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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專論
OECD發布第二支柱應予課稅原則

摘要

2023年7月17日，OECD包容性架構(Inclusive Framework，IF)發布了一份報告，其中包含了實施應予課稅原則(Subject-to-Tax-Rule，STTR)的租稅協定範本條款，以及一份附帶的註釋，解釋了應予課稅原則的目的和運作方式。OECD秘書處也發布了一份應予課稅原則的摘要，報告名稱為「應予課稅原則簡要說明」，以協助理解應予課稅原則範本條款。

應予課稅原則是一種基於租稅協定模式而發展出來的規則，允許來源國對某些集團內部支付款課徵額外的稅負，以防收款人的名目公司稅率低於9%(這裡的稅率是經過調整的，是扣除免稅額與稅額扣抵等稅基減免後的稅率)。該規則針對關係人之間廣泛的付款範圍，包括利息、權利金和服務費，但特別排除了股息。應予課稅原則優先於包含所得涵蓋原則(Income Inclusion Rule, IIR)與徵稅不足之支出原則(Under Tax Payment Rule, UTPR)在內的全球反稅基侵蝕規定(GloBE Rules)執行，並可作為涵蓋稅款予以扣抵。各國預計將於2023年10月開始實施這個原則，透過多邊工具(Multilateral instrument，MLI)讓數個雙邊租稅協定(bilateral tax treaties)能同時進行變更。IF成員國已承諾會在其他IF成員國(即發展中國家)的要求時採用應予課稅原則。[1]

要點：應予課稅原則是兩支柱計畫向發展中國家傾斜的重要部分，但實施這個規則的代價很高，因為對於納稅義務人與稅務機關來說租稅協定的複雜性會大幅增加。雖然應予課稅原則可能被證實在特定情況下能夠有效地讓來源國恢復課稅權， 為達成此目的，這原則會要求針對廣泛的直接與間接的集團內跨境付款進行細緻的分析，包括傳統上只受居民國課稅的收入項目(例如，服務)。納稅人應密切關注存在於發展中國家的租稅協定的應予課稅原則條款將到來的執行情況，包括運用2023年10月將通過的多邊工具的方式來實施。由於額外的來源稅收是根據總收入徵收的，而消除雙重課稅的判斷基準是淨收入，應予課稅原則有可能增加企業的資金成本。

內文

應予課稅原則機制

應予課稅原則旨在擴大租稅協定所授予來源國的課稅權，否則這項徵稅權將留給居民國，也就是當居民國以低於9%的名目稅率徵稅，但是租稅協定卻把徵稅權留給居民國的情況下將適用此原則擴大來源國徵稅權。這種額外的課稅權是以補足至9%的稅率來計算的。因此，應予課稅原則的指定稅率等於9%與居民國所適用的名目稅率(依應予課稅原則的定義)之間的差額，再減去依據協定其他條款已分配給來源國的來源稅。根據應予課稅原則可徵收的最高稅負是涵蓋所得的毛額乘以應予課稅原則的指定稅率的總額。

資誠觀察：雖然應予課稅原則的最高稅負是根據涵蓋所得的毛額來計算，但來源國並無義務完全地行使該課稅權或以毛額作為徵稅的基礎。

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納稅客體(涵蓋所得範圍)

應予課稅原則第四款列出了七種構成其涵蓋所得的收入類別：(1)利息；(2)權利金；(3)產品或服務的經銷權付款；(4)保險或再保險保費；(5)保證或融資費用付款；(6)工業、商業或科學設備的租金付款；以及(7)服務費付款。第b)目針對以上清單進行修改，排除了以下範圍內的任何收入：(a)出租或供使用無船員或船長的船舶來運載乘客或貨物所取得的收入(光船租賃收入)；或(b)取得該收入的人稅負輕重取決於船隻噸位大小(徵收噸位稅)，這種類型的收入也被排除。

資誠觀察：值得注意的是，涵蓋所得並不包括股息。相反的，這項原則著重的是哪些支付款會因為可認列費用因此減少來源國的稅基，這種支付款的類型十分廣泛。這意味著應予課稅原則所針對的收入類型，除了被動所得(例如，利息、權利金)以外，還有主動(例如，服務費)所得，只要它們可以被廣泛地視為是種侵蝕稅基的手段。因此，這項原則偏好透過使用權益而非債務的方式來進行集團內融資。涵蓋所得也包括了一些通常不被來源國徵稅的項目，因為依據OECD租稅協定範本第7(1)條，這些類型的收入的專屬課稅權歸於居民國(即：針對使用或有權使用經銷權利的服務費用與付款)。

個人範圍、排除事項和門檻

應予課稅原則的範圍涵蓋了關係人之間的交易。實體之間的關聯性是基於控制關係來判斷的。此外，一個推定規則規定，如果有超過50%的直接或間接參與，則收款人與支付人之間將被視為具有關聯性，或根據事實和情況來綜合判斷也可能認定雙方有關聯關係。

儘管如此，應予課稅原則不適用於以下類別的收款人：個人、非營利組織、履行政府職能的國家和政府實體、國際組織、符合特定條件的投資基金(含：退休基金)，或是完全或幾乎完全由排除收款人所持有的實體。

此外，應予課稅原則只有在來源國產生並支付給居民國的關係人的涵蓋所得總金額超過一定的重大性門檻時才適用，該門檻為每年25萬歐元或100萬歐元(取決於涉及的國家GDP是高於或低於400億歐元)。[2]

此外，除了利息和權利金外，應予課稅原則只適用於收款人所收取的涵蓋所得超過賺取該所得所發生的相關成本加上8.5%的利潤率的情況(這代表了僅存在有限的稅基侵蝕風險的交易可以被排除)。間接成本也與計算這個門檻有關，並且可以透過任何合理的方法確定這項成本可歸屬於涵蓋所得。

名目稅率

居民國適用的名目稅率與決定應予課稅原則的指定稅率有關。雖然在大多數情況下，相關的名目稅率可能與一般法定稅率相符，但有些情況可能需要對名目稅率進行調整，包括以下情況：

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- 某些類別的收入類別或符合某些條件的納稅人適用特別法定稅率；
- 法定稅率根據收入金額分級；
- 稅款涵蓋在相關的雙邊租稅協定內，但是按照另一種稅基徵收(例如按照資產或股權而非淨所得徵收的稅款)；以及
- 納稅人在居民國享有「優惠性調整」，導致應予課稅的涵蓋所得金額永久性減少。這包括免稅額、特定的稅基扣除額和某些稅額扣抵(不包括海外已納稅額扣抵)，這些優惠與一項涵蓋所得有直接關聯，而非與納稅人有關。

資誠觀察：應予課稅原則的側重點是名目稅率，意在簡化其運作，但是要依靠它還要滿足一些額外的條件，這就大大降低了簡化的意義。

消除雙重課稅

如果沒有任何調整，應予課稅原則可能會觸發居民國的義務，要求居民國採用免稅法或者對來源國繳納的稅款提供扣抵。然而，應予課稅原則並不意圖影響課稅權的分配。為了反映這一點，在消除雙重課稅的條款中增加了額外的規定，以維持居民國在應用應予課稅原則之前的立場。例如，如果一個協定通常允許來源國對所得徵收2.5%的稅款，而居民國對所得徵收4%的稅款，那麼居民國通常會對4%的稅款提供2.5%的扣抵。引入應予課稅原則的額外稅款2.5%(即來源國現在對所得徵收5%的稅款)不會要求居民國提供額外的扣抵額。

資誠觀察：報告指出，這一規定對於根據國內法可能提供的減免機制沒有影響，也不會干擾在全球最低稅負制GloBE 規則下應予課稅原則作為涵蓋稅款的處理方法。

針對性反避稅條款(Targeted anti-avoidance rule，TAAR)

應予課稅原則的第11款包含了一個複雜的針對性反避稅條款(TAAR)。這個條款適用於以下兩種情況：一是通過高稅關係人轉移付款；二是付款給一個非關聯的中間人，然後該中間人再付款給一個與第一個付款人相關的最終收款人。在特定的情況下且如果合理地斷定中間人在沒有原始付款的情況下不會進行相關付款，針對性反避稅條款允許在確定應予課稅原則的適用稅率時忽略中間人在交易流程中的角色。然而，如果締約國在其租稅協定中有主要目的測試和利益限制條款(Principal Purpose Test and the Limitation on Benefits)的有效條文，並且認為它們足以應對針對性反避稅條款所涵蓋的情況，它們可以省略這個針對性反避稅條款。

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資誠觀察：針對性反避稅條款是機械性地運作(不論支付涵蓋所得的人是否有為了取得違反相關租稅協定條款的稅收利益而進行避稅的意圖)。因此，針對性反避稅條款不一定只針對濫用性的交易。此外，適用針對性反避稅條款的主要條件之一(「中間人若沒有原始支付，就不會進行相關支付」)與OECD租稅協定範本第10-12條下關於受益所有人(beneficial owner, BO)的例外相符(即10-12條的規定只適用於中間人是受益所有人的情況，而不是最終收款人是受益所有人的情況)。然而，該條款中實際使用的文字會在受益所有人的概念和針對性反避稅條款的條款用語之間造成混淆，從而增加了稅務當局會類比地運用針對性反避稅條款來辨識受益所有人的風險，超出了應予課稅原則的適用範圍。

1 在此所謂「發展中國家」是依據2019年人均國民所得毛額(Gross National Income per capita)為12,535美元或以下的國家，此項數據並將定期更新。

2 此門檻與用於判斷在第一支柱的金額A下與一個司法管轄區有關聯性的門檻類似。

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專論
德國發布反混合錯配規定指引草案

摘要

德國聯邦財政部(Federal Ministry of Finance)在7月14日針對德國反混合錯配規定(anti-hybrid rules)發布了一份全面性的法令草案，將普遍適用在2019年12月31日以後發生的所有費用。雖然這項法令草案釐清了部分項目，但還是有幾項問題沒有被解決。公眾可以在2023年8月10日以前針對草案內容提出評論。

觀察：這項法令草案還是有被討論與修改的可能性。擁有德國子公司的跨國企業應該監督立法進程，並且分析這部法令草案對德國費用可扣除性的影響。根據法令草案的要求，企業還應該遵守外國法律針對交易處理的文件要求。

詳細內容

背景

德國反混合錯配規定適用在會導致以下情況的費用：(1)因混合錯配而導致交易參與的一方可以列報費用扣除，另一方卻可以不用計入收入(deduction without inclusion)；(2)雙重費用扣除(double deduction)；以及(3)導入的混合錯配(imported hybrid mismatches)。除了不溯及既往條款涵蓋的部分費用外，德國反混合錯配規定一般適用在2019年12月31日以後發生的所有費用(包括銷貨成本和認定費用)。

新法令草案

這是德國稅務機關針對反混合錯配規定發布的第一個指引草案。以下是對這項法令草案的一些主要初步觀察：

- **導入的混合錯配規定：**這個規定也適用在德國納稅人列報的費用與「混合」費用間沒有(經濟)關聯的情況。所以，導入的混合錯配規定不只限於應用在「背靠背」(“back-to-back”)的情況，根據目前的解釋，還需要分析在非德國實體間的各種費用支付。

範例(法令草案中的範例)：一家德國公司向它的外國關聯B公司支付利息費用；B公司向另一外國關聯實體支付權利金費用，B公司的利息收入和權利金間沒有經濟關聯，但在決定B公司收入時卻採淨額結算，導致交易參與的一方列報費用扣除；另一方卻不計入收入。根據法令草案導入的混合錯配規定，這家德國公司的利息費用將不可扣除。

- **被剔除的款項構成的雙重涵蓋收入(dual inclusion income)：**法令草案沒有解決因為美國稅收目的而被剔除的款項(這項收入在美國不課稅)是否會構成雙重涵蓋收入。

