

國際租稅要聞

International Tax Newsletter

第249期



資誠



Welcome

近幾年來國際租稅的環境劇烈變遷，跨國企業要掌握不斷變化的國際租稅議題與趨勢，是一項重大挑戰。資誠每月出版《國際租稅要聞》，提供專論，並整理 PwC Global Network 專家的觀點，提供全球稅務新知及分析發展趨勢。

我們希望本刊物對您有所幫助，並期待您的評論。

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摘要

在支柱二法規架構公布一週年後，OECD於2022年12月20日發布四份與支柱一及支柱二相關的指引文件：

1. 支柱二安全港及罰則減免指引；
2. 支柱二GloBE規則下稅負確定性公開徵詢稿（徵求意見至2023年2月3日）；
3. 支柱二GloBE資訊申報表公開徵詢稿（徵求意見至2023年2月3日）；及
4. 支柱一草擬數位服務稅（Digital Services Taxes，DSTs）及相關類似措施之多邊協定（Multilateral Convention，MLC）公開徵詢稿（徵求意見至2023年1月20日）。

除OECD包容性架構（Inclusive Framework，IF）已於12月15日批准安全港及罰則減免指引外，其餘三份文件皆屬於OECD秘書處的徵詢稿。

本文將針對稅負確定性徵詢稿進行介紹。

內文

GloBE規則之稅負確定性

有鑑於支柱二規則的複雜性及不同租稅管轄區對規則解釋或應用可能出現歧異，OECD開始致力於開發可進一步提供GloBE規則下稅負確定性的機制。本次關於支柱二GloBE規則下稅負確定性之徵詢稿旨在，就兩個或多個租稅管轄區之間對GloBE規則解釋或應用可能出現歧異的情況下，徵求利害關係人的意見。

資誠觀察：徵詢稿並非共識文件，意味著徵詢稿中的觀點與建議並未表達出包容性架構的一致立場。因此，徵詢稿僅代表目前OECD秘書處的提案。

OECD認為因為各國將使用全球法規架構和後續一致同意的行政指引作為其國內立法的基礎，法規解釋歧異的風險將大大降低。此觀點的實現程度，以及各國可能在多大程度上偏離法規架構，目前仍有待觀察。然而，如同歐盟及英國目前提出的法案，仍無法避免產生法規解釋的歧異。

專論

OECD發布支柱二稅負確定性框架徵詢稿

資誠觀察：目前關於如何解釋法規架構和逐條註釋仍有許多問題。預計2023年發布確定的行政指引有可能解決這些問題，但某些國家已表示OECD的指引將只是“有幫助”，而不是“有約束力”。在這種情況下，法規架構很可能最終會透過各國法院或歐盟法院以不同方式解釋，並依據各國實務和案例得出不同結論。

徵詢稿說明達成稅負確定性的各種機制，包含在徵稅前的預防機制及徵稅後的爭端解決機制。

預防機制

有賴於GloBE法規架構、逐條註釋及行政指引

徵詢稿指出，辨認所得涵蓋原則（Income Inclusion Rule，IIR）、徵稅不足之支出原則（Under Tax Payment Rule，UTPR）或國內最低稅負（Domestic Minimum Top-Up Tax，DMTT）為“合格”狀態是確保一致應用GloBE規則的基本機制。合格IIR、UTPR和QDMTT的認定將透過涵蓋GloBE法規架構所有章节的審查程序完成。

此外，租稅管轄區可以將管轄區間出現的GloBE規則解釋和應用的問題提交給包容性架構，透過之後確定的行政指引解決。然而，是否有約束力尚未清楚。另外，具體個案的稅負議題和納稅義務人資訊確定無法對外共享。

共同風險評估和協調法令遵循

基於在同一租稅管轄區進行類似營運的跨國集團可能具有類似風險性質的假設，可以為GloBE制定類似於OECD國際遵循確信計畫（International Compliance Assurance Programme，ICAP）的協調機制。評估風險的協調方法可以讓各稅務機關有機會在得到結論前分享各自觀點。

資誠觀察：ICAP所需的人力相當可觀，雖然這個觀點相當受到歡迎，但實務可行性可能會受到質疑。

具約束力確定性機制

徵詢稿承認預先訂價協議（Advanced Pricing Agreements，APA）是最常見能提供具約束力稅負確定性的爭端預防機制。APA能為納稅義務人和相關稅務機關提供有關移轉訂價議題的稅負確定性。徵詢稿解釋租稅管轄區通常依賴租稅協定作為進行雙邊或多邊預先訂價協議的法律依據，而APA討論的目標通常是與共同標準保持一致，即常規交易原則。因此，需要為GloBE規則定義類似APA機制的共同標準。然而，關於這個選項，徵詢稿指出，實務上GloBE規則範圍內的所有跨國集團可能無法使用這種類似APA的機制。

專論

OECD發布支柱二稅負確定性框架徵詢稿

爭端解決機制

爭端解決機制的實質

徵詢稿以OECD租稅協定範本第25條的相互協議程序（Mutual Agreement Procedure，MAP）條款作為GloBE爭端解決機制的基礎。該條款的基本要素可用於制定一個獨立於現有MAP框架的爭端解決機制。徵詢稿為GloBE爭端解決機制設定三個要素：

- a. 如果該管轄區的徵稅可能不符合GloBE規則，應允許跨國集團向管轄區的主管機關提出請求；
- b. 在有正當理由的情況下，應允許主管機關依據共同標準與同樣有權的其他有關租稅管轄區的主管機關一起解決案件；及
- c. 儘管國內法有期間限制，租稅管轄區應執行主管機關之間的任何協議。

徵詢稿指出，爭端解決機制的某些要素可能需要限定於GloBE規則之要求，例如所涵蓋爭端的性質，及解決爭端的基礎。不同範圍的爭端將受到討論，過大的範圍會導致提交案件過多，但事實上應用GloBE規則解決問題並沒有實際的困難，但納稅義務人往往更偏好確定性。因此，建議將範圍縮小到跨國企業需要在多個租稅管轄區適用GloBE規則和繳納補充稅的情況。更嚴格的方法可能會要求跨國企業證明GloBE規則的解釋或應用的歧異將導致雙重徵稅的結果。

無論選擇何種機制，徵詢稿都提及主管機關需要參考準則以解決潛在歧異。關於爭端解決的基礎，可以授權主管機關透過達成共同解釋來消除不一致的結果。如國內法納入GloBE規則將導致不一致的結果，主管機關可能同樣有權根據不會導致雙重徵稅或過度徵稅的共同方法（GloBE法規架構、逐條註釋及之後確定的行政指引）達成爭端解決的辦法。

爭端解決機制的可行工具

徵詢稿明確指出，上述機制可透過不同的法律工具實施。現有的機制，例如：多邊稅務行政互助公約（Mutual Administrative Assistance in Tax Matters，MAAC）或租稅協定，以及新機制，例如：引入國內法或多邊協定的爭端解決條款。徵詢稿列出四種選項：

1. 制定多邊公約（Multilateral Convention，MLC）

徵詢稿參考關於包容性架構成員考慮多邊公約以確保GloBE規則的協調和一致實施的雙支柱解決方案的十月聲明。多邊公約可能包含租稅確定性機制，但也可以解決其他行政問題，例如資訊交換。對於此選項，納稅義務人應注意程序問題，例如多邊協定的批准和與國際協議相關的議會審查程序。

專論

OECD發布支柱二稅負確定性框架徵詢稿

資誠觀察：雖然多邊公約很理想，但要達成是很有挑戰性。首先，要獲得足夠數量的國家同意可能需要一些時間，如果美國維持現狀，能否通過美國參議院將成問題。亦被質疑UTPR與OECD租稅協定範本第7條的兼容性，以及UTPR的租稅管轄區分配權在多大程度上可能構成OECD租稅協定範本第24條下的歧視。如果考慮多邊公約，包容性架構可能希望利用這個機會為上述議題提供確定性。

2. 有賴於 MAAC 下的主管機關協議

MAAC的主要目的是允許主管機關之間交換資訊，但也有允許主管機關進行諮詢的條款。然而，徵詢稿指出MAAC並未提供納稅義務人要求主管機關協議程序的權利，也不會為主管機關達成協議或執行協議提供實質性的法律依據。因此，徵詢稿建議租稅管轄區可以考慮用提供這些權利的國內法補充MAAC主管機關協議。

資誠觀察：雖然美國批准原版的MAAC，但並未批准主管機關協議，導致在許多領域產生問題，於此可能也會有相同的問題。

3. 有賴於現有租稅協定

徵詢稿提及探尋相互協議程序條款是否可以包含在現有租稅協定中以解決GloBE爭端的選擇，同時也承認在OECD租稅協定範本第25(1)和25(3)條，以及租稅管轄區之間沒有雙邊租稅協定下的限制。

4. 在國內法中制訂爭端解決條款

此選項包含建立一個共同的爭端解決條款，與GloBE規則一起導入各個租稅管轄區的國內法，並且在互惠的基礎上使用。

徵詢稿提供此條款要件。對於每個租稅管轄區，該條款可以：

- a. 允許跨國企業向根據其國內法定義的主管機關提出請求，如果該租稅管轄區的行為導致非預期的結果；
- b. 授權該主管機關在有正當理由且無法自行找到解決方案的情況下接受請求，並與其他相關主管機關進行討論以找到共同的解決方案；
- c. 授權其主管當局與收到類似請求的另一個租稅管轄區進行討論，以找到符合共同標準的共同解決方案；
- d. 儘管有國內法期間限制，執行商定的共同解決方案。

專論

OECD發布支柱二稅負確定性框架徵詢稿

資誠觀察：此種匹配國家法律的選項作為替代方案，嘗試繞過達成新版多邊公約或大幅修改租稅協定下的公認難題。然而，據了解某些國家已表示反對，因此該選項的可行性尚未清楚。

資誠觀察：既然歐盟已經就支柱二指令達成一致，就稅負確定性等剩餘的基本問題達成共識至關重要。如果沒有適當且及時實施稅負確定性機制，審查速度的差異可能會導致適用GloBE規則的風險。此種風險很大，可能在很多常見的情況下導致雙重課稅或過度徵稅。解決歐盟成員國之間爭端的措施可能可以在歐盟仲裁指令的擴大範圍中找到，但是仍需要一個全球性的解決方案。

結論

有鑑於歐盟成員國最近就支柱二規則達成一致，預計該規則也將在2023年初得到其他國家的採納，跨國企業將把注意力轉向GloBE規則的實際應用問題。此種OECD的簡化機制和稅負確定性指引包含一些受歡迎的想法，但任何想法的可行性目前仍不明朗。就目前而言，徵詢稿僅是對預防和爭端解決的方式進行盤點，在短期似乎不太可能就解決方案達成共識。

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專論

韓國發布支柱二 (Pillar Two) 草案

草案內容

作為2022年稅務改革的一部分，韓國企劃財政部 (Korean Ministry of Strategy and Finance, “MOSF”) 在7月21日發布了國內針對全球最低稅負制的立法草案。韓國發布的草案與經濟合作暨發展組織 (“OECD”) 先前發布的支柱二細節法規架構 (Pillar Two Model Rules) 十分相似，支柱二細節法規架構已由G20/OECD所領導的141個包容性架構成員國 (Inclusive Framework) 同意通過，而韓國的法規細節將在2022年12月公告。

