國際租稅要聞

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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

OECD/G20防止稅基侵蝕及利潤移轉 (BEPS) 包容性架構 (以下簡稱 “包容性架構”) 於2023年7月17日發布與支柱一和支柱二相關之四份重要文件，及於7月17日至18日會議中向G20財金首長和央行行長提交一份進度報告。該份報告係於前一週包容性架構全體大會中發布「成果聲明」後公開。成果聲明提出了實施支柱一金額A (Amount A) 和金額B (Amount B)，及支柱二應予課稅規定 (以下簡稱 “STTR”) 之情況和時程表的最新資訊。(更多資訊請參閱PwC Tax Policy Alert)。

上述文件包含：

- OECD秘書長向G20財金首長和央行行長提交之稅務報告書 (OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors)；
- 支柱一金額B之徵求意見稿；
- 支柱二之STTR；
- 支柱二之全球反稅基侵蝕規則 (以下簡稱 “GloBE”) 資訊申報表；和
- 支柱二之行政指引 (包含(1)永久性避風港規定，其適用於引入合格國內最低稅負制 (以下簡稱 “QDMTT”) 之租稅管轄區，以及(2)新過渡性避風港規定，其適用2025年底前之會計年度導入徵稅不足之支出規定 (以下簡稱 “UTPR”) 之租稅管轄區。)

本期租稅要聞主要係提供上述文件之簡短摘要，針對詳細之分析及觀察要點將於後續發布之租稅要聞中提供。

要點

依據目前發布之內容，仍須以實際狀況和商業模式進行全面性影響分析評估。初步檢視發布內容，我們可以看出在各項諮詢中所發現之議題已得到解決，例如行政負擔繁重或與現有系統不相容等問題。然而，支柱一和支柱二仍存在許多未知情況，唯有透過納稅義務人與OECD持續進行協調才得以解決。考量其中許多規定正在或即將實施，納稅義務人應著手準備新規則之內容，並對所發布文件之影響進行模擬評估。

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詳細內容

以下將先針對支柱一金額B之發展進行說明，再者為值得留意的支柱二發展，最後將介紹OECD秘書長之稅務報告。

支柱一金額B

OECD發布有關支柱一金額B之最新徵求意見稿 (以下簡稱“意見稿”)，該意見稿嘗試簡化特定基本批發行銷和配銷活動之移轉訂價。OECD亦發布一份簡短概要—「金額B概要」，以協助利害關係人了解金額B。意見稿之截止日期為2023年9月1日。

意見稿概述了金額B的主要設計元素，並確定進一步的執行方向，包含：

- 確定在辨認基本配銷活動時定量和定性指標間的適當平衡；
- 決定訂價框架及其應用的適當性；和
- 採用特定租稅管轄區之當地資料庫應用金額B之條件。

該意見稿強調以定性和定量門檻為條件的兩個替代備選方案 (方案A和方案B)。方案A無須單獨之定性條件以辨別和排除非基本配銷活動，而方案B則需要特定之定性條件進行判斷。各國似乎在上述兩個替代備選方案中所有分歧。

正如同2023年7月成果聲明所述，包容性架構計畫於2024年1月通過金額B之最終報告，並將重要內容納入OECD移轉訂價指南。另還需注意，因包容性架構尚未就這些提案達成共識，意見稿所提之提案將由OECD秘書處負責。因此，它們的基本設計可能有所改變，而不受諮詢過程影響。

支柱二行政指引

繼2023年2月發布之第一套行政指引後，包容性架構發布第二套關於支柱二GloBE之行政指引。

第二套行政指引包含計算GloBE時的貨幣轉換規則、稅收抵免、以及具有實質基礎的相關所得排除額 (以下簡稱 “SBIE”) 之應用指引。另在稅收抵免方面應特別注意，OECD不斷嘗試解決可移轉稅收抵免的可信度議題 (其承認降低通膨法案 (the Inflation Reduction Act) 的稅收抵免將加劇此議題)。雖然規則複雜 (包括適用性方面)，

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但如同先前稅收股權合夥企業的解決方案，至少稅收抵免所支付之金額 (相對於銷貨折扣) 是完全可信。行政指引亦包含對合格當地最低稅負制 (以下簡稱 “QDMTT”) 的設計提供進一步指引及兩個新避風港規定：

- 為引入QDMTT之司法管轄區提供永久性避風港規定，OECD聲稱這將使跨國企業和稅務機關更容易遵守及管理，然某些租稅管轄區之避風港規則於運作中亦存在一定的複雜性。

- 過渡性避風港規定，其適用2025年底前之會計年度導入徵稅不足之支出規定 (以下簡稱 “UTPR”) 之租稅管轄區，明顯係指UPE租稅管轄區為美國之情況。

這項行政指引包含更詳細之釋例內容，將納入將於今年稍晚發布之立法範本 (Commentary) 修訂版 (預計取代2022年3月發布之原始版本)。

GloBE資訊申報

GloBE資訊申報表 (以下簡稱 “GIR”) 之更新版本亦已發布。GIR係跨國企業集團向稅務機關提交詳細資訊的方式，以便對跨國企業集團及其組成實體執行適當的風險評估，並評估該集團補充稅 (Top-up Tax，若有) 負債之正確性。

GIR回應了初版GIR徵求意見稿中的多處更動，最值得注意的是包含一個過渡性框架，該框架允許2028年12月31日或之前開始之所有會計年度採用以管轄區為單位之簡化申報方式，但不包括2030年6月30日之後結束之會計年度。儘管有許多細節仍尚未確認，但在此過渡期間係允許以各管轄區為基礎進行申報，而非以各組成實體為申報單位。

應予課稅規定 (STTR)

最後，關於支柱二，包容性架構發布了一份報告，其中包含適用STTR之租稅協定條款範本，以及解釋STTR目的和執行之注釋。OECD秘書處亦發布了STTR之摘要 (標題為「應予課稅規定之簡述」) 以協助理解STTR模型之規定內容。

STTR是一基於租稅協定之規則，若收款方須繳納低於9%之名目公司所得稅率 (根據稅基減免後調整，例如免稅和稅收抵免)，則允許來源國對某些集團內部交易增加額外納稅義務。該規則適用於關係人間常見之支付交易，包括利息、權利金和服務費，惟股息除外。其他例外情況包括重大性門檻 (materiality threshold)、加成門檻 (mark-up threshold) 和特定性質之收款者。針對STTR消除雙重課稅之影響，所採取之做法係修改適用之租稅協定，以維持STTR適用前之狀態，代表收款之租稅管轄區既無須因STTR所產生之應付稅款而免除涵蓋收入 (covered income)，亦無須為STTR所產生之應付稅款提供稅收抵免。此外，STTR優先於GloBE規則，且可作為涵蓋稅額扣抵。各國計劃於2023年10月透過多邊租稅協定開始實施。包容性架構成員已承諾因應其他包容性架構成員中的開發國家之要求採用STTR。

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OECD秘書長向G20提交之報告

OECD秘書長向G20財金首長和央行行長提交之稅務報告書中指出，國際稅收改革取得了「重大進展」。該報告對於多項作業流程提出非常正面的更新，包括支柱一和支柱二、間接稅、稅收透明度、稅收政策和氣候行動及其他領域。與支柱一和支柱二有關且值得注意的觀察要點包含：

- **支柱一金額A**：正如2023年7月成果聲明中所說明，目前正努力解決剩餘之問題以盡快準備多邊條約 (以下簡稱 “MLC”) 之簽署，並以2025年生效MLC為目標前進。報告指出，MLC之正式簽署日將由締約租稅管轄區所決定 (應至少包含30個包容性架構成員，且包含至少60%達門檻之跨國企業UPE在內，故需包含美國)。此代表包容性架構於2021年10月聲明中決議之「群聚效應 (critical mass) 」門檻。
- **支柱二GloBE規則**：OECD估計至2025年，達門檻之跨國企業中近90%之企業將在其營運所在地之租稅管轄區內繳納15%有效最低稅負。
- **經濟影響評估**：根據2020年最新數據，支柱二所產生之預估收益已從每年2,200億美元 (OECD於2023年1月發布) 下調至2,000億美元。開發中國家支柱一收益預計將高於已開發國家。