專論
德國發布反混合錯配規定指引草案

- **受控外國企業(Controlled Foreign Corporation, CFC)規定的不徵稅：**德國反混合錯配規定也適用在外國CFC徵稅規定中因為混合錯配所觸發的不徵稅情況，前提是這個收入在任何其他稅收轄區也都不課稅。在這個基礎下，不在它稅收轄區納稅的實體(例如，零稅率稅收轄區的稅務居民)的費用支付，如果也被美國因稅收目的而剔除了，就會涵蓋在德國反混合錯配規定的適用範圍內。這個款項也不會被視為美國Subpart F Income(CFC相關收入)而需要計入美國直接或間接股東身上。這份草案沒有提到因應德國反混合錯配規定，應該如何處理美國全球無形資產低稅負所得(US global intangible low-taxed income, GILTI)。所以，因為美國GILTI目的的不徵稅是否也被視為一方列報費用扣除；另一方卻不計入收入，還存在不確定性。

- **因CFC規定的扣除而產生的雙重費用扣除：**如果費用同時因為德國稅收目的和外國CFC稅收目的而可被扣除，也會產生雙重費用扣除。在這種情況下，需要適用雙重涵蓋收入的例外。就算這樣，這項法令的注釋包含一項聲明，這項聲明說明了如果滿足特定要求，外國CFC稅將不會導致雙重費用扣除。法令草案並未提到前面法令注釋的這項聲明，也沒有提到為因應德國反混合錯配規定，將如何處理美國 GILTI。所以，因為美國GILTI目的扣除的費用是否會被視為將導致雙重費用扣除，還存在不確定性。

- **文件要求：**法令草案規定，納稅人必須遵守德國法律下的延伸合作規定，記錄外國稅法下對交易的處理方式。這些規定要求向德國稅務機關提供文件，以便根據外國法律確定相應交易(例如外國會計文件或外國稅務機關交易處理報表)。如果納稅人不遵守這些文件要求，稅務機關可能會被認定適用德國反混合錯配規則，使有關費用不可被扣除。

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專論
歐盟移轉訂價議題

摘要

歐盟執行委員會(European Commission)於9月12日發布了一系列新提案，提出以下三項稅收規則:

(i) 在歐盟內部經營之企業應遵守的稅收規則 - 歐洲商業活動之所得稅框架(Council Directive on Business in Europe: Framework to Income Taxation ,BEFIT)；

(ii) 制定歐盟一致性移轉訂價原則

(iii) 針對微型、小型和中型企業(SME)制定總部稅收制度(Head-Office Tax, HOT)

內文

移轉訂價議題

歐盟執行委員會近期提出一項旨在協調歐盟內部的移轉訂價原則，以確保在歐盟地區有關移轉訂價之規範具備一致性。瞭解備忘錄(Explanatory Memorandum)中說明，因多數歐盟成員國亦為OECD成員國之一，但OECD 移轉訂價指導原則(OECD TP Guidelines)在各歐盟成員國中的定位及狀況卻有所不同。此外，國內立法的差異(如控制之定義)也易提高複雜性及雙重(不)課稅等風險。在此背景之下，該提案將把常規交易原則及重要移轉訂價規則加入歐盟法律中，藉以提高OECD 移轉訂價指導原則的重要性，並創造歐盟在此準則上建立共同約束的可能性。

該指令適用範圍包括在一個或多個歐盟成員國註冊或應納稅之納稅義務人，以及在一個或多個歐盟成員國設立之常設機構(PE)。

一般準則中，歐盟成員國應確保當企業與關係企業進行一項或多項跨境商業或金融交易時，該企業應依照常規交易原則以確定其課稅所得(該原則在指令中係依照交易的獨立性來佐證彼此無關聯，並且其價格或利潤率是在公開市場下決定)。此外，該指令也為歐盟成員國提供了部分移轉訂價核心要素的共同規則。

此次提案中，歐盟成員國有義務將相關規範納入各國國內法之中，以確保移轉訂價原則之應用方式與OECD 移轉訂價指導原則一致。而歐盟理事會 (EU Council)可依據OECD 移轉訂價指導原則，制定進一步規則以說明常規交易原則及相關規範應如何在特定交易中進行應用。

目前擬定將與OECD 移轉訂價指導原則中第一章至第三章保持一致，其餘部分如無形資產(包括難以衡量之無形資產)、服務、成本分攤協議(CCA)、金融交易、企業重組及企業總部與常設機構交易等議題，皆須再進一步研擬。

專論
歐盟移轉訂價議題

提案指出，歐盟成員國應於2026年1月1日前開始實施移轉訂價原則。

資誠觀點

- 在編輯常規交易原則及相關重要移轉訂價原則(如關係企業之定義、爭議解決機制或相對應補償調整機制)時，應謹慎考量委員會與各成員國之間的平衡點。
- 對於歐盟成員國之間為制定共同準則而合作，從較容易達成共識的議題開始，如文件相關書寫建議等。此方式也有助於提早有效地處理各成員國之規定等相關議題。

結論

- BEFIT對企業而言雖可簡化業務，但在引入許多新概念下，又與GloBE規則有不一致的情形下，更需要謹慎處理，否則難以與其他稅務改革同時實施。
- 為了市場上的公平競爭，移轉訂價的法規制定絕對是備受歡迎的。移轉訂價原則之編輯需在委員會的理想及各成員國能配合的程度上找到一個平衡點，若各成員國可強制性進行相對應的調整相關制度，可促進此提案的編輯。
- 雖然總部針對中小企業的稅收提案簡化了許多措施，但由於適用範圍不大，造成實際利用時會有所設限。若增加適用範圍，對於歐盟不斷發展的中小企業將更為有利。

上述三項提案皆須獲得歐盟成員一致性的支持，並且在歐盟委員會任期結束前施行(明年春季)。即使目前判斷上述提案是否會正式通過仍過早，但針對移轉訂價之提案，仍是備受許多成員國所支持。

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要聞

Legislation
立法

巴貝多
巴貝多對支柱二全球最低稅負制的因應

11月7日，巴貝多總理宣布將對所得稅法第73章進行重大的國際稅務修正。這些修正預定於2024年1月1日生效，將再次改變巴貝多的公司稅務環境。

從2024年1月1日起，公司稅稅率將提高到9%。提高的稅率將影響所有公司實體，但排除了全球反稅基侵蝕規則(GloBE Rules，以下簡稱GloBE規則)中規定的排除實體。

對於最終母公司(UPE)所在租稅管轄區尚未實施所得涵蓋原則(IIR)或徵稅不足支出原則(UTPR)，或成員實體不受IIR或UTPR約束的適用範圍內的跨國企業(MNE)，將繼續適用2019年制定的5.5%至1%的現行滑動式稅率(sliding scale rates)。將不適用合格國內最低稅負制(QDMTT)。

自2024年1月1日起，針對適用範圍內的公司，將引入符合GloBE規則的QDMTT。對於UPE的租稅管轄區已引入IIR或UTPR的適用範圍內的跨國企業成員實體的子公司和常設機構，將對成員實體課徵補充稅，以確保他們按照GloBE規則承擔15%的有效稅負(ETR)。新的公司稅率將僅適用於2024年所得年度中，從2024年1月1日開始取得的利潤部分。

2024年公司稅改政策文件提到將實施與補充稅相關的一些避風港規則：合格國內最低稅負制(QDMTT)避風港、UTPR避風港和國別報告(CbCR)避風港。

資誠觀點

巴貝多實施避風港規則將減輕納稅人的行政和合規負擔，儘管主要是在集團或最終母公司層面。適用CbCR避風港將有可能大幅降低符合條件的納稅人的合規要求。因此，CbCR報告應符合GloBE規則。避風港規則還提供了更大的確定性，即不會向其他租稅管轄區繳納額外的補充稅。

Barbados
Barbados response to Pillar Two global minimum tax

The Prime Minister of Barbados, on 7 November, announced significant forthcoming international tax amendments to Income Tax Act, Cap. 73. The amendments, which are scheduled to come into effect on 1 January 2024, will again change the corporation tax landscape in Barbados.

Effective 1 January 2024, the corporation tax rate will increase to 9%. This increased tax rate will impact all corporate entities other than those that fall within the stipulated exclusions under the GloBE Rules.

For in-scope multinational enterprises (MNEs) whose Ultimate Parent Entity (UPE) is in a jurisdiction that has not adopted or implemented either the Income Inclusion Rule (IIR) or the Under-taxed Profits Rule (UTPR), or whose Constituent Entities are not subject to the IIR or UTPR, the current corporation sliding scale rates of 5.5% to 1%, established in 2019, will continue to apply. The Qualified Minimum Domestic Top-up Tax (QDMTT) will not apply.

Effective 1 January 2024, a QDMTT shall be introduced consistent with the GloBE Rules for in-scope companies. For subsidiaries and permanent establishments of in-scope MNEs' Constituent Entities whose UPE is in a jurisdiction that has introduced a IIR or a UTPR, a Top-up Tax will be imposed on the Constituent Entities to ensure that they will be subject to a 15% ETR in accordance with the GloBE Rules. The new corporation tax rate will apply only for the portion of profits in income year 2024 that is earned from 1 January 2024.

The Corporation Tax Reform 2024 Policy Paper references the implementation of a number of safe harbours in relation to the new Top-up Tax: QDMTT Safe Harbour, UTPR Safe Harbour, and Country-by-Country Reporting (CbCR) Safe Harbour.

For more information see our PwC Insight.

PwC observation:

The implementation of the safe harbours in Barbados would offer a reduced administrative and compliance burden for taxpayers, albeit primarily at group or ultimate parent level. The applicability of the CbCR safe harbour will have the potential to significantly reduce compliance requirements for eligible taxpayers. Thus, CbCR reporting should be undertaken such that it would comply with the GloBE Rules. Safe harbours also provide greater certainty that there would be no additional Top-up Tax payable to other jurisdictions.

比利時
比利時投資抵減制度預計將發生重大變化

2023年10月，比利時聯邦政府就聯邦預算達成協議。該協議中的一項重要租稅措施涉及比利時投資抵減制度的修正，旨在支持比利時的投資環境。

表決通過並生效的最終版法令，將把一般的投資抵減率從8%提高到10%。對於中小企業/合格個人進行的符合資格的數位投資，10%的稅率將進一步提高至20%。

新制度將以增加的「專題(thematic)」40%(非中小企業為30%)投資抵減，取代過往特定類別符合資格的投資。專題投資抵減適用於以下類別：

- 與有效利用能源和再生能源有關的投資；
- 零排放交通運輸的投資；
- 環境友善的投資；和
- 支持上述類別相關的數位投資。

資誠觀點

如果相關租稅法案最終通過，新制度預計將適用於2025年1月1日起進行的投資。不包括與(部分)專業扣繳稅豁免制度相關的修正，該修正將適用於2024年1月1日起進行的投資。

Belgium
Significant changes expected to the Belgian investment deduction regime

The Belgian Federal Government agreed on the federal budget in October 2023. One important tax measure in this agreement relates to changes in the Belgian investment deduction regime, an effort to support the Belgian investment climate.

The final law – after it is voted on and enters into force – will increase the ordinary investment deduction rate from 8% to 10%. The 10% rate will further increase to 20% for qualifying digital investments made by SMEs/qualifying individuals.

The new regime will replace the previously mentioned specific categories of qualifying investments in an increased 'thematic' investment deduction of 40% (30% for non- SMEs). The thematic investment deduction will apply to the following categories:

- Investments relating to the efficient use of energy and renewable energy;
- Investments in zero-emission transport;
- Environmentally friendly investments; and
- Supporting digital investments (linked to the above-mentioned categories).