根據草案，跨國公司所在的特定租稅管轄區有效稅率如果沒有達到韓國的最低稅率 (15%)，則可能需負擔有效稅率和最低稅率 (15%) 間的稅負差異。這個草案包括了所得涵蓋原則 (Income inclusive rule, “IIR”) 與補充原則—徵稅不足的支出原則 (Under Tax Payment Rule, “UTPR”)，兩個原則自2024年1月1日開始的課稅年度起適用。值得注意的是，歐盟 (EU) 最低稅負指令已將UTPR延後至2025年施行，但韓國的UTPR現仍維持於2024年生效。

韓國的草案中並沒有提到合格的當地最低稅負制稅額 (Qualified Domestic Minimum Top-up Tax, “QDMTT”) 的概念，但不排除QDMTT將在十二月公告的法規細節裡說明。

企業因應方式

潛在可能適用的企業應該思考如何因應韓國支柱二 (Pillar Two) 的推行，除了檢視集團控股架構與評估對有效稅率的影響以外，企業還需考量現行系統與作業程序是否能有效蒐集、記錄及處理資料。

適用韓國最低稅負制的企業

- 營收在過去的四個年度內有兩年以上達7.5億歐元的跨國企業。
- 原則上，最終母公司需要負擔補稅稅負，但如果中間層有部分持股母公司 (Partially owned intermediate company，也就是有超過20%的權益由非集團成員所直接或間接持有)，那麼這間公司需負擔補充稅負。

專論

韓國發布支柱二 (Pillar Two) 草案

- 下列為排除適用最低稅負制的個體：
 1. 政府組織、國際組織、非營利組織及退休基金
 2. 作為最終母公司的投資基金及房地產投資工具
 3. 由上述個體直接或間接持有的公司

申報截止日

- 韓國最低稅負制將自2024年1月1日開始的會計年度開始適用。
- 申報截止日是會計年度結束日後的15個月內，但是在法規適用的第一年，截止日是會計年度結束日後的18個月內。
- 舉例來說，如果一企業的會計年度於12月結束，那麼2024年度作為新法適用的第一年，申報與納稅的截止日為2026年6月30日。
- 根據會計原則，財報查帳人員應在2024年第1季季報的核閱中，將全球最低稅負制對於企業所得稅費用和相關負債的影響反應在財報上。

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要聞

Legislation
立法

葡萄牙

2023 年預算法提案提交給議會

2023 年預算法提案已於 10 月 10 日提交給議會。

加密資產 - 擬議的租稅架構

雖然目前來自加密資產的所得，在葡萄牙稅務居民公司（包括外國實體在葡萄牙的常設機構）取得時需繳納公司稅 (CIT)，但擬議的租稅架構引入了“加密資產”的定義。它包括可以使用分類帳 (distributed ledger) 或類似技術以電子方式傳輸或存儲的價值或權利的所有數位表示。該架構還包括對個人所得稅的加密資產所得和利得徵稅的規定。

公司稅——虧損扣抵

虧損扣抵允許無限期遞延。該規則適用於自2023 年 1 月 1 日或之後開始的納稅年度的課稅所得中扣除虧損扣抵。它也適用於在 2023 年 1 月 1 日之前仍在扣除中的納稅年度評估的虧損扣抵。虧損扣抵的扣除額也將減少到課稅所得的 65% (目前為 70%)。

新的租稅獎勵計劃 - 公司資本化的獎勵

預算案提出了一個新的租稅獎勵措施，旨在為公司提供權益資本。符合條件的公司可扣除相當於符合條件的權益淨增長4.5%的金額。扣除將在權益增加的納稅年度以及隨後的九個納稅期間進行。在每個納稅年度，此類扣除額不會超過 200 萬歐元或 EBITDA 的 30%，以較高者為準。超過EBITDA百分比的部分可遞延五年。以下是符合條件的權益增加：與公司成立或受益公司股本增加有關的現金出資；增資範圍內對應債權轉增股本的出資；發行證券的溢價以及用於保留盈餘或直接用於準備金或股本增加的課稅所得。

資誠觀點

雖然2023 年預算提案正在議會討論中，並且加密資產條款的最終措辭尚不確定，但在葡萄牙從事加密資產業務的實體應考慮自 2023 年起的額外租稅的合規負擔。

虧損扣抵的措施加強了納稅年度之間的團結原則 (principle of solidarity)，作為權責發生制會計原則的例外，應分析對遞延稅負的潛在影響。在某種程度上，減少虧損扣抵對課稅所得的扣除百分比限制了擬議措施的全部潛力。另一方面，由於稅法的連續修改和疫情期間的臨時措施，導致虧損扣抵存在遞延和扣除的多個制度和期限，建議為明年做好規劃。

作投資決策時應考慮與新租稅獎勵計劃相關的租稅優惠，因為它可能會在未來節省稅負。

Portugal

2023 Budget law proposal submitted to Parliament

The 2023 Budget law proposal was submitted to the Parliament on 10 October.

Crypto assets - Proposed tax framework

While the current income from crypto assets is subject to corporation tax (CIT) when derived by Portuguese tax-resident companies, including permanent establishments in Portugal of foreign entities, the proposed tax framework is introducing a definition of 'crypto assets'. It includes all digital representations of values or rights that can be transferred or stored electronically using distributed ledger or similar technology. The framework also includes provisions regulating the taxation of income and gains from crypto assets for personal income tax.

Corporation tax – Tax losses

Tax loss carryforwards would be allowed for an indefinite period. This rule would apply to the deduction of tax losses against taxable profit of tax years starting on or after 1 January 2023. It also would apply to tax losses assessed in tax years prior to 1 January 2023, for which period a deduction is still running. The deduction of tax losses would also be reduced to 65% (currently, 70%) of taxable profit.

New tax incentive scheme - Incentive for Capitalization of Companies

The Budget proposes a new tax incentive aiming at capitalizing companies with equity. Eligible companies could deduct an amount corresponding to 4.5% of the net increase in eligible equity. The deduction would occur in the tax year in which the increase in equity takes place, as well as in the nine following tax periods. Such deduction would not exceed, in each tax year, the higher of EUR 2 million or 30% of the tax EBITDA. The part that exceeds the percentage of the tax EBITDA could be carried forward for a five- year period. The following are eligible equity increases: cash contributions made in connection with the incorporation of companies or the increase in the share capital of the beneficiary company; contributions in kind made within the scope of the share capital increase that correspond to the conversion of credits into capital; premiums for issuing securities, and tax profits that are applied to retained earnings or, directly, to reserves or to an increase in share capital.

PwC observation:

While the 2023 Budget proposal is under discussion at the Parliament and there is yet no certainty around the final wording of the provisions on crypto assets, entities operating in the crypto assets business in Portugal should consider the additional tax compliance burden from 2023 onwards.

The tax loss measure reinforces the principle of solidarity between tax years, as an exception to the principle of accrual-based accounting, potential impacts on deferred taxes should be analysed. To some extent, the reduction of the percentage of deduction of tax losses against the taxable profit limits the full potential of the proposed measure. On the other hand, careful planning for next year is recommended, given the subsistence of multiple regimes and deadlines for the carryforward and the deduction of tax losses, resulting from consecutive amendments to the tax law and temporary measures during the pandemic.

The tax benefits associated with the new tax incentive scheme should be considered when it comes to investment decisions as it could lead to relevant future tax savings.

紐西蘭

影響雙重稅務居民公司的立法草案

最近發布的立法草案將影響作為雙重稅務居民公司的紐西蘭納稅人。該立法包括對歷史避稅條款的修正，在引入紐西蘭反混合錯配規則 (anti-hybrid rules) 後不再需要這些條款，同時還擬議了新的誠信措施 (integrity measures)。一些關鍵提案包括雙重稅務居民公司能夠將虧損扣抵移轉給其他紐西蘭集團納稅人，成為紐西蘭稅務合併集團的一部分以及在某些情況下保持扣抵的靈活性。

一般來說，這些變化對納稅人來說是正面的，但立法草案還包括以下擬議的誠信措施：

- 目前限制從一家紐西蘭集團公司向一家具有雙重稅務居民身份但根據相關租稅協定與第二國沒有聯繫的紐西蘭公司進行分配時，可以獲得的非預期利益，這可能導致該公司承擔重大的非居民扣繳稅義務；和

- 擴大公司遷冊規則 (migration rules)，將根據租稅協定與第二國斷絕居住關係的紐西蘭公司視為已經清算，這意味著出於租稅目的，被視為資產處置和向股東分配股利，這可能導致公司承擔重大的所得稅和/或非居民的扣繳義務。

資誠觀點

擬議的立法預計將於 2023 年 3 月頒布，但追溯至 2022 年 8 月 30 日。對於擁有雙重稅務居民身份的紐西蘭集團來說，必須考慮這些規則的影響。

New Zealand

Draft legislation affecting dual tax resident companies

Draft legislation was recently circulated which will impact NZ taxpayers that are dual tax resident companies. The legislation includes amendments to historic tax avoidance provisions that are no longer required given the introduction of NZ's anti-hybrid rules, as well as proposed new integrity measures. Some of the key proposals include the ability for dual tax resident companies to transfer tax losses to other NZ group taxpayers, the ability to be part of a NZ tax consolidated group, and flexibility with maintaining imputation credits in certain circumstances.

Generally the changes are positive for taxpayers, however the draft legislation also includes the following proposed integrity measures:

- restricting unintended benefits currently available on distributions made from a NZ group company to a NZ company that is dual tax resident but tie-broken to a second country under the relevant tax treaty, which could result in material non-resident withholding tax obligations for the company; and
- extending the corporate migration rules to deem a NZ company whose residence tie-breaks to a second country under a tax treaty to have liquidated, meaning a deemed disposal of assets and distribution of proceeds to its shareholders for tax purposes which could result in material income tax and/or non-resident withholding tax obligations for the company.

PwC observation:

The proposed legislation is expected to be enacted in March 2023 but with retroactive effect to 30 August 2022. It is important for New Zealand group entities that are dual tax resident companies to consider the impact of these rules.

