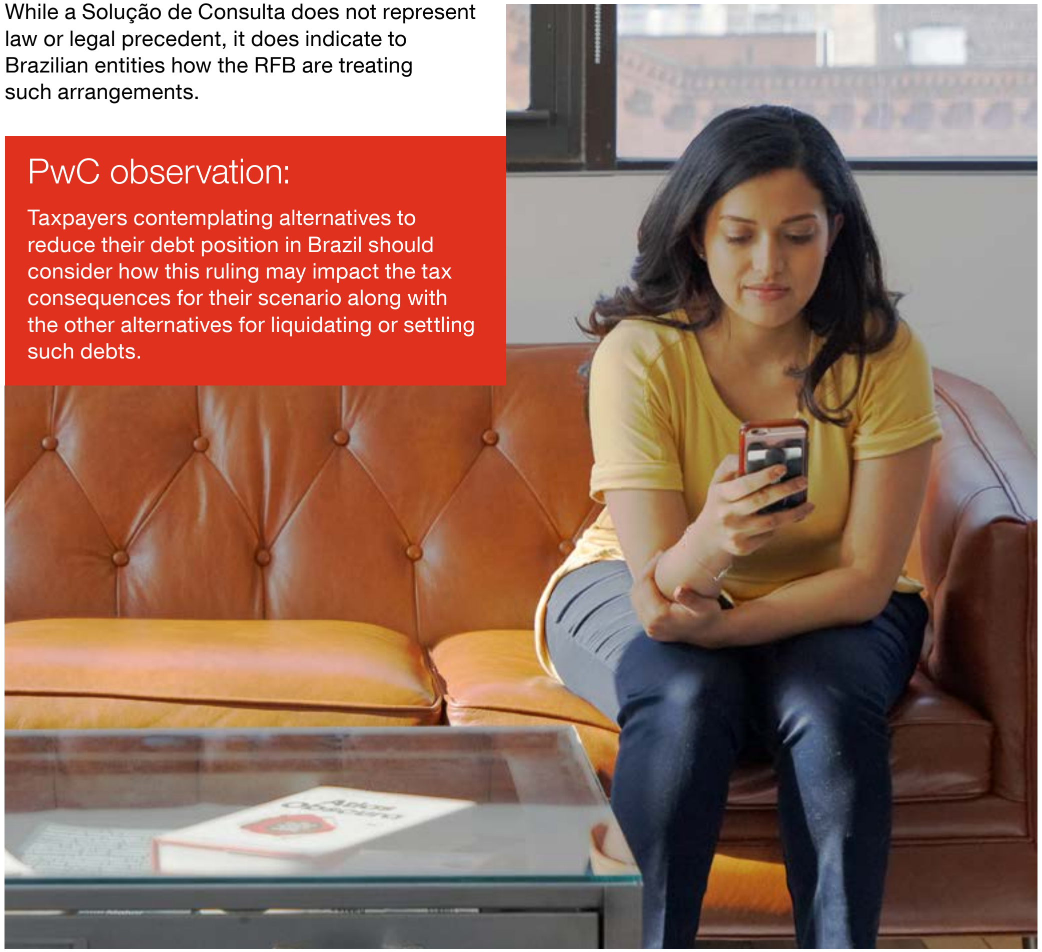
In the past, when considering a situation of debt forgiveness, there was a discussion as to whether the principal debt forgiven as well as any interest on such debt should be considered a revenue item subject to PIS/COFINS and if so, at what rate.

Solução de Consulta - Cosit 176/2018 considers that the forgiveness of debt should be regarded as a revenue item. Citing accounting rules (CFC No. 1.374/11), the RFB considered that the reduction of a debt originating from its forgiveness creates a requirement to recognize a revenue item.

Subsequently, in order to determine the PIS/COFINS implications, the RFB considered whether the revenue should be regarded as financial revenue. Drawing parallels with the corporate income tax definition of financial income and the associated guidance issued by the RFB, similarities were drawn between debt forgiveness and a discount or renegotiation of an original debt, both of which the RFB thought should be regarded as financial revenue. The RFB clarified that such conclusion applies to entities that are not dedicated to financial activities.