For more information see our PwC Insight.

PwC observation:

If the corresponding tax law will be finally voted, the new regime is expected to apply to investments made as of 1 January 2025 (apart from the correction related to the (partial) professional withholding tax exemption regime, which will apply to investments made as of 1 January 2024).

賽普勒斯
賽普勒斯同意QDMTT和過渡性UTPR避風港規則

10月30日，賽普勒斯財政部發布公告，確定賽普勒斯同意由OECD包容性架構所建立的支柱二合格國內最低稅負制(QDMTT)和過渡性徵稅不足支出原則(UTPR)避風港規則。

歐盟支柱二指令(理事會指令(EU)2022/2523)第32條規定，如果位於某個租稅管轄區內的成員實體有效稅負滿足「合格的避風港國際協議」(qualifying international agreement on safe harbour)的條件，則這個租稅管轄區應繳納的補充稅應被視為零。要使協議被視為「合格的避風港國際協議」，需要所有歐盟成員國都同意該協議。

2023年7月13日，包容性架構就上述避風港規則達成一致協議。然作為歐盟成員國但不是包容性架構成員的賽普勒斯，沒有機會在包容性架構層面上同意。

資誠觀點

鑒於支柱二的實施即將臨近，適用範圍內的跨國集團應立即分析可能的影響。賽普勒斯財政部的公告提供了一定的確定性，即在包容性架構層面達成一致的QDMTT和過渡性UTPR避風港規則，將適用於賽普勒斯。

Cyprus
Cyprus consents to QDMTT and Transitional UTPR Safe Harbours

The Cyprus Ministry of Finance, on 30 October, issued an announcement assuring that Cyprus consents to the Pillar Two Qualified Domestic Minimum Top-up Tax (QDMTT) and Transitional Undertaxed Profits Rule (UTPR) Safe Harbours as established by the OECD Inclusive Framework.

Article 32 of the EU Directive on Pillar Two (Council Directive (EU) 2022/2523) stipulates that the Top-up Tax due by a group in a jurisdiction shall be deemed to be zero if the effective level of taxation of the Constituent Entities located in that jurisdiction fulfils the conditions of a "qualifying international agreement on safe harbours." For an agreement to be considered as "qualifying international agreement on safe harbours" all EU Member States need to have consented to it.

The Inclusive Framework agreed on the said Safe Harbours on 13 July 2023. Cyprus, as an EU Member State that is not a member of the Inclusive Framework, did not have the opportunity to consent to the said Safe Harbours at the level of the Inclusive Framework.

PwC observation:

Given the fast-approaching implementation of Pillar Two, in-scope groups should analyze the potential implications now. The announcement of the Cyprus Ministry of Finance provides comfort that the Safe Harbours in respect of QDMTT and Transitional UTPR as agreed at the level of the Inclusive Framework will apply in Cyprus.

丹麥
丹麥向議會提交支柱二法案

2023年10月5日，丹麥將支柱二納入丹麥國內法的立法草案(最低稅負制)提交給丹麥議會。該法案的一讀於2023年10月11日進行，隨後稅務委員會(Tax Council)的討論將在二讀(預計在2022年12月5日)之前進行。

對法案提出補充問題的截止日期為2023年11月10日，答覆和建議修正的截止日期為2023年11月22日。稅務委員會的政治辯論必須在2023年11月29日之前完成，目前預計最終法案將在2023年12月7日進行的三讀期間最終確定並達成協議。

丹麥必須根據2022年12月14日的理事會指令(EU)2022/2523實施支柱二規則，以確保歐盟跨國集團和大型國內集團的全球最低稅負水平。

該法案總體上與歐盟指令保持一致，引入了15%的最低稅率。該法案包括從2024年開始的所得稅課稅年度實施所得涵蓋原則(IIR)，並於2025年實施「徵稅不足支出原則」(UTPR)(根據OECD指南的修正)。該法案還包括自2024年1月1日起適用的丹麥合格國內最低負制(QDMTT)。丹麥稅務部表示，預計這將成為「避風港」QDMTT。

資誠觀點

支柱二法案在現有的公司稅架構之外，有效地引入了一個新的公司稅制。丹麥的這個法案在單獨的法令中制定新的規則。

新的租稅法令將與現有的丹麥國內稅、租稅協定、各種歐盟指令和政府決定一起適用。該法令將適用於營運地點在丹麥且集團總營收至少為7.5億歐元的(跨國或大型國內)集團實體(某些行業除外)。

Denmark
Denmark submits Pillar Two legislation to Parliament

Denmark's legislative proposal to transpose Pillar Two into the Danish tax legislation was submitted to the Danish Parliament 5 October 2023 (titled Minimum Tax Act). The first reading/discussions of the bill happened 11 October 2023 and will be followed by a discussion in the Tax Council which will take place before the second reading/discussions occur (expected 5 December 2022).

The deadline for additional questions to the proposal was 10 November 2023 and the deadline for the replies and suggested amendments was scheduled for 22 November 2023. The political discussions in the Tax Council have to be finalized by 29 November 2023 and the final bill is currently expected to be finalized and agreed during the third reading/discussions scheduled for 7 December 2023.

Denmark 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.

The bill generally aligns with the EU Directive and introduces a 15% minimum tax. The bill includes implementation of the Income Inclusion Rule (IIR) for income tax years starting in 2024 with a later implementation of the 'Undertaxed Profits Rule' (UTPR) in 2025 (with the amendments from the OECD Guidance). The proposal also includes a Danish Qualified Domestic Minimum Top-up Tax (QDMTT) applicable from 1 January 2024. The Danish Ministry of Taxation has said that they expect it to be a 'Safe Harbour' QDMTT.

PwC observation:

The Pillar Two legislation effectively introduces a new corporate tax system in addition to the existing company tax framework. The Danish legislative proposal lays down the new rules in a separate legislative act.

The new tax act will apply alongside and in addition to the existing Danish national tax rules, tax treaties, various EU Directives, and government decisions. The legislative act will apply to entities of (multinational or large domestic) groups that are based in the Denmark with a consolidated group turnover of at least €750 million (certain sectors are exempted).

香港
處分股權的本地收益的稅務明確性優化計劃條例草案已刊登憲報

備受期待的稅務明確性優化計劃已進一步邁向實施階段，有關「2023年稅務條例草案 」已在2023年10月20日刊登憲報。該條例草案擬議修正稅務條例，在稅務條例中加入第40AX條和附表17K，為與優化計劃涉及的收益相關的稅務處理方式提供法律依據。

根據優化計劃，滿足所有規定條件的本地(境內)股權處分收益將被視為資本性質而不需要在香港繳納利得稅。規定條件包括投資者實體在處分股權前至少連續24個月持有被投資實體至少15%股權等。

政府採納了以下主要建議：(i)投資者實體及利害關係人所持有的股權可以合併計算以滿足15%的持股門檻；(ii)在分批處分的情況下，如果後續處分發生在上次符合條件的處分後起的24個月內，則後續處分剩餘部分的收益將不需要滿足15%的持有門檻。

待立法會通過條例草案後，優化計劃將適用(i)在2024年1月1日或之後發生的符合條件的股權處分的收益，且(ii)該處分收益在2023/24課稅年度或之後累算。

資誠觀點

此優化計劃不僅將為尋求重組或退出股權投資的納稅人提供更大的前期稅務確定性，還將降低企業的合規成本。條例草案採納了許多利益關係人的建議，大大提高了優化計劃的吸引力。優化計劃的實施將進一步提升香港作為跨國企業區域投資樞紐的競爭力。

Hong Kong

Bill on tax certainty enhancement scheme for onshore equity disposal gains gazetted

The highly anticipated tax certainty enhancement scheme has taken a further step towards implementation, with the Inland Revenue Bill 2023 gazetted on 20 October 2023. The Bill proposes to amend the Inland Revenue Ordinance by adding a new section 40AX and Schedule 17K to the IRO to provide for the tax treatment in relation to gains covered by the Enhancement Scheme.

Under the enhancement scheme, onshore equity disposal gains that satisfy all the prescribed conditions will be regarded as capital in nature and not chargeable to profits tax. These conditions include, inter alia, that the investor entity has held at least 15% of the equity interests in the investee entity for a continuous period of at least 24 months immediately prior to the date of disposal of such interests.

The government has adopted the following major recommendations: (i) equity interests held by an investor entity and its closely related entity/entities can be aggregated for meeting the 15% holding threshold; and (ii) in the case of disposal in tranches, gains from a subsequent disposal of left-overs from a previously qualifying disposal will not be required to satisfy the 15% holding threshold provided that the subsequent disposal occurs within 24 months after that previous disposal.

Subject to passage of the Bill by the Legislative Council, the Enhancement Scheme will apply if (i) the eligible equity disposal occurs on or after 1 January 2024, and (ii) the gains accrue in or after the year of assessment 2023/24.

For more information see our PwC Insight.

PwC observation:

The enhancement scheme will not only provide greater upfront certainty of non- taxation to taxpayers looking to restructure or exit from their equity investments, but also reduce the compliance cost of businesses. The Bill has incorporated many stakeholder suggestions, considerably enhancing the attractiveness of the enhancement scheme. The implementation of the enhancement scheme will further bolster the competitiveness of Hong Kong as a regional investment hub for multinational enterprises.

香港
進一步優化香港外地處置收益條例草案刊登憲報

在與利害關係人進行廣泛諮詢後，「2023年稅務(修訂)(外地處置收益徵稅)條例草案」在2023年10月13日刊登憲報，條例草案旨在優化稅務條例下現行的指明外地收入豁免徵稅(foreign-sourced income exemption，FSIE)制度，擴大境外處分收益所涵蓋的資產範圍，以包括股權權益以外的其他資產。

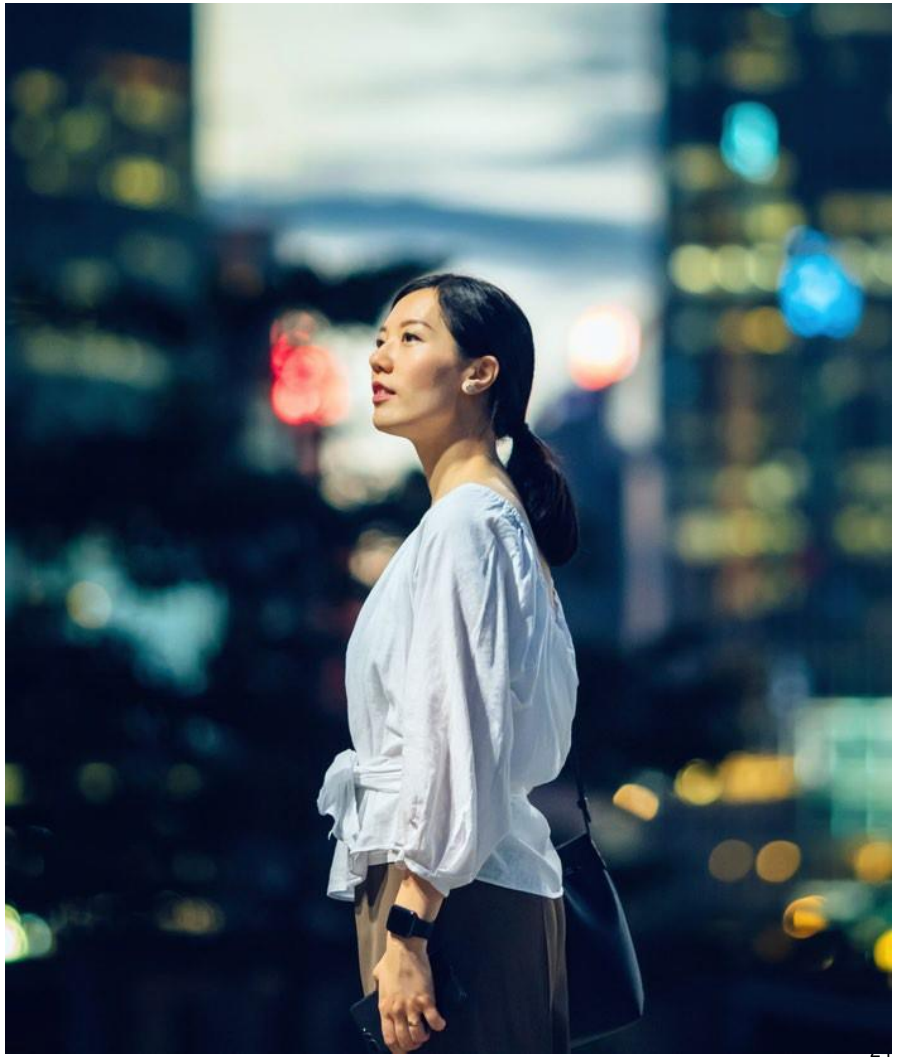
歐盟拒絕了香港政府提出的以下建議：(i)局限優化後的FSIE制度的資產範圍；以及(ii)允許將資產成本重新計算為相關條例草案生效日前的公允價值(或替代的優惠)。然而，歐盟同意(i)排除買賣商(trader)取得智慧財產權以外資產的處分收益，以及(ii)引入集團內部轉讓的減免。

