International Tax News

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Welcome

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

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

Cross Border Tax Talks

Tune into Cross-border Tax Talks, hosted by Doug McHoney, International Tax Services Global Leader. Various PwC specialists are featured and share insights on key issues impacting the ever-changing international tax landscape.

- Alphabet soup: A taste of EU tax (10 May 2023)
- Freshly Served: Germany's latest Pillar Two Draft (24 May 2023)

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Belgium

Belgium agrees on core principles for implementation of Pillar Two

The Belgian government reached agreement on the Federal budget. After long discussions, a number of measures were decided that will reduce expenditures and increase revenue. One key decision was on the core principles of introducing Pillar Two in Belgium:

- Belgium will introduce a domestic top up tax (QDMTT) and will include the Pillar Two in the existing tax prepayment schedule. As a result, companies in scope must consider advance tax payments for Pillar Two.
- In addition, the tax liability will be established on behalf of one group entity, with the other group entities being jointly and severally liable for the tax liability.
- The Belgian tax credit for Research and Development would be adapted in order to align with the Pillar Two requirements (meaning that the repayment period would be reduced from five to four years).

These measures will now be translated into proposed law, go through the legislative process, and be adopted by the Chamber before coming into effect. Note that, along the budget discussions, the government is also looking at a tax shift / tax reform. At this point in time, there is no final agreement yet on the tax reform proposal recently issued by the Belgian Ministry of Finance.

Since the budget agreement will include Pillar Two in the existing tax prepayment schedule, companies in scope must consider advance tax payments for Pillar Two.

See our Belgium website for more information.

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Legislation

Canada

Canada's mandatory disclosure rules

The Canadian Federal Government tabled Bill C-47**1** on 20 April 2023. The Bill includes legislation to implement revised and expanded disclosure rules relating to tax avoidance transactions and uncertain tax treatments, commonly referred to as mandatory disclosure rules (MDR). These measures were initially announced in the 2021 federal budget, with draft legislative proposals released on 4 February 2022 and 9 August 2022.

The MDR is comprised of three distinct regimes:

- reportable transactions, triggered by generic hallmarks, applying to transactions entered into on or after the date Bill C-47 receives royal assent (the date of royal assent)
- notifiable transactions, triggered by resemblance to specifically designated transactions, to apply to transactions entered into on or after the date of royal assent
- uncertain tax treatments, triggered by financial statement recognition, to apply to tax years beginning after 2022 (specific penalties for late-filing to apply only to tax years beginning on or after the date of royal assent).

The reportable and notifiable transaction regimes require information reporting by taxpayers and any relevant advisers or promoters. The deadlines are generally 90 days from the implementation date of the relevant transactions. Where a transaction is part of a series of transactions, it is possible to file one form that discloses all such transactions.

For more information see our PwC Tax Insight.

The uncertain tax treatments regime applies only to large corporate taxpayers (generally those with assets of at least $50 million) and the reporting deadline is the same as for the corporate tax return (i.e., six months after year end).

As the coming into force of all three MDR regimes is tied to the date Bill C-47 receives royal assent, which is expected to occur in late June 2023, taxpayers, advisers, and promoters should start preparing for and complying with these rules.

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Legislation

Hong Kong

Hong Kong gazettes bill on taxation of insurers upon implementation of risk-based capital regime

The Insurance (Amendment) Bill 2023 was gazetted on 6 April 2023. The Bill seeks to amend the Insurance Ordinance to provide a legal framework for implementating a risk-based capital (RBC) regime for the Hong Kong SAR insurance industry.

Adopting the RBC regime could potentially create a one-off taxable transitional adjustment to insurers in the year they adopt the RBC regime. The Bill proposes to introduce a spreading-over arrangement whereby upon an irrevocable election by insurers, the one-off transitional adjustment will be assessed over a five year period, commencing from the year of assessment in which the insurers adopt the RBC regime. The Bill also proposes amendments which could change the taxation basis of certain insurance business.

For more information see our PwC Tax News.

