國際租稅要聞

International Tax Newsletter

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pwc 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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專論
OECD發布實施支柱一金額A的多邊公約

摘要

2023年10月11日，經濟合作暨發展組織(OECD)發布了一套與支柱一的金額A相關的指引文件：包括共識性的多邊公約(Multilateral Convention, MLC)文本和相關的解釋性聲明、有關支柱一金額A(Amount A)確定性應用的瞭解備忘錄(Understanding on the Application of Certainty for Amount A of Pillar One, UAC)，及支柱一的經濟影響評估的更新。值得注意的是這一套指引文件中並未包括有關金額B(基本行銷和銷售交易的移轉訂價)的進一步指引。包容性框架(Inclusive Framework, IF)於公眾諮詢後持續投入工作並計劃在2024年初提供金額B之最終指引。

儘管這份文件約有850頁之多，但目前並未開放各國簽署多邊公約，因為仍有問題待解決。雖然已明確規定需要簽署的國家數量及受金額A涵蓋企業的百分比(請注意，如果沒有美國這是無法實現的)，但目前尚不清楚各個國家實際上需要什麼條件才能核准該公約，以及需要多少國家核准才能使MLC的條款生效。因此，儘管MLC已於2023年10月於摩洛哥舉行的G20財政部長會議上呈交，但進程仍然相當不確定。

除了針對支柱一的MLC和相關文件之外， OECD亦發布了一份旨在協助各國政府考慮實施支柱二全球最低稅負制的實施手冊。該手冊提供相關規則的主要條款概述，以及租稅政策、管理官員及其他利害相關者於評估實施選項時應考慮的因素。其亦強調同儕審查程序、交換協議及技術工具開發的計劃，該等工具旨在簡化申報和審核資訊申報書的過渡過程。

OECD先前已發布關於金額A的9份諮詢文件。對於每一份諮詢文件，都要求分別提供回應。第1份諮詢文件涵蓋有關收入來源和連結性規則的內容，第2份諮詢文件涵蓋稅基確定規則，第3份諮詢文件涵蓋一般適用範圍規則，第4份諮詢文件涵蓋採掘業的排除規定，第5份諮詢文件涵蓋受監管金融服務的排除規定，第6和第7份諮詢文件涵蓋租稅確定性。第8份諮詢文件涵蓋單邊措施的指引，第9份諮詢文件涵蓋行政和租稅確定性方面的內容。儘管在這些項目中已經有一些進展，但值得再次指出，仍存在一些重大問題並且許多規則仍然非常複雜。

內文

值得注意的細節

除金額A的實施條款之外，MLC亦包括規定要求關於對所有公司現行數位服務稅(Digital service taxes, DSTs)及相關類似措施的撤回條款，以及承諾不於未來實施此類措施。其列出要於8個不同國家中撤回9項特定措施。其亦要求不對涵蓋範圍內的跨國企業(MNEs)應用「顯著經濟存在」(或類似連結 (Nexus))規定的承諾。然而，這明顯取決於MLC的核准進展。

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就適用範圍方面已經提供了一些緩解。有關金額A規則的適用範圍的條件針對某些產業已簡化，如採掘業(例如礦業)和金融服務。國防工業現在已完全不受金額A規則約束。還新增1項新的自主國內業務豁免，允許公司排除來自特定租稅管轄區的財務資訊。瞭解備忘錄提供有關金額A租稅確定性框架實施方式的細節。

就扣繳稅(WHTs)的議題，於考量行銷及配銷安全港(Marketing and distribution safe harbour, MDSH)及消除雙重課稅下，已取得多數國家一致協議。然而，這是其他某些國家持續提出異議的項目。

PwC觀察

包容性框架的140個國家已同意公布MLC的文本，但目前尚無正式的簽署機會。儘管MLC在許多關鍵技術項目(如收入來源、連結性和稅基)展現了連貫性，但某些租稅管轄區對其他項目提出了不同的觀點。美國已對MLC展開為期60天的公眾諮詢，特別關注利害相關者就「完整文本、實施和可行性問題(包括簡化和技術精準確度間之平衡)及解決錯誤或澄清支柱一MLC條款運作的技術調整」提出之意見。然而，很可能大多數其他國家不會進行類似的諮詢，除了與一些關鍵利害相關者的對話之外，也不清楚MLC是否會重新開放以考慮各國家提出的意見。新的稅收預估旨在顯示發展中國家的表現優於先前假設，但這取決於各國對複雜公式的一致應用。當這些稅收增加以當前稅收的百分比表達時，發展中國家獲益最多。未呈現的是金額A的總稅收增長中有多少將流向這些國家(例如與已開發國家相比)。

PwC將在後續公布稅務新訊中提供有關MLC議題的內容和運作的進一步詳細資訊。

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專論
德國房地產轉讓稅(RETT)變更討論草案已提交

摘要

聯邦財政部已向聯邦各州提交修訂《房地產轉讓稅法》(RETTA)的討論草案，來徵求初步意見。目前還不確定草案是否會改變德國房地產轉讓稅(RETT)制度。

如果草案生效，德國的 RETT 稅制將會有實質性的修改。擁有德國房地產的跨國公司，可能需要進行集團RETT中立性組織重組 (neutral reorganization)。為了防止企業與第三方進行RETT中立性股權交易，草案提出了共同行動的“收購方集團” (group of acquirer)和“服務利益” (serving interest) 的概念。提案預計在 2024 年 1 月 1 日生效。

內文

新稅制

RETT 草案第 1a 段，將提供適用在公司和合夥企業股份收購交易的單一課稅規定。如果個人(或是一組共同行動的人)將持有房地產的實體的所有相關股份直接或透過中間實體間接統一，就會觸發 RETT。新規則基本上遵循RETTA第1(3)至(3a)條統一規則(unification rules)的概念，並進行了以下的修訂。

目前RETTA第1(2a)、 (2b)段中規定的轉讓規則(在10年內轉讓90%的股權)，以及在RETTA第1(3)、(3a)段規定的統一規則，將被RETTA草案第1a段完全取代。在草案規定下，目前的10年監管期和90%的固定參與門檻將不再適用。

“收購方集團”和“服務利益”的概念及集團內部豁免

共同行動的“收購方集團”以及“服務利益”的概念將取代現行90%的固定參與門檻。如果“收購方集團”(至少由兩個法人組成)共同收購相關股份，則集團收購的所有相關股份都需課徵RETT。

“共同行動”的定義相當廣泛，可能有很大的解釋空間。但兩個或以上的人組成的收購方集團，在轉讓股權給有實際上或時間上相關聯的集團成員時，通常會被認為是共同行動。

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在決定個人或“收購方集團”持有標的公司相關股份數量時，不需要考慮第三方(非“收購方集團”成員)代表收購方或為了收購方利益所持有的股份。在這樣的概念下，如果僅收購標的公司 85% 的股份，剩餘15% 符合“服務利益”的定義， RETT 也可能被觸發。

根據新草擬的RETTA草案第5(1)段(RETTA第 6a段的後續規定)，如果房地產的最終所有者沒有因為組織重組而改變，則組織重組可能免稅。實際上，在全資集團內部進行的轉讓，應該能從這項擬議的豁免中受益。

觀察

這份草案對德國現行 RETT 制度進行了重大修改和簡化。草案的實施可能提供納稅人實質性的減免，並為集團企業提供更大的彈性以減輕不必要的多重RETT費用。同時在新規則下，不同納稅人以“收購方集團”共同收購持有房地產的實體股份時，預期將會被課徵RETT稅。

RETT的修訂仍處於早期階段，還需要聯邦各州同意所提出的概念，特別是對於股份交易，草案不再仰賴嚴格的門檻或監管期間。目前還不清楚聯邦各州如何看待“共同行動”和“服務利益”等新概念在實務上的可行性，持有德國房地產的跨國公司應密切關注立法進程。

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專論
馬來西亞發布新移轉訂價及預先訂價協議法規

摘要

馬來西亞於2023年5月29日發布新的2023年所得稅(移轉訂價)法規 (Income Tax (Transfer Pricing) Rules 2023，以下簡稱「2023 TP法規」)，此法將於2023課稅年度(Year of assessment)起正式生效。2023 TP法規重大改變馬來西亞移轉訂價的規定，主要加強應備妥文件的要求，特別是針對跨國企業集團，提供常規交易範圍的具體指引，並對移轉訂價文件截止期限提出更嚴格的合規要求。

行動項目：鑑於常規交易範圍定義的變更，納稅義務人應留意自身當前的移轉訂價狀況，以分析其是否仍符合馬來西亞移轉訂價定義的常規交易。此外，納稅義務人應依據2023 TP法規備妥2023課稅年度所需的相關文件，以避免被馬來西亞稅務局 (Malaysian Inland Revenue Board，以下簡稱「IRB」) 處RM 2萬至10萬(約USD 4千至2萬1千)的罰款。

同樣於2023年5月29日發布2023所得稅(預先訂價協議)法規 (Income Tax (Advance Pricing Arrangement) Rules 2023，以下簡稱「2023 APA法規」)，取代了2012所得稅(預先訂價協議)法規 (Income Tax (Advance Pricing Arrangement) Rules 2012，以下簡稱「2012 APA法規」)，且自公布起即刻生效。2023 APA法規主要針對預備會議(Pre-filing meeting)之申請，規定額外的應備妥文件，以及限制來自與馬來西亞簽署租稅協定之租稅管轄區的交易對象可申請預先訂價協議(以下簡稱「APA」)之種類。

行動項目：欲申請馬來西亞APA之納稅義務人應依據2023 APA法規之修訂，審查其申請APA之策略。

以下針對「2023 TP法規」及「2023 APA法規」之主要要點進行討論。

詳細內容

2023 TP法規

同期移轉訂價文件 (Contemporaneous transfer pricing documentation)之定義

2023 TP法規將同期移轉訂價文件定義為一個課稅年度基期的稅務申報截止日前，從事受控交易應有的文件。

觀察：原先2012 TP法規中同期文件被認為是在交易制定或實施過程中應有的文件，或一個特定基期的稅務申報截止日前為反映重大改變而更新的文件。而在新的2023 TP法規中，修訂定義為每個課稅年度在提交稅務申報截止日前要求準備的移轉訂價文件，從而釐清每個課稅年度準備同期移轉訂價文件的要求。

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同期移轉訂價文件之內容

2023 TP法規納入先前於馬來西亞移轉訂價指導原則(Malaysian Transfer Pricing Guidelines)中列示詳細的文件要求，主要增訂以下內容：

相關基期內的跨國企業集團資訊 (2023 TP法規 附表一)

- 跨國企業集團全球組織架構圖，並揭露與馬來西亞納稅義務人從事交易的所有集團個體的所在地和所有權關係。
- 與馬來西亞納稅義務人業務相關的跨國企業集團業務描述，包含：
    - 跨國企業集團的業務、產品和服務、區域市場以及主要競爭對手。
    - 跨國企業集團業務及產品和服務的供應鏈。
    - 跨國企業集團的商業模式和策略。
    - 跨國企業集團的獲利動因。
    - 跨國企業集團營運所處的行業、市場及監管和經濟狀況。
    - 跨國企業集團中各集團個體的營運活動及貢獻的功能分析，包括執行的功能、使用的資產與承擔的風險。
    - 跨國企業集團透過企業重組、併購或分割改變組織架構的情形。
- 馬來西亞納稅義務人使用或與其有關的跨國企業集團無形資產的描述，包含：
    - 基期內無形資產的開發、所有權及利用等整體策略，包括研究與發展機構及管理研究與發展活動之所在地。
    - 跨國企業集團擁有的無形資產及其法律所有權人的清單。

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- 無形資產相關集團個體間的協議清單，包括成本貢獻協議、成本分攤協議、研究服務及授權協議。
- 跨國企業集團有關研究與發展和無形資產的移轉訂價政策。
- 基期內集團個體間任何無形資產權益的移轉，包括參與交易之成員名稱、開展業務所在國及所涉轉讓報酬。