Once it determined that debt forgiveness should be regarded as financial revenue, the RFB confirmed that the entity should apply the combined rate of 4.65%.

While a Solução de Consulta does not represent law or legal precedent, it does indicate to Brazilian entities how the RFB are treating such arrangements.



PwC observation:

Taxpayers contemplating alternatives to reduce their debt position in Brazil should consider how this ruling may impact the tax consequences for their scenario along with the other alternatives for liquidating or settling such debts.

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Brazil

Brazilian tax authorities provide guidance on US LLCs included on the list of privileged tax regimes

The Federal Brazilian Tax Authorities (RFB) published Solução de Consulta 218/2018 (dated November 29, 2018) on December 14, 2018, providing guidance for interpreting the relevant provision of the RFB's list of tax havens and privileged tax regimes dealing with United States (US) Limited Liability Companies (LLCs).

Normative Instruction 1,037/2010 released by the RFB sets out a list of countries that it considers 'tax havens' and also a list of regimes/circumstances where an entity in a non-tax haven may be considered to be subject to a 'privileged tax regime'. Classification as a privileged tax regime may cause adverse Brazilian tax ramifications, including, from a Brazilian transfer pricing and worldwide taxation legislation perspective, more restrictive thin capitalization and general deductibility rules, as well as withholding tax implications in certain circumstances.

With respect to the United States, the privileged tax regime list includes the following (translated from Portuguese): "with reference to the legislation of the United States, the regime applicable to legal entities constituted in the form of a state Limited Liability Company (LLC), whose participation is composed of non-residents, not subject to federal income tax".

Following the list's development, there was discussion about whether the term 'non-resident' should be considered from a Brazilian or US perspective. SC 218/2018 confirms that the term 'non-resident' refers to a non-resident from a US perspective. The position is based on a broader analysis of the relevant provision, which the RFB considers to target entities where both the entity itself and its shareholders, are not subject to US federal tax.

While a Solução de Consulta does not represent law or a legal precedent, it does indicate the RFB's position, especially in the context of interpreting and applying a Normative Instruction (where litigation is less likely).

PwC observation:

The potential implications of being classified as a 'privileged tax regime' are wide-reaching. Therefore taxpayers dealing with US entities should consider how the RFB guidance may impact their activities or transactions.

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United Kingdom

HMRC launches new profit diversion compliance facility

The UK's tax authority (HMRC) has launched a new initiative, the profit diversion compliance facility, aimed at multinationals using arrangements targeted by the diverted profits tax (DPT) who are not currently under a DPT or transfer pricing (TP) enquiry.