PwC’s Tax Readiness Webcast：OECD兩大支柱解決方案之現況

雖然支柱一存在不確定性 (無論是在時程上或是否能達成「群聚效應」門檻)，但許多國家已開始實施支柱二，並且OECD包容性架構現已在重要領域發布了更多實質性的指引。加入我們的CPE-eligible webcast (“ Tax Readiness: The current state of the OECD's two-pillar solution”) ，了解OECD兩大支柱解決方案之最新更新。

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專論
加拿大關稅估價規則的建議修訂：對進口商的影響

摘要

5 月 27 日《加拿大公報》第一部分公布關稅估價條例 (SOR/86-792) 的修正案 (加拿大公報第一部分，第 157 卷，第 21 期，1686)。這個修正案由加拿大邊境服務局 (CBSA) 發起，將影響加拿大貨物進口商申報完稅價格的方式。建議的修正案首次在聯邦政府2021年預算中公佈，並在2021年6月和7月舉行初步的諮詢。(CBSA，諮詢通知，「對關稅估價條例的潛在監管修訂」(2021年6月4日至7月4日))。

這個修正案解決了一個明顯的監管漏洞，就是CBSA認為非居民進口商因為 (NRIs) 支付比加拿大居民進口商更少的關稅而受益。雖然建議修訂的內容主要針對NRIs，但也可能影響加拿大居民進口商。

這個修正案實施的時間表還沒有確定，但是 CBSA 已經公開確認修正案不會追溯實施。進口商和其他利益關係人可以在 2023 年 6 月 26 日之前，針對建議的監管修正案提出意見。

觀察

建議的修正案將對進口到加拿大的企業產生重大影響。雖然目標是為所有進口商創造一個公平的競爭環境，但是修正案也可能會影響絕大多數進口商品在加拿大轉售的企業。進口商應該預計關稅成本的增加、潛在商業模式重新評估以及額外的行政負擔。進口商應該參與公開諮詢以及分析潛在的影響。

內文

目前的估價

目前，進口到加拿大的貨物完稅價格主要是使用“最後銷售”的方法，也就是交易價格法確定的，並受《海關法》和相關法規的監管。

在現有規則下，一些NRIs可能能夠根據採購成本對進口商品進行估價，而採購成本通常可能低於NRI對加拿大居民客戶以及最終消費者的銷售價格。相比之下，國內進口商必須使用他們的銷售價格。當NRI在將商品出售給加拿大購買者和最終用戶之前將商品出售給加拿大分公司或子公司時，就會產生這種差異。 CBSA 認為這種情況對於 NRI 來說是一種不公平的優勢。

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建議修訂

關稅估價條例的建議修訂案主要在確保，當進口商在將貨物進口到加拿大之前、安排將貨物轉售給加拿大客戶時，貨物的完稅價格以向加拿大客戶和最終消費者的銷售價格為基礎。

修正案將：

- 定義專門用語「為出口到加拿大而銷售」，以及
- 修改“加拿大境內購買者”的定義。

這個修訂將擴大「銷售」一詞的含義，並將進口貨物的完稅價格建立在導致貨物進口到加拿大的「銷售」上。

觀察

修正案主要在通過消除NRI 所享有的「不公平優勢」，為加拿大國內進口商和NRI創造公平的競爭環境。同時，這些變化的影響將進一步擴大。修正案的範圍很廣，可能會導致許多進口商的完稅價格大幅增加，造成關稅成本上升以及進口貨物總整體到岸成本上升。這種情況可能會侵蝕利潤率，也可能提高消費者訂價，並且促使進口商重新評估在加拿大的商業模式。

同時，遵守建議的修正案可能會帶來額外的行政負擔。在複雜的供應鏈中確定相關的出口銷售，尤其是當貨物儲存在加拿大和國外或通過多個通路銷售時，可能會變得很麻煩。發生在加拿大境內而且未導致貨物出口到加拿大的銷售，將不會用來確定進口貨物的完稅價格。

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專論
歐盟執委會 FASTER 指令將統一歐盟的扣繳程序

摘要

歐盟執委會在6月19日發布了更快速及安全的超額扣繳稅款減免指令草案 (以下簡稱FASTER)，藉由提高歐盟扣繳程序對投資者、金融中介機構以及成員國稅務行政的效率及安全性，鼓勵對歐盟單一市場的投資。FASTER是21世紀公司稅通訊以及執委會2020年資本市場聯盟行動計畫的關鍵要素之一。資本市場聯盟是一項為創造單一資本市場的計畫，使投資者無論身處何處都可以受益。FASTER是為了標準化扣繳稅款程序的需求下誕生，預計每年可為投資者省下約51.7億歐元。這個提案更提倡效率及安全性，因此也包括了反避稅條款及金融機構及稅務機關新的義務。提案一旦獲得歐盟會員國的通過，預計在2027年1月1日生效。

主要內容

背景

租稅協定及國內法豁免規定的目的是要減少在所得來源國對投資收入課稅且在居住國也被雙重課稅。申請適用租稅協定課稅的行政流程是漫長、昂貴且繁瑣的。以國際層面來看，OECD租稅協定減免利益與依從度提升計畫 (以下簡稱TRACE) 是為了解決扣繳程序的低效率問題。TRACE實施方案在2013年獲得批准，而芬蘭在2021年是第一個實施這個方案的國家。TRACE提供代表投資者預先扣繳稅款豁免或降低扣繳稅率的架構。這一計畫引用美國符合資格中介機構協議 (QI)。

多數歐盟成員國的扣繳稅減免或退稅程序大多不相同，可能有超過450個不同的表格，其中一些表格僅提供當地法定語言版本。因此，研究指出近70%有資格適用降低扣繳稅率的投資者並未申請減免，30%的投資者因為這一個稅務障礙而出售手上的歐盟投資標的。FASTER致力於透過建立數位居民證以及標準化的就源減免以及快速退稅程序，消除這些資本投資障礙。其中，就源減免程序規範支付股利或利息時應適用適當的扣繳稅率；或者，根據快速退稅程序，溢繳稅款將從付款日起 50 天內退還，歐盟成員國將選擇採用哪種方法。為了減少在新的遵循制度下的潛在濫用，FASTER納入了標準化的整段通報義務程序，以便有效地監控遵循情形。FASTER關鍵提案概述如下：

電子稅務居民證 (eTRC)

通用的歐盟eTRC致力於使扣繳稅減免的程序更快速及高效。舉例來說，eTRC會在提交請求後的一個工作日內自動簽發，並且只需要一張稅務居民證即可在一年 (甚至更長，這是最短期限) 之內進行多次扣繳稅退稅。eTRC與目前紙本程序耗費的時間形成鮮明對比，並可以向第三國開放使用。稅務居民證的數位化預計將使金融中介機構相關的流程得以自動化。

金融中介機構有義務透過通用的驗證方法，檢查eTRC的真實性及內容，同時並根據適用的協定或國內法檢查適用扣繳稅率的正確性。

專論
歐盟執委會 FASTER 指令將統一歐盟的扣繳程序

提高就源減免以及快速退稅程序

如上所述，兩個快速程序將補足現有的標準退稅流程。成員國可以選擇引入其中一個程序或兩者的組合。

- 根據「就源減免」程序，支付股利或利息時適用的稅率將直接按租稅協定中相關的條款適用。
- 根據「快速退稅」程序，一開始付款就要考量支付股息或利息的成員國扣繳稅率，除極少數情況外，任何溢繳稅款將從付款之日起 50 天內退還。

通報義務

FASTER將制訂一個與稅務機關共享稅務訊息的共用通報標準。作為扣繳義務人的金融中介機構將有義務需要註冊，以便直接對投資收入申請豁免或降低扣繳稅率。這些註冊者將協助稅務機關驗證及確認降低稅率的資格並發現潛在的濫用行為。大型歐盟金融中介機構將被要求加入，而非歐盟及較小的歐盟金融中介機構則可以選擇自願加入。

共用規範將明確制定金融中介機構何時會承擔因提供錯誤資料導致成員國稅收損失的責任。這個責任將由最接近投資者的金融中介機構承擔，中介機構同時有責任進行盡職調查。除了某些例外情況，中介機構將對誤報或少報的情況負責。