The Bill has taken into account the insurance industry's request for allowing the one-off transitional adjustment to be spread over five years of assessment, alleviating insurers' cash flow pressure. However, other amendments were unexpected and will change how the assessable profits of certain insurance businesses are ascertained.

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Legislation

Hong Kong

Hong Kong passes bill on family office tax concession

The Hong Kong Legislative Council passed both the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 and the proposed Committee Stage Amendments (CSAs) on 10 May 2023. Under the tax concession, a 0% concessionary profits tax rate is provided on assessable profits earned from qualifying transactions and incidental transactions (the latter being subject to a 5% threshold) for an eligible family-owned investment holding vehicle (FIHV) managed by an eligible single family office (ESF Office) in Hong Kong. The tax concession will apply retrospectively to any years of assessment commencing on or after 1 April 2022.

The CSAs to the Bill were in response to comments raised by the members of the Bills Committee and various deputations.. The key amendments include (i) replacing the ‘central management and control’ requirement with provisions that ESF Offices and FIHVs are required to be ‘normally managed or controlled’ in Hong Kong; (ii) allowing a local tax-exempt charitable institution or trust of a public character to have up to 25% of beneficial interest in an ESF Office and/or an FIHV; and (iii) providing flexibility to the Commissioner of Inland Revenue for regarding certain holding structures involving ‘specified trusts’ to have satisfied the relevant requirements for the purpose of the tax concession.

For more information see our PwC Tax News from April and May.

The tax concession, together with the policy measures announced in the government’s recent Policy Statement on *Developing Family Office Businesses in Hong Kong*, should help develop a more conducive environment for global family offices to run their operations in Hong Kong. Taxpayers are hopeful that the Inland Revenue Department will soon provide further clarifications and illustrative examples in the forthcoming Departmental Interpretation and Practice Notes, as there are a number of complicated technical issues involved in the legislation.

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Legislation

United States of America (the)

House Republicans introduce bill responding to Pillar Two and unilateral taxes

House Ways and Means Committee Chairman Jason Smith (R-MO) and all Ways and Means Republicans on 25 May introduced the Defending American Jobs and Investment Act. The proposed legislation would increase income tax and withholding tax rates, initially by 5 percentage points, increasing up to 20 percentage points on certain foreign citizens, foreign corporations, and foreign partnerships of any foreign country that is listed in a report on the extraterritorial taxes and discriminatory taxes of foreign countries submitted by the Secretary of the Treasury to certain Congressional committees.

"This bill sends a clear warning to any nation tempted to exploit the success of our workers and businesses for its own gain," said Chairman Smith, adding that Ways and Means Republicans are prepared to consider additional tax and trade countermeasures." We urge our global trading partners to reject all unfair taxes aimed at Americans, and we encourage countries, the OECD, and multinational companies to work toward solutions that will protect American sovereign taxing rights and avoid escalating tax and trade countermeasures."

The increases in income tax and withholding tax rates would take effect the day after the 180-day period beginning on the date the first Report is submitted which lists a foreign country. The legislation also includes other remedies against a listed foreign country with extraterritorial taxes and discriminatory taxes.

For more information see our PwC Insight.

The bill appears to take aim at the OECD two-pillar solution and at countries that introduce digital service taxes (DSTs), with the extraterritorial tax focusing on the undertaxed profits rule (UTPR) and the discriminatory tax focusing on DSTs. While Democratic party control of the Senate may prevent Congressional approval of this proposal in the near term, the bill nevertheless provides further indication of the dissatisfaction among Congressional Republicans with the current OECD process and some of its policy direction. Companies should continue to monitor

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Legislation

New Zealand

New Zealand releases draft Pillar Two legislation

New Zealand released draft legislation on 18 May, containing an Income Inclusion Rule (IIR) and an Undertaxed Profits Rule (UTPR). It also contains a Domestic Income Inclusion Rule (DIIR), which will apply when a New Zealand-headquartered MNE has undertaxed income in New Zealand - similar to a Qualifying Domestic Minimum Top-up Tax (QDMTT) but with some differences. New Zealand is conditioning its implementation of these rules on there being a critical mass of countries adopting the rules, but noting that the IIR would be introduced no earlier than 1 January 2024 and the UTPR no earlier than 1 January 2025.