德國

聯邦議會決議對德國註冊權的付款徵稅進行立法修改

德國聯邦議會於 12 月 2 日通過了 2022 年年度稅法。除其他條款外，該法還對外國納稅人之間支付的與在德國註冊智慧財產權有關的款項徵稅，進行了 (過渡性) 立法修改。與政府法案草案不同的是，關聯方之間的所有非協定案件在 2022 年之後暫時仍需繳納德國非居民稅。德國聯邦委員會將在 12 月 16 日的會議上討論該法律。

資誠觀點

根據《德國所得稅法》(Sec. 49)，在過去或未來幾年可能有潛在德國稅負的納稅人，應分析這些德國法律變更的影響。具體而言，有與在德國註冊智慧財產權相關的權利金的納稅人或因將此類財產出售給非關聯方而確認資本利得的納稅人，不再根據《德國所得稅法》(Sec. 49) 規定承擔潛在的納稅義務 (甚至適用於前幾年)。

對於支付權利金 (或資本利得) 給關聯方的納稅人，有必要判斷付款人 (或資本利得情況下的賣方) 是否有權申請與德國協定的豁免。這種判斷不是自動的，而是必須認定協定濫用規則 (基於協定和德國國內法) 的不適用。最後，根據簡化的申報程序要求對上一年關聯方權利金 (或向關聯方出售智慧財產權的資本利得) 申請協定豁免的納稅人必須在 2023 年 6 月 30 日之前完成此類工作。屆時若未能完成，將需要揭露更詳細的資訊以取得協定的豁免。



Germany

Federal Parliament resolves legislative changes to the taxation of payments for German-registered rights

The German Federal Parliament passed the Annual Tax Act 2022 on 2 December. Among other provisions, the Act introduces (transitional) legislative changes to the taxation of payments for IP rights that are registered in a German register between foreign taxpayers. In a change from the government's draft bill, all non-treaty cases between related parties, for the time being, will remain subject to German nonresident taxation beyond 2022. The German Federal Council will deal with the law in its session on 16 December.

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

PwC observation:

Taxpayers who may have potential German taxation under Sec. 49 of the German Income Tax Act in prior or future years should analyze the impact of these German law changes. Specifically, taxpayers with royalty payments related to German-registered IP, or who recognized capital gains on sales of such property to unrelated parties, no longer have potential tax liability under Sec. 49 of the German Income Tax Act (even for prior years).

For taxpayers with these royalty payments (or capital gains) with a related party, it will be necessary to determine if the payor (or seller in the case of a capital gain) is entitled to claim a treaty exemption with Germany. Such a determination is not automatic in that treaty-shopping rules (both treaty-based and those under German domestic law) must be considered inapplicable. Finally, those taxpayers claiming a treaty exemption on prior-year related-party royalty payments (or capital gains on sales of IP to related parties) under the simplified filing procedure must complete such work before June 30, 2023. Failure to do so by then will require disclosure of much more detailed information in order to seek treaty exemptions.



義大利

義大利引入常設機構 (PE) 投資管理豁免

預計將於年底前頒布的 2023 年預算法案在義大利所得稅法 (IITA) 中引入了一項投資管理豁免 (IME)。
IME 是一個避風港，旨在確保外國投資基金 (和受控實體) 不會因基金 (高級) 資產管理人在義大利的活動而觸發 PE。

預算法案中 IME 的特點包括：

- PE 議題的“避風港”旨在鼓勵基金經理人移轉到義大利。
- 降低與基金經理人在義大利存在相關的風險 (無論他們是交易員、交易團隊、當地合夥人等)，從而尋求減少基金所得 (以及非居民投資者) 在義大利的被注視和稅收。
- 允許發起人管理公司 (和 PE) 在義大利開展業務 (對管理公司的營業所得定期徵稅)，並允許基金 (以及投資者) 保持居住國/所在地的稅制。

義大利經濟和財政部將通過法令實施該規定。

資誠觀點

國外投資基金應考慮 IME 如何影響其營運。他們應該分析自己在義大利稅務方面的立場，並考慮新豁免的好處。此外，他們還應考慮在所謂的“回遣”制度下個人可能取得的義大利租稅優惠。



Italy

Italy introduces permanent establishment investment management exemption

The 2023 Budget Bill, expected to be enacted before year-end, introduces in the Italian Income Tax Act (IITA) an investment management exemption (IME). The IME is a safe harbor aimed at providing certainty that foreign investment funds (and controlled entities) will not trigger a permanent establishment (PE) due to activities in Italy of a fund's (senior) asset managers.

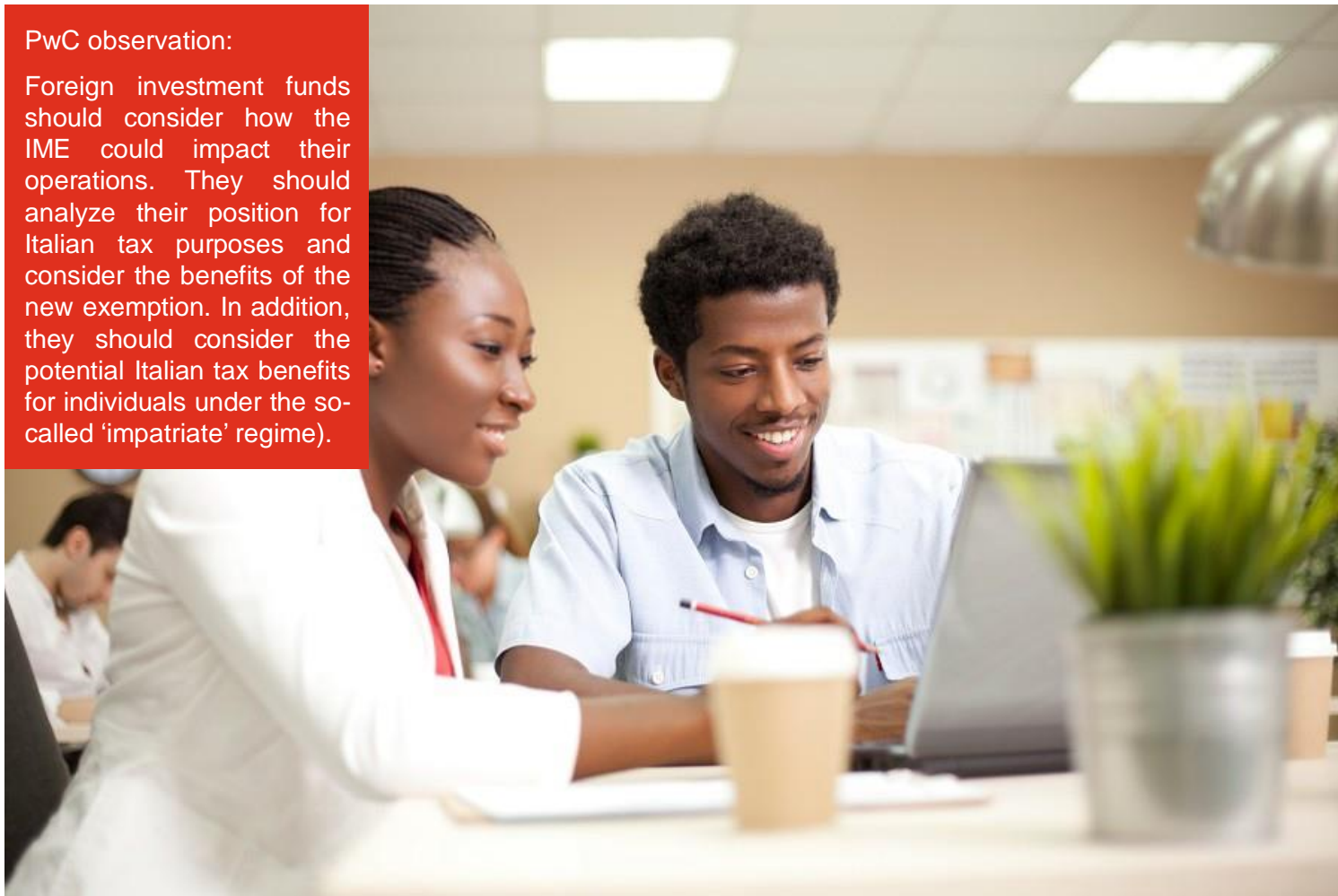
Features of the IME in the Budget Bill include:

- A 'safe harbor' from PE issues aimed at encouraging the transfer of fund managers to Italy.
- Reduced risk connected to the presence of fund managers in Italy (whether they are traders, deal teams, local partners, etc.), thereby seeking to reduce the attraction and taxation of fund income (and therefore of nonresident investors) in Italy.
- Allowing the operations of sponsor management companies (and PEs) in Italy (with regular taxation of the business income of management companies), and allowing the fund (and therefore the investors) to maintain the tax regime of the country of residence/location.

The Italian Ministry of Economy and Finance will implement the regulation through a decree. For more information, please see our [Tax Insight](#).

PwC observation:

Foreign investment funds should consider how the IME could impact their operations. They should analyze their position for Italian tax purposes and consider the benefits of the new exemption. In addition, they should consider the potential Italian tax benefits for individuals under the so-called 'impatriate' regime).



奈及利亞

奈及利亞創業法 - 為國家第四次改革定位

奈及利亞創業法案於 2022 年 10 月 19 日簽署成為法律，並立即生效。該法案旨在通過提供投資抵免等租稅優惠、由奈及利亞主權投資局 (Nigerian Sovereign Investment Authority，基金經理) 管理的 100 億奈拉的創業投資種子基金、簡化新創公司註冊程序的門戶網站以及其他商業獎勵措施，為新創公司提供有利環境，使其蓬勃發展。

對於有資格獲得獎勵措施的新創公司，該法案概述了新創公司需要滿足的條件：

- 根據《公司及相關事務法》(Companies and Allied Matters Act) 註冊為有限責任公司，並且自成立之日起存續時間不超過 10 年；
- 目標是數位技術創新產品或流程的創新、開發、生產、改進和商業化；
- 數位技術產品或流程的持有者或儲存庫 (repository)，或者註冊軟體的所有者或作者；
- 由一名或多名奈及利亞人作為新創公司的創始人或聯合創始人持有至少三分之一的當地股權。

對於註冊為獨資企業和合夥企業的企業，將頒發為期六個月的預先印備證書，在此期間，他們將變更為有限責任公司。

資誠觀點

該法案的核心目標是將奈及利亞的創業生態系統定位為非洲領先的數位技術中心，擁有世界一流的創新者、尖端技能和可出口的能力。聯邦政府還提供了一個架構，可以利用高等教育機構、研究組織和 (本地和國際) 技術合作夥伴加速這些與數位技術接壤的措施。預計這將有助於解決當今行業中存在的人才發展差距。

Nigeria

Nigeria Startup Act- Positioning the country for the fourth revolution

The Nigeria Startup Bill was signed into law on October 19, 2022, and took effect immediately. The Act seeks to provide the enabling environment for budding companies to thrive, through the provision of tax incentives such as an investment tax credit, a startup investment seed fund of N10billion to be managed by the Nigerian Sovereign Investment Authority (The Fund Manager), a startup portal to ease the process of registering as a startup and other business incentives.

For a startup to be eligible to access the incentives, the Act outlines certain conditions to be met in order to be labelled as a startup:

- It is registered as a limited liability company under the Companies and Allied Matters Act, and has been in existence for a period not more than 10 years from the date of incorporation ;
- Its objects are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process ;
- It is a holder or repository of a product or process of digital technology, or the owner or author of a registered software ;
- It has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup.

For businesses registered as sole proprietorships and partnerships, a pre-label certificate would be issued with a duration of six months during which they would change their corporate status to a limited liability company.

PwC observation:

A core objective of the Act is to position Nigeria's startup ecosystem as the leading digital technology centre in Africa with world class innovators, cutting edge skills and exportable capacity. The Federal Government also provided the framework where such initiatives that border on digital technology can be accelerated, leveraging tertiary education institutions, research organisations and technical partners (locally and internationally). This is expected to help address the talent development gap existing today in the industry.