觀察

FASTER是跨境扣繳稅的一項重要發展，建立了一個通用、標準化、適用於全歐盟範圍的扣繳稅減免程序。雖然距離生效日期2027年還很久，但投資者、金融中介機構和稅務機關應該開始評估稅務營運及風險模型，以便更了解未來的風險及機會。提高歐盟扣繳程序的效率及公平性將有助於跨境投資，進一步建構資本市場聯盟 (CMU)。金融機構應考慮利用自動化及機器學習，為客戶帶來更多好處。由於歐盟反濫用空殼公司 (Unshell) 指令可能會影響稅務居民證的簽發或獲得協定減免，而且歐盟此指令與G20/OECD 包容性框架支柱二的應予課稅原則 (STTR) 一起規範成員國之間交易減免的範圍。所以，新流程如何與STTR的相互作用是值得我們關注的。

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要聞

Legislation
立法

加拿大
加拿大發布全球最低稅負制法令草案以實施支柱二

8月4日，加拿大財政部發布了支柱二法令草案，以公開徵詢意見。作為「全球最低稅負制」發布的支柱二法令，包括計算各稅法管轄區補充稅 (Top-up Tax) 的規則，以及「所得涵蓋原則 (IIR)」和「合格國內最低稅負制 (QDMTT)」的適用。IIR和QDMTT將適用於符合條件的跨國企業集團自2023年12月31日或之後開始的財務年度。雖然草案為「徵稅不足之支出原則 (UTPR)」預留了位置，但沒有發布UTPR法令。UTPR將適用於符合條件的跨國企業集團自2024年12月31日或之後開始的財務年度。

支柱二法令包括一項規定，即對支柱二法令的解釋應與OECD發布的、不時修正的細節法規架構 (Model Rules) 和行政指南 (administrative guidance) 保持一致。另外，該草案還包括永久性QDMTT避風港以及OECD先前發布的過渡性CbCR避風港。最後，該草案還包括一項規定，即加拿大所得稅法第245條中的加拿大一般反避稅規則，應適用於根據支柱二法令確定的金額。對草案的意見應在2023年9月29日前提交。

資誠觀點

支柱二法令草案 (包括永久性和臨時性避風港規則) 總體上與OECD細節法規架構 (Model Rules) 一致。然而，法令草案的架構和起草方式在許多面向與Model Rules不同，因此有必要仔細審查法令草案，以確認加拿大支柱二法令將如何適用於跨國企業。

支柱二法令不包括對所得稅法的修正，涉及支柱二規則與現有涉及受控外國公司的國際稅制 (例如外國應計財產所得、外國應計稅和外國附屬公司盈餘規則) 之間的互相影響。這些修正是必要的，為了確保加拿大現有受控外國公司制度與支柱二法令之間的整合。

支柱二的生效日期即將到來。因此，跨國企業集團應採取行動，分析對集團的潛在影響，以及目前的數據、系統、技術和流程是否能夠支持支柱二法令的要求。

Canada

Canada releases draft Global Minimum Tax Act to implement Pillar Two

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

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

PwC observation:

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

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

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

波蘭
歐盟法院 (CJEU) 認為波蘭稅務條例限制溢繳稅款的利息退還違反了歐盟法

歐盟法院 (CJEU) 在2023年6月8日的判決 (案件編號 C-322/22) 中認為，1997年8月29日法案 (波蘭稅務條例，Polish Tax Ordinance) 第78§5條規定了對溢繳稅款利息退還的限制，違反了歐盟法。

該案件涉及一家美國投資基金 (簡稱「基金」)，該基金在2017年根據歐盟法院於2014年4月10日對C-190/12號案件的判決，申請退還波蘭公司股利的扣繳稅款。該判決指出，波蘭法規與歐盟法規不相容，因為它們歧視來自第三國的資金。本案為第三國的基金在波蘭申請退還扣繳稅款 (WHT) 提供了依據，因為相關的當地法規在這方面並沒有改變，即違反行為尚未被消除。該基金在2018年收到了扣繳稅款的退稅，但並沒有收到溢繳扣繳稅的全部利息。

在一審判決中，波蘭稅務機關拒絕支付溢繳扣繳稅款的任何利息。該判決被上訴到稅務管理局局長 (Director of the Tax Administration Chamber)，稅務管理局局長確認基金有權獲得2012-2013年發生的溢繳扣繳稅的利息，利息計算期限從溢稅款發生之日起至C-190/12號案件判決在歐盟官方公報刊登的第30天。然而，稅務管理局局長拒絕支付2014年溢繳稅款的利息，因為溢繳稅款是在歐盟官方公報 (Official Journal of the EU) 上刊登判決後發生的 (並且相關申請已提交)。

同樣的立場也被位於弗羅茨瓦夫 (Wrocław) 的省行政法院在2019年3月13日的判決 (signature I SA/Wr 1080/18) 中提出。該基金上訴至最高行政法院 (SAC)，SAC提請歐盟法院作出先行判決 (preliminary ruling)。SAC旨在確定，將納稅人溢繳稅款利息的退還限制在CJEU判決在歐盟官方公報上刊登後的30天內 (確認溢繳的申請是在第30天之後提交的情況下)，甚至排除溢繳稅款在第30天之後產生的任何利息，是否符合歐盟法的主要原則 (特別是與忠誠合作和對等原則相結合的效力原則)。

歐盟法院認為，在違反歐盟法下的國內法有關溢繳稅款利息退還的規定，特別是關於時效期限的規定，應與歐盟的效力和忠誠合作原則保持一致。因此，計算利息的期限不應限於歐盟官方公報刊登判決之日起30天。

資誠觀點

芬蘭在支柱二提案的草案中沒有涵蓋7月份的行政指南，可能是因為兩份文件之間的時間間隔很短。至於其他議題，很難知道是否被有意在提案中省略。一些缺失的指南可能會被納入最終的支柱二法令中。

芬蘭憲法要求稅法應包含足夠的細節，以便納稅人計算納稅義務，並且幾乎不留下解釋的空間。這些憲法限制可能會導致基於OECD指南的特定規則的應用存在不確定性，如果這些規則偏離了芬蘭支柱二法令。

Poland

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

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

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

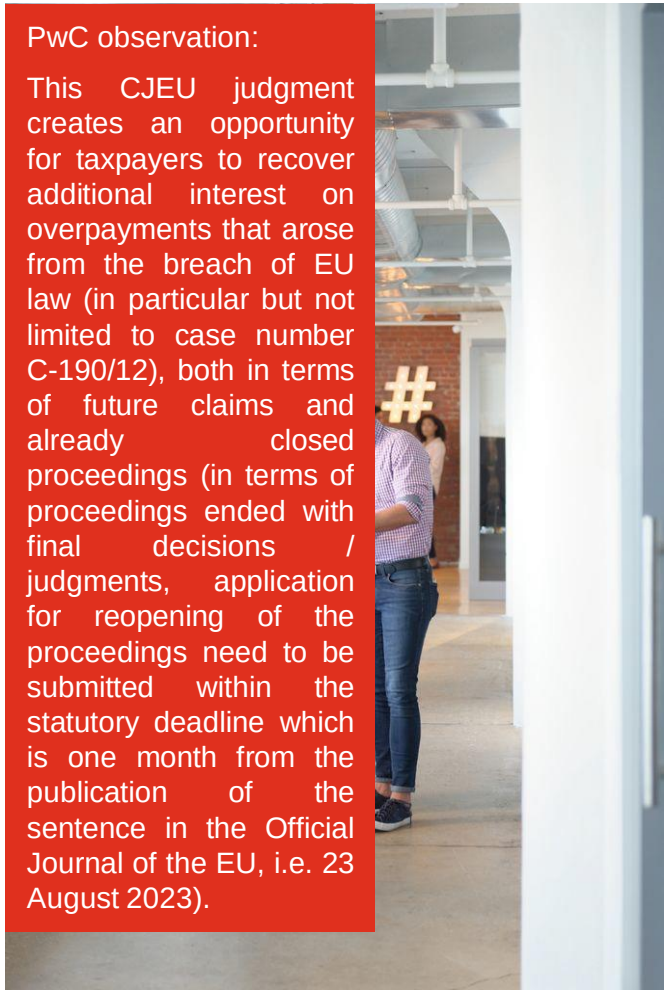
In the decision in the first instance, the Polish tax authority refused to pay any interest on the unduly withheld tax. The decision was appealed to the Director of the Tax Administration Chamber, who confirmed the Fund's entitlement to obtain interest on overpayments incurred in the years 2012-2013,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

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

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

PwC observation:

This CJEU judgment creates an opportunity for taxpayers to recover additional interest on overpayments that arose from the breach of EU law (in particular but not limited to case number C-190/12), both in terms of future claims and already closed proceedings (in terms of proceedings ended with final decisions / judgments, application for reopening of the proceedings need to be submitted within the statutory deadline which is one month from the publication of the sentence in the Official Journal of the EU, i.e. 23 August 2023).