此外，香港政府也採納了利害關係人的多項建議，以減輕優化FSIE制度對納稅人的影響。例如，對擬議的買賣商處分收益排除設定了較為寬鬆的條件，同時也非常寬泛地設定了擬議的集團內部轉讓減免下的關係人的條件，使跨國企業集團中擁有不同業務類型的納稅人均可享受減免。

條例草案已在2023年10月18日提交立法會，並建議適用於受涵蓋的納稅人在2024年1月1日或之後累積和收到的處分收益。

資誠觀點

雖然優化後FSIE制度將進一步擴大以涵蓋所有類型資產相關的處分收益，但條例草案還提出了緩解措施，例如擴大現有的排除適用範圍以涵蓋買賣商和某些特定實體所得的非智慧財產權處分收益，並引入集團內部轉讓減免。如果條例草案按提議的形式實施，透過適當的規劃，受涵蓋的納稅人所得的外地處分收益在優化後FSIE制度下應可維持免稅。尤其是在香港擁有足夠經濟實質的納稅人不太可能受到重大影響。



Hong Kong
Gazettal of the bill on further refinements to FSIE regime in Hong Kong

Following extensive stakeholder consultations, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023 was gazetted on 13 October 2023, The Bill seeks to refine the existing foreign-sourced income exemption (FSIE) regime under the Inland Revenue Ordinance by expanding the scope of assets in relation to foreign-sourced disposal gains to cover assets other than equity interests.

The European Union has rejected the HK Government's proposals to (i) confine the scope of assets subject to the refined FSIE regime; and (ii) allow the rebasing of an asset cost to its fair market value prior to the effective date of the refined FSIE regime (or an alternative taper relief). However, it has agreed to (i) the exclusion of disposal gains derived by traders of assets other than intellectual property and (ii) the introduction of an intra-group transfer relief.

Furthermore, the HK Government has adopted several stakeholder recommendations to mitigate the impacts of the refinements on covered taxpayers. For instance, less stringent conditions are imposed on the proposed exclusion for traders, and the association condition under the newly proposed intra-group transfer relief is drafted very broadly, such that taxpayers with entities in different business forms within their MNE group would be able to enjoy the relief.

The Bill was introduced into the Legislative Council on 18 October 2023, and the refinements are proposed to apply to disposal gains accrued and received by covered taxpayers on or after 1 January 2024.

For more information see our PwC Insight.

PwC observation:

While the refined FSIE regime will be further expanded to cover disposal gains in relation to all types of assets, the Bill also proposes mitigating measures, such as enhancing the existing exclusion to cover non-IP disposal gains derived by traders and certain specified entities, as well as introducing an intra-group transfer relief. If the Bill is enacted as proposed, with proper planning, foreign- sourced disposal gains derived by covered taxpayers should remain non- taxable under the refined FSIE regime. Taxpayers with adequate economic substance in Hong Kong are unlikely to see significant impact.

義大利
義大利預算法草案引入了歐盟/歐洲經濟區實體的參與豁免

義大利一般規定對非居民課徵26%的資本利得稅。義大利預算法草案將95%參與豁免(participation exemption)制度(已適用於義大利實體)擴大到處分義大利公司股份的歐盟/歐洲經濟區居民實體。這次擴大將消除對歐盟/歐洲經濟區居民實體的歧視，允許其對義大利股份處分利得享有95%的豁免。特別是，95%利得豁免將適用於(i)在義大利沒有常設機構的實體；(ii)居住在允許充分資訊交換的歐盟/歐洲經濟區國家；(iii)須在其居住國繳納公司稅。

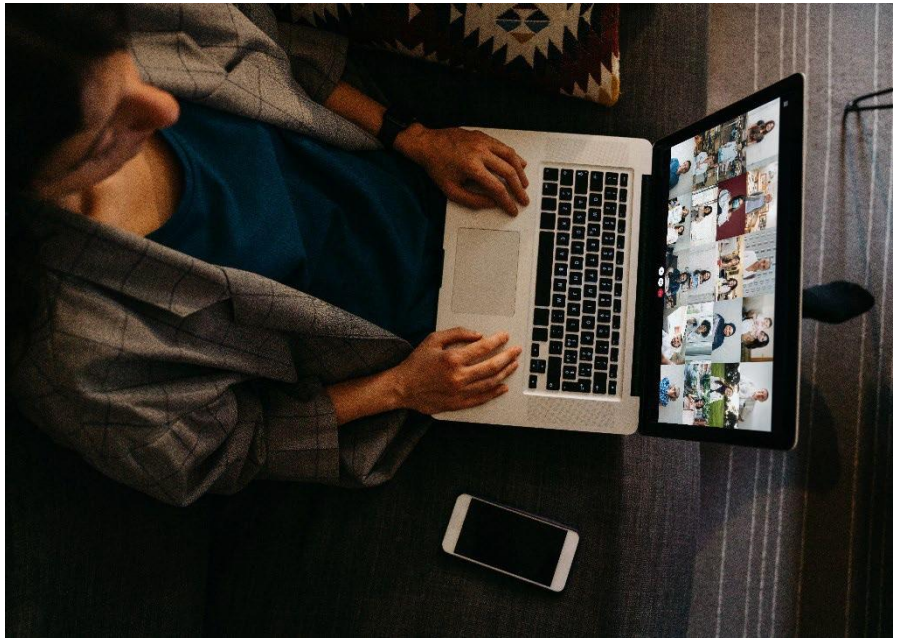
為了受益於豁免，應滿足適用於義大利實體的參與豁免制度已規定的相同要求。此外，轉讓的義大利股份必須是「符合資格的」，即代表至少20%的投票權或25%的股本(如果是上市股票，百分比分別降至2%和5%)。

該消息是在義大利最高法院(ISC)最近的兩項決定(21261/2023號和27267/2023號)之後發布的，兩項決定認為義大利公司(可以從參與豁免制度中受益)和非居民公司(無法從中受益)的租稅待遇存在差異，違反了歐盟法律原則(TFUE第49條和第63條)。

資誠觀點

根據該草案的比例，新規定可能會將歐盟/歐洲經濟區實體處分義大利股份的26%義大利非居民資本利得稅降低到1.2%。例如，在考慮涉及處分義大利股份的退出策略或集團重組時，該規定的影響可能是相關的。然而，非居民參與豁免要求的參數尚不清楚，需要進行個案分析。

一般而言，由於資本流動自由(TFUE第63條)適用於兩個歐盟國家之間以及歐盟與非歐盟國家之間的關係，因此可以想像，該消息可能也可以擴大到非歐盟/歐洲經濟區處分股份的公司(例如美國，即使這個觀點沒有被納入草案中)。



Italy

Draft Italian Budget Law introduces participation exemption for EU/EEA entities

Italy generally provides for a 26% non-resident capital gain tax. The Draft of the Italian Budget Law (currently under Italian Parliament's approval) extends the 95% participation exemption regime (already applicable to Italian entities) to EU / EEA resident entities that transfer Italian company shares. The extension will remove the discrimination against EU / EEA resident entities by allowing them to invoke the 95% exemption on the gains stemming from the transfer of Italian shares. In particular, the 95% gain exemption will apply to entities that (i) do not have a permanent establishment in Italy; (ii) are resident in an EU/EEA country allowing an adequate exchange of information; and (iii) are subject to corporate tax in their country of residence.

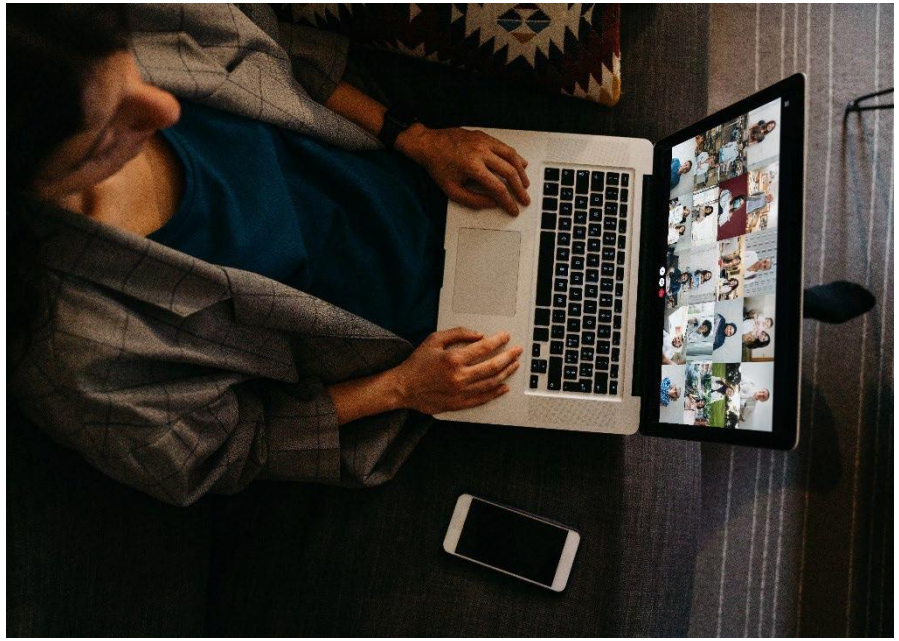
In order to benefit from the exemption, the same requirements already provided by the participation exemption regime applicable to the Italian entities should be fulfilled. Furthermore, the transferred Italian shareholding must be 'qualified' i.e., represent at least 20% of voting rights or a 25% capital participation (these percentages are reduced respectively to 2% and 5% in case of listed shares).

The news follows two recent decisions (no. 21261/2023 and no. 27267/2023) of the Italian Supreme Court (ISC) which recognised that the difference in tax treatment for Italian companies (that could benefit from the regime) and non-resident companies (that could not benefit from it) violated EU law principles (of articles 49 and 63 of TFUE).

PwC observation:

Based on the ratio of the law, the new provision might reduce the 26% Italian non-resident capital gain tax to 1.2% for EU/EEA entities disposing of Italian shares. Impacts of the provision might be relevant, for example, when considering exit strategies or group reorganisationsinvolving transfers of Italian shares. However, the parameters of the participation exemption requirements for non-residents is unclear and requires a case-by-case analysis.

Generally, since the freedom of movement of capital (art. 63 TFUE) applies to relations both between two EU countries and between EU and non-EU countries, the news could conceivably have been extended to non-EU/EEA selling companies (e.g. the United States, even if this argument is not included in the law).