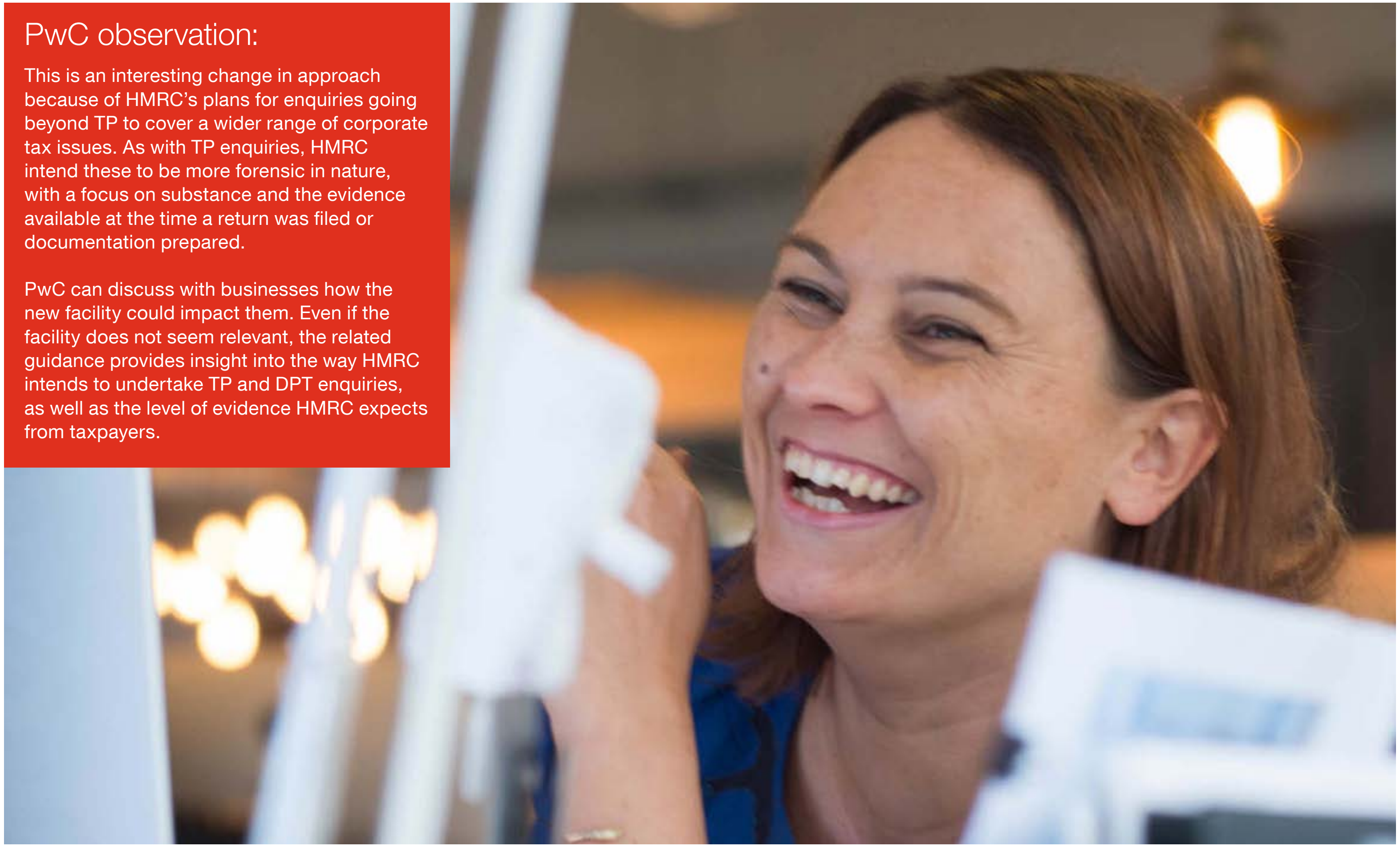
The new facility is designed to encourage businesses potentially impacted to review their tax policies, change them as appropriate, and use the facility to submit a report with a proposal to pay any additional tax, interest or penalties due. This would enable them to update their tax affairs efficiently and without HMRC intervention. The report preparation and submission will allow a business to manage its own internal processes as to what evidence to gather, who to interview, what comparables to use, and how to present the analysis. HMRC then chooses whether to accept the proposal without further enquiry.

HMRC has identified a number of businesses that display the hallmarks of 'profit diversion'. As part of this new initiative, HMRC will issue letters "inviting businesses to register for the facility. The facility also will be available to businesses that have not yet received a letter. HMRC expects to open enquiries into those that do not respond to their letter.

PwC observation:

This is an interesting change in approach because of HMRC's plans for enquiries going beyond TP to cover a wider range of corporate tax issues. As with TP enquiries, HMRC intend these to be more forensic in nature, with a focus on substance and the evidence available at the time a return was filed or documentation prepared.

PwC can discuss with businesses how the new facility could impact them. Even if the facility does not seem relevant, the related guidance provides insight into the way HMRC intends to undertake TP and DPT enquiries, as well as the level of evidence HMRC expects from taxpayers.