芬蘭
芬蘭推進支柱二

2023年8月15日，芬蘭的支柱二政府提案 (草案) 公開徵詢意見，徵詢期至2023年9月8日。該提案包括實施所得涵蓋原則 (IIR)、徵稅不足之支出原則 (UTPR) 和合格國內最低稅負制 (QDMTT)。IIR和QDMTT將適用於2023年12月31日或之後開始的財務年度，UTPR則適用於2024年12月31日或之後開始的財務年度。該提案不包括有關QDMTT規則的任何細節，這些細節將在另一份單獨的提案中涵蓋。不過該提案指出，QDMTT的計算規則應嚴格遵循IIR和UTPR下的計算規則。

政府提案嚴格遵循歐盟指令和全球最低稅負制 (GloBE) 的細節法規架構(Model Rules)。另外，提案中明確承認了OECD (現有和未來) 指南的核心作用，這是確保在全球範圍內協調實施並避免不同稅法管轄區作出不同解釋的關鍵。然而，該提案僅反映了OECD在2023年2月發布的行政指南(administrative guidance) 的部分內容，而2023年7月發布的行政指南則完全沒有涵蓋。另外，雖然提案納入了過渡性CbCR避風港規則，但沒有包含過渡性處罰減免規則。

資誠觀點

芬蘭在支柱二提案的草案中沒有涵蓋7月份的行政指南，可能是因為兩份文件之間的時間間隔很短。至於其他議題，很難知道是否被有意在提案中省略。一些缺失的指南可能會被納入最終的支柱二法令中。

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Finland
Finland moves forward with Pillar Two

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

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

PwC observation:

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

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

盧森堡
盧森堡發布實施支柱二的法令草案

作為歐盟成員國，盧森堡必須根據2022年12月14日理事會指令 (EU) 2022/2523執行支柱二規則，以確保歐盟內的跨國企業集團和大型國內集團的全球最低稅負水平。盧森堡在2023年8月4日發布了實施全球最低稅負的法令草案。歐盟支柱二指令的實施將通過一項單獨的法令，該法令將在盧森堡實施三項新稅。其中包括所得涵蓋原則 (適用於2023年12月31日或之後開始的財務年度)、徵稅不足之支出原則 (適用於2024年12月31日或之後開始的財務年度) 和合格國內最低稅負制 (適用於2024年12月31日或之後開始的財務年度)。

該法令草案嚴格遵循OECD在2022年12月發布的歐盟支柱二指令和過渡性避風港規則。然而，該法令草案僅反映了OECD在2023年2月發布的部分行政指南，而迄今為止，OECD在2023年7月發布的行政指南尚未涵蓋在該法令草案中，特別是在該指南可能偏離歐盟支柱二指令的地方。

資誠觀點

該法令草案將由盧森堡國務委員會審議，相關行業組織可就該法令草案的內容發表意見。儘管該法令草案可能仍需進行某些修改和澄清，但預計該法令的文本將與歐盟支柱二指令保持接近。

Luxembourg
Luxembourg releases draft law to implement Pillar Two

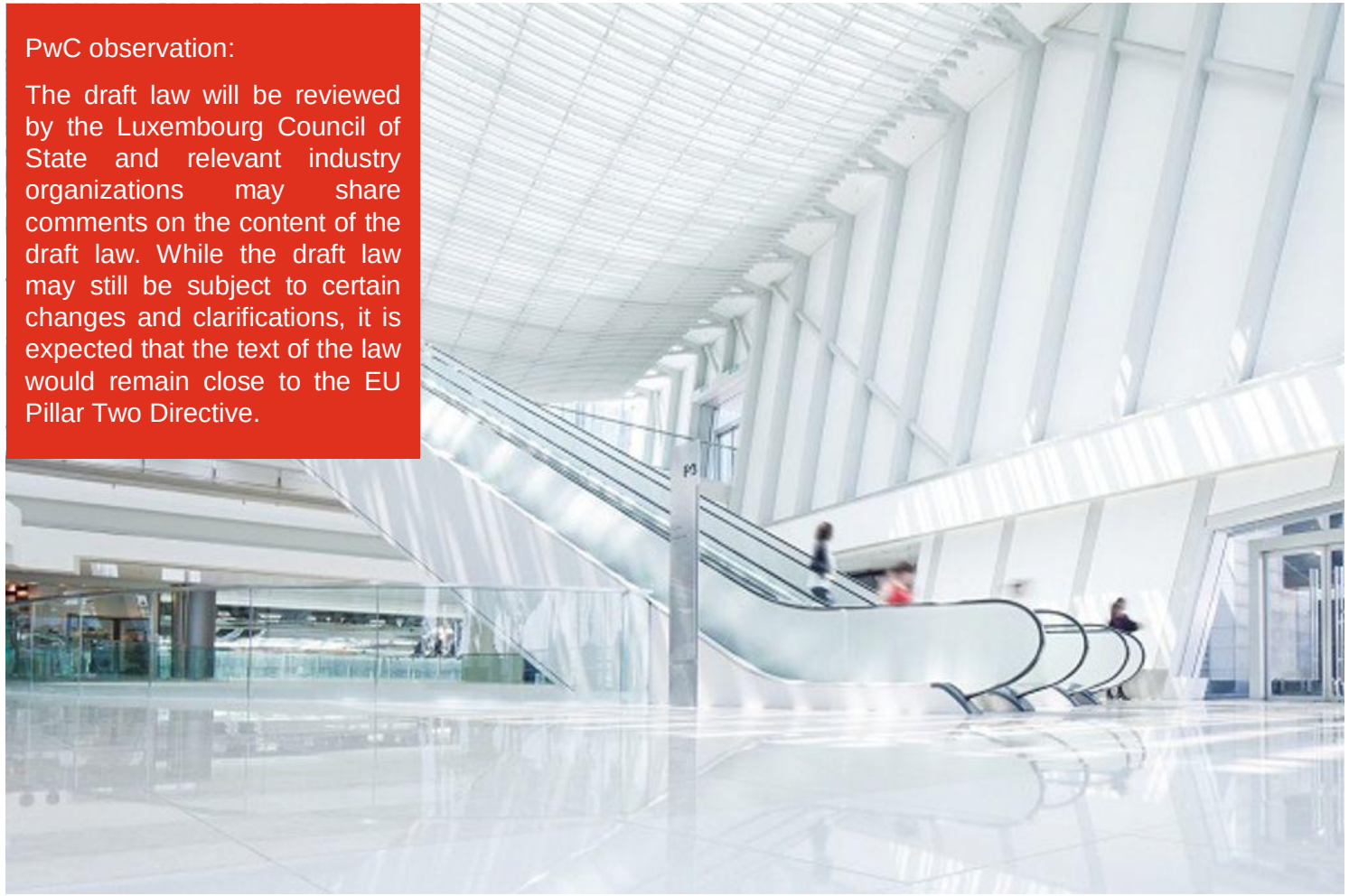
As an EU member, Luxembourg must implement the Pillar Two rules in line with Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. Luxembourg released the draft law to implement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

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

For more information see our PwC Newsalert.