義大利
義大利國際稅改法案

除支柱二法案外，國際稅改法案還規定了以下相關措施：

- **廢除名義利息扣抵(NID)**-預計從2023年12月31日當期之後的財務年度開始(即曆年制納稅人的2024財務年度)。
- **義大利企業稅務居民標準的革新**-法定註冊地標準(legal seat criterion)不變。此外，引入(i)實際管理處所(PoEM)和(ii)日常管理的主要處所。說明報告指出，PoEM的引入有助於使義大利國內法與租稅協定保持一致(已經將PoEM作為破除僵局法則)。報告還澄清，PoEM在概念上應與股東意願區分開來(即股東行使的正常監管活動本身不能導致將該實體視為股東居住國的稅務居民)。
- **在岸制度(Inshoring regime)**：對於從非歐盟/歐洲經濟區國家(例如瑞士、英國或美國)遷入到義大利的業務所產生的所得，為公司所得稅(IRES，稅率為24%)和地方稅(IRAP，一般稅率為3.9%)目的提供部分租稅減免。該所得將在六個財務年度內享有50%的豁免(ETR，13.95%)。在移入前24個月內在義大利進行的業務不符合豁免資格。如果在5年內(大型公司為10年)內將豁免的業務遷出到義大利境外，則適用追回制度。
  - 在岸制度可以與義大利入境稅制度 (在遷移到義大利、跨境交易涉及將資產/業務轉移到義大利，甚至是在總部與分支機構之間或分支之間的情況下，該制度允許調增資產價值) 一起適用，以及
  - 須經歐盟執委會批准。
- **簡化受控外國公司(CFC)規則**-修正案旨在參考有效稅率(ETR)的計算，簡化CFC規則。目的是將CFC制度與實施歐盟指令2022/2523的國內規則協調一致。

資誠觀點

納稅人和跨國企業可能需要考慮面對義大利廢除NID的影響，從而(i)確定可能增加的義大利稅負，以及(ii)基於這個新因素而實施可能的行動。另外，如果計劃在義大利進行集團重組或設立新業務，可能需要考慮受益於在岸制度。

Italy
Italian international draft tax reform decrees

In addition to Pillar Two drafted law, the draft of international tax reform decree provides the following relevant measures:

- **Repeal of the Notional Interest Deduction (NID)** - Expected starting from the FY following the one ongoing on 31 December 2023 (i.e. FY 2024 for calendar taxpayers) .
- **Reform of Italian tax residency criteria for corporations** - The legal seat criterion does not change. In addition, (i) the place of effective management (PoEM) and (ii) the place where day-by- day management mainly occurs are introduced. The explanatory report specifies that the introduction of the PoEM is functional in aligning the Italian law with its tax treaties (already providing the PoEM as tie-breaker rule). It also clarifies that the effective management shall be conceptually distinguished from the shareholder's will (i.e., a physiological supervision/monitoring activity exercised by the shareholders cannot per se lead to consider the entity as resident for tax purposes in the country of residence of the shareholders).
- **Inshoring regime**: Partial tax exemption, for CIT (IRES, 24% tax rate) and Regional Tax (IRAP, 3.9% ordinary tax rate) purposes, for any income derived by activities in-shored from non-EU/EEA countries (e.g. Switzerland, the UK or the US) to Italy. Income derived by the in-shored business will be 50% exempted (ETR, 13.95%) for six fiscal years. Activities carried out in Italy in the 24 months preceding the transfer are not eligible for the exemption. A recapture regime applies if the exempted activities are relocated outside Italy within 5 years (10 for large companies). The regime:
  - could be aggregated with the Italian entry tax regime (which allows a step-up of the value of assets in case of migration to Italy, cross-border transactions implying transfer of assets / business to Italy, even between a head office and its branch or between branches), and
  - is subject to European Commission approval.
- **Streamlining of CFC rules** - Amendments are aimed to simplify the CFC rules with reference to the computation of the effective tax rate (ETR). The aim is coordinating the CFC regime with domestic rules implementing EU Directive 2022/2523.

PwC observation:

Taxpayers and MNE might consider facing the NID repeal in Italy, and consequently (i) determining potential higher Italian tax burden and (ii) implementing potential actions due to the new element of the equation. Additionally, they might consider benefitting from the inshoring regime in case they are planning group reorganisationsor setting up new business in Italy.

匈牙利
匈牙利發布實施支柱二的法案

10月18日，匈牙利財政部公布了實施歐盟指令2022/2523以及OECD全球最低稅負制示範規則(Model Rules)的法案，並徵詢公眾意見。該法案與迄今為止發布的OECD示範規則、注釋(Commentary)和行政指南密切一致。該法案包含支柱二全部課徵機制，包括：

- 2024年適用的所得涵蓋原則(IIR)和合格國內最低負制(QDMTT)，
- 2025年適用的徵稅不足支出原則(UTPR)，
- 基於國別報告(CbCR) 的避風港規則，
- 補充稅的實質營運免稅額，以及
- 最低稅率為15%。

該法案定義了被視為涵蓋稅款(covered taxes)的稅種，即在GloBE有效稅率(ETR)計算中可以納入考慮的稅種。非詳盡清單包括：公司所得稅、地方營業稅(local business tax)、創新貢獻稅(innovation contribution)和能源供應商所得稅(energy suppliers' income tax)。

匈牙利旨在引入避風港QDMTT，基於公司用在國內法定申報目的財務報表(根據匈牙利國內法，可以是匈牙利GAAP或IFRS)。擬議的QDMTT法規的設計遵循OECD發布的行政指南，包括有關涵蓋稅款在成員實體之間分配的規定。值得注意的是，計算QDMTT的ETR時，對匈牙利成員實體的外國母公司課徵的受控外國公司稅不可分配給匈牙利。

資誠觀點

支柱二法案非常複雜，將影響適用範圍內公司的整個(全球)商業組織。公司應立即開始分析這些新規則對商業組織的財務和行政影響。

Hungary

Hungary releases draft bill implementing Pillar Two

The Hungarian Ministry of Finance published on 18 October the draft legislation for public consultation to implement EU Directive 2022/2523/OECD Model Rules on the global minimum tax (GloBE). The draft legislation closely aligns with the OECD Model Rules, Commentary, and Administrative Guidance published thus far. The draft bill includes the full set of the Pillar Two charging provisions, including:

- an Income Inclusion Rule (IIR) and a Qualified Domestic Minimum Top-up Tax (QDMTT) applying in 2024,
- an Undertaxed Profits Rule (UTPR) applying in 2025,
- a Country-by-Country Report (CbCR) based Safe Harbor legislation,
- a Substance Based Income Exclusion amount for all Top-up Taxes, and
- a minimum tax rate at 15%.

The draft legislation defines taxes that are considered covered taxes, i.e., taxes that can be taken into account for the purposes of GloBE effective tax rate (ETR) calculations. The non-exhaustive list includes: corporate income tax, local business tax, innovation contribution, and energy suppliers' income tax.

Hungary aims to introduce a Safe Harbor QDMTT based on the financial statements that companies use for local statutory reporting purposes (this could be either Hungarian GAAP or IFRS based on local legislation). The proposed design of the QDMTT regulation follows the administrative guidance issued by the OECD, including the provisions on the allocation of covered taxes between Constituent Entities. Notably, controlled foreign company taxes levied on the foreign parent entities of Hungarian Constituent Entities would not be allocable to Hungary for the purposes of the ETR calculation for QDMTT purposes.

For more information see our PwC Insight.

PwC observation:

The complex Pillar Two legislation impacts the entire (global) business organization of in-scope companies. Companies should start analyzing the financial and administrative impact of these new rules on their business organization.

列支敦斯登
列支敦斯登議會批准全球最低稅負制

列支敦斯登議會在11月10日的第二次聽證會上批准了全球最低稅負制法案(GloBE Tax Law，以下簡稱GloBE法案)，GloBE法案將OECD全球最低稅負制(支柱二)引入列支敦斯登國內法，同時在生效日期上保留彈性。GloBE法案將引入合格國內最低負制(QDMTT)、所得涵蓋原則(IIR)和徵稅不足支出原則(UTPR)。

GloBE法案一般可能在2024年1月1日或之後開始的課稅年度生效。不過，議會對GloBE法案進行了修正，以便政府仍可以通過法規決定將GloBE法案的生效日期延至2025年1月1日。UTPR的生效日期將透過第二個法規另行規定。UTPR最早可於2025年1月1日生效。政府在決定GloBE法案的生效日期時，將考慮OECD示範規則在全球層面的實施狀況。

一般來說，列支敦斯登GloBE法案遵循OECD示範規則。總營收達到7.5億歐元(根據歐盟理事會指令)的跨國企業(MNE)，以及超過營收門檻的列支敦斯登國內集團，將納入GloBE法案的適用範圍。跨國公司的定義包括公司實體，也包括信託、基金會(foundation)和機構(establishment)。因此，列支敦斯登任何形式的公司或法律實體都應評估是否適用新的GloBE法案。

資誠觀點

GloBE法案需要列支敦斯登王子的批准和認可，才能頒布並生效。預計將在適當的時候得到這個批准。列支敦斯登議會的修正為引入GloBE法案奠定了法律基礎，但仍保留了政府的彈性和自由裁量權，可將實施推遲一年，具體取決於全球其他重要國家的做法。納稅人應密切關注政府對QDMTT和IIR規則是否將於2024年1月1日或2025年生效的決定。此外，通常擁有列支敦斯登信託、機構或基金會的投資架構，應審查是否符合最終母公司的資格。

Liechtenstein
Liechtenstein Parliament approved GloBE Tax Law

The Liechtenstein Parliament in its secondary hearing on 10 November, approved the GloBE Tax Law, which introduces the OECD Pillar Two Global Minimum Tax rules into local Liechtenstein law while remaining flexible on the effective date. The GloBE Tax Law would introduce a Qualified Domestic Minimum Tax (QDMTT), an Income Inclusion Rule (IIR) and the Under-taxed Profit Rules (UTPR).

The GloBE law could generally become effective for tax years starting on or after 1 January 2024. However, the GloBE law was adjusted by Parliament so that the government, via ordinance, can still decide to make the GloBE law effective as of 1 January 2025. The effectiveness of the UTPR will be separately defined via a second ordinance. The earliest the UTPR can enter into force is 1 January 2025. The government, when deciding on the GloBE law effective date, will consider the OECD model rules' implementation status at a global level.

Generally, the Liechtenstein GloBE Tax Law follows the OECD Model Rules. Multinational enterprises (MNEs) with gross revenue of EUR 750M (as in accordance with the EU Council Directive), as well as pure domestic Liechtenstein groups exceeding the revenue threshold will fall within scope of the GloBE T ax Law. The MNE definition includes corporate vehicles, but also trusts, foundations, and establishments. Hence Liechtenstein corporate or legal vehicles of any form should assess whether they fall within scope of the new GloBE Tax Law.

For more information see our PwC Blog.

PwC observation:

The GloBE tax law needs to be approved and sanctioned by the Reigning Prince of Liechtenstein in order to be enacted and enter into force. It is expected that such approval should follow in due course. The Liechtenstein Parliament adjustment has set the legal basis for the GloBE introduction, but still kept flexibility and discretion for the Government to defer the implementation for one year, depending on what other important countries around the globe will do. Taxpayers should closely monitor the decision by the Government on whether the QDMTT and IIR rules shall become effective for January 1, 2024 or in 2025. Additionally, investment structures often have a Liechtenstein trust, establishment or foundation should be reviewed for qualification as an ultimate parent entity.