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United States

Highlights of the final 'toll tax' regulations under Section 965

Treasury and the IRS on January 15 released the 305-page final regulations under Section 965 as amended by the 2017 tax reform legislation (the Act). The final regulations provide guidance relating to the 'toll tax' due upon the mandatory deemed repatriation of certain deferred foreign earnings.

The final regulations incorporate with modifications the rules described in the proposed regulations under Section 965 and set forth additional guidance on a range of issues relating to the implementation of that provision.

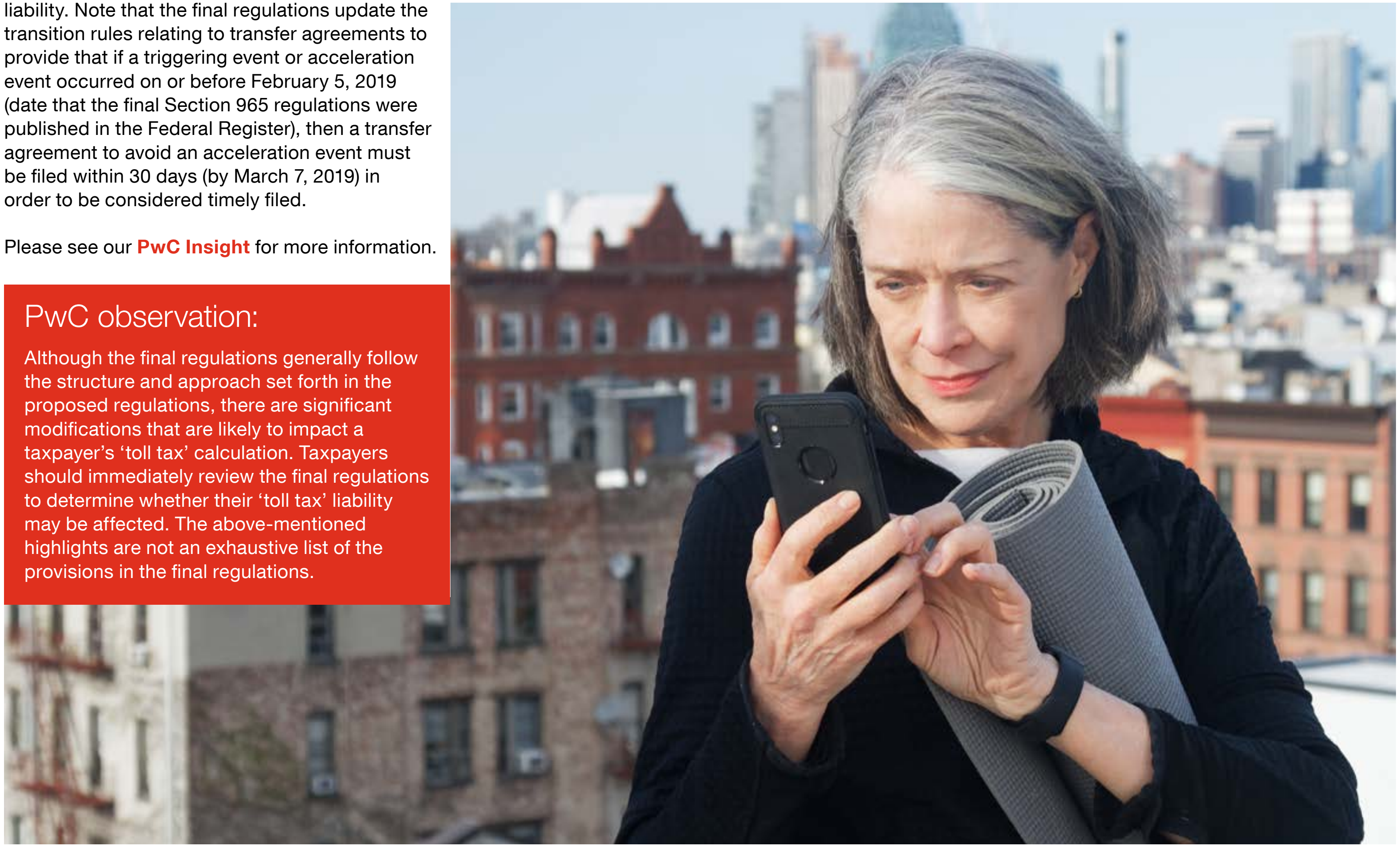
Significant divergences from the rules in the proposed regulations include provisions for the basis adjustment elections, modifications to cash position determinations, and revisions to the five-step ordering rule for E&P adjustments (including the interaction of the ordering rule with foreign tax credits and disregarded payment rules). The final regulations also clarify the timing and manners of certain Section 965 elections and payments.