● 跨國企業集團與在馬來西亞公司業務相關的融資活動，包含：

- 跨國企業集團的融資活動，包括集團個體及非該集團個體的融資安排
- 辨識該集團提供主要融資功能的個體。
- 跨國企業集團個體間融資安排的移轉訂價政策。

● 跨國企業集團的財務及稅務情況，包含：

- 跨國企業集團與在馬來西亞公司業務相關的年度合併財務報表及；
- 簡述該跨國企業集團現行單邊APA以及與其他國家收入分配相關的稅務裁決 (tax rulings)清單。

觀察：修訂後之文件要求導入僅在集團主檔中被廣泛揭露的內容，顯著增加馬來西亞納稅義務人所需準備之文件，因為：

● 過去僅合併收入超過EUR 7.5億/RM 30億 (以適用門檻為準)之跨國企業集團需提交集團主檔，如今適用於所有已達完整移轉訂價文件準備門檻之跨國企業集團的納稅義務人。備註：營收達RM 2,500萬 (約USD 500萬)且受控交易金額達RM 1,500萬 (約USD 300萬)的納稅義務人，需備妥移轉訂價報告。若為有從事資金貸與交易的納稅義務人，其財務金額達RM 5,000萬(USD 約1,100萬)時，亦須備妥移轉訂價報告。

● 馬來西亞納稅義務人現在必須在各課稅年度的稅務申報截止日前獲取並記錄那些較不易獲得的資訊，這對於許多跨國企業集團而言是一種挑戰，因為OECD針對跨國企業集團提交集團主檔的建議時程為財務年度結束後12個月內。

專論
馬來西亞發布新移轉訂價及預先訂價協議法規

業務資訊(附表二)及成本貢獻協議(附表三)

附表二中所列出之業務資訊，通常涵蓋於當地企業檔案 (Local file)中，主要參考馬來西亞移轉訂價指導原則中所列示之文件要求，且與OECD發布之跨國企業與稅捐機關移轉訂價指導原則 (Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations，以下簡稱「OECD指引」)中的原則大致一致。

觀察：儘管附表二中所列示之文件要求與OECD指引原則上大致一致，但就必須附上的詳細程度和支持文件而言，例如業務計畫、管理資訊及預測資訊 (forecasts and projections)，馬來西亞文件要求比標準的當地企業檔案更具實質性。如果2023 TP法規中所列示的支持性文件與分析無關，納稅義務人必須明確說明這些文件的不適用性。

由於廣泛的文件要求已成為馬來西亞目前立法的一部份，納稅義務人應盡早開始準備編製必要的資訊，以避免受罰。

標註移轉訂價文件完成日期的要求

自2023課稅年度起，納稅義務人必須在移轉訂價文件上標註完成日期。

觀察：IRB目前接受公司提交同期移轉訂價文件為公司接獲IRB通知提供之日起14天內，而此附加要求進一步強制納稅義務人必須在稅務申報截止日前備妥同期移轉訂價文件，若未備妥，可能會面臨每一課稅年度RM 2萬至10萬 (約USD 4千至2.1萬)的罰款。

最適常規交易方法的選定

2023 TP法規實際上以OECD指引原則中之的最適方法，取代2012 TP法規中概述的方法規則。

2023 TP法規亦要求納稅義務人針對選定之方法提供解釋及理由，並說明為何認為所選定之方法最接近常規交易價格，而若選用交易淨利潤法(TNMM)進行分析，則須針對選定之利潤率指標進行說明。

如果Director General (以下簡稱「DG」)有理由認為所選定之方法不是最合適的分析方式，則可以用最合適的方法替換原所選用之方法。

準備文件時可使用資料

納稅義務人於決定常規交易價格時，必須依據當時合理可用的最新資料來做決定。

專論
馬來西亞發布新移轉訂價及預先訂價協議法規

觀察：若於準備移轉訂價文件時未能取得可比較資料，需額外使用三年度加權平均或最近一年資料以評估當年度結果。

常規交易價格的調整

常規交易範圍被定義為介於資料**第37.5百分位數至第62.5百分位數**間的數字範圍或單一數字。

觀察：2023 TP法規旨在明確定義馬來西亞的常規交易範圍。因相較於其他租稅管轄區採用四分位數為常規交易範圍而言，馬來西亞適用之常規交易範圍更為狹窄，故納稅義務人應審視其現有之移轉訂價政策，以分析從馬來西亞角度下是否仍符合常規交易原則。

若受控交易價格位於常規交易範圍內，則該價格視為符合常規；若受控交易價格位於常規交易範圍之外，則會以常規交易價格的中位數為準。

當未受控交易和受測交易可比性間存有缺陷，則允許DG將受控交易價格調整至中位數或高於中位數且位於常規交易範圍內的任何點。

觀察：納稅義務人除審視2023 TP法規中基於常規交易範圍定義所採用之受控交易價格外，亦應審視所選定之可比較公司的可比性，以分析其是否可得出可靠的常規交易範圍；否則，DG仍保留申請將常規交易價格至少調整至可比結果之中位數的權利。

2023所得稅(APA)法規

APA之申請

從事跨境交易之納稅義務人可以申請APA，但須符合以下條件：

- 若交易對象來自來自依1967年所得稅法第132條與馬來西亞簽署租稅協定之國家，納稅義務人僅能申請雙邊APA或多邊APA；或者
- 若交易對象來自未與馬來西亞簽署租稅協定之國家，納稅義務人僅能申請單邊APA；或者
- 適用所得稅法第132條的常設機構，僅能申請雙邊APA或多邊APA，此類申請應由其總部代其提出。

觀察：欲申請APA之納稅義務人，若其交易對象涉及與馬來西亞簽署租稅協定之司法管轄區，現在僅能考慮申請雙邊APA或多邊APA。若交易對象所在司法管轄區之稅務機關不同意APA稅務審查的結果，基於行政考量馬來西亞稅務機關可能會決議提出相互協議程序(Mutual Agreement Procedure, MAP)。

專論
馬來西亞發布新移轉訂價及預先訂價協議法規

預備會議之申請

根據2012 APA法規，納稅義務人必須先申請預備會議，與稅務機關討論APA之主要方向。

納稅義務人現在必須在申請預備會議前，提供以下文件及資料：

- 根據2023 TP法規準備之移轉訂價文件。
- 納稅義務人及APA擬涉及之其他對象(無論其是否於馬來西亞境內)的名稱、地址及稅務參考資料(tax file references)。
- 擬涵蓋之交易。
- APA擬涵蓋期間。
- 簡述提出移轉訂價方法之關鍵假設及考量這些假設時應考慮之事件。
- 至少提供申請前三年的財務報表及稅務計算。
- 書面說明所涵蓋交易相關收入是否於其他租稅管轄區免稅。

觀察：如今預備會議所需之文件範圍相當廣，反映出稅務機關在預備會議後和正式申請時通常會要求的文件。對於新成立且經營期間少於三年的納稅義務人，可就APA涵蓋期間內納稅義務人業務的穩定性及擬提出的涵蓋交易進行討論。

提交APA申請的時程

納稅義務人於收到DG許可通知後6個月內(原為2個月)提交正式申請。

追溯申請

允許追溯的時間不得超過涵蓋期間前的3個課稅年度。如果允許追溯，納稅義務人必須在APA簽署後30天內提交相關課稅年度修正後的稅務計算。

專論
馬來西亞發布新移轉訂價及預先訂價協議法規

觀察：2012 APA法規中並未明確規定追溯期間。而實務上，IRB通常會考量至多三年的追溯期間。

撤銷

如果納稅義務人未能揭露任何自願性揭露、調查、審計或許可獎勵之情形，現在DG可撤銷APA。

費用

現在APA的申請費用取決於提出申請的速度。若為新APA申請，(1)如果在收到DG通知後兩個月內提出，則收取不可退還申請費RM 5千(約USD 1千)；或(2)如果在收到DG通知後兩個月至六個月內提出，則收取不可退還申請費RM 1萬(約USD 2千)。若為展期申請，則收取不可退還申請費RM 5千(約USD 1千)。

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要聞

Legislation
立法

加拿大
數位服務稅與現實又更靠近了一步

2023年8月4日，加拿大財政部發布了修正的數位服務稅法案(DST法案)的草案，以及修正(完整)的說明文件(2023年8月發布)。要點如下：

- 對DST法案進行了多項實質性和行政性的修正，其中包括一個新選擇，納稅人可選擇以DST法案生效年度的加拿大數位服務收入為基礎，來計算DST法案適用初期年度的數位服務稅(DST)負債
- 沒有改變DST法案起始適用的時間(即DST將追溯適用於自2022年1月1日以來取得的加拿大數位服務收入)

新的選擇通常意味著納稅人可以根據2024年加拿大數位服務收入占總收入的比重來計算2022年和2023年DST負債，並且無需開發詳細的報告系統來計算2022年和2023年加拿大數位服務收入。

資誠觀點

企業應開始執行必要的系統更新，以獲取計算加拿大數位服務收入所需的數據。因為2024年即將到來，若於早期採用者，可能會受益於新選擇帶來的規劃機會，從而節省遵循成本。

Canada
Digital services tax – one step closer to becoming a reality

On 4 August 2023, Canada's Department of Finance released a revised draft of the Digital Services Tax Act (DST Act), along with revised (and complete) explanatory notes (August 2023 release). The August 2023 release:

- made a number of substantive and administrative revisions to the DST Act — this includes a new election to determine a taxpayer's Digital Services Tax (DST) liability for the initial years of application based on Canadian digital services revenue for the year in which the DST Act comes into force
- did not change the timing aspects of the DST Act (i.e. that the DST would retroactively apply to Canadian digital services revenues earned since 1 January 2022)

The new election generally means that a taxpayer could elect to base its 2022 and 2023 DST liability on its 2024 ratio of Canadian digital services revenue to total revenue, and eliminate the need to develop detailed reporting systems to capture Canadian digital services revenues for 2022 and 2023.

For more information see our PwC Tax Insight.

PwC observation:

Businesses should start implementing the necessary systems to capture the required data needed to determine Canadian digital services revenue — 2024 is fast approaching and early adopters may benefit from a planning opportunity that is available due to the new compliance-saving election.

巴西
政府發布臨時措施，為投資補貼制定新的租稅待遇

2023年8月31日發布的臨時措施(nº 1.185/2023)引入了關於聯邦實體投資補貼課稅的新規則，這是高等法院(STJ)最近處理的事項(Topic nº 1,182)。

自2024年1月1日起，由於撤銷了12.973/2014號法案的第30條、10.637/2002號法案的第1條第3款第十小節及10.833/2003號法案第1條第3款第九小節的，在計算企業所得稅(IRPJ)、淨利潤社會稅捐(CSLL)、社會整合計劃稅捐(PIS)和社會安全融資稅捐(COFINS)時，不允許將補貼收入排除在外。

在符合臨時措施規定的條件下，選擇根據實際所得制度計算和支付IRPJ的納稅人，可以獲得投資補貼的稅額抵減，金額等於補貼收入乘以IRPJ稅率。

與實施或擴張經濟企業所使用的資源無關的收入不產生稅額抵減。在計算稅額抵減時，只能考慮在經濟企業實施或擴張完成後確認的補貼收入。

補貼將僅限於IRPJ和CSLL計算中的收入，涉及與經濟企業實施或擴張相關的折舊、攤銷或耗竭費用(如適用)。稅額抵減不會包含在IRPJ、CSLL、PIS和COFINS的計算基礎中。

資誠觀點

補助產生的稅額抵減僅適用於預先在巴西聯邦稅務局(Federal Revenue Service of Brazil, RFB)註冊的法人實體。在提交註冊申請後，稅額抵減可以退還或抵扣任何联邦稅。臨時措施所涵蓋的稅額抵減將在2028年12月31日終止。

Brazil

Government issues provisional measure establishing new tax treatment for investment subsidies

Provisional Measure nº 1.185/2023, published 31 August 2023, introduces new rules on the taxation of investment subsidies from federal entities, a matter recently addressed by the Superior Court of Justice (STJ) (Topic nº 1,182).

Effective 1 January 2024, the exclusion of revenues derived from a subsidy for the purposes of calculating Corporate Income Tax (IRPJ), Social Contribution on Net Profits (CSLL), Contribution to the Social Integration Program (PIS), and Contribution for Social Security Financing (COFINS) will no longer be allowed due to the revocation of Article 30 of Law 12.973/2014, Subsection X of Paragraph 3 of Article 1 of Law 10.637/2002, and Subsection IX of Paragraph 3 of Article 1 of Law 10.833/2003.