PwC observation:

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



香港

香港擬對指明外地收入豁免徵稅 (FSIE) 機制和境內股權處分收益稅務明確性優化計劃進行細化的最新消息

今年早些時候，香港特區政府針對兩項立法建議進行了公開徵詢意見活動，分別是 (i) 優化指明外地收入豁免徵稅 (FSIE) 機制下的外地資產處分收益；以及 (ii) 引入處分股權權益的本地收益的稅務明確性優化計劃(簡稱「稅務明確性優化計劃」)。

7月下旬，稅務局與相關利害關係人進行溝通，根據徵詢期間收到的意見，擬定上述法案修正方向。FSIE機制擬修正範圍包括 (i) 涵蓋資產的清單； (ii) 確定處分收益的來源地； (iii) 處分收益或損失的計算方法；(iv) 其他豁免措施。另一方面，擬議的稅務明確性優化計劃，優化範圍包括 (i) 符合資格的投資者實體；(ii) 符合資格的所得； (iii) 持有股權期限及持有比例門檻； 以及 (iv) 加強豁免措施。

資誠觀點

政府採納了利害關係人的多項建議，以提高稅務明確性優化計劃的吸引力，並減輕優化的FSIE機制對受涵蓋納稅人的影響。政府現正草擬落實這兩項立法建議的相關條例草案，預計在2023年10月夏季休會後提交立法會。同時，政府將繼續與歐盟就優化FSIE機制進行溝通，以及與利害關係人就這兩項立法建議持續溝通。因此，根據正在進行的討論的反饋，相關立法建議可能會有進一步的變化。

Hong Kong

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

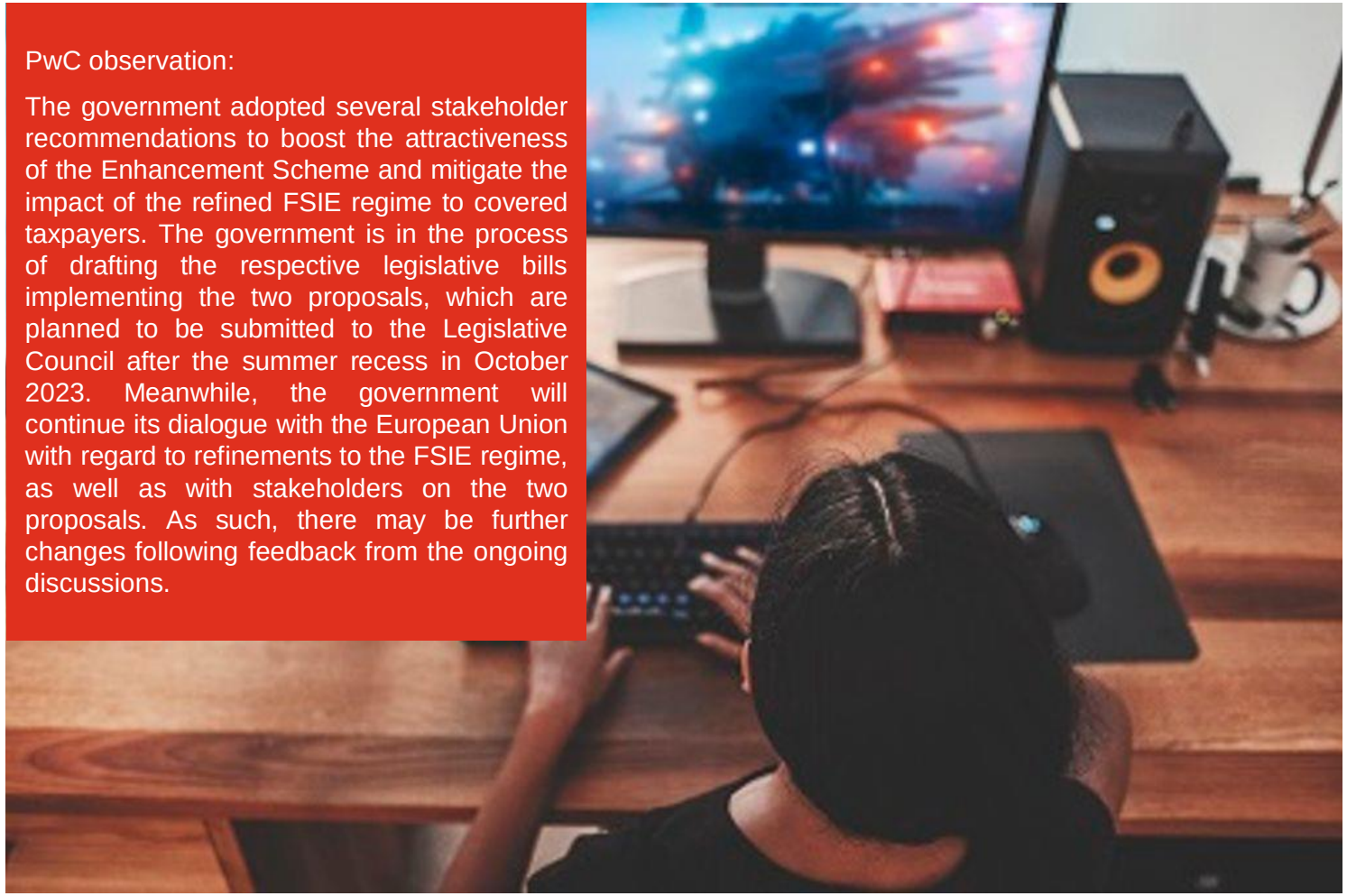
Earlier this year, the Hong Kong SAR Government launched two consultation exercises on legislative proposals to (i) refine the foreign-sourced income exemption (FSIE) regime for foreign-sourced disposal gains; and (ii) introduce a tax certainty enhancement scheme for onshore equity disposal gains (Enhancement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

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

For more information see our Tax Alert.

PwC observation:

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



斯洛維尼亞
支柱二和ATAD利息限制的更新

支柱二

2023年6月23日，斯洛維尼亞財政部發布了最低稅負制法令的草案，以配合有關跨國企業集團全球最低稅負水平的歐盟理事會指令 (EU) 2022/2523的實施截止期限。財政部確定了400多家跨國實體 (MNE)，其母公司在斯洛維尼亞，或海外母公司在斯洛維尼亞設有子公司的，年度合併收入超過支柱二報告/課稅的7.5億歐元門檻。

反避稅指令 (ATAD)

雖然大部分ATAD規則已被納入斯洛維尼亞稅法中，但因為斯洛維尼亞已經有了類似的國內規則 (4:1資本弱化避風港條款)，利息限制規則的導入被推遲到2024年。斯洛維尼亞有義務在2024年之前將EBITDA利息限制規則轉換為斯洛維尼亞國內法。

資誠觀點

雖然一般認為即將頒布的支柱二法令只會影響少數斯洛維尼亞公司，但公司應檢視財政部列出的名單，並對法令的影響以及行政遵循成本進行模擬。

Slovenia
Updates to Pillar Two and ATAD interest limitation

Pillar Two

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

Anti-tax Avoidance Directive (ATAD)

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

PwC observation:

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

要聞

Administrative
行政

義大利

義大利稅務局的決議承認向享受部分免稅待遇的瑞士公司給付股利可以免課徵扣繳稅

2023年7月，義大利稅務局 (Italian Revenue Agency, IRA) 發布了第46/2023號決議，涉及母子公司指令 (Parent-Subsidiary Directive, PSD) 提供的，並由歐盟-瑞士協定第9條規定的扣繳稅 (WHT) 豁免，適用於義大利給付給受益於瑞士混合控股公司機制 (Swiss mixed holding companies regime) 的瑞士實體的股利。

該決議明確推翻了2007年IRA立場的第93號決議，IRA認為如果瑞士公司有義大利來源股利，且在三個租稅層級 (市、州、聯邦) 中的任何一個層級享有免稅待遇，則可以拒絕WHT豁免。而混合控股公司機制在州一級提供免稅。

此後，歐盟法院 (ECJ) 公布了C-448/2015號決議，只有在完全免稅的情況下才應拒絕PSD下的WHT股利豁免，而在母公司部分免稅的情況下，應給予WHT豁免。另外，瑞士租稅改革頒布後，瑞士混合控股公司機制在2020年1月1日被廢除，從而取消了州免稅。作為對第135/2021號函釋的回應，IRA承認從2020財務年度起，對以前受益於混合控股公司機制的瑞士股利接受者可以享受WHT豁免。

通過第46/2023號決議，IRA明確承認2007年決議已過時，並且為了遵守歐盟判例和協定精神，承認在瑞士股利接受者享受部分免稅的情況下，也應給予PSD下的WHT豁免。

資誠觀點

第46號決議推翻了IRA之前的一個立場，並且與最近的歐盟判例法保持一致。通過將WHT豁免的錯誤適用限制在完全免稅的情況下，大大擴大了歐盟PSD對瑞士實體的適用範圍，這些瑞士實體享受特殊稅制下的部分免稅待遇。