沙烏地阿拉伯
擬議的新稅法和擬議的新天課(Zakat)和稅務程序法

2023年10月25日，Zakat、稅務和海關管理局(ZATCA)向改革和發展稅收體系，邁出了強而有力且前所未有的一步。ZATCA提出了一個全面的稅法、以及一個Zakat和稅務程序法，並徵詢公眾意見至2023年12月25日。目標是制定和更新現行的稅法，以符合國際最佳實踐。

擬議的新所得稅法旨在與該國鼓勵外國投資以及國內經濟成長的願景和目標保持一致。除此之外，還支持稅務合規、透明度和國際稅務合作。

ZATCA以保持現代化和與比較稅法相符的方法，根據國際標準提出了新的稅法。擬議的新稅法包括：

- 改變合夥企業的稅務處理。
- 投資基金的稅務處理透明化，與Zakat處理一致。
- 微型企業(即極小)納稅人的替代稅務計算方法。
- 以下面向的特別規定，涉及：
  - 根據第30條和第31條將居住權轉移至該國或從該國移出。
  - 再投資準備金。
  - 合併和分割交易的稅務處理。
  - 不同租稅管轄區之間金融工具的稅務處理不一致的案例。
  - 境外已繳納稅款的稅務處理。

資誠觀點

納稅人應分析擬議的新稅法，以了解可能的稅務和合規影響。稅務和Zakat納稅人應與ZATCA合作，透過Istitla網站提供對擬議修正案的反饋意見。

Saudi Arabia
Proposed new tax law and proposed New Zakat and tax procedures law

The Zakat, Tax and Customs Authority (ZATCA) on 25 October 2023, launched a strong and unprecedented step toward reforming and developing the tax system and landscape. ZATCA proposed a comprehensive tax law and a Zakat and tax procedures law for public consultation until 25 December 2023. The objective is to develop and update the current tax law to align with international best practices.

The proposed new income tax law aims to be consistent with the Kingdom's vision and goals of encouraging foreign investment, as well as domestic economic growth. This is in addition to supporting tax compliance, transparency and international tax cooperation.

In line with ZATCA's approach of being current and competent with the comparative tax regulations, ZATCA has proposed new tax law according to international standards. The proposed new tax law includes:

- Changing the tax treatment of partnerships.
- Transparent tax treatment of investment funds in line with their Zakat treatment. Stating alternative methods of tax computations for the Micro-Enterprise (i.e., infinitesimal) taxpayers.
- Stating alternative methods of tax computations for the Micro-Enterprise (i.e., infinitesimal) taxpayers.
- Stating special provisions regarding:
  - Transferring residency to and from the Kingdom as per articles 30 and 31.
  - Re-investment reserve.
  - Tax treatment of merger and demerger transactions.
  - Cases of non-coincident tax treatment of financial instruments between different jurisdictions.
  - Tax treatment of taxes paid outside the Kingdom.

For more information see our PwC Insight.

PwC observation:

Taxpayers should analyse the proposed new tax law for potential tax and compliance implications. Tax and Zakat payers should engage with ZATCA, providing feedback on the proposed amendments through the Istitla portal.

烏拉圭
2022財務年度責任法

2022年11月6日，烏拉圭通過了2022財務年度責任法，引入了一些將於2024年1月1日生效的稅務規定。以下是其中一些相關規定。

1. 合併和分割

對於不是出於稅務目的的集團內重組，商譽排除在稅務計算之外，需滿足以下條件：

- 被合併或分割實體的最終受益人完全相同，持有至少95%的股權比例，並且在未來兩年內不改變。
- 交易必須以帳面價值進行。
- 遵守向相關的公共登記機構(public registries)申報合併或分割的規定。
- 合併或分割前的核心業務未來兩年必須保留。

如果不符合這些條件，那麼必須繳納稅款，但不需繳納罰鍰和利息。適用的法定期限為10年。如果不遵守規定，繼受公司將共同承擔前身公司的稅務義務。

2. 股權處分

烏拉圭稅務居民法人實體的股權處分將被視為按會計價值進行，因此，如果滿足以下條件，則這些交易不會產生應納稅款：

- 轉讓人和受讓人都是烏拉圭的稅務居民。
- 轉讓人和受讓人的最終受益人完全相同，持有至少95%的股權比例，且在接下來的四年內不改變。
- 受讓人在接下來的四年內持有股權。
- 交易價格等於轉讓股權的帳面價值。
- 合併或分割必須向相關的公共登記機構申報。

資誠觀點

在不以經濟利益為目的進行重組和股權處分時，公司應考慮是否有可能利用這種中性稅收制度。

Uruguay
Accountability law for fiscal year 2022

Uruguay passed the Law of Accountability for Fiscal Year 2022 on 6 November 2022, introducing certain tax provisions that will take effect on 1 January 2024. The following relevant provisions were among those introduced.

1. Mergers and spin-offs

Legal status is granted to the rule that excludes from computing for tax purposes the goodwill in intragroup restructurings which are not tax-driven and provided the following conditions are met:

- The ultimate beneficiaries from the entities to be merged or spun-off, are exactly the same, maintaining at least 95% of their equity proportions and not modifying them for the following two years.
- The operations must be carried out at the book value.
- Compliance with the reporting of the merger or spin-off to the appropriate public registries.
- The core business before the merger or spin-off take place must be kept for the following two years.

In the case of non-compliance with these conditions, taxes must be paid without penalties and interests. The statute of limitations applicable in this case will be 10 years. The successor companies will be jointly responsible for the tax obligations of their predecessors in the event of non-compliance..

2. Transfer of equity shares

Transfer of equity shares of Uruguayan tax-resident legal entities will be considered carried out at their fiscal value and thus, no tax due would be derived from these operations, provided that the following conditions are met:

- The transferors and transferees are tax residents in Uruguay.
- The ultimate beneficiaries from the transferors and transferees, are exactly the same, maintaining at least 95% of their equity proportions and not modifying them for the following four years.
- The transferees maintain the shares for the following four years.
- The price of the operation equals the book value of the equity shares transferred.
- The merger or spin-off must be reported to the appropriate public registries

PwC observation:

Corporations should review the possibility to take advantage of this neutral tax regime on reorganizations and transfer of equity shares with no purpose of obtaining an economic result.

要聞

Administrative
行政

加拿大
加拿大稅務局正式指定首筆應通報交易

2023年11月1日，加拿大稅務局(CRA) 為近期頒布的「應通報交易」制度指定了第一組交易，該制度構成加拿大增強版強制揭露規則(MDR)的一部分。這些交易及相關描述與2022年2月4日發布的指定交易樣本相同，不同之處在於：

- 自2023年11月1日生效，且
- 應申報的交易不再包括因操縱加拿大受控私人公司改變地位的交易。

此外，2023年11月2日，CRA發布了有關MDR制度各個方面的更新指南，包括有關應通報交易規則過渡期適用的重要聲明。總之，這些文件意味著應通報交易的首次申報截止日期不得早於2024年1月30日。2023年6月22日頒布的增強版MDR制度由三個不同的要素組成：

- 應報告交易(reportable transactions)，由避稅目的和存在三個一般特徵(hallmark)之一觸發；
- 不確定的稅務處理，由財務報表認列的稅務不確定性觸發；和
- 應通報交易(notifiable transactions)，因與特別指定的交易相似而觸發。

資誠觀點

隨著CRA公布其第一組指定交易，加拿大MDR制度的三要素的最後一個要素現已到位。納稅人、顧問和推動者(promoter)可能需要最早在2024年1月30日前提交有關應通報交易的資訊申報表。CRA定期就MDR制度所有三要素發布新的指南，因此可能會在2024年1月截止日前發布額外的相關指南。

Canada

Canada Revenue Agency officially designates first notifiable transactions

The Canada Revenue Agency (CRA), on 1 November 2023, designated its first set of transactions for purposes of the recently enacted 'notifiable transactions' regime, which forms part of Canada's enhanced mandatory disclosure rules (MDR). The transactions and their related descriptions are identical to the sample designated transactions that were released on 4 February 2022, except that they:

- are now stated to be effective 1 November 2023, and
- no longer include the manipulation of Canadian-controlled private corporation status.

In addition, on 2 November 2023, the CRA issued updated guidance on various aspects of the MDR regime, including important statements on the transitional application of the rules for notifiable transactions. Together, these documents imply that the first filings for notifiable transactions will be due no earlier than 30 January 2024. The enhanced MDR regime, enacted 22 June 2023, is comprised of three distinct elements:

- reportable transactions, triggered by a tax avoidance purpose and the presence of one of three generic hallmarks;
- uncertain tax treatments, triggered by financial statement recognition of tax uncertainties; and
- notifiable transactions, triggered by resemblance to specifically designated transactions.

For more information see our PwC Insight.

PwC observation:

With the CRA's publication of its first set of designated transactions, the final element of Canada's three-part MDR regime is now in place. Taxpayers, advisers, and promoters may need to file information returns in respect of notifiable transactions as early as 30 January 2024. The CRA regularly issues new guidance on all three elements of the MDR regime, so additional relevant guidance could be issued before the January 2024 deadline.

阿拉伯聯合大公國
阿拉伯聯合大公國發布有關公司稅制的額外指南

2023年5月12日，阿拉伯聯合大公國財政部發布了公司稅(CT)的解釋指南(Explanatory Guide)。該國聯邦稅務局隨後於9月11日發布了公司稅的一般指南(General Guide)，並於10月16日發布了免稅所得(股利和參與豁免)指南，10月23日發布移轉訂價指南。

解釋指南說明了公司稅條款的含義和預期效果，而公司稅一般指南和免稅所得指南則將公司稅以及相關內閣和部長級決定所涉及主題的關鍵規定彙整在一起。所有指南都對特定概念進行了說明，並包含實務和數字示例。

資誠觀點

所有指南都應該使得理解和闡明阿拉伯聯合大公國公司稅制的規定變得更容易。請注意，公司稅的解釋指南、一般指南、免稅所得指南、移轉訂價指南和常見問答集(FAQ)不是法律，也不具有任何法律效力。

United Arab Emirates
The UAE publishes additional guidance on the corporate tax regime

The UAE Ministry of Finance issued an Explanatory Guide to the CT Law on 12 May 2023. The UAE Federal Tax Authority then published a Corporate Tax General Guide on 11 September and complemented it with a Guide on Exempt Income: Dividends and Participation Exemption issued on 16 October and a Transfer Pricing Guide issued on 23 October.

While the Explanatory Guide explains the meaning and intended effect of each article of the Corporate Tax Law, the CT Guide and Exempt Income Guide combine the key provisions on a topic covered in the Corporate Tax Law and relevant Cabinet and Ministerial Decisions in one place. All guides provide clarifications on particular concepts and include practical and numerical examples.

For more information see our PwC Insight.

PwC observation:

All of these should make it easier to understand and interpret the provisions of the UAE corporate tax regime. Note that the Explanatory Guide, the CT Guide, Exempt Income Guide, TP Guide and FAQ are not law and do not have any legal power.