Subject to the conditions established in the provisional measure, taxpayers opting to calculate and pay IRPJ under the actual profit regime may recognize a tax credit for investment subsidies corresponding to the product of the subsidy revenues multiplied by the IRPJ rate.

Revenues not linked to resources employed in the implementation or expansion of the economic enterprise do not generate tax credits. When calculating the credit, only subsidy revenues recognized after the completion of the economic enterprise's implementation or expansion can be considered.

Subsidies will be limited to the value of revenues included in the computation of the IRPJ and CSLL, with respect to depreciation, amortization, or exhaustion expenses related to the implementation or expansion of the economic enterprise, when applicable. The tax credit value will not be included in the computation basis of IRPJ, CSLL, PIS, and COFINS.

PwC observation:

The tax credit derived from the subsidies will only be allowed for legal entities pre-registered by the Federal Revenue Service of Brazil (RFB). After filing the registration request, the tax credit can be reimbursed or offset against any federal tax. The tax credit covered by the provisional measure will be extinguished on 31 December 2028.

香港
香港展開專利盒稅務優惠諮詢

根據2023年2月公布的2023-24年度財政預算案，香港將引入專利盒租稅獎勵措施，為源自香港並且透過研發活動所產生的具資格智慧財產權(IP)資產的所得提供租稅優惠。

在9月1日，商務及經濟發展局發布了備受期待的擬議專利盒機制的諮詢文件(簡稱「咨詢文件」)，以推動香港成為創新科技中心及區域智慧財產權貿易中心。

擬議的專利盒機制嚴格遵循了OECD所制定的關聯法(nexus approach)，該方法規定，源自具資格智慧財產權資產的所得中符合資格享有租稅優惠的部分須按照「關聯比例」計算，即具資格研發開支在納稅人就開發相關智慧財產權的整體開支中所占的比重。關聯法並不是一個全新的概念，並且已經可以用於計算指名外地收入豁免徵稅機制下有關智慧財產權所得可豁免繳納利得稅的程度。

資誠觀點

政府已展開業界咨詢，以了解利害關係人對擬議專利盒機制設計的意見。

意識到智慧財產權商業化對於知識經濟持續發展非常重要，許多利害關係人一直提倡實施專利盒機制，以刺激有價值的研發活動在香港進行，並創造更多具有市場潛力的專利發明。

Hong Kong
Hong Kong launched consultation on patent box tax incentive

As foreshadowed in the 2023-24 Budget announced in February 2023, a patent box tax incentive will be introduced to provide tax concessions for profits sourced in Hong Kong and derived from eligible intellectual property (IP) assets generated through R&D activities.

The Commerce and Economic Development Bureau on 1 September issued its much-anticipated consultation paper on the proposed patent box regime as Hong Kong pushes ahead with its goals of becoming both an innovation and technology centre and a regional IP trading centre.

The proposed patent box regime closely follows the nexus approach promulgated by the OECD, which stipulates that a preferential regime should only apply to a proportion of income based on a 'nexus ratio' calculated by reference to qualifying R&D expenditures as a proportion of overall expenditures incurred to develop the IP asset. The nexus approach is not a new concept and has already been in use for determining the extent to which foreign-sourced IP income will not be chargeable to profits tax under the refined foreign-sourced income exemption regime.

For more information see our PwC Tax News.

PwC observation:

The government has launched a trade consultation to gauge stakeholders' views on the design of the proposed patent box regime.

Recognising that IP commercialisation is important to the continuous development of a knowledge-based economy, many stakeholders have been advocating for the implementation of a patent box regime to stimulate the performance of valuable R&D activities and drive the creation of more patented inventions with market potential in Hong Kong.

匈牙利
匈牙利稅改開始生效

正如國際租稅要聞(International Tax News)6月號所報導的，2023年6月6日，匈牙利政府向議會提交了一項法案(No. T/4243)，涉及2024年稅法的擬議修正。此後，立法程序已經結束，相關法案(Act LIX of 2023)已經生效。由該法案引發的大多數修正於2023年8月1日或2024年1月1日開始生效。下文概述了草案的措辭相比，已頒布的法案中的最重要修正。

支付服務稅(PST)的修正於2023年8月1日生效

PST對某些支付服務課徵0.3%的稅，每筆交易的上限為10,000福林(25歐元)。2022年，PST的課徵範圍擴大到跨境支付服務提供商，但並沒有對跨境支付服務提供商的資格提供詳細的指導。

該法案的初衷是澄清不確定性，並規定須繳納PST的外國服務提供商包括向匈牙利稅務居民(包括個人和實體)提供支付服務、信貸和貸款發放、貨幣兌換活動以及貨幣兌換中介服務(「範圍內服務」)者。然而，在立法過程中重新審議了該定義，在匈牙利跨境提供範圍內服務的外國服務提供商仍在PST的適用範圍內。由於跨境服務提供的確切含義尚未明確，2022年立法的不確定性仍然存在。

投資交易稅(ITT)的修正於2023年8月1日生效

ITT於2022年6月引入，對購買某些具有匈牙利中央保管機構(Hungarian Central Depository)簽發的ID號碼(ISIN代碼)的金融工具需繳納0.3%的稅率。ITT的稅基是證券帳戶記載的金融工具價值，每次購買的上限為10,000福林(25歐元)。ITT的範圍包括跨境投資服務提供商，但沒有提供相關指導。

與PST一樣，該法案旨在澄清立法範圍的不確定性。然而，這個定義被重新審議，向匈牙利稅務居民提供跨國投資服務的外國人仍需納稅。(有趣的是，已批准的法案現在引入了跨境服務提供的定義，但該定義似乎只適用於支付服務提供商，而不適用於投資服務提供商)。此外，議會還批准了該法案提議的一項新豁免。因此，在證券帳戶為非匈牙利居民擁有的情況下，證券購買交易不產生ITT納稅義務。

資誠觀點

關於ITT，外國投資服務提供商應分析在立法變化的結果下的預期立場。儘管新的豁免澄清了前面的一些問題，但回到個人範疇的跨境服務提供概念，確實意味著許多之前確定的問題仍未解決。

Hungary
Hungarian tax law changes entering into force

As covered in the June issue of International Tax News, on 6 June 2023 the government submitted a bill (No. T/4243) to Hungary's Parliament covering proposed tax law changes for 2024. Since then the legislative procedure has concluded and the related act (Act LIX of 2023) has entered into legal force. The majority of the triggered changes take effect beginning 1 August 2023 or 1 January 2024. Outlined below are the most important changes reflected in the enacted law as compared to the Bill's original wording.

Changes to the payment services tax (PST) effective 1 August 2023

The PST subjects certain payment services to a 0.3% tax, capped at HUF 10,000 (EUR 25) per transaction. In 2022, the scope of the PST was extended to cross-border payment service providers, without providing detailed guidance as to who qualifies as such.

The Bill originally intended to clarify the uncertainties and stated that those foreign persons subject to the PST include those who provide payment services, credit and loan granting, currency exchange activity, and currency exchange intermediation services ('in-scope services') to Hungarian tax residents (including both individuals and entities). However, during the legislative process, this concept was reconsidered, and those foreign service providers who provide in-scope services on a cross-border basis in Hungary remained within scope of the PST. Since the precise meaning of the cross- border service provision has not been clarified, the uncertainties of the 2022 legislation remain.

Changes to the investment transaction tax (ITT) effective 1 August 2023

The ITT was introduced in June 2022, subjecting the purchase of certain financial instruments with an ID number (ISIN code) issued by the Hungarian Central Depository to a 0.3% tax rate. The basis of the ITT is the value of the financial instrument as credited on the securities account and capped at HUF 10,000 (EUR 25) per purchase. The scope of the ITT includes cross-border investment service providers, although no related guidance was provided.

As with the PST, the Bill intended to clarify uncertainties regarding the scope of the legislation. However, the concept was reconsidered and foreign persons providing cross-border investment services to Hungarian tax residents remained subject to the tax. (Interestingly, the approved act now introduces a definition of the cross-border service provision, but the definition seems to only apply to payment service providers, not investment service providers). Additionally, Parliament approved a new exemption proposed in the Bill. Accordingly, no ITT payment liability shall arise in respect of those security purchase transactions where the security accounts are owned by non- Hungarian resident persons.

PwC observation:

Regarding the ITT, foreign investment service providers should analyze their expected position as a result of the changing legislation. Although the new exemption clarifies some of the previous questions, returning to the cross-border service provision concept in respect of the personal scope does mean that many of the previously identified issues are unresolved.

西班牙
受DAC7影響的數位平台的新義務

歐盟居民和非居民數位平台營運商將對平台賣家的所得有新的報告義務。平台必須將賣家在平台上的所得情況告知稅務機關，並必須遵守盡職調查義務。

2023年5月24日第13/2023號法律已將2022年3月22日第2021/514號歐盟指令(稱為DAC 7)轉化為西班牙國內法。該指令規定了歐盟成員國稅務機關之間關於數位平台賣家所得的資訊交換。為了讓稅務機關能夠執行資訊交換，數位平台營運商必須提前向其註冊地的主管部門提供所需的資訊。請注意，該義務適用於平台獨立賣家產生的收入。外國數位平台將被要求在某個成員國註冊。

新法規也建立了違規行為的懲罰制度。第一次報告必須在2024年1月31日提交，即2023財政年度。

資誠觀點

這項新規定不僅規定了簡單的報告義務，還規定了盡職調查的要求。因此，有必要制定程序來遵守上述義務。盡職調查程序可以由平台或第三方制定，並且必須在報告年度的12月31日之前執行。

DAC 7規定的資訊義務與現有的涉及數位平台的增值稅資訊義務之間存在關聯。因此，數位平台必須解決合規性問題，以確保不會出現重複或低效的情況。

Spain
New obligations for digital platforms affected by DAC 7

EU resident and non-resident digital platform operators will have new reporting obligations regarding the income obtained by its users acting as sellers. The platforms must inform the tax authorities about the income obtained by sellers operating on their platforms and must comply with due diligence obligations.

Law 13/2023 of 24 May 2023, has transposed into the Spanish legal system the EU Directive 2021/514 of 22 March 2022, known as DAC 7. The Directive regulates the exchange of information between the tax authorities of the EU Member States concerning the income received by the sellers operating in digital platforms. In order for tax authorities to do that, digital platform operators must provide the required information in advance to the administration where they are registered. Note that the obligation affects revenues generated by independent sellers of the platform. In the case of foreign digital platforms, they will be required to register in a Member State.

The new regulation also establishes a system of sanctions to be applied in the event of non-compliance. The first reporting must be made on 31 January 2024, referring to fiscal year 2023.

PwC observation:

This new regulation not only establishes a simple reporting obligation, but also provides for due diligence requirements. It is therefore necessary to establish a procedure for complying with the aforementioned obligations. The due diligence procedure may be established by the platform or by a third party and must be carried out before 31 December of the calendar year in respect of which the notification is made.

There are connection points between the information obligation derived from DAC 7 and those that already exist for VAT affecting digital platforms. For these reasons, digital platforms will have to address compliance, to ensure that no duplications or inefficiencies arise.