Italy

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

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

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

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

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

PwC observation:

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

要聞

Judicial
司法

印度
根據印英租稅協定，印度行政法庭判決管理費不需納稅

在各種跨國集團現有的公司架構下，存在這種安排：其中一個集團實體向其他集團實體提供財務、技術、銷售和法律支持等集中支援服務，並由提供支援服務的實體收取相關報酬。在最近一項針對非居民實體提供服務的判決中，根據印英租稅協定，印度行政法庭 (簡稱法庭) 分析所提供的集中支援服務是否應該課稅。

在仔細審閱協議、電子郵件往來和其他文件後，法庭發現所提供的服務包括維護發票記錄、審閱法律協議、向關係企業 (AE) 的客戶提供技術支援等。這些服務是從英國提供，並透過電子郵件交付給AE，而且是連續多年提供，這表明服務的接受者無法獨立履行這些職能。法庭認為，這些服務是為了支援接受實體的公司管理的正常運作，因此屬於管理服務的性質，不屬於租稅協定中技術服務費 (FTS) 的範圍。法庭進一步得出結論，即使將這些服務歸類為技術或諮詢服務，也不符合租稅協定中「提供 (make available)」的條件，因為納稅人沒有通過向接受實體提供上述支援服務的方式，提供任何技術知識、經驗或技能。

資誠觀點

考慮到大多數租稅協定中FTS的定義較為狹窄，法庭的判決重申了集中支援服務不應課稅的立場。納稅人必須通過保留充分的支持性事實文件 (包括電子郵件往來等)，證明這些服務不提供任何技術知識或技能。

India

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

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

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

PwC observation:

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

印度
印度法院對租稅協定下的互聯和頻寬費的稅務處理做出了有利的判決

長期以來，國際電信連接和頻寬費的課稅議題一直是稅務機關和納稅人爭論不休的問題。在最近的一項決定中，印度法院解決了納稅人向客戶提供的國際連接和頻寬服務的課稅問題，這些服務是由納稅人從非居民第三方服務提供商那裡獲得的。

在這樣的背景下，印度法院注意到納稅人案件中的一些無可爭議的事實，包括設備和海底電纜系統位於印度境外、非居民服務提供商在印度沒有常設機構等。鑒於這些事實並依據各種司法聲明，除其他外，印度法院認為：

- 納稅人可以根據租稅協定的有利規定來確定其是否可以減稅。
- 印度國內稅法對權利金定義範圍的追溯性修正不影響租稅協定下的定義。據此，法院認為：1) 納稅人不需要根據「1961年所得稅法」(簡稱所得稅法) 下擴大的權利金定義範圍進行扣稅； 2) 不能指望納稅人做不可能的事；3) 納稅人可享受租稅協定規定的好處。
- 鑒於所有設施都在印度境外且非居民服務提供商在印度沒有任何存在，印度稅務機關無權對境外來源的收入課稅。
- 一旦按照適用租稅協定的規定扣稅，就不能適用國內稅法規定的較高稅率。

資誠觀點

印度法院的這個決定重申了以前法院決定所闡明的原則，即對國內法案條款的修正不能影響租稅協定的相關條款，因為它是兩國之間的主權文件。法院還同意了「lex no cogit ad impossibilia」的既定原則，即法律不要求不可能的事情，因此納稅人不能因有關國內稅法的追溯性修正而承擔扣稅義務 。

India

Indian court rules favorably on tax ability of interconnectivity and band width charges under tax treaties

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

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

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

PwC observation:

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

義大利

義大利最高法院 (ISC) 將義大利參與免稅 (PEX) 制度擴大到非居民

2023年7月，義大利最高法院發布了第21261/2023號決定，涉及適用與法國公司出售義大利子公司股份所實現資本利得的義大利稅制，以及非義大利居民資本利得稅 (NRCGT) 與歐盟原則的兼容性。

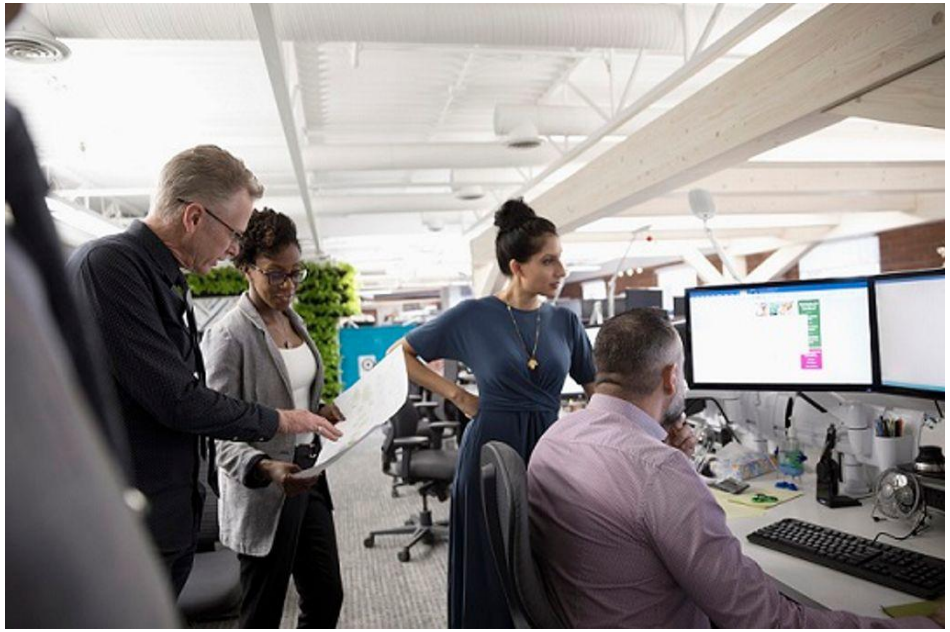
根據義大利稅制，非義大利居民公司 (沒有義大利常設機構) 在處分義大利股權時需繳納26%NRCGT (根據案件發生時有效的法令，為13.67%的有效稅率)，除非租稅協定規定了豁免。參與免稅制度僅適用於義大利稅務居民公司 (或義大利常設機構)，根據該制度，只有5%的資本利得需繳納企業所得稅。

雖然義大利簽署的大多數租稅協定規定僅在賣方所在國對資本利得徵稅，但義大利和法國之間的協定(議定書)規定對義大利和法國的某些股權同時徵稅。ISC認識到PEX和義大利股利免稅制度 (規定95%的股利排除) 具有相同的理論基礎，即消除經濟雙重課稅 (economic double taxation)。回顧歐盟法院對過去義大利境外股利的稅制的判決 (參見案例C-540/07)，ISC表示，對非義大利公司實現的資本利得徵稅是經濟雙重課稅，應予以取消，以便根據「歐盟運作條約」第49-63條，給予非居民與居民相同的租稅待遇 (即PEX制度，如果滿足所需條件)。

ISC還表示，租稅協定提供的稅額扣抵本身不足以確保消除經濟雙重徵稅。因此，如果對非居民的不利租稅待遇仍然存在，則國內法 (以及適用的租稅協定) 應以符合歐盟法的方式解釋和適用。

資誠觀點

ISC的決定代表了跨境資本利得稅制的一項重要創新。一些租稅協定 (例如與法國、中國、韓國、以色列簽署的協定) 規定在來源國同時課稅，而大多數協定則授予賣方居住國排他性的課稅權。然而，不論是在協定國家或非協定國家的賣方都應考慮在義大利支付的較高資本利得稅的退稅機會，並且應該對未來的處分進行個案分析 (包括在沒有簽訂租稅協定的情況下)。