The New Zealand draft legislation proposes that instead of repeating or translating the OECD's Model Rules, Commentary and Administrative Guidance, these texts would be incorporated into New Zealand law by reference. The legislation provides for future amendment intended to ensure consistency with any additional published OECD guidance. With New Zealand's implementation of the Pillar Two rules fast approaching, and potential penalties of up to $100,000 for failing to comply with the reporting requirements, groups within scope should act now to analyse the potential impact on their group, as well as whether their current data models, systems, technology, and process can respond to the new regime's requirements.

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Legislation

South Africa

South Africa moves forward with Pillar Two

The 2023 Budget Review documents, published 22 February 2023, announced that during the 2023 legislative cycle, the South African Government will publish a draft position on the implementation of Pillar Two for public comment. Draft legislation will be prepared for inclusion in the 2024 draft income tax legislation, which presumably means that South Africa could implement Pillar Two beginning in 2025. The draft legislation is expected to be shared for public comment in the fourth quarter of 2023.

For more information see our PwC Tax Alert.

Multinational Groups that ultimately are parented in South Africa, as well as those with operations in South Africa should remain abreast of local legislative developments once the draft legislation is released for public comment. The draft legislation should provide further clarity on the governments' position on the implementation of Pillar Two, and will afford multinational groups an opportunity to participate in the public consultation process prior to the finalization of the income tax legislation in 2024.

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Administrative

Saudi Arabia

Saudi Arabia establishes four new Special Economic Zones

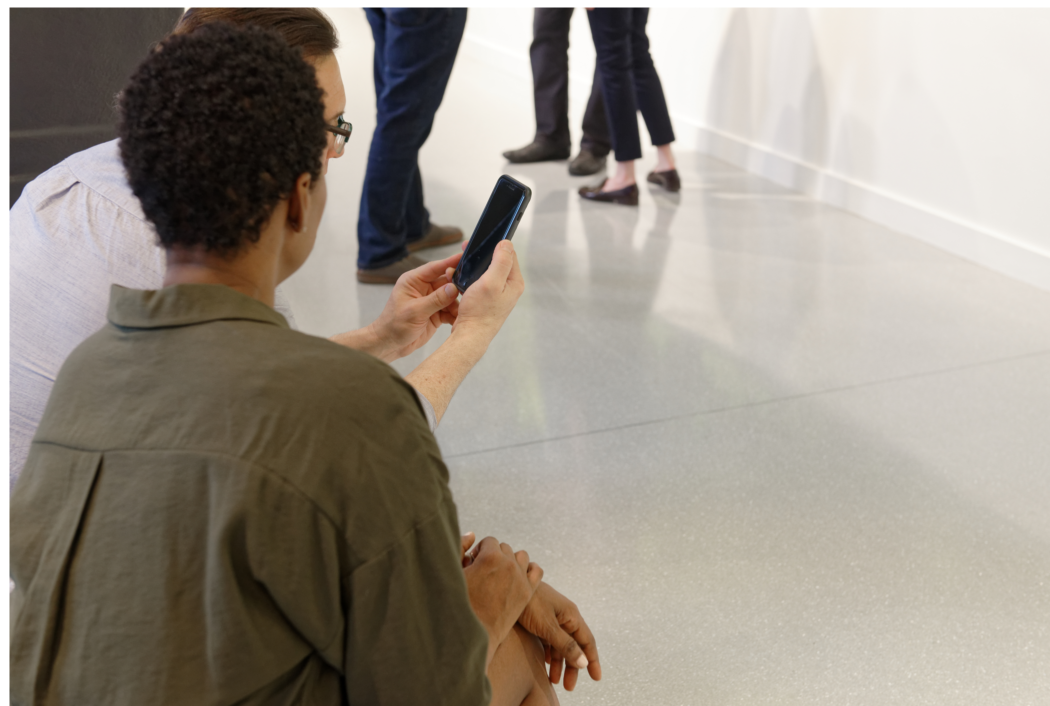
The Saudi government announced, on 14 April 2023, the establishment of four new Special Economic Zones (SEZs) across various regions of the country. These new SEZs aim to offer competitive incentives for businesses that will invest in such zones, the most notable incentives including:

- 5% Corporate Income Tax rate for up to 20 years;
- 0% withholding tax on repatriation of profits from SEZs into foreign countries;
- Customs duties deferral for goods inside SEZs or 0% Custom duties on capital equipment and inputs inside SEZs;
- Flexible and supportive regulations around foreign talent during first five years;
- 0% VAT for all intra-SEZ goods exchanged within and between the SEZs;
- Special tax treatment in line with OECD principles to avoid double taxation;
- Competitive rate of utilities, notably electricity;
- Exemption from operational fees for employees and their families within SEZs.

The zones will have their own focused areas based on the location and circumstances of the respective zone. Separate contact lines and communication channels have been established for the investors to register their interest and to obtain further information as required.

For more information see our PwC Tax Insight.

The establishment of four new special economic zones represents a long-term program aiming to attract and encourage foreign direct investment as well as talent in order to promote business development activities in the Kingdom by creating a world class infrastructure and provision of distinct investment opportunities and incentives.



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Administrative

Spain

Suspension of reporting requirements for intermediaries involved in a declarable cross-border mechanism (DAC6)

Article 45 of the General Regulations for Tax Administration and Control Procedures and for the Development of the General Rules for Tax Application Procedures (known in Spanish as the 'RGAT') establishes that an intermediary subject to the duty of professional secrecy has a reporting obligation to inform the Spanish Tax Administration of certain tax planning mechanisms.

As anticipated previously, the Spanish Tax Agency suspended this reporting obligation on 26 April 2023. The Spanish Association of Tax Advisors (AEDAF) had received the Order, dated 27 February 2023, in which the Court agreed to adopt the related injunction. This adoption implied suspension of applying the relevant article which states: "the exempted intermediary must notify said circumstance within a period of five days from the day following the birth of the information obligation to the other intermediaries involved in the mechanism and the interested taxpayer through the communication referred to in the twenty-fourth additional provision of the Spanish General Tax Law."

On its website, the Spanish Tax Agency published the precautionary measure suspending the reporting obligation of intermediaries involved in cross-border tax planning mechanisms subject to reporting (DAC6).

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Judicial

Brazil

Brazil's Superior Court of Justice standardizes ability to exclude state value added tax benefits from corporate tax calculation bases

In 2019, the Superior Court of Justice (STJ) issued a decision establishing the understanding that the State Value-Added Tax (ICMS)-related deemed credit cannot be included in the calculation basis of Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL), regardless of whether the credits fall into a specific subsidy category (for investments or costing), on the grounds that there cannot be an infringement of the Federative Pact established between the political entities.

After a number of isolated decisions dealing with other types of ICMS incentives in the context of the same Federative Pact argument, the STJ concluded, on 26 April 2023, that the 'Federative Pact argument' for ICMS deemed credits (which may be excluded from the IRPJ and CSLL bases regardless of whether the credits fall into a specific category of investment or costing subsidies) cannot be extended to other tax incentives such as "tax base reduction, rate reduction, exemption, deferral, among others." These, in turn, to be excluded from the IRPJ and CSLL bases, must meet the requirements of Article 10 of Complementary Law (LC) No. 160/2017 and Article 30 of Law No. 12. 973/2014.

For the incentives of tax base reduction, exemption, among others, once the requirements of Article 10 of LC No. 160 and Article 30 of Law No. 12,973 are met, which require the booking of the amounts subsidized in a tax incentive reserve (profit reserve) not subject to distribution to the shareholders, the exclusion of such incentives from the IRPJ and CSLL calculation bases may apply without needing to demonstrate that they were granted to stimulate the implementation or expansion of economic ventures.