紐西蘭
紐西蘭發布數位服務稅立法草案

引入數位服務稅(DST)的法律草案於2023年8月31日提交給議會，DST將自2025年1月1日開始適用於大型「數位服務集團」。對全球年度「數位服務收入」達到或超過7.5億歐元，且紐西蘭「數位服務收入」達到或超過350萬紐元的公司，建議對與紐西蘭用戶或土地相關的「數位服務收入」總額課徵3%的DST。

擬議的數位服務包括：

- 中介平台，例如主要用途是促進用戶將商品或服務銷售給其他第三方用戶的線上平台；
- 社群媒體和共享平台，例如主要目的是促進用戶之間互動或便利共享內容的線上平台；
- 網路搜尋引擎，例如允許使用者在網路上搜尋多個不相關網站的數位內容的線上平台；和
- 上述活動附帶進行的任何活動，包括廣告以及與這些平台上用戶生成資料(user-generated data)相關的活動。

政府已公開表示傾向支持國際商定的OECD解決方案，以解決有關數位經濟課稅的擔憂。然而，基於OECD迄今為止在支柱一方面取得的進展，DST法律草案已經被引入，如果各國無法在實施OECD解決方案方面取得足夠進展時，政府能夠迅速實施DST(並有意在擬議的DST生效後達成國際解決方案的情況下，撤銷DST)。

如果頒布，DST將不會在2025年1月1日之前生效，該草案規定政府可以將生效日期推遲到該日期起最多五年。

資誠觀點

稅務局最初在2019年就新西蘭DST的可能設計進行了徵詢意見，但此後的討論有限。在10月14日紐西蘭大選前議會解散前夕，該草案出人意料地被提出。選後政府將需要恢復該草案，以便透過標準的紐西蘭立法程序取得進展；假設該草案得以恢復，作為該過程的一部分，將有機會公開提交。

New Zealand

New Zealand releases draft digital services tax legislation

Draft legislation was introduced to Parliament on 31 August 2023 to introduce a Digital Services Tax (DST) that would apply to large 'digital service groups' starting no earlier than 1 January 2025. A 3% DST on gross 'digital service revenues' that are connected to New Zealand users or land is proposed for large companies that have annual global 'digital service revenues' of €750m or more and New Zealand 'digital services revenue' of NZ$3.5 million or more.

Digital services are proposed to include:

- Intermediation platforms, e.g., online platforms with the main purpose of facilitating sales by users of goods or services to other third-party users;
- Social media and content-sharing platforms, e.g., online platforms with the main purpose of promoting interaction or the facilitation of sharing content between users;
- Internet search engines, e.g., online platforms that allow users to search the internet for digital content of multiple unrelated websites; and
- Any activity that is carried on incidental to the above, including advertising and activities in relation to user-generated data on those platforms.

The government has publicly stated its preference to support an internationally agreed OECD solution to address concerns with respect to taxing of the digital economy. However, based on OECD progress to date with respect to Pillar One, the draft legislation has been introduced to enable the government to quickly impose a DST if jurisdictions cannot make sufficient progress towards implementing an OECD solution (with the intention that the legislation would be repealed should an international solution be agreed subsequent to commencement of the proposed DST).

If enacted, the DST would not come into force before 1 January 2025, with the draft legislation providing the government with an ability to defer the commencement date for up to five years from this date.

PwC observation:

Inland Revenue had initially consulted on the potential design of a NZ DST in 2019 with limited discussion since then. The draft legislation was unexpectedly introduced immediately prior to Parliament dissolving ahead of the NZ election, which will take place on 14 October. The post-election government will need to reinstate the draft legislation in order for it to progress through the standard NZ legislative process; assuming it is reinstated, there will be an opportunity for public submissions as part of that process.

愛爾蘭
作為愛爾蘭公司稅制一部分引入參與免稅的藍圖和徵詢公眾意見

愛爾蘭財政部發布了「愛爾蘭公司稅制引入參與免稅的藍圖，包括技術徵詢意見」(簡稱文件)。關鍵的要點是，財政部打算在2025年1月1日生效的「2024年財政法案」(Finance Bill 2024)中立法規定外國股利的參與免稅。外國分公司豁免的引入仍在審議中。該藍圖提供了背景資訊，並列出了從現在到2024年財政法案制定期間的徵詢利害關係人意見的計劃。本次徵詢公眾意見將持續到2023年12月13日。前一次徵詢公眾意見是在2021年12月。

新聞稿中的兩個主要領域涉及引入外國股利參與免稅(第一部分)和外國分公司利潤豁免(第二部分)。

該文件概述了設計和引入股利參與免稅所涉及的關鍵政策考量因素，其中包括：

- **全部或部分免稅**：不同的稅法管轄區採取不同的方法，從100%全部免稅到95%或98%的減免。
- **選擇性**：利害關係人此前曾建議在股利參與免稅制度中包含不同程度的可選性，例如自動申請允許納稅人選擇退出並繼續適用當前的「納稅和扣抵」制度。必須解決與撤銷選擇和時間限制有關的其他考慮因素。
- **符合資格的稅法管轄區**：參與免稅是否適用於全球收到的股利，還是僅限於來自歐盟或協定夥伴等特定地區的股利。
- **參與的時間和性質**：某些稅法管轄區要求最低持股和擁有期限才有資格獲得免稅。
- **過渡性規定**：根據實施的設計和時間安排，可能需要就新的免稅制度制定過渡性規則。

採用屬地稅制也會引起其他更廣泛的技術問題，需要在現有法律架構的背景下加以考慮，例如與以下面向的相互作用：

- **反混合錯配、CFC規則、利息限制規則**：這些規則需要根據免稅制度進行審查。
- **移轉訂價**：如果引入分公司免稅，則需要考慮外國分公司的利潤歸屬規則。
- **已完稅投資所得(Franked Investment Income, FII)**：這些現有規則對國內來源的股利提供免稅，可能需要進行重新審查，以確保與參與免稅制度保持一致。

資誠觀點

關於徵詢意見，該文件提出了與股利免稅相關的廣泛問題。這表明財政部已經對引入外國股利參與免稅進行了深入思考，目前正在就如何最好地設計該制度徵求納稅人的意見。

現階段與外國分公司豁免相關的問題較少，這些問題表明在做出決定之前，財政部打算審查愛爾蘭公司對分公司的整體使用情況。

Ireland

Roadmap and public consultation for the Introduction of a Participation Exemption as part of the Irish Corporation Tax regime

The Irish Department of Finance has published a ‘ Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax, including technical consultation ’. The key takeaway is that the Department intends to legislate for a participation exemption for foreign dividends in Finance Bill 2024, effective January 1, 2025. The introduction of a foreign branch exemption is subject to ongoing consideration. The roadmap provides background and sets out the stakeholder consultation plan from now until Finance Bill 2024. This public consultation period will run to December 13, 2023. It follows a previous consultation period run in December 2021.

Two main areas in the release concern the Introduction of Foreign Dividend Participation Exemption (Part I) and Foreign Branch Profits Exemption (Part II).

The document outlines the key policy considerations that would be involved in the design and introduction of a participation exemption for dividends. These include:

- **Full or partial exemption**: Jurisdictions have different approaches, ranging from a full scope of 100% exemption to 95% or 98% relief.
- **Optionality**: Stakeholders have previously suggested varying levels of optionality could be included in the dividend exemption regime, relating to for example, automatic application to allowing taxpayers to opt out and continue to apply the current ‘tax and credit’ system. Additional considerations relating to election revocation and temporal limitations must be worked through.
- **Eligible jurisdictions**: whether the participation exemption could apply to dividends received worldwide or be limited to those sourced from specific regions such as the European Union or treaty partners.
- **Lengths and nature of participation**: Some jurisdictions require a minimum shareholding and ownership period to qualify for exemption.
- **Transitional provisions**: Depending on the design and timing of implementation, transitional rules may be required in respect of a new exemption regime.

The introduction of a territorial regime of taxation would also give rise to other broader technical issues that will need to be considered in the context of existing legislation, such as the interaction with:

- **Anti-hybrid Rules, CFC Rules, Interest Limitation Rules**: These rules would need to be reviewed in light of the exemption regime.
- **Transfer Pricing**: If a branch exemption is introduced, rules for profit attribution for foreign branches would need to be considered.
- **Franked Investment Income (FII)**: These existing rules, which provide an exemption for domestically sourced dividends, may need to be reviewed to ensure consistency with the participation exemption regime.

PwC observation:

In relation to the consultation, the document provides a broad range of questions related to the dividends' exemption. This indicates that the Department of Finance has already given a lot of thought to the introduction of a foreign dividend participation exemption, and is now looking for input from taxpayers on how best to design the regime.

There are fewer questions at this stage related to a foreign branch exemption, with those questions indicating that the Department intends to review overall branch use by Irish companies before making a determination.

要聞

Administrative
行政

賽普勒斯
賽普勒斯同意支柱二過渡性CbCR避風港

賽普勒斯透過財政部長最近的新聞聲明，同意OECD/ G20包容性架構商定的支柱二過渡性CbCR避風港。賽普勒斯雖然是歐盟正式成員國，但不是包容性架構的成員國，因此需要獲得程序上的同意。

此外，據報導，財政部不打算在即將公布的徵詢公眾意見的草案中引入合格國內最低稅負制(QDMTT)。因此，至少在2024年甚至更長時間內，賽普勒斯都不會適用QDMTT。

此前，財政部在2022年12月16日發布的關於歐盟指令轉換的公告提到，財政部正在研究措施，以減輕對賽普勒斯經濟可能產生的負面影響。除此之外，這可能包括具有潛在廣泛應用的QRTC(Qualified Refundable Tax Credits, 合格的可退還租稅抵減)。

資誠觀點

根據CbCR過渡性避風港規則，在支柱二範圍內的跨國企業集團，如果其賽普勒斯組成實體滿足三項適用測試(簡易版的ETR測試、小型微利測試或例行利潤測試)之一，則將不需要在2026年12月31日或之前開始的年份對賽普勒斯進行完整的支柱二計算。同時，支柱二範圍內跨國企業集團的組成實體(無論是否在賽普勒斯)應考慮如果2024年不引入賽普勒斯QDMTT的影響。

Cyprus
Cyprus consents to Pillar Two Transitional CbCR Safe Harbour

Cyprus, via a recent press statement of the Minister of Finance, consented to the Pillar Two Transitional CbCR Safe Harbour as agreed by the OECD/ G20 Inclusive Framework. Cyprus, even though an EU full Member State, needed to procedurally consent given the fact that it is not an Inclusive Framework Member.

Also, as reported, the Ministry of Finance is not planning to introduce a domestic minimum Top-up Tax in the draft law, which is to be released for public consultation. So, no Cyprus QDMTT will apply at least for 2024 and potentially beyond.

Previously, the Ministry of Finance announcement dated 16 December 2022 regarding the transposition of the EU Directive mentioned that the Ministry of Finance was examining measures to mitigate potential negative effects on the Cyprus economy. This may, inter alia, include a QRTC with potential broad application.

PwC observation:

Pursuant to the CbCR Transitional Safe Harbour rules, MNE groups within scope of Pillar Two will not be required to perform full Pillar Two calculations for Cyprus for years beginning on or before 31 December 2026, if their Cyprus constituent entities satisfy one of the three applicable tests (simplified ETR test, de minimis income test, or routine profits test). At the same time, constituent entities (whether in Cyprus or not) of Pillar Two in-scope MNE groups should consider the impact if a Cyprus QDMTT is not introduced in 2024.

波蘭
波蘭常設機構規定下居家辦公的處理

近期，波蘭稅務機關(PTA)和行政法院解決了在居家辦公模式下工作的波蘭僱員構成波蘭常設機構(PE)的風險。根據最近的稅務函釋和法院判決，在固定營業場所和非獨立代理人的概念下，此類僱員都可以被視為常設機構。

總體而言，PTA在最近的個別稅務函釋中聲稱，僱員的私人家庭住址可以被視為由外國企業支配的固定營業場所，而不管雇主缺乏進入該場所的實際能力。因此，如果波蘭僱員的目的是持續居家辦公，則可能會在波蘭構成常設機構。此外，在波蘭僱員以企業名義簽訂合約時至少扮演次要作用(例如，透過參與談判、提出要約和建議，或積極參與行銷職能)的每一種情境下，PTA尋求在非獨立代理人概念下構成常設機構的風險。

在最近的個別稅務函釋和法院判決中，PTA和行政法院所採取的立場保持一致，並強調了僱用波蘭員工的外國企業面臨的波蘭常設機構風險是重大的。

資誠觀點

近年來，申請有關居家辦公模式下工作的員工以及評估他們的活動是否構成波蘭常設機構風險的稅務函釋的數量有所增加。這是由於遠距工作的流行，尤其是在COVID-19大流行期間達到了高峰。在這種情況下，跨國公司無需在波蘭租用辦公空間，即可獲得專業的當地員工，從而受益。

根據最近的稅務函釋和判決，即使外國企業在波蘭沒有當地分支機構或辦事處，業務模式也可能導致構成波蘭常設機構的風險。然而，根據輔助和準備活動的豁免，履行某些後勤職能的員工仍然可以避免構成波蘭常設機構。然而，國內稅法中不存在輔助和準備活動豁免的概念。因此，應用此類優惠需要在適用的租稅協定中有法律依據。

Poland
Home office treatment under Polish PE provisions

Polish tax authorities (PTA) and administrative courts have recently addressed the risk of creating a Polish permanent establishment (PE) by a Polish employee working in a home office model. Pursuant to recent tax rulings and court judgments, such employee can be considered a PE both under fixed place of establishment and dependent agent concepts.