西班牙

對銀行和能源部門徵稅的擬議立法草案

西班牙政府於 2022 年 7 月 28 日提出立法草案，提議對主要銀行的利息和佣金的淨所得徵收 4.8% 的稅，並對大型能源公司的所得徵收 1.2% 的稅。如果取得批准，這些新稅種將適用於 2023-2024 年。

歐洲中央銀行 (ECB) 警告說，西班牙提議對銀行利潤徵收特別稅可能對該國的金融穩定以及借款人的信貸供應構成風險。ECB 在 2022 年 11 月 2 日發布的不具約束力的意見中表示，對信貸機構徵稅可能會對實體經濟增長產生負面影響，並在一定程度上加劇不確定性，以至於徵收新稅可能會使貸款人對經濟衝擊的抵禦能力下降，最終發放更少的貸款或以更不利的條件提供信貸。ECB 已要求西班牙對擬議租稅可能產生的負面影響進行詳盡分析，詳細說明對金融機構盈利能力以及市場競爭條件的影響。

與此同時，西班牙政府對立法草案提出了一個修正案，旨在將受 ECB 直接監管的外國貸款人的國內單位納入擬議的租稅範圍。2022 年 11 月 10 日提出的立法草案修正案指出，銀行利潤稅將不僅適用於利息和佣金所得超過 8 億歐元的信貸機構和金融機構，也適用於 2023 年 1 月 1 日受 ECB 直接監管的實體，以及受 ECB 直接監管的外國信貸機構在西班牙境內設立的分支機構。

關於對能源公司的徵稅，該立法草案與歐盟提出的配置不同，因為其是對能源公司的銷售徵稅，而不是對其剩餘利潤徵稅。

資誠觀點

擬議的稅種是否符合歐盟法規提出的暫時性團結捐 (temporary solidarity contribution) 還有待觀察。



Spain

Proposed draft legislation to tax banking and energy sectors

The Spanish Government proposed draft legislation on 28 July 2022 that proposes imposition of a 4.8% tax on the net income from interest and commissions of the main banks, as well as a 1.2% tax on the income of large energy companies. If approved, these new taxes would apply to years 2023-2024.

The European Central Bank (ECB) has warned that Spain's proposed extraordinary tax on bank profits could pose a risk to the country's financial stability, as well as to the availability of credit for borrowers. In its non-binding opinion dated November 2, 2022, the ECB stated that the use of the tax on credit institutions could negatively affect real economic growth and foster uncertainty to the extent that the imposition of the new tax may generate lenders less resilient to economic shocks, eventually issuing fewer loans or granting credit on less favorable terms. The ECB has asked Spain for an exhaustive analysis of the possible negative consequences that could derive from the proposed tax, detailing the impact on the profitability of financial institutions, as well as on the conditions of competition in the market.

In parallel, the Spanish Government introduced an amendment to the draft legislation aiming to include in the scope of the proposed tax the domestic units of foreign lenders supervised directly by the ECB. The amendment to the draft legislation, proposed November 10, 2022, states that the tax on bank profits will apply not only on credit institutions and financial establishments with income from interest and commission greater than EUR 800 million, but also to entities directly supervised by the ECB as of January 1, 2023, as well as the branches established in the Spanish territory of foreign credit institutions subject to the ECB's direct supervision.

Regarding the tax on energy companies, the draft legislation has a different configuration from the one proposed by the European Union, as it taxes the sales of energy companies and not their surplus profits.

PwC observation:

It remains to be seen whether the proposed tax complies with the temporary solidarity contribution proposed by the EU Regulation.



香港

擬議對家族投資控股工具的利得稅的寬減

《2022 年稅務 (修訂) (家族投資控股工具的稅務寬減) 條例草案》(the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022，以下簡稱為條例草案) 於2022 年 12 月 9 日刊憲。條例草案為符合資格的單一家族辦公室在香港管理的符合資格家族投資控股工具 (FIHV) 提供利得稅寬減，FIHV 從符合資格的交易和附帶交易 (後者受限於5% 門檻限制) 賺取的應課稅所得將按 0% 的利得稅稅率課稅。租稅寬減於 2022 年 4 月 1 日開始的課稅年度追溯生效。

資誠觀點

FIHV 的利得稅寬減應有助於吸引更多家族辦公室在香港設立和經營業務。這將進一步豐富香港的資產和財富管理生態系統。



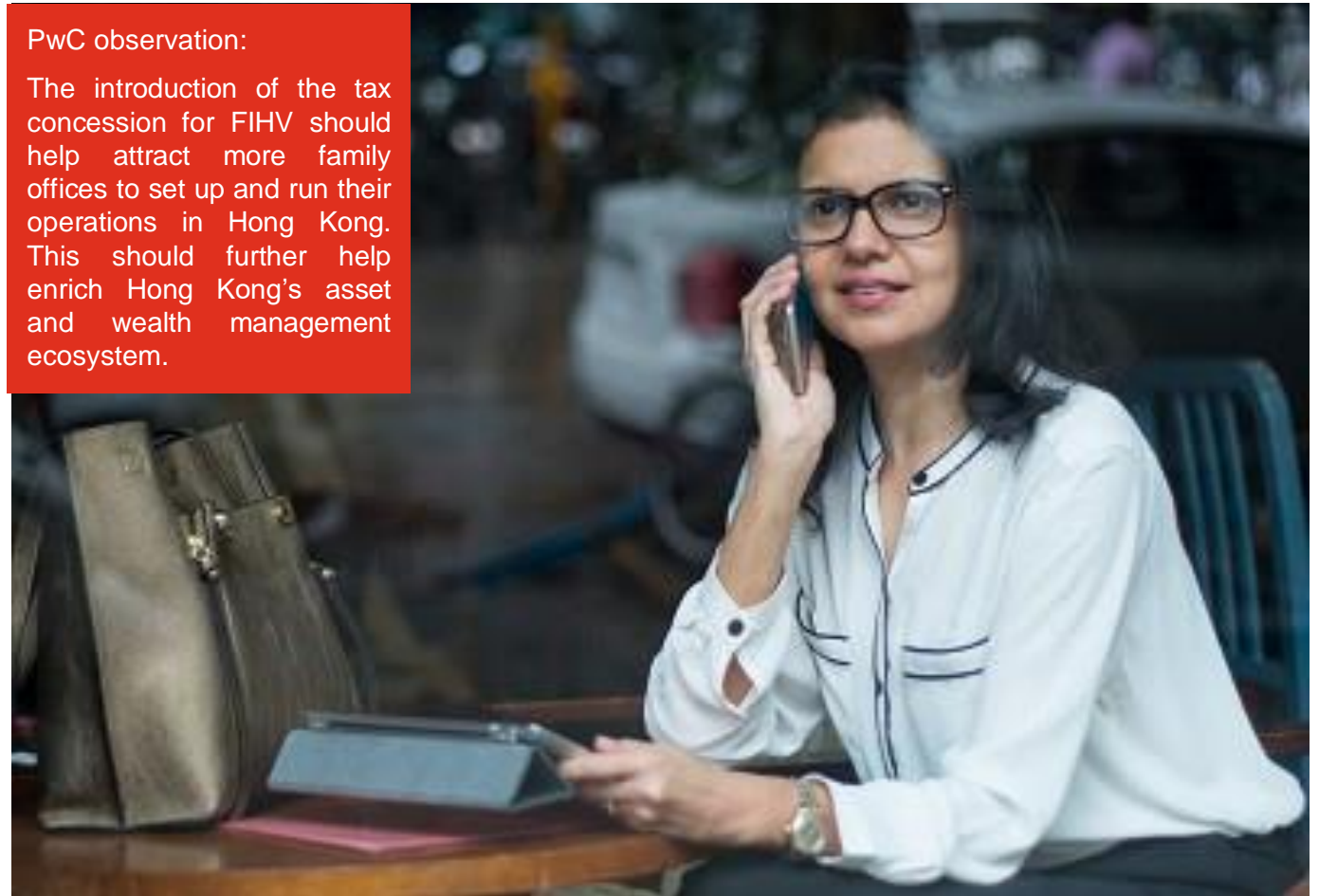
Hong Kong

Proposed profits tax concession for family- owned investment holding vehicles

The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 was gazetted on 9 December 2022. The Bill provides a profits tax concession for an eligible family-owned investment holding vehicle (FIHV) managed by an eligible single family office in Hong Kong, such that the FIHV's assessable profits earned from qualifying transactions and incidental transactions (the latter being subject to a 5% threshold) would be subject to a 0% profits tax rate. The tax concession will have retroactive effect from the year of assessment commencing on 1 April 2022. For more information see our [PwC Insight](#).

PwC observation:

The introduction of the tax concession for FIHV should help attract more family offices to set up and run their operations in Hong Kong. This should further help enrich Hong Kong's asset and wealth management ecosystem.



香港

完善後的離岸所得豁免徵稅(FSIE)機制

《2022 年稅務 (修訂) (指名外地收入徵稅) 條例》(the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022)於 2022 年 12 月 14 日刊憲，對香港四類離岸所得豁免徵稅機制進行了修正：利息、股利、權益證券轉讓所得和智慧產權所得 (統稱為“特定境外所得”)。

根據完善後的FSIE機制，除非滿足豁免規定，否則2023年 1 月 1 日或之後在香港從事貿易、專業或業務的跨國企業在香港賺取的“特定境外所得”將被視為來源於香港並徵收利得稅。

資誠觀點

雖然完善後的 FSIE 制度對香港的稅制帶來了前所未有的重大變化，但與其他管轄區的制度相比，香港完善後的 FSIE 制度仍具有競爭力。

目前在香港的跨國企業和在香港探索商機的實體應在完善後的 FSIE 制度於 2023 年 1 月 1 日生效之前做好準備。



Hong Kong

Refined foreign-sourced income exemption regime

The Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 was gazetted on 14 December 2022, introducing refinements to Hong Kong's foreign-sourced income exemption (FSIE) regime for four types of offshore income: interest, dividends, disposal gains from the sale of equity interests, and income from intellectual property (collectively, 'specified foreign-sourced income').