The judgment aimed to ensure that the tax authorities may combat situations in which ICMS benefits may be diverted for distribution to shareholders, even if a profit reserve is established, even by other financial means or in a manner that is unrelated to the company's business, as the predictions set forth in paragraph 2 of Article 30 of Law No. 12,973 are illustrative.

While the STJ judgment aligns with the opinions expressed by its Ministers throughout the judgment and is also appropriate based on a systematic interpretation of the legislation in force and precedents of the Superior Court itself, the decision retains complexity and a degree of uncertainty. Therefore, companies should act carefully and wait for the formal publication of this decision, while monitoring the expected motions for clarification in order to understand the judgment's scope.

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Judicial

India

Larger bench of Indian Administrative Tribunal settles controversy on the dividend distribution tax

According to former domestic tax law on dividend taxation, Indian companies were required to pay additional income tax, i.e., dividend distribution tax (DDT), on any dividend declared, distributed, or paid at the prescribed rate on the distributed profits. Based on judicial precedents, Indian companies contested for refund of excess DDT deposited with the government, relying on the lower dividend tax rates specified for non-resident shareholders under respective tax treaties. Doubting the correctness of these precedents, the matter was referred to the larger bench of the Indian Administrative Tribunal to adjudicate the issue.

The larger bench of the Administrative Tribunal, *inter-alia*, held that DDT is an additional tax levied on the Indian company's profits and not a tax paid on behalf of the shareholder. Hence, the benefit of the lower tax rate as per the relevant tax treaty for taxation of dividend will not be available to non-resident shareholders. Moreover, the larger bench also held that a tax treaty benefit for lower tax rate, if any, on DDT can be extended to contracting states wherein the same has been specifically agreed to by the respective parties to the tax treaty. The India–Hungary tax treaty is an example.

For more information see our PwC Insight.

This is an important precedent wherein the larger bench of the Administrative Tribunal has put to rest the ongoing controversy on the DDT issue, *inter-alia*, holding that the DDT is an additional income tax on the company's profits, not eligible for lower tax rate prescribed under tax treaties for shareholder dividends. This ruling likely will impact Indian companies who have claimed a refund of excess DDT paid *vis-à-vis* the beneficial tax treaty rates.

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Judicial

Spain

Spanish Supreme Court sets criteria for taxation of non-resident hedge funds

Under Spanish non-resident income tax legislation, hedge funds resident in Spain are taxed at a 1% rate on dividends received, while foreign hedge funds are taxed at a 19% rate, without prejudice to the applicability of a more favourable tax treaty that may reduce this rate. As a result, foreign hedge funds are subject to a more onerous tax regime.

The Spanish Supreme Court concluded on 5 April that this different treatment is contrary to the freedom of movement of capital's principle established in Article 63 of the Treaty on the Functioning of the European Union (TFUE). They reached this conclusion since the discrimination against non-resident hedge funds has no valid justification, and the same treatment should apply if the foreign hedge funds have characteristics similar to the domestic characteristics.

Therefore, the 1% tax rate also should apply to hedge funds not resident in Spain to the extent that: i) they are 'open' institutions (i.e., they attract capital contributions from the general public with no access limitations for professional or qualified investors that would detract from their open nature); ii) they have a valid authorization to operate in their country, issued by the financial regulator equivalent to the Spanish National Securities Market Commission (CNMV); and iii) they are managed by an entity authorized to operate as an Alternative Investment Fund Manager in accordance with the terms of Directive 2011/61/EU.

With the Spanish Supreme Court setting this criteria, the Spanish Tax authorities will have to refund the excess tax paid by a large number of companies. According to the Spanish Court of Auditors, this could reach 1,000 million euros in total.