In general, in recent individual tax rulings the PTA claims that the employee's private home address could be considered a fixed place of business being at the disposal of a foreign enterprise regardless of the lack of actual ability of the employer to enter into such place. Therefore, if the party's intent is to perform work from home on a constant basis, it might create a PE in Poland. In addition, the PTA seeks a PE exposure under the dependent agent concept in every situation where the Polish employee plays at least a minor role in concluding contracts in the name of an enterprise (e.g., by participating in negotiations, presenting offers and proposals, or taking an active part in marketing functions).

The standpoint adopted by the PTA and administrative courts in recent individual tax rulings and court judgments remains consistent and emphasizes that the risk of Polish PE exposure for foreign enterprises employing Polish workers is material.

PwC observation:

Recent years have seen an increased number of applications for tax rulings on employee(s) working in a home office model and assessment of whether their activities risk creating a Polish PE. This resulted from the popularity of remote work which reached its peak during the COVID-19 pandemic. Under such scenarios, multinational companies benefit from the possibility of obtaining specialized local staff without needing to rent office space in Poland.

As adopted in recent tax rulings and judgments, a business model may result in a risk of a Polish PE creation, even though there is no local branch or office of the foreign enterprise in Poland. However, avoiding the creation of a Polish PE is still possible for employees performing certain back-office functions based on the exemption covering auxiliary and preparatory services. Nevertheless, the concept of auxiliary and preparatory services exemption does not exist under domestic tax law. Thus, applying such a preference requires a legal basis in the applicable tax treaty.

要聞

Judicial
司法

法國
即使相應的股份未列在資產負債表中，分公司也可以享受股利參與免稅

如果符合參與免稅制度的條件，股利的接受者可以享受所得稅僅限於所得5%(或在某些情況下為1%)的租稅優惠。

參與免稅制度的條件之一是，接受者在股利支付日之前，至少已持有分配股利公司的股份(即在資產負債表上列為資產)兩年。

然而，行政最高法院在2023年6月20日的判決中表示，如果股利分配給分公司，只要外國公司(而不是其法國分公司)滿足所需條件即可。

因此，所涉及的股份未列在分公司的資產負債表中(即出於會計和稅務目的分配給分公司的資產)並不妨礙適用參與免稅制度。

資誠觀點

行政最高法院推翻了法國稅務機關的指南，該指南規定享受參與免稅制度優惠的前提是股份在接受者的資產負債表上列為資產。

根據這項判決，可以在2023年12月31日之前提出申請，要求對2021年支付的此類股利申請適用參與免稅制度。

France

A branch may benefit from the dividend participation exemption even when the corresponding shares are not registered in its balance sheet

Recipients of dividend payments may benefit from a taxation limited to 5% (or to 1% in certain cases) of the income received, provided the conditions for the participation exemption regime are met.

One of the conditions for opting for this exemption regime is that the shares of the distributing company have been held (i.e., recorded as assets on the balance sheet) for at least two years by the recipient, at the date of payment.

However, in a ruling of 20 June 2023, the Administrative Supreme Court stated that, where the dividends are allocated to a branch, it is sufficient that the required conditions are met by the foreign company and not by its French branch.

Thus, the fact that the shares in question are not registered in the branch's balance sheet (i.e., assets allocated to the branch for accounting and tax purposes) does not prevent application of the participation exemption.

PwC observation:

The Administrative Supreme Court overturned the guidelines of the French tax authorities which, in this situation, make the benefit of the participation exemption regime conditional on the shares being recorded as assets on the recipient's balance sheet.

Based on this decision, claims can be filed until 31 December 2023, requesting application of the participation exemption regime for tax paid in 2021 on such dividend payments.

葡萄牙
受益所有權和經濟實質的最新進展

在最近的稅務查核過程中，葡萄牙稅務局(Portuguese Tax Authority)拒絕對一家居民實體向一家非居民實體支付的利息提供扣繳稅的豁免，因此不允許根據2003年6月3日理事會指令2003/49/EC(利息和權利金指令或IRD)。做出這項決定的理由是，利息的接受者不符合指令下受益所有權人(BO)的資格。此外，葡萄牙稅務局認為該架構是以濫用方式設立的，目的是從豁免中受益。納稅人將案件提交給稅務仲裁法院(Tax Arbitration Court, CAAD)，該法院最近發布了確認了葡萄牙稅務局立場的決定。

本案涉及一家在多個稅法管轄區(包括歐盟成員國和葡萄牙稅法列入黑名單的稅法管轄區)經營的跨國公司。葡萄牙稅務局證明，所謂的利息BO實際上只是在歐盟成員國設立的導管公司，其目的是以超越法律精神的方式應用IRD。事實證明，這些實體沒有自己的場地、資產和人員，也沒有按照法定目的進行有效的經濟活動，只是充當透明實體。

雖然葡萄牙稅法沒有包含有關經濟實質要求的規定，但葡萄牙稅務局在本案中的決定，得到了稅務法院的支持，提供了有關他們如何在內部處理這類問題的指南。也顯示了葡萄牙稅務機關在成功挑戰這些架構的積極性。

稅務局和稅務法院均依據歐盟法院在所謂丹麥BO案件(cases C-115/16、C-118/16、C-119/16和C-299/16)的判決，直到「脫殼指令」(Unshell Directive, ATAD 3)通過國內稅法實施為止。

資誠觀點

葡萄牙稅務局的立場得到了稅務仲裁法院的支持，這表明了當地處理導管公司和缺乏經濟實質架構的方法發生了變化。儘管目前尚無關於此事的正式法律規定，但葡萄牙稅務局質疑涉及葡萄牙稅務居民實體的現有架構的風險增加。因此，評估風險和重組的時機已經成熟。

Portugal
Developments on beneficial ownership and economic substance

During the course of a recent tax audit, the Portuguese Tax Authority denied a withholding tax exemption on interest paid by a resident entity to a non-resident entity, therefore disallowing the benefits under Council Directive 2003/49/EC of 3 June 2003 (Interest & Royalties Directive or IRD). This decision was taken on the grounds that the interest recipient did not qualify as the beneficial owner (BO) within the meaning of the Directive. Furthermore, the Portuguese Tax Authority considered that the structure was set up in an abusive manner with the purpose of benefiting from the exemption. The taxpayer referred the case to the Tax Arbitration Court (CAAD), which recently issued its decision, confirming the Portuguese Tax Authority's position.

This case involved a multinational company operating in multiple jurisdictions including EU Member States and in jurisdictions regarded as black-listed under Portuguese tax law. The Portuguese Tax Authority demonstrated that the alleged BO of the interest were in fact mere conduit companies, established in an EU Member State with the purpose of applying the IRD in a manner that went beyond the spirit of the law. According to the facts, those entities lacked their own premises, assets or staff, and also did not conduct any effective economic activity as per their statutory object, merely acting as pass-through entities.

While Portuguese tax law includes no provisions about economic substance requirements, this decision by the Portuguese Tax Authority in the case at hand, seconded by the tax court, offers guidance on how they will address the matter internally. It also shows how active the Portuguese Tax Authority is in successfully challenging these structures.

Both the Tax Authority and the tax court are relying on the European Court of Justice rulings in the so-called Danish BO cases (cases C-115/16, C-118/16, C-119/16 and C-299/16), until the 'Unshell Directive' (ATAD 3) is adapted through domestic tax legislation.

PwC observation:

The position of the Portuguese Tax Authority, seconded by the tax arbitration court, signals a change in the local approach to tackling conduit companies and structures lacking economic substance. While there is yet no formal legal provision on the matter, there is increased risk of the Portuguese Tax Authority challenging existing structures involving entities resident in the Portuguese territory. Accordingly, the timing is right for an assessment of risks and restructuring.

印度
印度行政法庭判決雲端計算服務的所得不作為權利金或FIS徵稅

非居民納稅人因各種IT相關服務(包括雲端計算服務)的所得是否應納稅的問題，一直是印度納稅人和稅務機關之間不斷提起訴訟的問題。在最近的一項判決中，印度行政法庭在向印度客戶提供雲端計算服務方面做出了有利於非居民美國實體的判決。法庭的結論是，此類服務不屬於租稅協定下的權利金或包括服務費用(fees for included services, FIS)的範圍。

納稅人是美國稅務居民，為全球客戶提供雲端計算服務。納稅人與其印度客戶簽訂客戶協議，以提供雲端計算服務。法庭認為，納稅人作為美國稅務居民，受印美租稅協定的管轄。因此，應根據租稅協定的規定，對所得是否應納稅進行分析。法庭參考了納稅人實體的事實和其他有利的司法判例作出以下判決。

所得不作為權利金徵稅:

- 客戶沒有取得使用這些服務中涉及的版權或其他智慧財產權的任何權利。
- 客戶未被授予任何源代碼的許可，或者使用或商業利用智慧財產權的權利。
- 不向客戶提供任何可供其使用的設備。
- 客戶僅被授予有限的、非排他性的、可撤銷的且不可轉讓的使用納稅人商標的權利。

所得不作為FIS徵稅:

- 納稅人提供的服務是標準且自動化的，在線公開提供，並且不針對任何客戶定制。
- 僅向客戶提供附帶或輔助支援。
- 支援服務是一般和附帶的支援服務，不涉及任何技術或知識移轉。
- 稅務機關所設想的術語「架構指導」(architectural guidance)的含義絕不意味著向客戶提供任何技術知識或專有技術(know-how)。

考慮到上述情況，非居民納稅人實體的所得在印度被認為是免稅的。

資誠觀點

行政法庭確認了以下立場：提供雲端計算服務不會導致服務提供者授予客戶對提供此類服務的基礎設施的控制權或存取權限。法庭認為，雲端計算服務是向廣大公眾開放的標準和自動化服務，並且不為任何特定的服務接受者定制的。

India

Indian Administrative Tribunal adjudicates receipts from cloud- computing services are not taxable as royalty or FIS

The issue of taxability of income received by non-resident taxpayers on account of various IT-related services, including cloud-computing services, is a matter of continuous litigation between the taxpayers and tax authorities in India. In a recent ruling, the Indian Administrative Tribunal ruled in favour of a non-resident US entity in the context of cloud- computing services provided to Indian customers. The Tribunal concluded that such services are not covered within the ambit of either royalty or fees for included services (FIS) under the tax treaty.

The taxpayer, a US tax resident, provides cloud-computing services to customers worldwide. The taxpayer enters into customer agreements with its Indian customers to provide cloud-computing services. The Tribunal observed that the taxpayer, being a US tax resident, is governed by the India-USA tax treaty. Accordingly, it analyzed the taxability of the receipts under the provisions of the tax treaty. The Tribunal has observed the facts of the taxpayer entity and other favorable judicial precedents to adjudicate as below.

Income not taxable as royalty:

- Customers do not receive any right to use the copyright or other intellectual properties involved in these services.
- Customers are not granted any source code of the license, or the right to use or commercially exploit the intellectual property.
- Customers are not provided any equipment at their disposal.
- Customers are granted only a limited, non-exclusive, revocable and non- transferable right to use the taxpayer's marks.

Income not taxable as FIS:

- Services the taxpayer has provided are standard and automated services that are publicly available online and not customized for any customer.
- Only incidental or ancillary support is provided to the customers.
- The support services are general and incidental support services and do not involve any transfer of technology or knowledge.
- The meaning of the term 'architectural guidance,' as envisaged by the tax authorities, in no way results in making available any technical knowledge or know-how to the customers.

Considering the above, receipts of the non- resident taxpayer entity were held to be non-taxable in India.