Italy

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

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

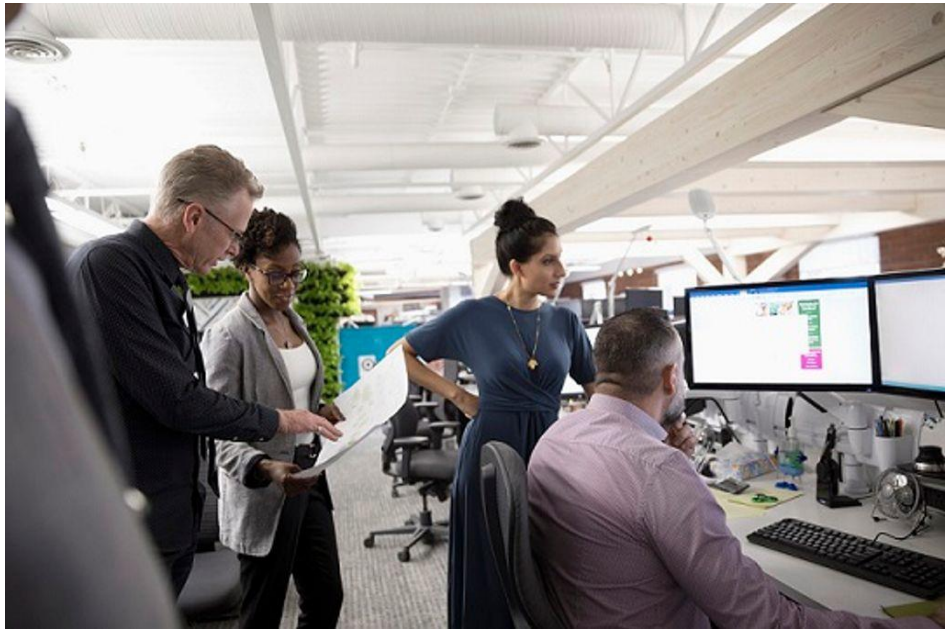
According to the Italian regime, non-Italian resident companies (with no Italian PE) are subject to a 26% NRCGT (13.67% ETR according to the law in force at the time of the case) upon the disposal of Italian shares - unless a tax treaty provides for an exemption. The participation exemption (PEX) regime,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

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

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

PwC observation:

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



義大利

義大利最高法院將義大利地區稅 (IRAP) 納入義法租稅協定在國外稅額扣抵(FTC) 目的下的涵蓋稅種

義大利最高法院 (ISC) 發布了第21047/2023號決定，關於義大利地區稅(Italian Regional tax, IRAP)下FTC的扣抵處理。該案涉及一位義大利納稅人，出於IRAP的目的，希望扣抵因出售法國房產產生的資本利得而在法國繳納的超額國外稅款。IRAP應稅所得應根據具體規定計算，IRAP稅率一般為3.9%，也可能略有變化 (取決於業務活動和地區)。

原則上，義大利法律僅為企業所得稅(CIT) 目的扣抵FTC。然而，ISC回顧了租稅協定優於相應國內法的一般原則，因為IRAP包含在租稅協定涵蓋的稅種中，所以國外稅款可以用於IRAP目的的扣抵。

ISC澄清，為了驗證IRAP是否包含在租稅協定所涵蓋的稅種中，需要進行個案評估，因為舊的協定將ILOR (即之前的義大利地區稅) 包含在所涵蓋的稅種中。ILOR廢除後IRAP的自動適用存在疑問，但ISC認為ILOR和IRAP是等同的，因此後者被列入租稅協定所涵蓋的稅種中。事實上，(i) 租稅協定將協定規則的適用範圍擴大到簽署後引入的稅種； (ii) 義大利稅務局向法國稅務機關通報了IRAP的引入，並建議將其作為協定目的的ILOR的替代稅種； (iii) 法國稅務機關接受並承認IRAP為協定稅種。

資誠觀點

簡而言之，ISC的決定認可了根據義法租稅協定，出於IRAP目的可以扣抵在法國繳納的國外稅款，即使義大利國內稅法只允許FTC用於扣抵CIT 。

ISC的決定可能在法國以外具有更廣泛的適用性，如果其他租稅協定將IRAP列入涵蓋稅種並遵循以IRAP替代ILOR的程序。

Italy

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

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

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

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

PwC observation:

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

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

要聞

OECD/EU
經合組織/歐盟

歐盟
聯合國秘書長發布促進包容和有效的國際稅務合作的初期草案報告

2023年8月8日，聯合國秘書長發布了一份未經編輯的初期版本的報告，分析了圍繞聯合國國際稅務合作的備選方案和下一步措施。該報告是在某些非洲國家在2022年底批准並通過了決議草案之後發布的。正式版本將在9月的聯合國大會下屆會議前發布，會議期間和之後將討論採納報告的哪些部分。備選方案並並不是互相排斥的，備選方案包括：(1) 多邊稅務公約，(2) 國際稅務合作架構公約，以及 (3) 國際稅務合作架構。

資誠觀點

鑒於國際稅務多邊主義的明顯分裂，以及全球南方和民間社會推動聯合國發展的願望，聯合國在稅務問題的議程應該得到考慮。無論七國集團(G7)和其他大型經濟體的觀點如何，都應認真對待報告提出的聯合國在國際稅務中發揮更大作用的可能性。

European Union

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

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

Read the full Tax Policy Alert here.

PwC observation:

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

要聞

Treaties
租税協定

以色列
以色列稅務通函發布租稅協定的相互協議程序 (MAP)

8月7日，以色列稅務局 (ITA) 發布了第01/2023號所得稅通函，其中涉及租稅協定的相互協議程序。該通函具體規定了提交申請的政策和此類程序的處理方式。該通函的目的是根據ITA對以色列作為締約方的協定中MAP條款的解釋，澄清MAP的性質，並為以色列納稅人聯繫主管當局請求啟動相互協議程序制定政策。另外，該通函取代了之前的第23/2001號所得稅通函，內容更加全面，並作出了若干澄清。該通函不構成正式法規或具有約束力的解釋。

資誠觀點

近年來，圍繞移轉訂價、扣繳稅和居民身分等問題的跨境稅務爭端不斷增加。MAP是一種可以幫助解決與這些問題相關的稅務爭端的工具，這些問題涉及已由稅務機關 (在以色列和其他協定國家) 做出的決定。在提交MAP申請之前，納稅人應考慮其性質和提交日期，以便有效執行該程序。納稅人還應考慮將預先訂價協議 (APA) 作為移轉訂價的前瞻性協議。

Israel

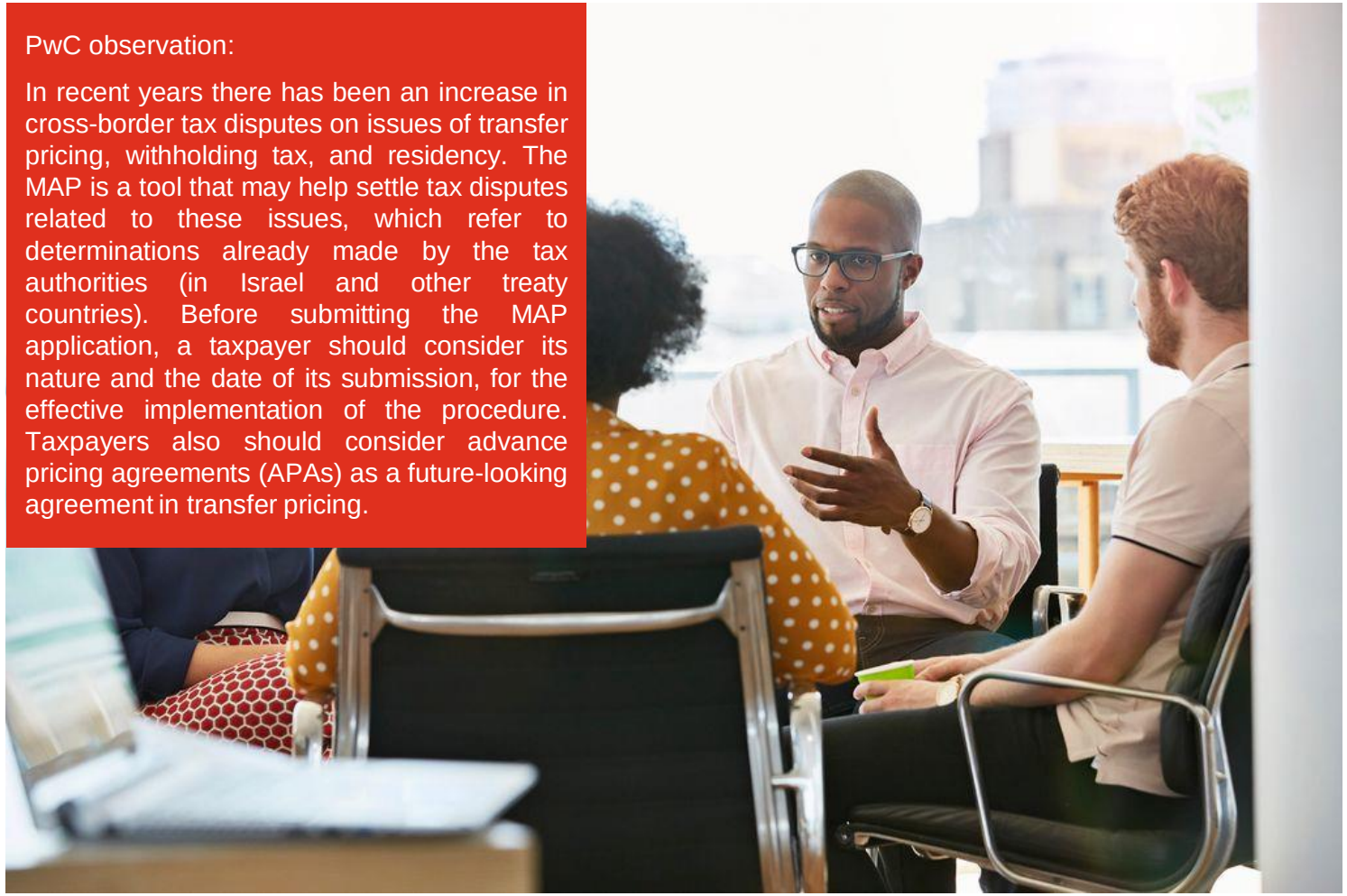
Israeli tax circular addresses MAPs for tax treaties