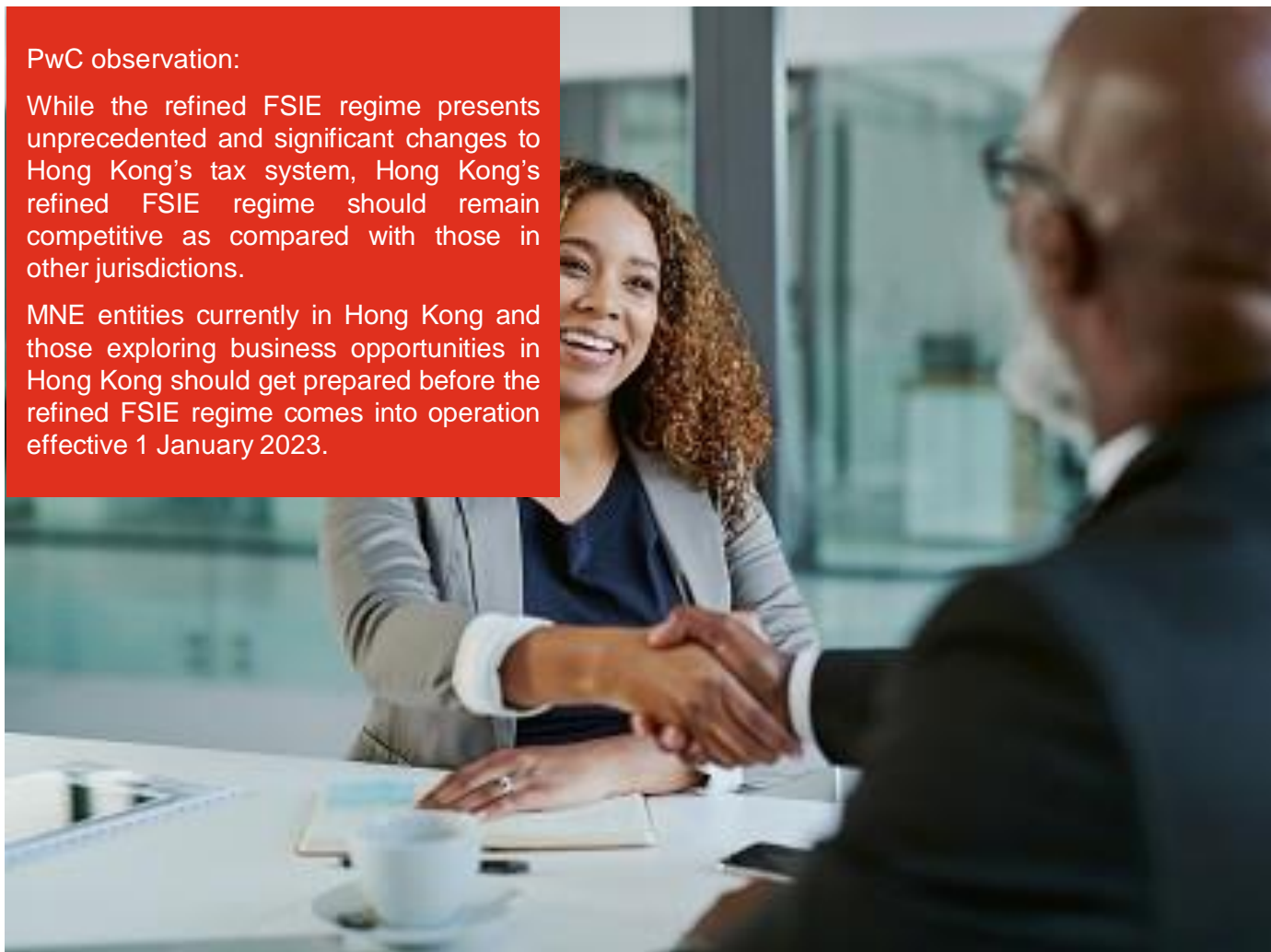
Under the refined FSIE regime, the specified foreign-sourced income accrued to and received in Hong Kong by a MNE entity carrying on a trade, profession, or business in Hong Kong on or after 1 January 2023 will be deemed to be sourced from Hong Kong and chargeable to profits tax, unless certain exemptions are met.

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

PwC observation:

While the refined FSIE regime presents unprecedented and significant changes to Hong Kong's tax system, Hong Kong's refined FSIE regime should remain competitive as compared with those in other jurisdictions.

MNE entities currently in Hong Kong and those exploring business opportunities in Hong Kong should get prepared before the refined FSIE regime comes into operation effective 1 January 2023.



西班牙

西班牙推進影視產業租稅獎勵制度改革

西班牙眾議院 (即西班牙下議院) 於 11 月 24 日批准了修正企業所得稅法 (CIT) 中包含的對電影製作、視聽系列、現場表演藝術和音樂節目投資的租稅優惠的法案。擬議的修正包括：

- 參與資助製作西班牙長篇電影、短片、視聽小說、動畫或紀錄片系列，或現場表演藝術和節目的納稅人可以使用 CIT 中製作人的獎勵措施，如果資助款項不僅用於支付製作成本，而且還包括製作人支付的獲得出版、廣告或促銷的費用，最高限額為製作成本的 30%。
- 投資者可申請的租稅抵減的金額應按照與製作人申請相同的條款規定。
- 投資者可申請的最高租稅抵減金額是投資者用於製作成本或製作人支付的為獲得出版、廣告和促銷費用的金額乘以 1.2。

- 投資者可以將增加的 50% 的租稅獎勵限額應用於應納稅額總額，前提是與融資提供者有關的租稅抵減金額等於或超過其應納稅額總額減去國際雙重課稅扣抵和優惠的 25%。

資誠觀點

如果簽署成為法律，修正案將適用於 2021 年 1 月 1 日或之後開始的課稅年度。



Spain

Spain advances reform to the tax incentive system for the audio-visual industry

The Spanish Congress of Deputies (i.e., Spain's lower house), on November 24, approved the Bill to amend the tax incentives for investments in film productions, audio-visual series, live performing arts, and music shows, included in the Corporate Income Tax (CIT) Act. The proposed amendments include:

- Taxpayers who participate in financing the production of Spanish feature-length films, short-films, audio-visual fiction, animation or documentary series, or live performing arts and shows may apply the incentives generated by the producer envisaged in the CIT Act, when the amounts contributed not only finance productions costs, but also expenses for obtaining copies, advertising, or promotion payable by the producer up to the limit of 30% of production costs.
- The amount of the tax credits that the investor may apply should be determined on the same terms as the producer would have applied.
- The maximum tax credit which the investor may apply is the result of multiplying the amount contributed by the investor to finance production costs or expenses for obtaining copies, advertising, and promotion payable by the producer by 1.2.

- The investor may apply the increased tax incentive limit of 50% to gross tax payable provided that the tax credit amount pertaining to the finance provider equals 25% or more of its gross tax payable less international double tax deductions and tax relief.

PwC observation:

If signed into law the amendments would apply to tax years beginning on or after January 1, 2021.



西班牙

西班牙發布了西班牙稅務集團制度可能進行的臨時改革草案

西班牙發布了與先前宣布的西班牙稅務合併制度 (tax consolidation regime) 臨時租稅改革有關的第一份立法草案。在這份草案中，對確定合併稅務集團 (consolidated tax groups) 稅基的制度進行了若干修正。

提案包括以下修正：

- 於 2023 年開始的課稅期間獨家申請 (exclusive application)。
- 對現行制度的修改將適用於所有西班牙稅務集團，而不會根據其規模確定任何排除。
- 在現行制度下，集團的稅基由個體稅基的總和確定。然而，擬議的草案規定，這一數額將是指個體正稅基 (positive taxable bases) 和個體負稅基 (negative tax base) 的 50%。

- 對於連續的課稅期間，根據上述規定未被納入稅務集團稅基的個體負稅基的金額將被視為該稅務集團的負稅基。

資誠觀點

跨國公司必須重新審視在西班牙的架構和投資，因為該草案的修正可能會對業務營運產生重大影響。



Spain

Spain releases draft of potential temporary reform to Spanish tax group regime

Spain released the first draft of legislation relating to the previously announced temporary tax reform of the Spanish tax consolidation regime. In this draft, certain modifications are established in the system for determining the tax base for consolidated tax groups.

The proposals includes the following changes:

- Exclusive application for tax periods beginning in 2023.
- The modifications to the current regimen would apply to all Spanish tax groups, without establishing any exclusion based on their size.
- Under the current regime, the tax base of the group is determined from the aggregation of the individual tax bases. However, the proposed text establishes that this amount will refer to the individual positive taxable bases and to 50% of the individual negative taxable bases.

- For successive tax periods, the amount of the individual negative tax bases not included in the tax base of the tax group by application of the previously mentioned provision will be considered a negative tax base of the tax group.

PwC observation:

Multinationals must revisit their structures and investments in Spain as the amendments included in this draft could significantly impact their business operations.



要聞

Administrative
行政

澳大利亞 公司稅務透明度報告

澳大利亞稅務局 (ATO) 發布了 2020-21 所得年度的公司稅務透明度報告，其中包含以下企業的名稱、澳大利亞商業編號 (Australian Business Number, ABN)、總所得、應稅所得和應納稅額：

- 所得在 1 億澳元或以上的澳大利亞上市公司和外資公司
- 所得為 2 億澳元或以上的澳大利亞居民私人公司。還包含 2020-21 所得年度有石油資源租賃稅 (petroleum resource rent tax, PRRT) 應付金額的實體的名稱、ABN 和應納稅額。

據報導，儘管發生了 COVID-19 大流行，但澳大利亞的大型企業納稅人總體表現良好，共繳納了 686 億澳元的所得稅，比上一年的所得稅增加了 19.8%。大宗商品價格上漲是企業納稅額增加的主要驅動力。請注意，對於澳大利亞居民私人公司，報告門檻從 2022/23 所得年度開始 (將在 2024 年及以後報告) 降至 1 億澳元。

資誠觀點

ATO 持續關注跨國公司，並在最近幾個月立法擴大公司年度稅務透明度報告中所報告的公司數量。



Australia

Corporate tax transparency report

The Australian Taxation Office (ATO) has released its corporate tax transparency report for the 2020–21 income year which contains the name, Australian Business Number (ABN), total income, taxable income, and tax payable for:

- Australian public and foreign-owned companies with income of AUD 100 million or more
- Australian-owned resident private companies with income of AUD 200 million or more. It also contains the name, ABN and tax payable for entities that had a petroleum resource rent tax (PRRT) payable amount for the 2020–21 income year.

It was reported that despite the COVID-19 pandemic, Australia's large corporate taxpayers generally performed well and paid a combined AUD 68.6 billion in income tax – representing a 19.8% increase on the income tax from the prior year. Higher commodity prices were the key driver of the increase in corporate tax payments. Note that for Australian-owned resident private companies, the reporting threshold decreases to AUD 100 million effective with the 2022/23 income year (which will be reported in 2024 and onwards).

PwC observation:

The ATO has a continued focus on multinationals and has, in recent months, legislated to expand the number of companies reported upon in the annual corporate tax transparency report.



要聞

Judicial
司法

法國

確認租稅協定中受益所有權的新立場

最高行政法院於 2021 年 2 月 5 日處理了一家英國公司代表英國和國外作者收取權利金的受益所有權人的資格問題。法院認為，這種資格不僅取決於正式授予公司的權力，還取決於權利金在實踐中是如何分配的。

根據這一裁決，凡爾賽上訴法院 (the Versailles Court of Appeal) 裁定，基於案件事實，這家英國公司不符合受益所有權人的資格。因此，法院確認了法國稅務機關對支付給非英國作者的權利金在法國免徵扣繳稅的質疑。

對於支付給非英國居民的權利金，法國與其居住國之間簽署的租稅協定可以免除法國的扣繳稅，前提是有資格成為付款的受益所有權的人。在本案中，這種資格並沒有得到證明。

資誠觀點

該裁決強調需要根據法律上和事實上的要素，仔細證明受益所有權人的資格，以便享受法國的扣繳稅的豁免。



France

Confirmation of the new position regarding beneficial ownership in tax treaties

The Administrative Supreme Court, on February, 5, 2021, addressed the qualification of beneficial owner regarding a British company collecting royalties on behalf of British and foreign authors. The Court held that this qualification not only depends on the powers formally granted to a company, but also on how the royalties are allocated in practice.