For more information see our Tax Insight.

PwC observation:

The Administrative Tribunal affirmed the position that provision of cloud- computing services does not result in service providers granting the customers control or access to the infrastructure setup for the rendition of such services. According to the Tribunal the cloud-computing services are standard and automated services that are open to the public at large and are not customized for any particular service recipient.

印度
印度行政法庭解釋印度-模里西斯租稅協定中「股份」的含義

印度-模里西斯租稅協定於2017年修正並生效，其中包含一項祖父條款(grandfathering provision)，即免除任何符合資格的居民轉讓在2017年4月1日之前購得的股份所產生的資本利得稅。印度行政法庭最近就模里西斯居民納稅人在2017年4月1日之後的股份轉讓是否應課稅做出了判決。

持有模里西斯有效稅務居住證(TRC)的納稅人在2017年4月1日之前取得了累積可轉換優先股(CCPS)。這些股份在2017年4月1日之後轉換為普通股，然後被出售，也就是在印度-模里西斯租稅協定修正後。稅務機關對納稅人享有租稅協定優惠的主張提出異議，認為納稅人是一家沒有任何商業理由的導管公司。法庭做出如下結論：

申請租稅優惠的資格:

行政法庭確認了一個原則，即稅務機關不能在不考慮有效的TRC的情況下確定納稅人實體的居住地。此外，由於稅務機關沒有提供任何令人信服或具體的證據，法庭駁回了稅務機關有關納稅人是導管公司和財務透明實體的論點。

資本利得可免稅:

法庭指出，納稅人有資格申請豁免是沒有爭議的，因為這些股份無疑是在2017年4月1日之前取得的。原因如下。

- 納稅人在2017年4月1日之前購買了CCPS，並根據發行條款轉換為普通股，納稅人的權利沒有任何實質性變化。
- CCPS轉換為普通股只會導致股權性質上的變化，而納稅人的權利沒有實質性差異，投票權或其他權利也沒有改變。
- 除了在分派股利或償還股本方面的優先順序外，CCPS與普通股之間不存在重大差異。
- 在租稅協定中，「股份」具有更廣泛的含義，包括優先股在內的所有股份，。

鑒於上述情況，法庭允許納稅人根據印度-模里西斯租稅協定主張租稅優惠。

資誠觀點

行政法庭在解釋印度-模里西斯租稅協定中的「股份」一詞時得出的結論，必須在更廣泛的意義上解釋「股份」。因此，CCPS應被包含在其範圍內。此外，法庭重申了以下立場，即一旦模里西斯稅務機關簽發了TRC，稅務機關就不能在不考慮TRC的情況下繼續進行，並拒絕給予納稅人享有租稅協定的優惠。

未來，納稅人應密切關注法庭對「股份」的解釋將如何發展，以及更高的法院將如何評估。

India

Indian Administrative Tribunal interprets the meaning of 'shares' under India-Mauritius treaty

The India-Mauritius tax treaty, amended with effect from 2017, contains a grandfathering provision that exempts capital gains tax on the transfer of shares acquired by any eligible resident before 1 April 2017. The Indian Administrative Tribunal recently ruled on the taxability of the transfer of equity shares by a Mauritian-resident taxpayer after 1 April 2017.

The taxpayer, holding a valid tax residency certificate (TRC) of Mauritius, had acquired cumulative convertible preference shares (CCPSs) before 1 April 2017. These were converted to equity shares after 1 April 2017 and then sold—i.e., after amendment of the India-Mauritius tax treaty. The tax authorities disputed the taxpayer's claim to the tax treaty benefit, holding that the taxpayer was a conduit company without any commercial rationale. The Tribunal concluded the following.

Eligibility to claim tax benefits:

The Administrative Tribunal affirms the principle that the tax authorities cannot proceed without considering the valid TRC to determine the residency of the taxpayer entity. Moreover, in the absence of any cogent or concrete evidence presented by the tax authorities, the Tribunal rejected the tax authorities' contention that the taxpayer is a conduit company and a fiscally transparent entity.

Exemption on the capital gains available:

The Tribunal noted that there is no dispute that the taxpayer is eligible for an exemption claim since the shares were, without doubt, acquired before 1 April 2017. The reasons are as follows.

- The taxpayer acquired the CCPSs before 1 April 2017, which stood converted into equity shares as per the terms of issue, without any substantial change in the taxpayer's rights.
- Conversion of the CCPSs into equity shares would only result in a qualitative change in the nature of the shares' rights, with no material difference in rights and no alteration in voting or other rights with the taxpayer.
- Except for the differences in preference in receiving dividends or repaying capital, there are no material differences between the CCPSs and equity shares.
- In the tax treaty, the term 'shares' is used in a broader sense and takes within its ambit all shares, including preference shares.

In view of the above, the Tribunal has allowed the taxpayer's claim of benefits under the India-Mauritius tax treaty. For more information see our PwC Insight.

PwC observation:

The Administrative Tribunal, while interpreting the term 'shares' in the India-Mauritius tax treaty, concluded that 'shares' must be interpreted in a broader sense. Consequently, the CCPSs should be covered within its scope. Moreover, the Tribunal has reaffirmed the position that once the Mauritian tax authorities have issued the TRC, the tax authorities cannot proceed without considering the TRC and deny the tax treaty benefit to the taxpayer.

Going forward taxpayers should stay attuned to see how this interpretation of 'shares' provided by the Tribunal will evolve and be evaluated by higher courts.

印度
印度行政法庭對固定場所常設機構(PE)的組成作出判決

印度行政法庭最近就在印度有員工的情況下是否構成固定場所的常設機構(PE)進行了判決。在這個情景下，法庭評估了從事機器人流程自動化及其相關產品和服務業務的非美國居民納稅人的課稅問題。

法庭注意到納稅人案件中的某些無可爭議的事實：

- 沒有員工是為了開發、銷售或與機器人流程自動化軟體平台的開發或銷售相關的任何活動而來的。
- 訪問印度的員工都沒有進行任何有關銷售許可證的活動。
- 員工來訪的目的包括股東活動、監管活動、行銷活動、接受訓練等。
- 納稅人沒有利用印度聯營企業的場所透過其員工進行任何與銷售許可證相關的活動。
- 稅務機關未能提供任何證據證明納稅人在印度擁有固定場所的PE。

法庭同意納稅人的論點，即證明固定場所PE存在的基本標準的責任在於稅務機關。考慮到這些事實，法庭得出的結論是，稅務機關沒有能透過可信的證據證明納稅人在印度擁有固定場所的PE，並透過該PE取得了與銷售軟體許可證有關的所得。因此，軟體授權許可費用的任何部分都不能歸於PE。

資誠觀點

行政法庭的判決確認了以下原則：外國公司員工前往印度進行管理、輔助或準備活動不會在印度構成PE。法庭依靠納稅人提供的有力書面證據來證實其員工訪問印度的目的，最終對其有利。這強調了納稅人需要記錄和保存強有力的文件，以向印度稅務機關證實他們的案件。

India

Indian Administrative Tribunal rules on what constitutes a fixed-place PE

The Indian Administrative Tribunal recently ruled on the existence of a fixed-place permanent establishment (PE) on account of employees' presence in India. Here, it has evaluated the taxability of non-resident US taxpayers engaged in the business of robotic process automation and its related products and services.

In this context, the Tribunal has noted certain undisputed facts in the taxpayer's case.

- None of the employees came for development, sale, or any activity related to the development or sale of the robotic process automation software platform.
- None of the employees visiting India were carrying on any activity regarding the sale of a license.
- The employees' purposes of visiting included shareholder activity, stewardship activity, marketing events, receipt of training, etc.
- The taxpayer was not carrying on any activity related to the sale of license through its employees by using the premise of the Indian associated enterprise.
- The tax authorities failed to provide any evidence that the taxpayer has a fixed- place PE in India.

The Tribunal has agreed with the taxpayer's argument that the burden to prove that the essential tests for the existence of a fixed-place PE lies on the tax authorities. Considering the facts, the Tribunal concluded that the tax authorities failed to establish through credible evidence that the taxpayer has a fixed-placed PE in India, through which it has earned income relating to the sale of software licenses. Hence, no part of the software licensing fees can be attributed to the PE.

For more information see our Tax Insight.

PwC observation:

The ruling by the Administrative Tribunal affirms the principle that visits of foreign company employees to India for stewardship or auxiliary or preparatory activities would not create a PE in India. The Tribunal relied on the robust documentary evidence shared by the taxpayer to substantiate the purpose of its employees' visits to India, that eventually worked in its favour. This underlines the need for taxpayers to record and maintain strong documentation to substantiate their case before the Indian Tax Authorities.

波蘭
波蘭不當扣繳稅款利息的追回

歐盟法院(CJEU)在2023年6月8日的判決(案件編號為C-322/22)中聲稱，「波蘭稅務條例」第78條第5款限制了溢繳稅款的利息追回，違反了歐盟法。CJEU認為，國內法對於違反歐盟法而課徵費用的返還，特別是有關時效期限的規定，需要與歐盟的有效性(principle of effectiveness)和忠誠合作原則(principle of loyal cooperation)保持一致。因此，計算利息的期限不應限於在歐盟官方公報公布判決之日起30天。

該案涉及一家美國投資基金(基金)，該基金於2017年根據CJEU 2014年4月10日的判決(案件編號為C-190/12)，申請退還波蘭公司股利的扣繳稅(WHT)。2014年的判決認為，波蘭法因為歧視來自第三國的基金，與歐盟法不相容。本案構成了第三國基金在波蘭申請退還扣繳稅款的依據，因為當地法規在這方面的規定沒有改變，即2014年判決中發現的違規行為並沒有被糾正。該基金於2018年收到了退還的扣繳稅款，但並未收到所有不當扣繳稅款的利息(該基金只取得了2012-2013年自溢繳之日起至案件編號為C-190/12的判決刊登在歐盟官方公報的第30天溢繳稅款的利息，而2014年溢繳稅款的利息被拒絕，因為這些利息是在CJEU判決公布後產生的)。

根據「波蘭稅務條例」第78條第5款CJEU認為，溢繳稅款的利息為：

- 從溢繳之日起至歐盟官方公報上公布判決之日起第30天期間，在有限的範圍內支付(如果溢繳稅款的退還申請是在歐盟官方公報上刊登該判決之日起第30天後提交的)，
- 在歐盟官方公報上刊登判決之日起30天後發生的溢繳，則根本不需要支付；和
- 嚴重違反了歐盟法，將有效性和忠誠合作原則結合考慮。

資誠觀點

歐盟法院最近的判決可能成為納稅人基於違反歐盟法而被剝奪資金情況下，申請退還利息的依據。歐盟法院的這項判決為納稅人提供了一個機會，可就因違反歐盟法(特別是但不限於案件C-190/12)而產生的溢繳款項，在未來的主張和已結束的訴訟程序中，尋求額外的利息追回。對於已經有最終判決裁判的訴訟，必須在法定期限內(即在歐盟官方公報公布判決的一個月內，即2023年8月23日)提交重新啟動訴訟程序的申請。

Poland
Interest recovery on unduly withheld tax in Poland

The Court of Justice of the European Union (CJEU) in its judgment dated 8 June 2023 (case no. C-322/22) claimed that the Poland's article 78 § 5 of the Polish Tax Ordinance, which limits interest recovery on tax overpayments, is in breach of EU law. 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 which the interest shall be calculated should not be limited to 30 days from the date of publication of the sentence in the Official Journal of the EU.

The case concerned an American investment fund (Fund) which in 2017 applied for a refund of tax withheld (WHT) on dividends from Polish companies based on the CJEU judgment dated 10 April 2014 in case no C-190/12. This 2014 judgment found that Polish regulations were incompatible with EU regulations as they introduce discrimination against funds from third countries - this case constitutes a basis for third country funds to recover WHT in Poland as the local provisions in this regard remain unchanged, i.e. the breach found in the 2014 judgment was not removed). The Fund received a WHT refund in 2018, however, it did not receive all the interest on tax unduly withheld (the Fund was granted only 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 no C-190/12 whereas interest on overpayments made in 2014 was refused as they had arisen after the publication of CJEU jugdement).