Taxpayers subject to Section 965 should immediately review the final regulations and determine the impact, if any, on their toll tax liability. Note that the final regulations update the transition rules relating to transfer agreements to provide that if a triggering event or acceleration event occurred on or before February 5, 2019 (date that the final Section 965 regulations were published in the Federal Register), then a transfer agreement to avoid an acceleration event must be filed within 30 days (by March 7, 2019) in order to be considered timely filed.

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

PwC observation:

Although the final regulations generally follow the structure and approach set forth in the proposed regulations, there are significant modifications that are likely to impact a taxpayer's 'toll tax' calculation. Taxpayers should immediately review the final regulations to determine whether their 'toll tax' liability may be affected. The above-mentioned highlights are not an exhaustive list of the provisions in the final regulations.



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Judicial

EU

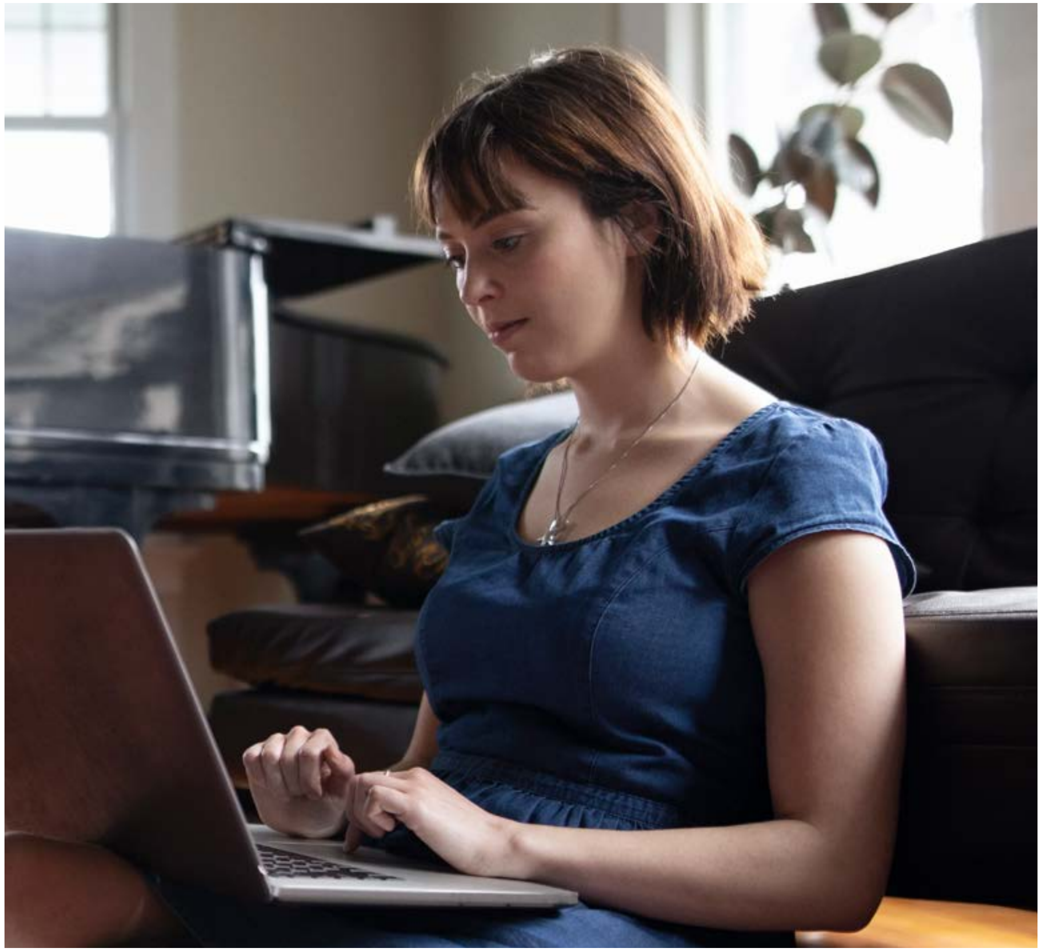
EC opens in-depth State aid investigation into the Netherlands' tax treatment of Nike