Following this decision, the Versailles Court of Appeal ruled that the British company does not qualify as beneficial owner based on the facts of the case. It therefore confirmed the position of the French tax authorities challenging the exemption of withholding tax in France for royalties paid to non-British authors.

For royalties paid to these non-British residents, a tax treaty signed between France and their State of residence may grant an exemption from withholding tax in France provided these persons qualify as beneficial owners of the payment. Such a qualification was not demonstrated in the case at hand.

PwC observation:

This decision highlights the need to carefully demonstrate, based on de jure and de facto elements, the qualification of beneficial owner to benefit from the withholding tax exemption in France.



波蘭

由關係企業提供的支援服務觸發波蘭常設機構 (PE)

波蘭稅務機關拒絕將銷售支援活動視為輔助活動，因此認為此類活動在波蘭構成常設機構，從而對納稅人不利。波蘭稅務機關越來越願意參考OECD注釋 (Commentaries) 的修正版和OECD所得與資本的租稅協定範本 (OECD Model Tax Convention on Income and Capital)，採用動態方法來解釋協定範本變更前締結的租稅協定。

省行政法院和最高行政法院在最近的一個案件中得出了相同的結論，即代理人根據代理協議開展的活動構成了 2003 年簽署的波蘭和德國租稅協定所指的波蘭常設機構。華沙省行政法院指出，“無論是舊版還是現行版協定，都有關於非獨立代理人 and 獨立代理人的規定”。

基於對更新後的 OECD注釋 (Commentaries) 的分析，一審法院和二審法院均得出結論，不能假定代理人提供的服務具有準備性或輔助性，因為代理人的營銷活動旨在實現與納稅人核心業務相同的目標。

資誠觀點

上述一、二審法院的不利判決以及對近年來發布的稅務裁定的分析，表明在波蘭子公司為外國企業提供各種支援服務的情況下，波蘭PE的風險正在增加。

波蘭不斷增加的 PE 風險可能導致有將部分國外利潤分配到波蘭的義務，並結清未繳納的所得稅 (以及欠稅情況下逾期付款的利息)。在這種情況下，需要在波蘭履行一些遵循的義務。

在有義務為租稅目的註冊的常設機構並繳納企業所得稅的情況下，未揭露常設機構也可能導致外國實體的非居民財務/稅務負責人 (例如，管理委員會成員、首席會計師) 受到財政處罰。

Poland

Polish PE triggered by support services provided by a related company

The Polish tax authorities present an unfavorable position for taxpayers by refusing to recognize sales support activities as ancillary activities, thus recognizing that such activities constitute a permanent establishment (PE) in Poland. The Polish tax authorities are increasingly willing to refer to the amended version of the OECD Commentary and the OECD Model Tax Convention on Income and Capital, by applying the dynamic approach to the interpretation of tax treaties concluded before the introduction of the changes in the Model Convention.

The same conclusion was reached by both the Provincial Administrative Court and the Supreme Administrative Court in a recent case where the activity conducted by the agent under the agency agreement constituted a PE in Poland within the meaning of the Poland and Germany tax treaty signed in 2003. The Provincial Administrative Court in Warsaw pointed out that "both in the previous and in the current version of the Convention, there are provisions concerning the dependent and independent agent".

Based on the analysis of the updated OECD Commentary, both the court of first and second instance concluded that the services provided by the agent could not be assumed to be preparatory or auxiliary nature, because the agent's marketing activities are aimed at achieving identical goals with the core business of the taxpayer. For more information see our Tax Insight.

PwC observation:

The above unfavorable verdict of the court of first and second instance, as well as the analysis of tax rulings issued in recent years, indicate that the risk of a PE in Poland is growing in situations where Polish subsidiaries provide various support services to foreign enterprises.

The growing PE risk in Poland may result in an obligation to allocate part of the foreign profits into Poland and settle outstanding CIT (along with late payment interest in case of tax arrears). In such situation, a number of compliance obligations need to be fulfilled in Poland.

Lack of PE disclosure where there is an obligation to register PE for tax purposes and settle the corporate income tax may also result in fiscal penal sanctions against the persons responsible for the non-resident financial / tax matters of foreign entities (e.g., Management Board members, the chief accountant).

要聞

OECD/EU

經合組織 / 歐盟

歐盟

歐盟成員國最終批准支柱二的指令

12 月 15 日，歐盟理事會以書面程序正式通過了歐盟的最低稅負制。書面程序以一致同意的結果結束，儘管匈牙利在最後的投票中投了棄權票，瑞典對指令的特定條款發表了書面意見。該指令將在歐盟官方公報上發布的第二天生效。成員國應在 2023 年 12 月 31 日之前將指令轉化為國內法。所有成員國都對所附的理事會聲明投了贊成票。直到昨天的歐盟理事會會議，對於是否能達成一致同意的猜測已持續了一周，此前波蘭保留了對支柱二的支持。

歐盟理事會會議上通過的整體計劃包括歐盟最低稅負制指令、為烏克蘭提供資金、理事會關於保護歐盟預算免受匈牙利違反法治行為的決定（法治條件機制，rule of law conditionality mechanism）以及批准委員會對匈牙利恢復和復甦計劃的評估的進一步理事會決定。

資誠觀點

通過承諾發放歐盟復甦基金來確保匈牙利對該指令的支持是長期協商中的重大進展。一旦書面程序獲得批准，歐盟的國家將成為第一批實施支柱二最低稅負制的國家。這無疑會鼓勵其他國家採納和實施這些規則。



European Union

EU Member States give final approval to proposed Pillar Two Directive

On 15 December, the EU Council formally adopted the EU minimum tax Directive by written procedure. The written procedure ended with this unanimous agreement, notwithstanding the fact that Hungary abstained from the final vote, and Sweden made a written observation on a specific provision of the Directive. The Directive will enter into force on the day following its publication in the Official Journal of the European Union.

Member States shall transpose the Directive into their domestic law by 31 December 2023. All Member States voted in favour of the accompanying Council Statement. This outcome follows a week of speculation on the deal after Poland reserved its support until yesterday's EU Council meeting.

The overall package passed at the EU Council meeting includes the EU minimum tax Directive, funding for Ukraine, a Council decision for the protection of the Union budget against breaches of the rule of law in Hungary (rule of law conditionality mechanism) and a further Council decision which approves the Commission's assessment of Hungary's recovery and resilience plan.

For more information see our [PwC Tax Policy Alert](#).

PwC observation:

The deal to secure Hungary's support for the Directive through promising the release of EU recovery funds is a significant development in this long-running saga. Once the written procedure is secured, the European Union will be the first block of countries that have adopted the Pillar Two minimum taxation rules. This undoubtedly will encourage other countries to adopt and implement the rules.



歐盟

歐盟委員會發布加密貨幣和其他修正後的稅務報告提案 (DAC8)

歐洲議會向歐盟委員會提出的關於公平和簡單稅務策略的建議包括將更多類別的所得和資產，例如加密資產，納入自動資訊交換的範圍。歐盟委員會對稅務行政合作指令 (Directive on Administrative Cooperation, DAC) 發布的第七次可能的更新，即DAC8，旨在解決自動資訊交換範圍發現的某些缺陷，包括對嚴重違規行為設定最低水平的經濟處罰。

- 修正案將解決歐盟稅務管理部門缺乏電子貨幣 (e-money)、數位貨幣(digital currencies)、高淨值個人跨境租稅裁定和某些加密資產資訊的問題。

- 加密資產和電子貨幣的內容主要遵循 10 月份發布的OECD加密資產申報框架 (CARF) 的示範規則 (model rule)，同時對共同申報準則 (CRS) 進行了修正，詳見我們 2022 年 10 月 11 日的快訊。
- 委員會認為這些資訊將創造公平的競爭環境，並為歐盟成員國增加 24億 歐元的額外稅收；實施成本估計為 3 億歐元，每年的經常性成本為 2500 萬歐元。
- 除了少數例外情況，這些變更將於 2026 年 1 月 1 日生效。

資誠觀點

出於租稅目的，無論集團的總部位於歐盟還是其他地方，歐盟實體越來越多地受到額外的申報義務的約束。如果一個集團利用在一個成員國能在任何 DAC 制度下申報歐盟範圍內的資訊，而不是在成員國間申報特定的資訊，集團不妨審視因資訊錯誤或未能及時提供資訊而面臨的任何處罰的變化。如果DAC8得到歐盟理事會成員國一致同意，集團還可能需要分析其集團內可能有應歐盟要求需額外申報的與加密資產或電子貨幣相關的任何實體。

European Union

European Commission publishes crypto and other revised reporting proposals for tax (DAC8)

The European Parliament's recommendations to the EU Commission on a fair and simple taxation strategy included additional categories of income and assets, such as crypto assets, to include in the scope of automatic exchange of information. The seventh potential update published by the European Commission to the EU's Directive on Administrative Cooperation on Tax (DAC), which would make this DAC8, is to address certain deficiencies that have been identified in the scope of the automatic exchange of information, including to set minimum levels of financial penalties with respect to serious non-compliance.

- Amendments would address the lack of information at the level of EU tax administrations about e-money, digital currencies, cross-border tax rulings for high net worth individuals, and certain crypto assets.

- The crypto asset and e-money element largely follows the model rules of the OECD's Crypto-Asset Reporting Framework (CARF) which was published in October, along with amendments to the Common Reporting Standard (CRS), as set out in our Alert of 11 October 2022.
- The Commission believes this information will level the playing field and raise additional tax revenues of €2.4B by the EU Member States; implementation costs are estimated at €300M with annual recurring costs of €25M.
- With a few exceptions these changes would apply effective 1 January 2026.

For more information see our [Tax Policy Alert](#).

PwC observation:

EU entities are increasingly becoming subject to additional reporting obligations for tax purposes, whether they are headquartered in the European Union or elsewhere. Where a group makes use of the ability to report EU-wide information under any of the DAC regimes in one Member State rather than specific information in a number of Member States, it may wish to review any change in the penalties it faces for getting that information wrong or failing to provide it on time. Groups may also want to analyse any entities in their group that may have additional EU reporting requirements related to crypto-assets or e-money were DAC8 to be agreed unanimously by Member States in the Council of the European Union.