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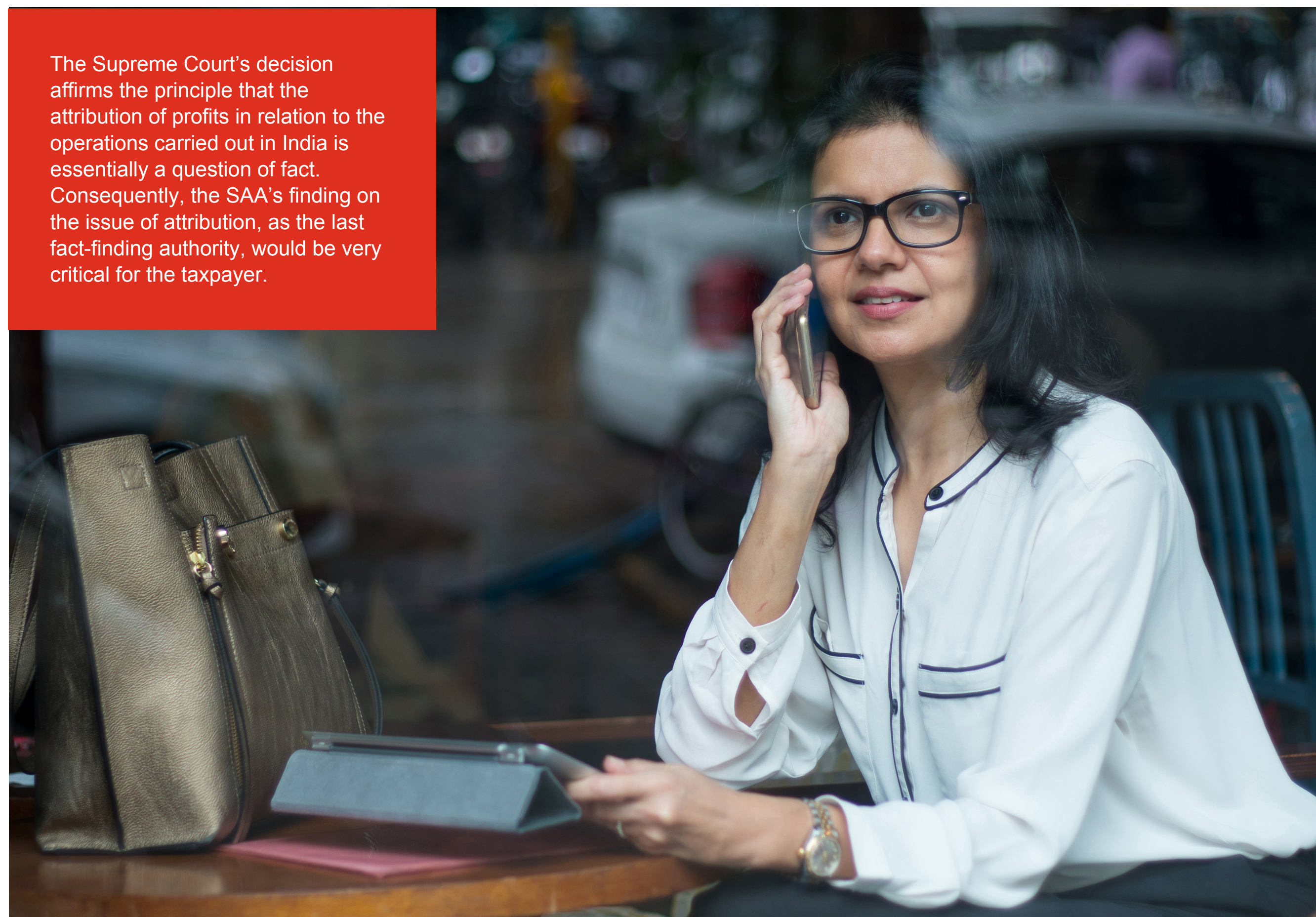
Judicial

India

Supreme Court affirms the principle that profit attribution is essentially a question of fact

The constitution of permanent establishments (PEs) of non-residents in India and attribution of profits to such PEs in India has been litigated in India. In a significant decision, the Supreme Court of India, *inter-alia*, reaffirmed the principle that the question as to what proportion of profits arose or accrued in India is essentially a question of fact. And considering that the Second Appellate Authority (SAA), the final fact-find authority, already had arrived at the taxpayer's quantum of revenue in India based on the functions, assets, and risks analysis, the Supreme Court held that the SAA's fact finding does not call for any interference.