美國
財政部發布外匯擬議法規

11月9日，財政部和國稅局發布了第987節下的擬議法規，對合格業務單位(QBU)買賣不是自身擁有的外匯所產生的外幣匯兌損益課稅。2023年擬議法規基本保留了2016年最終但尚未生效的第987節法規的方法。2023年擬議法規提供了可以採用類似於1991年提出的第987節法規的方法(將QBU的所有項目視為標記項目(marked items)，並受到損失暫停規則「loss suspension rule」)的限制) 的選擇，以及一種按年度認列QBU所有的第987節損益的選擇。

新法規一般建議在2024年12月31日或之後開始的課稅年度生效。主要涉及第987節損益遞延的規定擬議對在2023年11月9日或之後發生的分支機構終止(或特定的勾選原則「check-the-box election」)生效。過渡期規則是為了對未實現的第987節損益的未來認列提供指引。對2023年擬議法規和之前發布的2016年擬議法規的意見徵詢截止日期為2024年2月12日。

資誠觀點

公司應分析擬議法規對任何目前涉及終止QBU的計劃的可能影響，因為如果法規按照擬議的方式最後定稿，實現的第987節的虧損可能會被遞延或被拒絕。此外，應對2023年擬議法規對QBU的總體影響進行模擬分析，包括在有和沒有擬議選擇的情況，因為選擇將影響法規的定量結果和所需追蹤的數據。公司也應考慮在徵詢期內提供反饋意見。最後，公司應評估2023年擬議法規對財務報告的可能影響，以及法規按最初擬議的最後定稿的影響。

United States
Treasury releases foreign currency proposed regulations

Treasury and the IRS on 9 November released proposed regulations under Section 987 on the taxation of foreign currency translation gains or losses arising from qualified business units (QBUs) that operate in a currency other than the currency of their owner. The 2023 proposed regulations largely retain the methodology of the 2016 final but not yet effective Section 987 regulations. The 2023 proposed regulations offer an election to utilize a methodology similar to the Section 987 regulations proposed in 1991—by treating all items of a QBU as marked items, subject to a loss suspension rule—and an election to recognize all Section 987 gain or loss with respect to a QBU on an annual basis.

The new regulations generally are proposed to be effective for tax years beginning on or after 31 December 2024. Certain provisions primarily related to the deferral of Section 987 gains and losses are proposed to be effective for branch terminations (or certain check-the- box elections) occurring on or after 9 November 2023. Transition rules are provided to offer guidance on the future recognition of pre-transition unrealized Section 987 gains and losses. Comments are due by 12 February 2024 on both the 2023 proposed regulations and the previously issued 2016 proposed regulations.

For more information see our PwC Insight.

PwC observation:

Companies should analyze the impact of the new proposed regulations on any current planning that involves terminating a QBU, as realized Section 987 losses may be deferred or disallowed if the regulations are finalized as proposed. Further, they should model the overall impact of the 2023 proposed regulations on their QBUs with and without the newly proposed elections, as the elections would affect both the quantitative results of the regulations and the data required to be tracked. Companies should also consider providing comments during the comment period. Finally, companies should evaluate the potential financial reporting impact of the 2023 proposed regulations and their impact if finalized as proposed.

要聞

Judicial
司法

印度
最高法院對印度租稅協定中最惠國條款的判決

印度與OECD成員國(法國、荷蘭和瑞士，即FNS國家)簽訂了租稅協定，規定了所得的稅率和課稅範圍。隨後，印度與FNS國家簽訂了一項議定書/最惠國(MFN)條款，規定如果印度向任何其他OECD成員國提供了更優惠的稅率或更受限的課稅範圍，那麼自後續租稅協定生效之日起，也必須向FNS國家提供這樣的優惠利率或更受限的課稅範圍。

印度與斯洛維尼亞、立陶宛和哥倫比亞(SLC國家)簽訂了租稅協定，規定股利所得稅率為較低的5%。在提供這種優惠稅率時，這些國家並不是OECD成員國，但後來成為了成員國。

FNS國家的納稅人請求印度稅務機關根據租稅協定啟動最惠國條款，在發放股利所得扣繳證明時，提供與SLC國家一樣的較低優惠稅率，因為SLC國家已成為了OECD成員國。稅務機關拒絕了這些請求。

在最近的一個案件中，印度最高法院認為，印度租稅協定中的MFN條款並非自動生效。只有在根據1961年所得稅法第90條發布一個單獨通知，使租稅協定的修正生效後，才能適用。此外，根據與一個OECD成員國簽訂的協定的MFN條款所提出的請求，如果該請求是基於另一個OECD成員國與印度簽訂的租稅協定，那麼該請求只有在這個第三國與印度簽訂租稅協定時就是OECD成員國的情況下才有效。

資誠觀點

這個重要的判決影響深遠。根據MFN條款，許多納稅人已享受了印度與SLC國家租稅協定下的5%較低股利稅率的優惠。然而，最高法院澄清，如果沒有根據1961年所得稅法第90條發布通知，那麼不能提供優惠稅率給上述納稅人。這也將對其他有MFN條款但尚未發出通知的租稅協定產生影響。同時，值得關注的是任何受這個判決影響的印度雙邊協定夥伴對此作出的反應。

India

Supreme Court decision on MFN clause in India's tax treaties

India had entered into tax treaties with various OECD member countries (France, Netherlands and Switzerland (FNS Countries), to provide for the rate and scope of taxability of income. Subsequently, India entered into a Protocol/ Most Favoured Nation (MFN) clause with the respective FNS countries to provide that, if India provides a rate more favourable or a scope more restricted to any other OECD member, then such favourable rate or restricted scope must also be provided to the respective FNS country from the date on which such subsequent relevant tax treaty enters into force.

India entered into tax treaties with Slovenia, Lithuania and Colombia (SLC countries) to provide for a lower tax rate on dividend income at a 5% rate. At the time of providing this favourable tax rate, those countries were not OECD members, but subsequently became members.

Taxpayers from the FNS countries urged tax authorities to invoke the MFN clause in their tax treaties and provide the lower rate benefit while issuing a withholding certificate for dividend income, as provided to the respective SLC countries, which became OECD members. Those requests were rejected by the tax authorities.

In the recent case, the Supreme Court of India held that the MFN clause in Indian tax treaties does not come into effect automatically. It can become operational only by issue of a separate notification under section 90 of the Income-tax Act, 1961 (the Act), bringing the consequential amendments to the treaty into effect. Moreover, a claim under the MFN clause of a treaty with a country that is a member of the OECD, which relies on a third OECD member's tax treaty with India, is valid only if the third country was a member of OECD at the time of entering into its tax treaty with India.

For more information see our PwC Tax Insight.

PwC observation:

This significant decision has far-reaching consequences. Many taxpayers have taken the benefit of the lower 5% rate of dividend taxation as provided in the tax treaty between India and the respective SLC countries pursuant to the MFN clause. However, the Supreme Court has clarified that the beneficial tax rate provided to these countries cannot be provided to the aforesaid taxpayers in the absence of any notification issued under section 90 of the Act. This will also have implications on other tax treaties that have MFN clauses where notifications have not been issued. It will also be interesting to see if there is any reaction from any of India's bilateral treaty partners that have MFN clauses, which are likely to be affected by this decision.

印度
天使稅估值的最終規則已通知

從2023年4月1日起，非居民投資者對印度私人控股公司的任何超過印度公司股份公平市場價值(FMV)的投資都將在該公司手中納稅(在印度通常被稱為天使稅)。2023年5月，印度政府發布了規則草案，擬議修改計算這類股份FMV的方法。

近日，印度政府發布了計算股份FMV的最終規則。總的來說，最終規則與規則草案是一致的，其中強制可轉換特別股(CCPS)的估值方面，最終規則進行了補充規定。

最終規則的主要修正包括：

1. 除了居民投資者可以使用的兩種股份估值方法，即現金流量折現法和資產淨值法之外，還為非居民投資者提供了五種股份估值方法。其中包括可比較公司倍數法、機率加權預期回報收益法、期權定價法、里程碑分析法和重置成本法。
2. 凡收到政府通知的非居民實體發行股份的對價(consideration)，該對價對應的股權價格可作為居民和非居民投資者股份的FMV，但須符合以下條件：
    a. 這類FMV的對價不超過從被通知實體收到的總對價；和
    b. 公司已在作為估值標的的股份發行日期前後的90天內從被通知實體收到對價。
3. 同樣的，創投基金或特定基金的投資，也可以為居民和非居民投資者提供估值參考。
4. 也為居民和非居民投資者提供了計算CCPS FMV的估值方法。已向非居民投資者提供了與非上市股份估值方法類似的其他CCPS估值方法。
5. 提供了10%價值變動的避風港。

資誠觀點

政府發布的最終規則只規定了股份和CCPS的估值標準。其他類型的股份，包括可選擇性轉換或可贖回特別股，將繼續受現有規則監管。

India
Final angel tax valuation rules notified

Effective 1 April 2023, any investment by non- resident investors in a privately held Indian company in excess of the fair market value (FMV) of the shares of an Indian company will be taxable in the hands of such company (popularly known as angel tax in India). In May 2023, the Indian Government had notified draft rules proposing changes in the method for determining the FMV of such shares.

Recently, the Indian Government released the final rules for determining the FMV of shares. Broadly, the final rules are in line with the draft rules, and there is one aspect of valuation of compulsory convertible preference shares (CCPS), which has been additionally provided in the final rules vis-à-vis draft rules.

The key amendments in the final rules include:

1. In addition to the two methods for valuation of shares, namely, the discounted cash flow and the net asset value method available to residents, five more valuation methods have been made available for non-resident investors. These include the comparable company multiple method, the probability weighted expected return method, the option pricing method, the milestone analysis method and the replacement cost method.
2. Where any consideration is received for issue of shares from any non-resident entity notified by the government, the price of the equity shares corresponding to such consideration may be taken as the FMV of the equity shares for resident and non-resident investors, subject to the following.
    a. To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity; and
    b. The consideration has been received by the company from the notified entity within a period of 90 days before or after the date of issue of shares which are the subject matter of valuation.
3. Similarly, price matching for resident and non-resident investors would be available with reference to investment by venture capital funds or specified funds.
4. Valuation methods for calculating the FMV of CCPS have also been provided for both resident and non-resident investors. Additional methods for CCPS valuation have been provided to non-resident investors similar to the method for valuation of unquoted equity shares.
5. A safe harbour of 10% variation in value has been provided.

For more information listen to our PwC podcast.

PwC observation:

The final rules released by the government specify the norms for valuation for only equity shares and CCPS. Other types of shares, including optionally convertible or redeemable preference shares, will continue to be governed by existing rules.

荷蘭
應收股利的匯兌結果應課稅

應收股利在公司主管機關通過股利發放決議時發生。此時，母公司必須對應收股利進行估值，並在稅上的資產負債表中認列為一項資產。如果適用參與豁免，那麼母公司收到的股利可豁免。任何與應收股利有關的後續收益(包括匯兌收益)均不包含在參與豁免的適用範圍，而需繳納公司所得稅。最高法院在2023年11月3日的判決中支持了這個觀點。

最高法院的判決

在最高法院審理的案件中，爭議點在於參與豁免是否也包含應收股利的匯兌結果。

最高法院必須回答的第一個問題是應收股利在稅上的應課稅時點。爭議點是應收股利的應課稅時點是在宣告股利時(即民事法律用語中應收股利的發生時刻)，或是在可支付股利時。最高法院支持了第一種觀點。應收股利在公司主管機關通過股利發放決議時發生。此時，母公司必須對應收股利進行估值，並在稅上的資產負債表中認列為資產。

最高法院必須回答的第二個問題是參與豁免的適用範圍。判決明確指出，與股利應收款發生時相關的所得適用參與豁免。因此，股利本身包含在參與豁免的適用範圍內。接著，最高法院判決，隨著該應收股利的出現後，就不再有參與豁免的所得。從那時起，應收股利是一項獨立的資產，本質上可能會導致利潤或虧損。因此，應收股利價值的變化，包括因外幣匯率波動而導致的價值變化，屬於應稅範圍(所得應課稅、虧損可扣抵)。因此，應收股利在稅上的資產負債表中認列的價值非常重要。

最後，最高法院指出了如何對財務資產負債表上的應收股利進行估值。為了正確計算應課稅所得總額，應收股利必須在發生時在資產負債表上認列。這是產生法律上強制義務的時刻。因此，不存在 “經濟”的方法。估值以當時的公允價值進行。

資誠觀點

從最高法院判決中得到的一個重要教訓是，涉及參與豁免所得的交易必須以法律上的精準度進行建構。本案涉及的是股利分配，股利本身適用參與豁免。然而，從股利發放決議到實際支付之間存在一段時間間隔，儘管只有一個多月的相對較短的時間間隔。股利以外幣計價。在這段短時間內，應收股利發生了匯率價差。這導致一個不適用參與豁免的應課稅的匯兌結果。不幸的是，從該集團和荷蘭公司的角度來看，考慮到整個交易，只有一個「帳面」利潤。

Netherlands
F/X result on participation dividend receivable taxable

A dividend receivable arises at the moment the company's competent body adopts the dividend resolution. At that moment, the parent company must value the dividend receivable and recognise it as an asset on its tax balance sheet. The dividend to be received by the parent company is exempt if the participation exemption applies. Any results in respect of the dividend receivable (including foreign exchange results) are not covered by the participation exemption and are subject to corporate income tax. The Supreme Court confirmed this in a judgment dated 3 November 2023.