歐盟

歐洲理事會正式通過外國補貼規則

在歐洲議會於 11 月 10 日批准後，理事會於 11 月 28 日正式通過了外國補貼規則 (Foreign Subsidy Regulation, FSR)，在某些情況下，該規則扭曲了內部市場。

FSR 可能於 2022 年 12 月生效，並將於 2023 年中期開始實施。FSR 是歐盟委員會的最新工具，旨在確保內部市場公平競爭和執行更廣泛的歐盟 2020 年產業政策。

資誠觀點

FSR 將增加希望以投資方式或以其他方式進入歐盟內部市場的歐盟以外企業的監管負擔。請注意，在非歐盟國家開展業務並取得外國財政補助的歐盟企業也在 FSR 的範圍內。此外，FSR 可能導致加強對併購的審查，並延長公開招標過程，這只是一些潛在影響的例子。因此，重要的是要評估 FSR 是否對您產生影響，並考慮採取哪些進一步的行動。



European Union

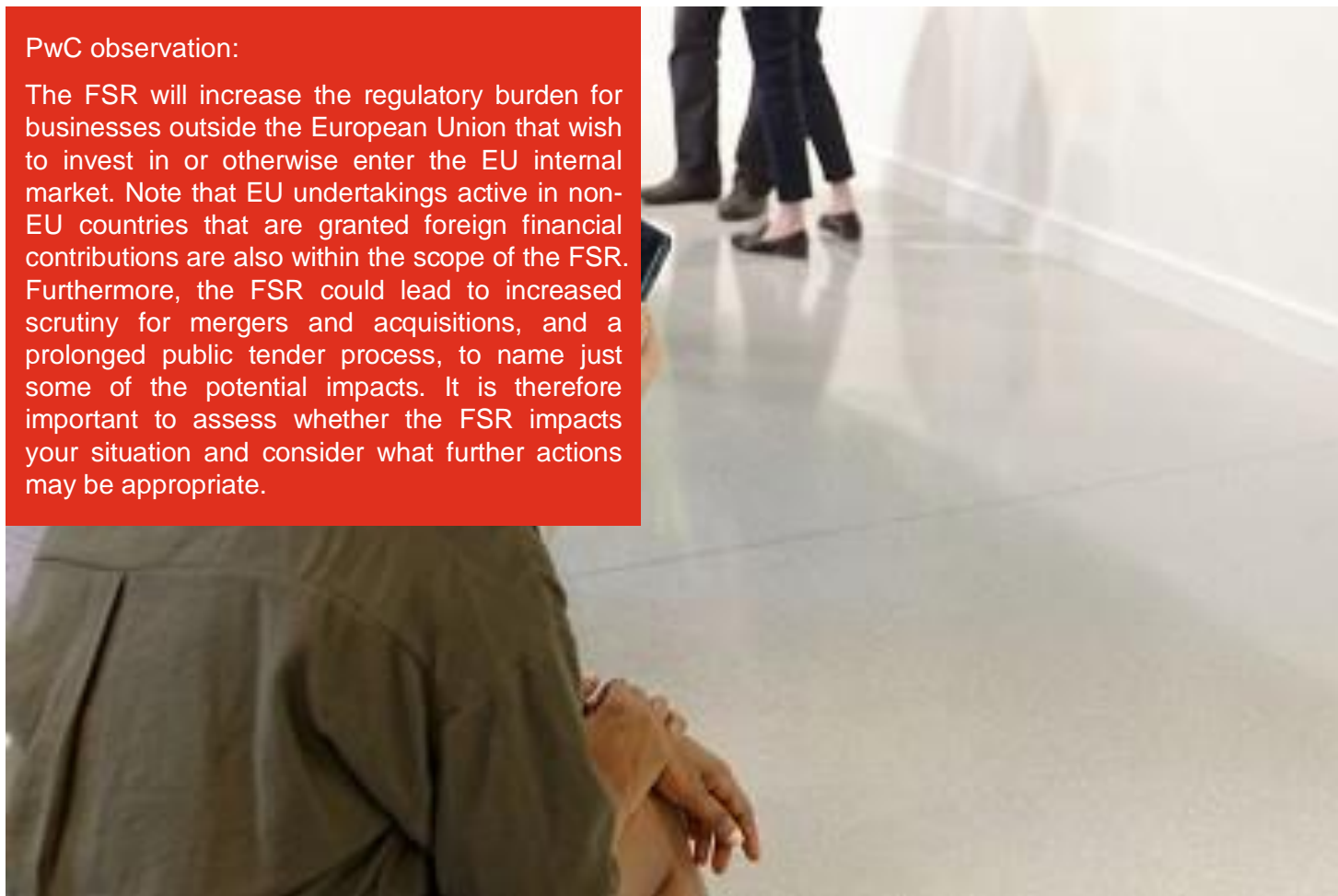
European Council formally adopted the Foreign Subsidy Regulation

After the European Parliament's approval on 10 November, the Council formally adopted, on 28 November, the regulation on foreign subsidies ('FSR') that, in certain cases, are distorting the internal market.

The FSR is likely to enter into force in December 2022 and will apply as of mid 2023. The FSR is the latest instrument by which the European Commission aims to ensure a level playing field in the internal market and to execute its broader EU 2020 industrial policy. For more information see our [Tax Policy Alert](#).

PwC observation:

The FSR will increase the regulatory burden for businesses outside the European Union that wish to invest in or otherwise enter the EU internal market. Note that EU undertakings active in non-EU countries that are granted foreign financial contributions are also within the scope of the FSR. Furthermore, the FSR could lead to increased scrutiny for mergers and acquisitions, and a prolonged public tender process, to name just some of the potential impacts. It is therefore important to assess whether the FSR impacts your situation and consider what further actions may be appropriate.



西班牙

西班牙通過多邊公約 (MLI) 更新協定

與印尼的協定

西班牙財政和公共行政部於 11 月 10 日公布了OECD MLI 下的印尼-西班牙租稅協定綜合文本。這份新文本介紹了經 MLI 修改的租稅協定以及印尼於 2020 年 4 月 28 日和西班牙於 2021 年 9 月 28 日提交的相關立場。

2020 年 8 月 1 日和 2022 年 1 月 1 日，印尼和西班牙分別向OECD交存了一份通知，確認已完成一些額外涵蓋租稅協定的內部程序，包括西班牙-印尼租稅協定。基於以上所述，印尼-西班牙租稅協定的MLI條款將按以下方式生效：

- 對於支付給或應支付給非居民的款項的扣繳稅，當產生這些稅款的事件發生在 2023 年 1 月 1 日或之後。
- 對於征收的所有其他稅種，西班牙是 2023 年 6 月 10 日或之後開始的納稅期，印尼是 2024 年 1 月 1 日或之後開始的納稅期。

與香港、塞內加爾和泰國的協定

根據MLI第 35(7)(b) 條，西班牙於 11 月 30 日向OECD交存了一份通知，確認完成了內部程序，以實施OECD MLI關於其與香港、塞內加爾和泰國的雙重徵稅協定的規定。

資誠觀點

自 2022 年 6 月 1 日起，88 個租稅協定中有 50個被列入西班牙的保留和通知中，西班牙已為此交存了確認完成內部程序的通知，並確認MLI 第六部分（仲裁）對19個租稅協定生效。

Spain

Spain updates treaties through MLI

Treaty with Indonesia

The Spanish Ministry of Finance and Public Administration, on November 10, published the Indonesia-Spain tax treaty synthesized text under the OECD MLI. This new text presents the tax treaty with modifications made by the MLI and the relevant positions submitted on April 28, 2020 by Indonesia and on September 28, 2021, by Spain.

On August 1, 2020 and January 1, 2022, Indonesia and Spain respectively deposited a notification with the OECD through which they confirmed the completion of its internal procedures for some additional covered tax agreements, including the Spain-Indonesia tax treaty. Based on the above, the provisions of the MLI for the Indonesia-Spain tax treaty will come into effect in the following manner:

- For taxes withheld at source on amounts paid or credited to non-residents, when the event giving rise to those taxes occurs on or after January 1, 2023.
- For all other taxes levied, for tax periods beginning on or after June 10, 2023 in the case of Spain and for tax periods beginning on or after January 1, 2024, in the case of Indonesia.

Treaties with Hong Kong, Senegal, and Thailand

In accordance with MLI article 35(7)(b), Spain submitted a notification to the OECD on November 30 confirming the completion of its internal procedures for the entry into effect of the provisions of the OECD MLI regarding its Double Tax Treaties with Hong Kong, Senegal and Thailand.

PwC observation:

Since June 1, 2022, 50 of the 88 covered tax agreements are listed in Spain's reservation and notifications for which Spain deposited the notification confirming completion of its internal procedures and for the entry into effect of Part VI (Arbitration) of the MLI for 19 of its covered tax agreements.

要聞

Treaties
租稅協定

墨西哥

ATAD 3- 墨西哥稅務考量

近年來，由於全球經濟和稅務環境不斷變化，全球稅務機關被提供不同支援的替代方案，在這些考量中，包含濫用租稅協定和濫用不當租稅行為等。這些替代方案包括多邊公約 (MLI) 和反避稅指令 (ATAD)。

根據上述目標，並考慮到歐盟稅務機關認為經濟實質活動極小的實體被用於不當的租稅目的，歐盟委員會在 2021 年發布了 ATAD 3 指令，該指令提供了一系列條件來識別那些低經濟實質的公司。一般而言，除非這類低經濟實質的公司能夠提供證明，否則當地歐盟稅務機關正在探索不向上述空殼實體簽發稅務居民證的可能性以及其他考慮或後果。

從墨西哥稅務的角度來看，申請享受租稅協定優惠應滿足的關鍵要求之一是在這種情況下的歐洲實體 (在這種情況下) 提供由相應歐盟稅務機關在適用租稅協定優惠的同一財政年度簽發的稅務居民證。因此，如果根據 ATAD 3 規定，歐盟實體由於缺乏實質而無法取得這種稅務居民證，則與墨西哥簽訂的協定所提供的優惠將不再適用。

根據歐洲議會經濟和貨幣事務委員會 (ECON) 發布的上一份報告，為確定歐盟實體的實質而要遵循的標準有了相關放寬，並將 ATAD 3 的實施時間推遲到 2025 年 1 月，但是有兩年的“回顧”期。

資誠觀點

與歐盟實體進行交易的墨西哥實體應了解 ATAD 3 潛在的變化和適用，以便從租稅角度 (以及扣繳稅角度) 評估其架構，特別是因為“回顧”的要求在實際操作中意味著一旦生效和適用，才開始分析這些後果可能已經太晚了。換句話說，雖然將從 2025 年開始適用，但從 2023 年開始就應該滿足相應的要求。

Mexico

ATAD 3- Mexican tax considerations

In recent years and as result of the changing global economic and tax environment, tax authorities around the globe are being provided with different alternatives to help combat, among other considerations, tax treaty abuse and abusive improper tax practices. These alternatives include the Multilateral Instrument (MLI) and the Anti-Tax Avoidance Directive (ATAD).

In line with the above objective and considering that EU tax authorities consider that entities with minimal substance and economic activity are used for improper tax purposes, the European Commission issued during 2021 the ATAD 3 directive, which provides a series of conditions to identify those companies with low economic substance. In general terms, unless such entities with low substance companies justify their position, the local EU tax authorities are exploring the possibility of not issuing tax residence certificates to said shell entities, among other considerations or consequences.

From a Mexican tax perspective, one of the key requirements that should be met in order to apply tax treaty benefits is that the European entity (in this case) provides a tax residency certificate issued by the corresponding EU tax authority in the same fiscal year in which the treaty benefits would be applied. Consequently, if under the ATAD 3 provisions, the EU recipient cannot secure such tax residency certificate due to its lack of substance, the benefits provided by the treaties entered with Mexico will no longer apply.