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

For more information see our PwC Insight.

PwC observation:

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



墨西哥
太平洋聯盟 協定將於2024年1月1日對墨西哥、智利、哥倫比亞和秘魯生效

繼墨西哥、智利、哥倫比亞和秘魯在2023年7月2日完成國內法律批准程序後，標準化國際租稅協定以避免雙重課稅的公約正式生效，適用於太平洋聯盟架構協定的締約會員國。該公約於2017年10月14日在華盛頓特區簽署，公約條款將於2024年1月1日生效。

太平洋聯盟架構協定的主要目的是促進四個會員國之間的合作、增長和經濟一體化。為此，該公約將修改墨西哥、智利、哥倫比亞和秘魯之間簽署的租稅協定，賦予養老基金居民身分，使其能夠享受四個太平洋聯盟會員國之間簽署的租稅協定的好處。

該公約還旨在標準化處分股票所產生的利息和資本利得的稅務處理，這些股票是通過屬於拉丁美洲綜合市場的證券交易所出售的。對於利息，適用的扣繳所得稅率為利息總額的10%，而對於資本利得，僅在出售實體股票的養老基金的居住國課稅。

重要的是要考慮到，根據所得稅法，作為利息所得、資本利得以及臨時使用土地和建築物的有效受益人的養老和退休基金，其墨西哥境內來源所得將不會被扣繳稅款。

資誠觀點

公約的規定將反映在養老基金附屬機構的利益上，因為它們將獲得更多的投資機會，並有更好的營利選擇。該公約規定，認可的養老基金將被視為其所得的受益所有人。就墨西哥的具體情況而言，將包括根據退休儲蓄制度法(Law of the Retirement Savings Systems) 設立的退休基金的投資公司(SIEFORES)。

利息和資本利得稅務處理的標準化將降低各國認可養老基金的租稅負擔。例如，來源國對利息所得課徵稅率的上限為10%。請注意，公約規定，如果根據任何現行協定對任何特定所得課徵較低的稅率，則以這種待遇為準，並且必須適用於有關協定。

Mexico

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

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

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

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

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

PwC observation:

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

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

美國
取代涉及特定所得稅協定的北美自由貿易協定 (NAFTA)；俄羅斯暫停美俄所得稅協定

7月31日，美國國稅局 (IRS) 公布了與丹麥、盧森堡、墨西哥和馬爾他的主管當局協議 (Competent Authority Agreement)，根據該協議，在雙邊基礎上，在與美國簽訂的各自租稅協定中提及北美自由稅貿易協定將被視為提及2020年7月1日生效的美墨加協定 (USMCA)。

2023年3月，據媒體報導，俄羅斯外交部和俄羅斯財政部宣布一項倡議，暫停與所有對俄羅斯實行單邊經濟限制的國家簽署的租稅協定。據媒體報導，俄羅斯總統普丁8月8日簽署一項法令，暫停俄羅斯與包括美國在內的38個國家之間的租稅協定的優惠待遇。

資誠觀點

對於根據利益限制 (LOB) 條款的衍生利益測試或上市公司測試，要求獲得租稅協定好處的納稅人，主管當局協議解決了2020年用USMCA取代NAFTA而帶來的與租稅協定資格相關的問題。然而，仍有一些美國租稅協定提及NAFTA，但尚未達成解決方案，不確定美國、墨西哥和加拿大的居民是否仍有資格以優惠的方式享受協定好處。

美俄租稅協定包含一項終止條款，要求採取特定的外交程序，至少提前六個月發出終止通知，並且終止條款規定了終止生效的具體時間 (即六個月期滿後的次年1月1日之後)。因此，所報導的單邊暫停尚不明確。這種缺乏明確性可能會對於國外稅額扣抵 (FTC) 等產生影響，例如根據美國FTC規則，向俄羅斯繳納的稅款是否屬於「自願」稅。

United States of America (the)

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

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

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

For more information see our PwC Insight.

PwC observation:

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

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

Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
AE	Associated Enterprise
BEPS	Base Erosion and Profit Shifting
CIT	corporate income tax
CJEU	Court of Justice of the European Union
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
EU	European Union
FSIE	Foreign-sourced Income Exemption
FTC	Foreign Tax Credit
IIR	Income Inclusion Rule
IRAP	Italian Regional Tax
ITA	Israel Tax Authority

Acronym	Definition
ISC	Italian Supreme Court
LOB	Limitation on Benefits
MNE	Multinational enterprise
MAPs	Mutual Agreement Procedures
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
PEX	Participation Exemption
QDMTT	Qualified Domestic Minimum Top-up Tax
SAC	Supreme Administrative Court
SIEFORES	Investment Companies Specialized in Retirement Funds
UTPR	Under-taxed Profits Rules
USMCA	United States-Mexico-Canada Agreement

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- 兩岸與國際租稅Update (IPO跟稅有關的三件事、台商大陸公司安全有序的碎鍊調整) ：https://youtu.be/l_sT3uNaAEQ
- 台灣稅務與投資法規Update-8月號 (給付勞務報酬的扣繳稅負優惠申請)：https://youtu.be/Tgy6cwMcszw
- 2023 資誠前瞻研訓院線上講堂 (8月)：

ESG近期發展https://youtu.be/jzP3M3XMhZ8
碳定價對財務報表的影響https://youtu.be/PP7cKarhzPQ
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台灣稅務法令更新及因應https://youtu.be/DU0OpFHzTks
兩岸稅務法令更新及因應https://youtu.be/zxXa3nUFOP8
國際稅務法令更新及因應https://youtu.be/Rul4mAEDgZQ
美國稅務法令更新及因應：台美租稅協定X赴墨西哥投資https://youtu.be/RN7oqXlcaDs
東南亞稅務法令更新及因應：泰國X越南X馬來西亞X印尼X印度https://youtu.be/61OAuuzLw00
會計審計法令更新https://youtu.be/uPdoay3cM18
智財法令更新：個資法 X 商標法https://youtu.be/YYrbVoH_1Wg
公司及證管法令更新https://youtu.be/3hI5oExY5go

中華產業國際租稅學會 敬邀加入會員

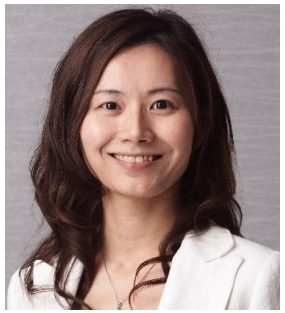
本會為依法設立、非以營利為目的的社會團體，以建構產業稅務專業人士的交流平台，研究產業稅務問題，促進公平合理課稅為宗旨。在台灣稅務界，本會成已為稅務專業的意見領袖，產、官、學界的主要諮詢機構。

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

與我們專業國際租稅團隊聯絡：



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