The CJEU ruled under article 78 § 5 of the Polish Tax Ordinance, interest on the overpayment is:

- payable to a limited extent for the period from the date of the overpayment to the 30th day from the date of publication of the sentence in the Official Journal of the EU (if the application for reimbursement of the overpayment was submitted after 30th day from the date of publication of the sentence in the Official Journal of the EU),
- not due at all in a situation where the overpayment has arisen after 30th day from the date of publication of the sentence in the Official Journal of the EU; and
- significantly contrary to EU law taking into account the principle of effectiveness in conjunction with the principle of loyal cooperation.

PwC observation:

The CJEU's recent judgment may constitute a basis for applying for a recovery of interest in cases where the taxpayer has been deprived of funds as a result of the breach of EU law. This CJEU judgment creates an opportunity for the taxpayers to seek additional interest recovery on the overpayments that have arisen as a result of a breach of EU law (in particular but not limited to case no C-190/12) both in terms of future claims and already closed proceedings. For 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.

西班牙
常設機構的管理費用和一般行政費用的比例分配

在2023年7月17日的一項判決中，西班牙最高法院討論了受西班牙企業所得稅第22條規定的豁免影響的常設機構(PE)的一般管理和行政費用的分配標準。

該判決重點關注的是的特定活動和服務的處理，這些活動和服務不會在集團內每個實體中產生相應費用的交易，但對實體(包括其常設機構)產生難以個別區分的效用。

資誠觀點

西班牙最高法院的結論是，為了計算根據企業所得稅第22條免稅的常設機構執行業務所得，為實現常設機構目的而發生的管理和一般行政費用可以按比例歸屬於該常設機構，無論這些費用是否發生在常設機構所在地。

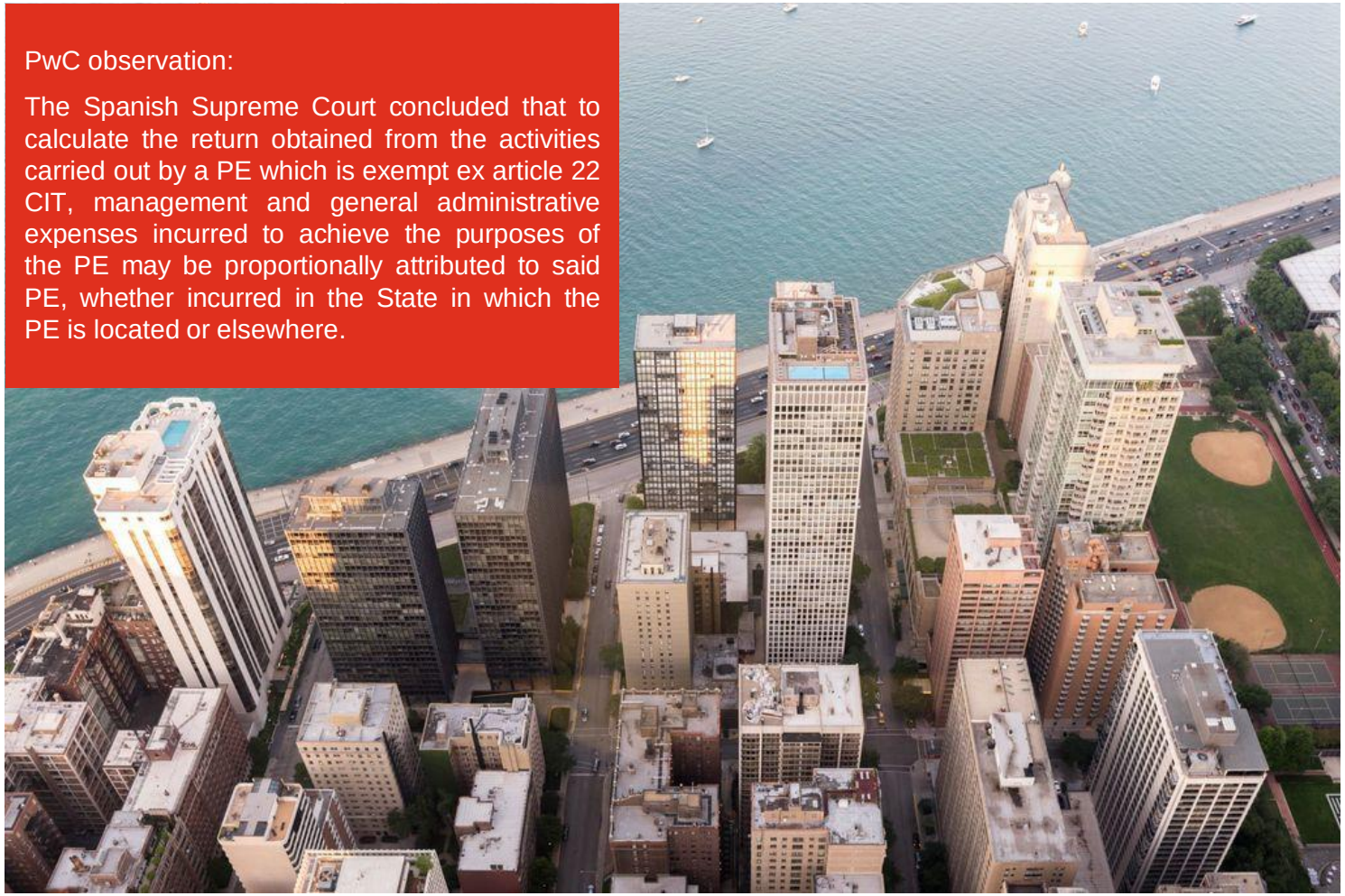
Spain
Proportional allocation of a PE's management and general administration expenses

In a 17 July 2023 ruling, the Spanish Supreme Court addressed the criteria to allocate general management and administration expenses attributable to Permanent Establishments (PE) affected by the exemption provided for in article 22 of the Spanish Corporate Income Tax.

The ruling focuses on the treatment of activities and services that don't generate a transaction with a correlative expense in every entity forming part of the group, but that result in a utility for these entities (including their PEs) that is difficult to individualize.

PwC observation:

The Spanish Supreme Court concluded that to calculate the return obtained from the activities carried out by a PE which is exempt ex article 22 CIT, management and general administrative expenses incurred to achieve the purposes of the PE may be proportionally attributed to said PE, whether incurred in the State in which the PE is located or elsewhere.



西班牙
稅務機關對拒絕非居民適用所得稅法的股利免稅，有舉證濫用的責任

根據歐盟法院最近的判決，西班牙最高法院在2023年6月8日發布了第2652/2023號判決。該判決確認了2021年5月21日西班牙國家高等法院的決定，涉及非居民所得稅法第14(1)(h)條規定的反濫用條款。

上述條款中包含的反濫用條款規定，在收到股利的實體由在歐盟或歐洲經濟區之外的非居民股東控制的情況下，西班牙子公司向其歐洲母公司分配股利，不能享有母子公司指令的免稅待遇。

西班牙最高法院認為這項規定違反了歐盟法，因為它建立了濫用和詐欺的一般推定，將證明不存在濫用的責任轉嫁給了納稅人。另外，判決聲稱，為了證明反濫用條款的適用並拒絕免稅待遇，稅務機關必須根據個案的具體情況來證明存在濫用行為，不可能以一般詐欺推定為由拒絕免稅待遇。

資誠觀點

簡而言之，反濫用條款的解釋必須採用限制性方式，因為它涉及不能享受母子公司指令的好處。這意味著只有在稅務機關能夠證明存在濫用權利的情形下，分配給歐洲母公司的股利才不能取得免稅待遇。

這項判決意味著西班牙最高法院放棄了迄今為止的原則，該原則認為證明不存在濫用或詐欺行為的責任落在納稅人身上。

Spain

The Tax Authority has the burden of proof of abuse for denying the exemption applicable on dividends under the non-resident income tax law

In view of the recent case law of the Court of Justice of the European Union, the Spanish Supreme Court has released Judgment number 2652/2023 of 8 June 2023. This Judgment confirms the decision of the Spanish National High Court of 21 May 2021, regarding the anti-abuse clause provided for in article 14(1)(h) of the Non-Resident Income Tax Law.

The anti-abuse clause included in the mentioned article establishes that the distribution of dividends by a Spanish subsidiary to its European parent company can't benefit from the Parent-Subsidiary Directive exemption in those cases where the recipient entity is controlled by shareholders non- resident in the European Union or in the European Economic Area.

The Spanish Supreme Court regards this provision as an infringement of EU law since it establishes a general presumption of abuse and fraud that transfers onto the taxpayer the burden of proving the lack of abuse. Moreover, the ruling claims that in order to justify the application of the anti-abuse clause and deny the application of the exemption, the Tax Authority must prove —according to the prevailing circumstances in each specific case— the existence of the constituent elements of an abusive practice, not being possible to ground the denial of the exemption on a general presumption of fraud.

PwC observation:

In a nutshell, the interpretation of the anti-abuse clause must be made in a restrictive manner, as it entails an exception to the benefits of the Parent-Subsidiary Directive. This means that only those dividends distributed to European parent companies for which the Tax Authorities can prove the existence of an abuse of rights will not be exempt.

This ruling implies the abandonment of the Spanish Supreme Court doctrine so far, which held that the burden of proving the absence of abuse or fraud fell on the taxpayer.

西班牙
西班牙行政或司法機關不得質疑他國稅務機關簽發的稅務居住者證明

西班牙最高法院在2023年6月12日的判決(rec. 915/2022)中確認，西班牙稅務機關(STA)不得質疑他國政府機構根據租稅協定簽發的稅務居住者證明。在分析的案例中，美國稅務機關已證明納稅人是美國-西班牙租稅協定中規定的美國稅務居民。由於這種情況是自動來源於他的美國公民身分(這是美國簽署的所有租稅協定的特殊之處)，STA和西班牙國家法院質疑他是否真的是租稅協定下，可享受特殊待遇的美國居民。

因此，STA根據西班牙個人所得稅(PIT)認為他是西班牙的稅務居民，在沒有考慮租稅協定第4.2條的破除僵局法則(tie-breaking rules)的情形下，就否定了他作為美國居民的身分。西班牙最高法院駁回了這項推理，認為它違反了西班牙憲法和租稅協定本身。該判決指出，如果租稅協定不對居住概念加以限制，而是將其確定權留給各締約國的國內法，則所涉國家的稅務機關均不得質疑他方締約國已證明的標準。

資誠觀點

因此，一旦納稅人的稅務居民身分在西班牙和美國都得到確認，就必須根據上述租稅協定的破除僵局法則來解決爭議。

Spain

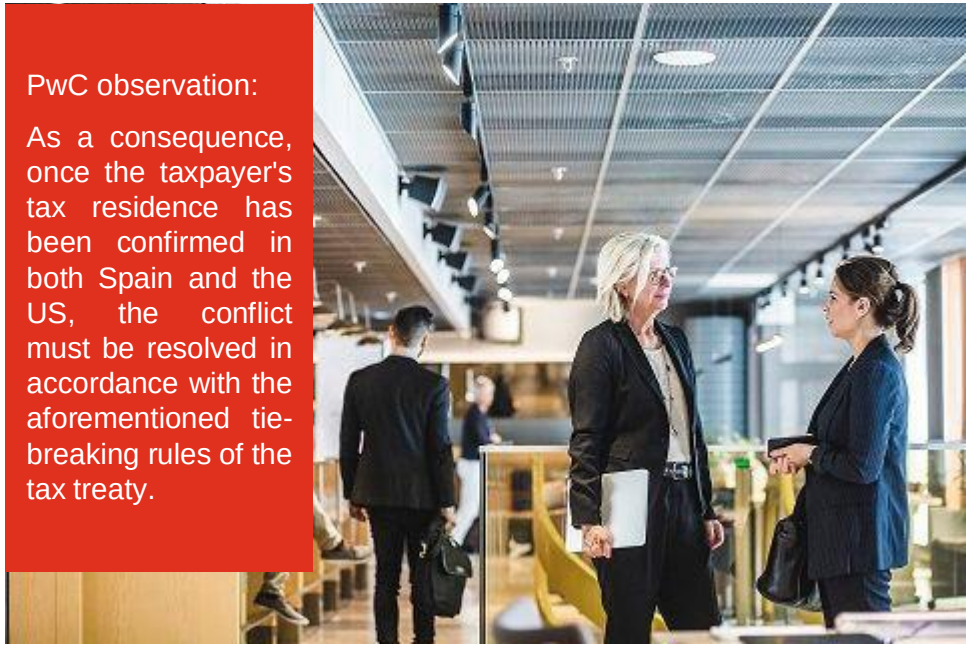
The tax residence certificate issued by the Tax Authority of another State cannot be questioned by the Spanish administrative or jurisdictional bodies

The Spanish Supreme Court, in its ruling of 12 June 2023 (rec. 915/2022), confirmed that the Spanish Tax Authorities (STA) cannot question a certificate of residence issued by another Administration regarding a tax treaty. In the case analyzed, the United States' Tax Authority had certified that the taxpayer was a tax resident in the United States for the purposes of the US-Spain tax treaty. Since this circumstance derived automatically from his condition of US citizenship (a particularity of all tax treaties signed by the US), the STA and the Spanish National Court had questioned whether he was really a resident of the US who deserved the special treatment provided for in the tax treaty.