On January 10, the European Commission (EC) announced in a press release that it opened a formal State aid investigation into the Netherlands' tax treatment of two Dutch Nike affiliates. The text of the opening decision is not yet available. According to the press release, the EC's formal investigation focuses on five tax rulings that were granted to Nike's affiliates from 2006 to 2015. Two of these rulings are still in force. The EC states that its investigation will seek to determine whether the amount of royalty payments endorsed in these rulings has unduly led to a reduction of the tax base in the Netherlands, thereby granting Nike a 'selective advantage' not available to stand-alone entities or other group companies.

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

PwC observation:

The EC's press release reiterates that tax rulings that confirm the tax treatment of intra-group transactions applying the relevant national legislation are not problematic from a State aid perspective, unless they confer a selective advantage to certain companies. In the press release, the EC underlines the efforts made by the Netherlands to reform its corporate tax system. The EC notes in this respect the tightened requirements for tax rulings with respect to international structures, the increased monitoring and management of rulings, and the plans to introduce a withholding tax on interest and royalty payments made to companies in tax havens. This press release is the latest in a number of related high-profile cases concerning the EC's approach to State aid, particularly in relation to transfer pricing practices documented in tax rulings. Note that the opening of an in-depth investigation does not pre-judge its outcome. Taxpayers should examine the detailed EC decision once released, in order to assess the EC's arguments and their potential implications. Finally, most EC decisions regarding fiscal State aid currently are under appeal before the General Court of the European Union.



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United States

DC Circuit subjects requests for discretionary grant of treaty benefits to judicial review

The US Court of Appeals for the DC Circuit issued its opinion in Starr International Co., Inc. v. United States, 2018 WL 6423944 (D.C. Cir. 2018) on December 7, 2018. The court reversed the US District Court's decision to dismiss Starr International's tax refund claim that challenged the decision by the US Competent Authority (USCA) to deny Starr's request for a discretionary grant of treaty benefits under Article 22(6) of the US-Switzerland tax treaty and remanded the case to the District Court. The Court of Appeals limited its decision to Starr's standing to bring a refund claim and the standards for the court to apply; it did not address the merits of arguments for or against granting treaty benefits under Article 22(6). Access to discretionary grants of treaty benefits play an increasingly important role in treaty planning.

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

PwC observation:

Businesses need to be able to obtain discretionary treaty benefits in appropriate cases, because the tax rate reductions allowed under US income tax treaties serve the important purpose of removing impediments to cross-border trade and investment. Such impediments include the high rates of tax imposed on certain gross income (under Sections 871(a)(1) and 881(a)), which were intended, at least in part, to encourage countries to enter into tax treaties with the United States. Access to the discretionary grant of treaty benefits plays an increasingly important role in treaty planning, as the objective tests in limitations on benefits articles have become more restrictive. The Starr decision clarifies that, while the USCA has broad discretion in determining whether to grant treaty benefits, that discretion is not unfettered and may be subject to judicial review to determine whether the standards applied by the USCA depart from the standards established by the treaty. This right of judicial review is a factor to be taken into account both in deciding whether to seek a discretionary grant of treaty benefits and in determining, for financial statement purposes, whether to reserve on the amount of treaty benefits that remain subject to the discretionary grant process.