Supreme Court Ruling

In the case before the Supreme Court, the issue was whether the participation exemption also covered the foreign exchange result on the dividend receivable.

The first question the Supreme Court had to answer was the question of the moment that a dividend receivable arises for tax purposes. In particular, this discussion focused on the question of whether a dividend receivable arises at the moment the dividend is declared, i.e., the moment at which the dividend receivable arises in civil-legal terms, or at the moment it is made available for payment. The Supreme Court has now ruled that the first view is correct. A dividend receivable arises at the moment the company's competent body adopts the dividend resolution. At that moment, the parent company must value and recognize the receivable as an asset on its tax balance sheet.

The second question the Supreme Court had to answer was the question of the scope of the participation exemption. The judgment clarifies that a benefit located in the arising of the dividend receivable belongs to the exempt participation profit. The dividend itself is therefore covered by the exemption. Next, the Supreme Court ruled that with the arising of that receivable, the exempt participation profit is left. From then on, the dividend receivable is an independent asset which, by its nature, can lead to profits and losses. As a result, changes in the value of the dividend receivable, including changes in value due to exchange rate fluctuations of foreign currencies, are in the taxable domain (profits taxed, losses deductible). Therefore, the value that the dividend receivable is recognized on the tax balance sheet is very important.

Finally, the Supreme Court indicated how the valuation of the dividend receivable on the fiscal balance sheet should take place. In order to correctly determine the taxable total profit, the dividend receivable must be recognised on the balance sheet at the moment it arises. This is the moment a legally enforceable liability arises. Thus, there is no ‘economic’ approach. The valuation is made at fair value at that time.

For more information see our PwC Insight.

PwC observation:

An important lesson from the Supreme Court ruling is that transactions involving exempt participation income must be structured with legal precision. This case concerned the distribution of a dividend to which, in itself, the participation exemption applied. However, a period elapsed between the dividend resolution and the actual payment, albeit a relatively short period of just over a month. The dividend was denominated in foreign currency. During this short period, an exchange rate difference occurred on the dividend receivable. This led to a positive taxable foreign exchange result to which the participation exemption does not apply. Unfortunately from the perspective of the group and the Dutch company, there was only a ‘paper’ profit given the totality of the transactions.

美國
美國地方法院在Liberty Global案中適用經濟實質原則

10月31日，美國科羅拉多州地方法院就Liberty Global Inc.訴美國案作出即決判決(summary judgment)，支持政府的主張，認為涉案交易(「Project Soy」)缺乏經濟實質。

第7701(o)節規定，判定交易是否符合經濟實質原則時，滿足以下條件的交易才具有經濟實質：(1)該交易以有意義的方式改變了納稅人的經濟狀況，並且(2)納稅人進行的交易具有合理商業目的。Liberty Global的一個關鍵問題是涉案交易是否符合經濟實質原則。

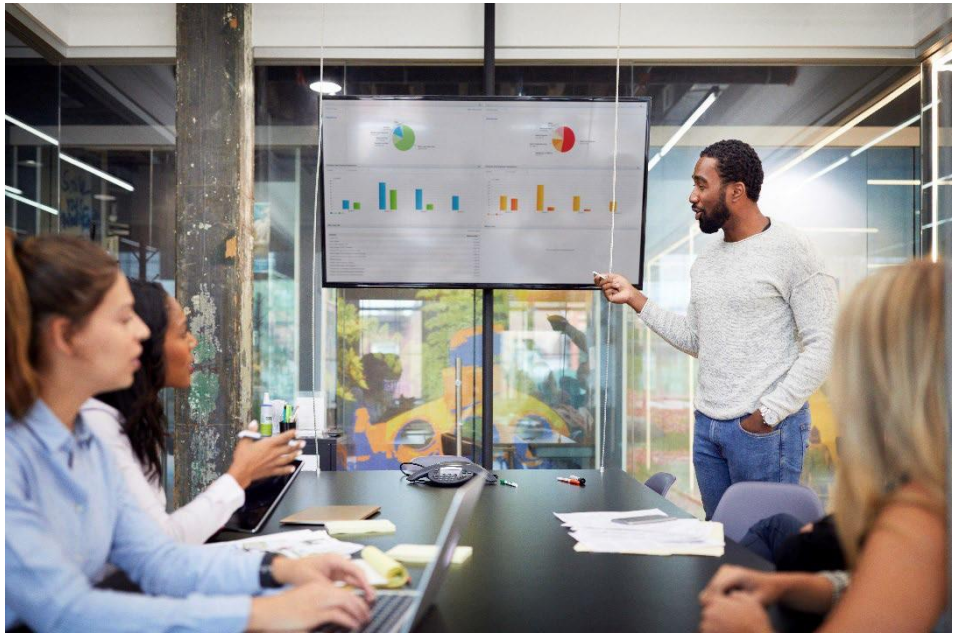
地方法院的主要裁決

沒有「相關性」門檻審查 - 地方法院駁回了納稅人的論點，即第7701(o)節的立法歷史證明國會有意限制該節適用的交易類型。相反，地方法院根據對第7701(o)節的立法歷史和先前判例法中特定陳述的解釋得出的結論是，在進行經濟實質測試之前沒有初步的「相關性」審查。

沒有基本商業交易(basic business transaction)例外 - 立法歷史表明，第7701(o)節不適用於某些基本商業交易，「這些基本商業交易在長期司法和行政實踐中之所以受到尊重，僅僅是因為在有意義的經濟替代方案之間的選擇，在很大程度上或完全基於相對的稅收優勢」。地方法院得出結論，Project Soy的步驟不是基本商業交易，因為(i)這些步驟產生的稅務結果違反了GILTI制度和第245A節所依據的立法意圖，(ii)該交易是在一位資深稅務顧問的幫助下規劃的，以及(iii)該交易包含一系列複雜的步驟。

資誠觀點

納稅人表示將就地方法院的判決向美國第十巡迴上訴法院提出上訴。雖然地方法院的判決先例價值有限，但納稅人應繼續關注Liberty Global上訴和相關訴訟，以評估法院解釋經濟實質原則適用方式的進一步發展。



United States
US District Court applies economic substance doctrine in Liberty Global

The US District Court for the District of Colorado issued its opinion in Liberty Global Inc. v. United States on 31 October, granting summary judgment in favor of the government that the transaction at issue ('Project Soy') lacked economic substance.

Section 7701(o) provides that, when the economic substance doctrine is relevant to a transaction, the transaction has economic substance only if (1) the transaction changes in a meaningful way the taxpayer's economic position and (2) the taxpayer has a substantial business purpose for entering into the transaction. A key issue in Liberty Global was whether the economic substance doctrine was 'relevant' to the underlying transaction.

District Court Key Determinations

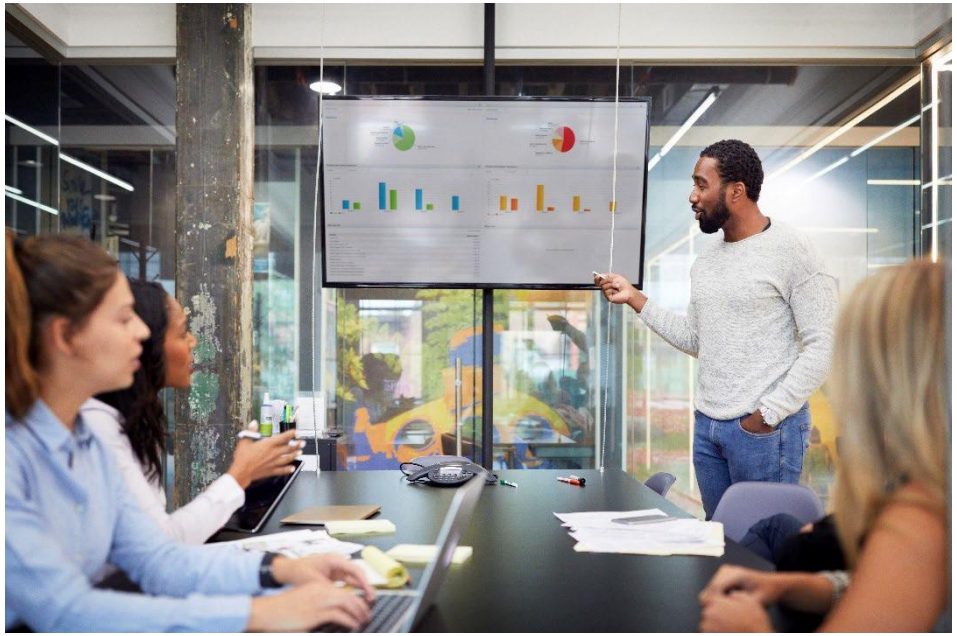
No 'relevance' threshold inquiry - The District Court rejected the taxpayer's argument that the legislative history of Section 7701(o) evidenced a Congressional intent to limit the types of transactions to which the provision was relevant. The District Court instead concluded – based upon its interpretation of certain statements in the Section 7701(o) legislative history and prior case law – that there is no initial 'relevance' inquiry prior to applying the economic substance test.

No basic business transaction exception - The legislative history states that Section 7701(o) does not apply to certain "basic business transactions that, under longstanding judicial and administrative practice are respected, merely because the choice between meaningful economic alternatives is largely or entirely based on comparative tax advantages." The District Court concluded that the Project Soy steps were not basic business transactions because (i) the steps produced a tax result that was violative of the Congressional intent underlying the GILTI regime and Section 245A, (ii) the transaction was planned with the help of a sophisticated tax advisor, and (iii) the transaction comprised a complex series of steps.

For more information see our PwC Insight.

PwC observation:

The taxpayer has stated that it will appeal the District Court's decision to the US Court of Appeals for the Tenth Circuit. While the District Court's decision has limited precedential value, taxpayers should continue to monitor the Liberty Global appeal and related litigation to assess further developments in the manner courts interpret the application of the economic substance doctrine.



Glossary

Acronym	Definition
ATAD	Anti-Tax Avoidance Directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate

Acronym	Definition
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
OECD	Organisation for Economic Co-operation and Development
PE	permanent establishment
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

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- 兩岸與國際租稅Update(Pillar Two – Subject to Tax Rule(STTR)應予課稅原則)：https://youtu.be/ctK-Coq2c2Y
- 台灣稅務與投資法規Update-12月號 (數位經濟下跨境電商稅務實務分享)：https://youtu.be/XGtuLqpiwK8
- 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
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  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
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中華產業國際租稅學會 敬邀加入會員

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

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

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

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

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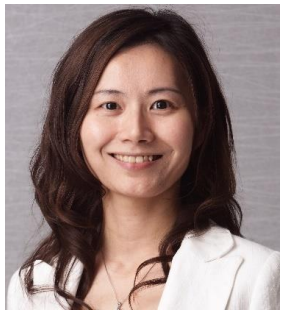

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