As result of the last report released by the European Parliament Committee on Economic and Monetary Affairs (ECON), there are relevant relaxations for the criteria to be followed in order to determine the substance of a EU entity as well as a deferral of the implementation of ATAD 3 to January 2025, but with a two-year 'look-back' period.

PwC observation:

Mexican entities having transactions with EU entities should be aware of potential changes and adoption of ATAD 3 in order to assess their structures from a tax perspective (among others, from a withholding tax perspective), particularly since the 'look-back' requirement would in practice mean that it could be already too late to start analyzing these consequences once in force and applicable. In other words, although it would apply effective 2025, the requirements should have been satisfied beginning in 2023.

澳大利亞 擴大澳大利亞租稅協定網絡的諮詢

財政部正在徵求對政府提議的擴大澳大利亞租稅協定網絡的意見。這包括與保加利亞 (Bulgaria)、哥倫比亞 (Colombia)、克羅埃西亞 (Croatia)、賽普勒斯 (Cyprus)、愛沙尼亞 (Estonia)、拉脫維亞 (Latvia) 和立陶宛 (Lithuania) 的談判計劃。就澳大利亞在談判這些租稅協定時應尋求的主要成果以及與澳大利亞租稅協定網絡相關的任何其他問題的徵詢意見應在 2022 年 12 月 23 日之前提交。這些國家是對當前協定談判計劃的補充，其中包括葡萄牙 (Portugal)、斯洛維尼亞 (Slovenia)、希臘 (Greece) 和盧森堡 (Luxembourg)。

資誠觀點

澳大利亞租稅協定網絡的擴大應促進澳大利亞與其協定夥伴轄區 (尤其是歐盟成員國) 之間的跨境貿易和投資。尤其是從事跨境業務的納稅人將從這些措施中受益。



Australia

Consultation to expand the Australian tax treaty network

The Treasury is seeking comments on the government's proposed expansion of the Australian tax treaty network. This includes a plan for negotiations with Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia, and Lithuania. Submissions were sought by 23 December 2022 on the key outcomes Australia should seek in negotiating these tax treaties and any other issues related to Australia's tax treaty network. These countries are in addition to the current treaty negotiation program, which includes Portugal, Slovenia, Greece, and Luxembourg.

PwC observation:

The expansion of Australia's tax treaty network should facilitate cross-border trade and investment between Australia and its treaty partner jurisdictions (particularly EU Member States). Taxpayers with cross-border operations, in particular, will benefit from these measures.



墨西哥

根據多邊公約 (MLI) 墨西哥批准的主要目的測試 (Principal Purpose Test, PPT)和一般反避稅條款 (General Anti-Avoidance Rule, GAAR)考量因素

稅基侵蝕和利潤移轉 (BEPS) 多邊公約 (MLI) 第 7 條一般規定，儘管有涵蓋租稅協定 (Covered Tax Agreement, CTA)的任何規定，但如果考量任何安排或交易的所有相關事實和狀況後，可以合理地得出結論，主要目的之一是取得直接或間接租稅優惠，則不得給予相關所得或資本利得上的租稅優惠。

墨西哥一般反避稅條款 (General Anti-Avoidance Rule, GAAR) 允許稅務機關在納稅人取得的租稅優惠 (理解為減少、消滅或推遲繳納稅捐) 大於合理預期的經濟利益時，對不符合商業目的的交易重新定性。當納稅人的交易意圖是產生收入、降低成本、增加資產價值、改善市場定位等時，就存在合理預期的經濟利益。此外，如果通過較少的步驟就可以取得相同的經濟利益，但稅收會更高，那麼墨西哥稅務機關可認為缺乏商業理由。

不通過 PPT 的後果是不適用協定優惠。不通過墨西哥 GAAR 將導致交易重新定性，即在以下情況下，已經給予的稅收優惠可能會被修改：
(i) 經濟利益低於租稅優惠；以及
(ii) 經濟利益本可以通過更少的法律行為來實現，並且租稅負擔會更重。

資誠觀點

考慮到目前在 MLI PPT 和墨西哥 GAAR 這兩個概念上，幾乎沒有先例、明確或擴展的定義，在墨西哥開展業務的跨國公司應開始從租稅角度開始評估其已經/或支持其交易的商業要件，以避免根據 MLI PPT不適用協定的優惠和基於墨西哥 GAAR 對交易重新定性。

Mexico

PPT and Mexican GAAR considerations in light of the MLI Mexico approval

Article 7 of the Base Erosion and Profit Shifting (BEPS) Multilateral Instrument (MLI) generally states that, notwithstanding any provisions of a Covered Tax Agreement (CTA), a benefit under the CTA shall not be granted in respect of an item of income or capital if it is reasonable to conclude, considering all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes (Principal Purpose Test, or PPT) of any arrangement or transaction that resulted directly or indirectly in that benefit.

The Mexican General Anti-avoidance Rule (GAAR) allows tax authorities to recharacterize transactions that do not serve a business purpose when taxpayers obtain a tax benefit (understood as a reduction, elimination, or deferral of a contribution) greater than the reasonably expected economic benefit. A reasonably expected economic benefit exists when a taxpayer's transactions intend to generate income, reduce costs, increase the value of assets, improve market positioning, etc. Moreover, if with a lesser number of steps the same economic benefit could be achieved, but the taxation would have been higher, then the Mexican tax authorities could argue there is a lack of business reasons.

The consequence of not passing the PPT would be the non-application of treaty benefits. Not passing the Mexican GAAR would result in transactions' recharacterization, i.e., the tax effects already given may be modified, when (i) the economic benefit is inferior to the tax benefit; and (ii) the economic benefit could have been achieved with fewer legal acts and their tax effects would have been more burdensome.

PwC observation:

Considering that currently there are few precedents and clear or extended definitions on both concepts, the MLI PPT and the Mexican GAAR, multinationals doing business in Mexico should start evaluating the business elements that already (and would) support their transactions, from a tax perspective, to avoid the non applicability of treaty benefits pursuant to the MLI's PPT and transactions' recharacterization based on the Mexican GAAR.

西班牙 西班牙租稅協定談判

與巴拉圭的協定

巴拉圭政府於 11 月 7 日發表聲明，通知在西班牙最近一輪談判之後，兩國代表簽署了一份租稅協定。談判自 2013 年開始，隨後陷入癱瘓，但於 2022 年 4 月恢復。巴拉圭和西班牙之間的第一份協定預計將促進兩國的商業和投資。

與科威特的協定

根據科威特財政部公布的資訊，科威特和西班牙的代表於 11 月 15 日在馬德里舉行會議，討論修改兩國簽署的租稅協定議定書草案。該議定書將是對 2008 年 5 月 16 日簽署的，並自 2013 年 7 月 19 日起生效的租稅協定的首次修正。

資誠觀點

在西班牙開展業務或有西班牙控股公司的跨國企業應審查擬議協定如何影響其在西班牙的投資。



Spain

Spanish tax treaty negotiations

Treaty with Paraguay

The Paraguayan Government issued a statement on 7 November, informing that, following a recent round of negotiations in Spain, representatives of both jurisdictions have signed a tax treaty. These negotiations, open since 2013, were subsequently paralyzed and but resumed in April 2022. This first agreement between Paraguay and Spain is expected to promote business and investment in both countries.

Treaty with Kuwait

Representatives of Kuwait and Spain met in Madrid on November 15, to discuss a draft protocol to amend the tax treaty signed between both countries, according to the information published by the Kuwaiti Ministry of Finance. The possible protocol would be the first amendment to the tax treaty, which was signed on May 16, 2008 and which has been in force since July 19, 2013.

PwC observation:

Multinational enterprises with either operations in Spain or with Spanish holding companies should review how the proposed treaties may affect their investments in Spain.



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

Acronym	Definition
ETR	effective tax rate
EU	European Union
MNE	multinational enterprise
NID	notional interest deduction
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	research & development
SBT	Same business test
SiBE	Similar business test
VAT	value added tax
WHT	withholding tax



歡迎掃描QRcode 成為資誠會員

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資誠稅務一點通系列影片已上線

資誠每月定期提供兩岸及國際租稅相關訊息另外也有定期更新的全球防疫稅務影片，請您持續關注最新資訊並請與我們諮詢相關業務。

- 兩岸與國際租稅Update (兩岸與國際租稅Update (大陸資金匯出))：<https://youtu.be/jQw5btL4q-c>
- 台灣稅務與投資法規Update-12月號 (租稅優惠:資安產品或服務投資抵減申請要件及程序說明、台版晶片法案草案)：<https://youtu.be/NX3B4oNkWdE>
- 2022 資誠前瞻研訓院線上講堂 (8月)：

公司治理3.0 - 企業社會責任近期發展：國際ESG發展 x 綠化財務報表 x 台灣淨零轉型 x ESG資訊揭露<https://youtu.be/PAyt-UXHILc>

2022台灣併購趨勢及發展<https://youtu.be/4EBb35DZmS4>

再生能源產業趨勢介紹<https://youtu.be/khPYhZAwWI4>

上市櫃公司資安規範實務：資通安全管控指引 x 公司治理評鑑指標 x 關鍵資安觀念<https://youtu.be/HG5z43wnR0k>

台灣稅務法令更新及因應<https://youtu.be/CLPY-EINzvw>

中國大陸稅務法令更新及因應<https://youtu.be/oefjp5LfRUo>

國際稅務法令更新暨集團移轉訂價之因應https://youtu.be/_cgkOB2nCfQ

美國稅務法令更新及因應：台商營運成本增加 x 前進墨西哥建立生產基地<https://youtu.be/fnf0LmY2DaU>

東南亞稅務法令更新及因應：越南 x 泰國 x 印度<https://youtu.be/OjbJAjr8yk>

會計審計法令更新：財報實審常見缺失 x 上市櫃公司公告申報財務資訊規範<https://youtu.be/rIonLbnNDR8>

公司及證管法令更新：董事會召集事由 - 重要討論事項 x 視訊股東會實務作業 x 企業併購法<https://youtu.be/Wtq41-0QQrw>

智財法令更新：CPTPP智慧三法 x 國家核心關鍵技術 x 營業秘密保護常見問題<https://youtu.be/FnhaNyK4LNw>

勞動法令更新及因應：健保投保級距調整 x 外籍中階技術人力在台工作 x 監督管理人員適用勞基法規定<https://youtu.be/2gSC990pszM>

中華產業國際租稅學會 敬邀加入會員

本會為依法設立、非以營利為目的的社會團體，以建構產業稅務專業人士的交流平台，研究產業稅務問題，促進公平合理課稅為宗旨。在台灣稅務界，本會成已為稅務專業的意見領袖，產、官、學界的主要諮詢機構。

本會除例行會員集會，相互交換國際稅務新知與經驗交流外，每月提供會員最新國際、國內及大陸之稅務新規，每年舉辦國際與兩岸租稅專題研討會，邀請兩岸稅務機關首長及稅務官員蒞會演講、座談及研討，與業界會員雙向溝通，共同分享最新租稅相關議題。

歡迎兩岸財稅法學者、專家及在工商界服務的稅務專業精英加入本會會員，入會相關事宜可到學會網站（連結如下）。

<http://www.industries-tax.org.tw/SitePages/Intro.aspx>



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