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Treaties

China

China and Spain signed a new tax treaty and an accompanying protocol

China and Spain entered into a new tax treaty on November 28, 2018, which largely amended the treaty signed on November 22, 1990. It will enter into force three months after the day that the latter notification of the contracting parties is received. The key changes as compared to the1990 treaty include:

Partnership

A clarification of the treatment of income derived by or through an entity or arrangement that is treated as fiscally transparent.

Permanent establishment (PE)

- the threshold for constituting a construction PE increases from 6 months to 12 months
- the threshold for constituting a service PE is changed from 6 months to 183 days within any twelve-month period
- the situations that constitute agency PE are extended

Dividends

The restricted tax rate on dividends paid to a beneficial owner who meets the prescribed requirements is reduced from 10% to 5% for those holding at least 25% of the capital of the company paying the dividends.

New provisions added to the "capitalgains" article

- Gains derived by a resident of a Contracting State from the alienation of shares (or comparable interests) of property-rich companies (i.e., more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State) may be taxed in that other State; however, immovable property used by a company for exercising its business will not be taken into account.
- Gains derived by a resident of a Contracting State from the alienation of non-listed shares of a company that is a resident of the other Contracting State may be taxed in that other Contracting State if the first-mentioned resident, at any time during the 365 days preceding the alienation, has owned, directly or indirectly, at least 25% of the shares of that company.

PwC observation:

The new China-Spain tax treaty indicates China's intention to put it on par with other tax treaties concluded or re-negotiated by China in recent years. The extension of time threshold for constituting a PE, the lower withholding tax (WHT) rate for dividends, and the taxing right allocation for capital gains should attract more investments in either country and benefit investors in both countries.

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China

China and the Argentine Republic signed a tax treaty and an accompanying protocol

China and the Argentine Republic entered into a tax treaty on December 2, 2018. It will enter into force on the 30th day following the day when the ratification notifications of the contracting parties are received. The important features of the China-Argentine tax trreaty include:

- The time threshold for constituting a construction PE should be 6 months, and for a service PE should be 183 days within any 12 month period.
- For passive income, in the premise of meeting the prescribed requirements, the restricted WHT rate should be 10% for dividends and 12% for interests. WHT rates on royalties paid to qualified beneficial owners (BOs) should be restricted to 3% for the use of news, 5% for the use of copyright, 7% for the use of containers, and 10% under other situations.
- Capital gains arising from the transfer of shares of property-rich companies (i.e., more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State) may be taxed in the source state. Moreover, for capital gains arising from the transfer of shares of a non-property-rich company which is a resident of the other State, the tax charge cannot be more than 10% of the capital gain if the alienator has, at any time during the 365 days preceding the alienation, held directly or indirectly, at least 25% of the shares of that company, and cannot be more than 15% in all other cases.
- A new stand-alone article ‘entitlement to benefits’ is provided to prevent treaty shopping, where only a ‘qualified person’ could claim the treaty benefit. It also includes a ‘principal purposes test’ provision for obtaining the treaty benefit.

PwC observation:

China is one of the few countries that has signed a tax treaty with Argentina. The clauses in the China-Argentine tax treaty are relatively restrictive when compared to other China treaties, especially for WHT rates on passive income and capital gains.

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Cyprus

Tax treaties/Amending protocols entered into force in 2018 and effective for Cyprus on January 1

The 2018 Cyprus tax treaty developments include:

1. Cyprus – Luxembourg first time tax treaty
   The first tax treaty between Cyprus and Luxembourg entered into force on May 21, 2018 for Cyprus. The treaty was effective for Cyprus on January 1, 2019. The treaty provides for a 0% WHT rate on payments of interest and royalties. For dividends, a 0% WHT rate applies for corporate investors holding directly at least 10% of the capital of the paying company; a 5% WHT rate applies in all other cases of dividends. For capital gains, under the treaty, Cyprus retains the exclusive taxing rights on disposals of shares in Luxembourg companies, except in those cases where more than 50% of the value of the shares is derived directly from immovable property situated in Luxembourg.