As a result, the STA considered him a tax resident in Spain in accordance with the Spanish Personal Income Tax (PIT) regulations, being his status as a resident in the US denied without addressing the tie-breaking rules of article 4.2 of the treaty. The Spanish Supreme Court rejects this reasoning considering that it infringes both the Spanish Constitution and the tax treaty itself. The ruling establishes that if a tax treaty does not impose a concept of residence but leaves the determination of it to the internal legislation of each Contracting State, the Tax Authority of none of the countries involved can question the criterion that the other party has already certified.

PwC observation:

As a consequence, once the taxpayer's tax residence has been confirmed in both Spain and the US, the conflict must be resolved in accordance with the aforementioned tie-breaking rules of the tax treaty.



要聞

OECD/EU
經合組織/歐盟

比利時
歐盟普通法院認為比利時超額利潤的判決是非法的國家援助

9月20日，歐盟普通法院(GCEU)就比利時超額利潤的判決(Belgian EPR)案進行第二次判決(歐盟普通法院對案件T-131/16的判決)。與2019年對EPR的首次判決相反，它確認了歐盟委員會(EC)2016年1月11日的決定，即EPR構成非法稅務計劃並違反了歐盟國家援助規則。

CGEU現在認為EC關於比利時EPR違反歐盟國家援助規則的決定是正確的。GCEU拒絕了比利時提出的論點，包括EC未能考慮比利時適用的稅務規則。具體而言，GCEU得出以下有關EC的結論：

- 證明EPR為其受益人提供了租稅優惠；
- 正確總結了EPR的選擇性，因為從中受益的跨國集團的成員與受標準比利時企業所得稅制度約束的實體受到不同的待遇；
- 正確地發現，EPR不適用於不在比利時進行投資、集中活動或創造就業機會的公司，也不適用於小型集團的成員。

資誠觀點

歐盟國家援助規則對納稅人在歐盟內部正確適用稅務判決和移轉訂價規則帶來重大的不確定性。這項判決是為進一步明確和指導國家援助規則的適用而採取的眾多步驟之一。這項判決將對其他正在進行的案件和調查產生什麼影響尚不明確。跨國公司應關注歐盟國家援助規則的進展情況，並考慮最終決定將如何影響他們的處境。

Belgium

EU General Court considers the Belgian excess profits ruling to be unlawful state aid

The General Court of the European Union (GCEU) on September 20 ruled for the second time in the case of the Belgian Excess Profits Ruling (Belgian EPR) (Judgement of the General Court in case T-131/16). Contrary to its first judgement in 2019 on EPR, it has confirmed the European Commission (EC) decision of January 11, 2016 that the EPR constituted an unlawful tax scheme and infringed the EU State aid rules.

The CGEU now has ruled that the EC was correct in deciding that the Belgian EPR infringes EU State aid rules. The GCEU rejected the arguments that Belgium put forward, including the EC's failure to take into account the tax rules applicable in Belgium. More specifically, the GCEU concluded that the EC:

- demonstrated that the EPR granted tax advantages to its beneficiaries;
- correctly concluded on the selectivity of the EPR, as the members of a multinational group benefitting from it were treated differently from entities subject to the standard Belgian Corporate Income Tax regime;
- was right in finding that the EPR was not open to companies that did not make investments, centralise activities, or create employment in Belgium, and was not available to members of a small group.

PwC observation:

The EU State aid rules continue to cause significant uncertainty for taxpayers as to the correct application of tax rulings and transfer pricing rules within the European Union. This judgment is one of many steps in providing further clarity and guidance on the application of the State aid rules. What impact this judgment will have in the other ongoing cases and investigations is not certain. Multinationals should monitor the EU State aid rules developments and consider how the ultimate decisions could impact their situation.

要聞

Treaties
租税協定

西班牙
在自由貿易區租稅協定的適用申請

財政部最近於2023年6月6日發布了具有約束力的函釋(編號V1605/2023)，該函釋審查了租稅協定在免稅區的適用。該函釋涉及一家西班牙公司的案件，該公司在杜拜的一個自由貿易區設有子公司，該子公司銷售西班牙公司的產品。在上述自由貿易區，沒有類似西班牙企業所得稅的稅收，因此該子公司的利潤在阿拉伯聯合大公國無需繳納任何稅款。問題是西班牙和阿拉伯聯合大公國之間的租稅協定是否適用。

為了確定杜拜的自由貿易區是否包含在阿拉伯聯合大公國境內，根據西班牙與阿拉伯聯合大公國簽署的租稅協定，「阿拉伯聯合大公國」一詞包括其主權下的區域，以及上述國家根據國際法和國內法行使主權權利的領海、領空以及水下區域，包括大陸領土和管轄島嶼，以及與之相關的任何活動。此外，免稅區是國家領土的一部分，儘管主管機關為某些工業、商業或服務提供租稅優惠，不認為這些活動是在該國的關稅領土內進行的。因此，即使就海關而言，免稅區可能不被視為相關國家的領土，但它們是該領土的一部分，且租稅協定也不會因此而停止適用。

資誠觀點

該函釋的結論是，由於租稅協定適用於阿拉伯聯合大公國整個領土，而免稅區是該領土的一部分，只要子公司滿足被視為阿拉伯聯合大公國居民的所有要求，在上述免稅區所進行的活動將適用租稅協定的規定。

Spain
Application of a tax treaty to a free zone

The Ministry of Finance recently published binding ruling number V1605/2023, dated 6 June 2023, which examines the application of a tax treaty to a tax-free zone. The ruling addresses the case of a Spanish company with a subsidiary located in a free zone in Dubai, which markets the products of the Spanish company. In said free zone there is no tax analogous to the Spanish CIT, so the subsidiary's profit has not been subject to any tax in the United Arab Emirates. The question arises as to whether the tax treaty between Spain and the UAE is applicable.

To determine whether the free zone in Dubai is included within the territory of the UAE, the tax treaty signed between Spain and the UAE determines that the expression 'United Arab Emirates' includes the area under its sovereignty, as well as the territorial sea, airspace and underwater areas over which said States exercise sovereign rights in accordance with International Law and by virtue of their domestic legislation, including the continental territory and the jurisdictional islands, in relation to any activity related to it. In addition, tax-free zones are parts of the territory of a certain country, although the competent authorities provide tax benefits to the development of certain industrial, commercial, or service-providing activities, by not considering those activities to be carried out within the customs territory of that country. Therefore, even though for customs purposes the tax-free zones may not be considered as territory of the country in question, they are parts of said territory, and the tax treaty would not cease to apply for this reason.

PwC observation:

The ruling concludes that since the tax treaty applies to the entire territory of the UAE, and the tax-free zones are parts of said territory - as long as the subsidiary meets all the requirements for being considered a resident in the UAE - the activities carried out in said tax-free zones will be covered by the provisions of the tax treaty.

墨西哥
墨西哥法院澄清墨西哥-荷蘭租稅協定下的技術援助付款

2023年6月18日，聯邦行政司法法院(TJFA)高級法廳發布了一項法院判例，涉及墨西哥-荷蘭租稅協定下，將技術援助付款歸類為營業利潤。一般而言，TFJA規定，出於適用租稅協定的目的，技術援助付款不應被視為營業利潤，即使此類付款沒有在具體租稅協定條款中進行定義。法院在做出判決時，得出以下結論：

- 根據租稅協定第3條第2款和第7款，租稅協定中未明文規定的任何術語應根據締約國(墨西哥和荷蘭)國內法規定的含義來解釋。
- 如果外國居民的所得不在租稅協定的其他所得條款中單獨規定，這並不意味著可將該所得視為適用租稅協定優惠的營業利潤。
- 為了定義外國居民的所得，應根據墨西哥國內法規定的定義進行分析。
- 如果墨西哥國內法中有租稅協定中沒有的所得類型的定義，則墨西哥稅務居民應根據國內法中所規定的定義，對此類付款適用相應的扣繳稅(例如，租稅協定下的技術援助應被視為權利金)。

資誠觀點

鑒於上述情況，該法院判例可能會影響墨西哥稅務居民在適用墨西哥-荷蘭租稅協定時被視為營業利潤的付款。這最終可能會擴展到其他墨西哥租稅協定，因此納稅人應分析此類付款是否屬於墨西哥稅法規定的所得類型。而且，判例被賦予了法律的性質，因而具約束力的法院判例的效力。

Mexico

Mexican court clarifies technical assistance payments under the Mexico – Netherlands tax treaty

The Superior Chamber of the Federal Court of Administrative Justice (TJFA) issued a court precedent on 18 June 2023, in connection with the classification of technical assistance payments as business profit under application of the Mexico – Netherlands tax treaty. In general terms, the TFJA establishes that technical assistance payments should not be considered business profit for purposes of the application of the treaty even when such payments are not defined under a specific treaty article. In reaching its decision the Court concluded the following:

- Pursuant to Article 3, paragraphs 2 and 7 of the treaty, any term not expressly defined in the treaty shall have the meaning it has under the laws of the Member States (Mexico and the Netherlands).
- If the income received by the foreign resident is not within the other income regulated separately in the articles of a tax treaty, this should not imply that such concept may be considered as business profit for purposes of the applicability of the benefits of a tax treaty.
- To define the concept of the income received by a foreign resident, it should be analyzed under the definitions established in the Mexican laws.
- If the Mexican laws provide a definition of an income type not established in the tax treaty, the Mexican tax resident shall apply the corresponding withholding tax for such payments considering the definition established in the domestic legislation (e.g., technical assistance under the tax treaty should be considered royalties).

PwC observation:

In light of the above, this court precedent is likely to impact payments made by Mexican tax residents considered as business profit under application of the Mexico - Netherlands Tax Treaty. This could eventually be extended to other Mexican tax treaties, so taxpayers should analyze if such payments could fall within an income type established in the Mexican tax laws. Moreover, the court precedent was given the character of jurisprudence, thus having the effect of binding court precedent.

Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CJEU	Court of Justice of the European Union
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate

Acronym	Definition
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
PEX	Participation Exemption
R&D	Research & Development
VAT	value added tax
WHT	withholding tax

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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(泰國租稅優惠台商常見問題)：https://youtu.be/El6NvQVRUwY
- 台灣稅務與投資法規Update-10月號 (債權轉增資之運用及其限制)：https://youtu.be/UisN24b--v4
- 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
  2023台灣併購趨勢與發展https://youtu.be/WwF0Y1oxSVI
  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

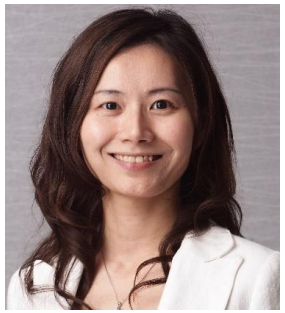
本會為依法設立、非以營利為目的的社會團體，以建構產業稅務專業人士的交流平台，研究產業稅務問題，促進公平合理課稅為宗旨。在台灣稅務界，本會成已為稅務專業的意見領袖，產、官、學界的主要諮詢機構。

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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