For more information see our PwC Insight.



The Supreme Court's decision affirms the principle that the attribution of profits in relation to the operations carried out in India is essentially a question of fact. Consequently, the SAA's finding on the issue of attribution, as the last fact-finding authority, would be very critical for the taxpayer.

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EU/OECD

Germany

CJEU rules that German tax treatment of income earned by a nonresident property fund from German property is not compatible with EU Law

The Court of Justice of the European Union (CJEU) decided on 27 April 2023, in the case C-537/20 (L Fund), that Germany infringes the free movement of capital by subjecting the income earned by a foreign specialised property fund on German property income to corporate taxation, whereas resident specialised property funds are exempted from corporate tax.

The CJEU concluded that Article 63 TFEU must be interpreted as precluding German legislation to make non-resident specialised property funds liable to corporate income tax in respect of the income from property which they receive in Germany, whereas resident specialised property funds are exempted from corporate tax.

In particular, the CJEU ruled that: i) the German legislation discourages, on one hand, non-resident specialised property funds from investing in companies established in Germany and, on the other hand, investors resident in Germany from acquiring shares in foreign specialised property funds; ii) the difference in treatment between resident and non-resident specialised property funds concerns objectively comparable situations; iii) this difference in treatment cannot be justified by overriding reasons in the public interest, namely the need to preserve the coherence of the tax system, and the balanced allocation of taxing rights.

For more information see our PwC EUDTG Alert.

This judgment is important to foreign specialised property funds and other similar non-resident investment vehicles. Those foreign specialised funds should consider lodging an appeal against their German tax assessment notices after analysing the individual case.

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Treaties

Mexico

Current administrative requirements to apply for a tax treaty reorganization exemption in Mexico

Some of Mexico's tax treaties with other jurisdictions provide tax benefits that can apply on the transfer of Mexican shares as part of a corporate reorganization or in a share-for-share transaction between members of a group of companies. This is the case in the United States–Mexico tax treaty.

Historically, these treaty benefits can be applied in Mexico by filing a notification with the purpose to inform the appointment of a legal representative in Mexico and disclose the reorganization indicating that it is not subject to taxation in Mexico because tax treaty benefits apply. In the past, these notifications did not include granular transaction details, but rather information about the parties involved.

Recently, the Mexican tax authorities published additional requirements that taxpayers must fulfill when they intend to apply tax treaty benefits on the transfer of Mexican shares during a corporate reorganization. These new requirements have been included in administrative procedure number 50/ISR, which requests the following information:

- working papers including details of the procedure and calculation of the transaction's tax gain or loss (even if the transaction is exempted), as well as the amount of income tax to be paid including detail of the tax basis, consideration received, and date in which the transfer was executed or was effective considering the relevant corporate acts;
- the amount of the transaction (i.e., a valuation satisfying Mexican transfer pricing requirements);
- supporting legal documentation related to the corporate reorganization (i.e,, actual corporate legal documentation including the evidence (for example, from a Mexican notary) that it is contemporaneous documentation);
- confirmation that the transferor and transferee are considered related parties under domestic law and the relevant tax treaty.

This information, along with other documents, must be included in the notification that the legal representative in Mexico must file to proclaim that the reorganization is not subject to taxation in Mexico due to the application of tax treaty benefits.

These new procedures add requirements that are not currently included in Mexican domestic law. For example, under Mexican Income Tax Law and its regulations, taxpayers are not required to prepare a tax calculation of the income tax that would be paid, or document the tax basis of the shares in a corporate reorganization exempted under the tax treaty. These new requirements are similar to the information being requested by the Mexican tax authorities on recent tax audits (those starting in 2023) on similar transactions. In this case, a detailed analysis is recommended about how to address these new requirements if a taxpayer claims a tax treaty exemption, or if the Mexican tax authorities conduct a tax audit.

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Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

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Worldwide Tax Summaries

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 - visit our comprehensive tax guide, or explore rates in over 150 countries using our online tools, updated daily.

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