2. Cyprus – Mauritius amending Protocol to the existing treaty (signed in 2000)
   The amending Protocol signed October 23, 2017 to the existing treaty between Cyprus and Mauritius (signed in 2000) entered into force on April 30, 2018.

   The Protocol revises the provisions of Article 27 "Exchange of Information" to totally align its wording with the OECD Model Convention. This new article takes effect July 1, 2018 in Mauritius and January 1, 2019 in Cyprus.

3. Cyprus – San Marino amending Protocol to the existing treaty (signed in 2007)
   The amending Protocol signed May 19, 2017 to the existing treaty between Cyprus and San Marino (signed in 2007) entered into force on June 27, 2018.

   The Protocol revises the provisions of Article 25 'Exchange of Information' to totally align its wording with the OECD Model Convention. This new article takes effect January 1, 2019 in Cyprus.

4. Cyprus – the United Kingdom new tax treaty and accompanying Protocol, replacing previous treaty (1974)
   Cyprus and the United Kingdom signed a new tax treaty and accompanying Protocol on March 22, 2018, replacing previous treaty (1974). The new treaty entered into force on July 18, 2018, further to its ratification on April 2, 2018, and was effective for Cyprus on January 1, 2019.

   The new treaty provides for a 0% WHT rate on payments of dividends, interest and royalties (with the exception of dividends paid by certain investment vehicles out of income derived, directly or indirectly, from tax exempt immovable property income; in such cases a 15% WHT rate applies).

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

   - where the shares derive more than 50% of their value (directly or indirectly) from immovable property situated in the United Kingdom. This does not apply to shares in which there is substantial and regular trading on a stock exchange.
   - where the shares derive their value or the greater part of their value (directly or indirectly) from certain offshore rights/property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in the United Kingdom

The new treaties between Cyprus and Luxembourg and the United Kingdom incorporate the OECD/G20 Base Erosion and Profit Shifting (BEPS) project Action 6 report 'principal purpose test' , which is a minimum standard under the BEPS project.

PwC observation:

Cyprus continues to update and expand its tax treaty network. The above-mentioned treaties, as well as amendments to the existing treaties open the way for new investment opportunities and trade relations between these countries. Taxpayers should consider how they may be impacted by these new/amended tax treaties.

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Hong Kong

Hong Kong / Finland tax treaty enters into force

The Hong Kong Inland Revenue Department announced on December 28, 2018, that the tax treaty between Hong Kong and Finland would enter into force on December 30, 2018. According to the tax treaty, the treaty articles will become effective from the year of assessment 2019/20 in Hong Kong, while the effective date in Finland is January 1, 2019.

PwC observation:

Hong Kong does not currently impose any WHT on dividends and interest paid to non-residents. Alternatively, the WHT rate on royalties under the Hong Kong domestic law is 4.95% (or 2.475% for the first HKD 2 million of assessable profits under the two-tier profits tax rates regime). Under the Hong Kong/ Finland tax treaty, the WHT rate for certain royalties will be reduced / capped to 3%.

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Glossary

Acronym	Definition
Act	2017 tax reform reconciliation act
ATAD	Anti-tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
DAC6	EU Mandatory Disclosure Rules
DPT	diverted profits tax
DTT	double tax treaty
EEA	European Economic Area
EC	European Commision
EU	European Union
IRS	Internal Revenue Service
LLC	limited liability company
MNEs	multinational enterprises

Acronym	Definition
MNEs	multinational enterprises
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
PBoC	People's Bank of China
PPT	Principal Purpose Test
PRIRC	Puerto Rico Internal Revenue Code of 2011
PROMESA	Puerto Rico Oversight, Management, and Economic Stability Act of 2016
RFB	Federal Brazilian Tax Authorities
StHG	Tax Harmonisation Act
TRAF	Tax Reform and AHV Financing bill
TP17	Tax Proposal
USCA	US Competent Authority
VLT	video lottery terminals
WHT	withholding tax

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