

# 國際租稅要聞

## International Tax Newsletter



# 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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作者：蘇宥人 執業會計師 / 李苡甄 經理

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## 專論

# GS警示：美中所得稅協定評估

## 摘要

美中所得稅協定評估

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全球架構實務

近期市場上關於美中所得稅協定的討論持續升溫，外界關注現任美國政府是否可能終止該協定。

平衡我們對客戶的訊息非常重要，儘管我們尚無具體的時間或特定結果，但我們了解到川普政府即將宣布終止美中所得稅協定的可能性相當大。一旦有更多詳細資訊，我們會即時提供，同時希望您能做好準備，與客戶討論此事。正如下文所述，如果在2025年6月30日之前發出官方終止通知，則自2026年1月1日起開始的課稅年度將不再適用已終止的協定效益。

請考慮您客戶的具體情況，與相關的租稅協定專業人士聯繫，並根據需求與我們的移轉訂價及稅務政策同事相互配合。

## 詳細說明

根據2025年2月21日美國總統簽署「美國優先貿易政策」備忘錄 (<https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investmentpolicy/>)，美國財政部（及其他相關部門）已被要求審查暫停或終止自1986年生效的美中所得稅協定（以下簡稱「本協定」）的可能性。這將是一個罕見的措施，因為在過去38年間，僅有三個租稅協定被終止（分別為匈牙利、馬爾他和荷屬安地列斯）。

## 專論

# GS警示：美中所得稅協定評估

## 可能的影響

如果終止本協定，將可能對企業界產生深遠的影響。以下是一些需考慮的潛在影響（非詳盡列舉）：

- 可能對現有的雙邊預先訂價協議（Advance Pricing Agreement，APA）或正在談判中的協議產生影響；限制本協定下享有的減免預扣稅率的權益，特別是對於“進入”美國的企業（該協定相較於目前中國大陸的國內法僅提供了有限的預扣稅優惠）；
- 限制美國企業在未設立常設機構的情況下，獲取與中國大陸相關營業利潤（例如，臨時外派員工至中國大陸、銷售至中國大陸，或在中國大陸保存貨物以進行加工、儲存、展示或交付等準備性或輔助性活動）而無須課徵淨利潤之權利；並對中國大陸企業在未設有常設機構的情況下，獲取自美國相關營業利潤而無須課徵淨利潤之權利產生類似影響；
- 限制對本協定的雙重稅收減免機制的使用，例如，資源配置規則可能幫助納稅人獲得美國對中國大陸資本利得稅的外國稅收抵免。終止本協定的潛在可能將對於頻繁從事併購活動的公司、私募股權/資產管理行業，或考慮重組其中中國大陸控股架構的公司來說，變得至關重要。

## 程序考量

### 美中所得稅協定第28條 – 終止

本協定第28條規定終止程序。締約國任一方可以通過外交途徑向另一方發出終止通知。如在歷年6月30日或之前發出通知，則本協定將自次年1月1日或之後失效。舉例來說，如果美國在2025年6月30日或之前通知中國大陸終止本協定，則本協定將於2026年1月1日起終止生效。

本協定無關於暫停之相關規定。因此，暫停可能被視為對美國在本協定下承諾的實質性違反。

## 專論

# GS警示：美中所得稅協定評估

Revenue Procedure 2015-41 ( 以下簡稱「Rev. Proc. 2015-41」 ) 制度 – 對APA的影響

Rev. Proc. 2015-41第7節涵蓋對APA的管理及規定，除非協定國雙方同意修訂APA：

1. 在適用規定發生重大變更的情況下，預先訂價及相互協商計畫 ( Advance Pricing and Mutual Agreement Program ) 將取消APA；
2. 取消APA通常自美國稅收條款變更生效日開始之年度期間始生效；以及
3. 在取消生效日期之後的期間，APA對於美國稅局 ( IRS ) 和納稅人在美國所得稅目的上將不再具有任何效力。

實際上，這意味著如果美國在2025年6月30日或之前通知中國大陸終止本協定，則本協定將於2026年1月1日終止生效，而現有的APA也可能將於2026年1月1日被取消，並且可能停止未來APA的談判。

### 本文作者為資誠聯合會計師事務所

蘇宥人 執業會計師

Tel: 02-2729-5369

Email: peter.y.su@pwc.com

李苡甄 經理

Tel: 02-2729-6666 轉 35608

Email: luna.lee@pwc.com

要聞

Legislation

立法

# 非洲

## 非洲稅務政策趨勢

非洲各國的稅務政策正經歷著顯著變化，因為這些國家正努力在社會經濟的挑戰中提升國內收入。隨著數位經濟的興起，非洲各國政府正擬定策略以有效對數位服務課稅。同時，提高稅收支出的效率是改善政府財政管理方式的關鍵。

不斷演變的非洲稅務政策可能帶來雙重影響，一方面，各國增加或引入新稅種，可能導致企業面臨更高的稅務負擔。另一方面，非洲國家仍將繼續提供稅務優惠，以吸引(外國直接)投資。

### 資誠觀點

隨著非洲積極因應全球化和數位經濟所帶來的挑戰與機會，稅務政策必須與時俱進。透過使稅制與不斷變化的經濟環境保持一致，非洲國家可以確保其財政框架保持著相關性和有效性。非洲不斷變化的稅務政策，既是對全球變化的回應，也是經濟自主性的體現。隨著這些政策的完善，各國政府、區域機構和國際組織的協同努力，對於確保非洲稅制的公平、高效和符合目的將至關重要。



# Africa

## Tax policy trends in Africa

Tax policy in various African jurisdictions is undergoing significant change as these countries grapple with the need to boost domestic revenue amidst socio-economic challenges. With the rise of the digital economy, African Governments are strategizing to effectively tax digital services. At the same time, making tax spending more efficient is key to improving how the government manages its finances.

The evolving African tax policy landscape could, on the one hand, lead to a higher tax burden for companies as countries increase or introduce new taxes. On the other hand, African countries will continue providing tax incentives to attract (foreign direct) investment.

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

### PwC observation:

As Africa navigates the challenges and opportunities of a globalized and digital economy, it is essential that tax policies evolve in tandem with these changes. By continuously aligning tax systems with the shifting economic landscape, African nations can ensure their fiscal frameworks remain relevant and effective. Africa's evolving tax policies reflect both a response to global shifts and an assertion of economic agency. As these policies are refined, the collaborative efforts of governments, regional bodies and international organizations will be crucial in ensuring that Africa's tax systems are equitable, efficient and fit for purpose.



## 盧森堡

# 盧森堡支柱二法案草案實施全球反稅基侵蝕資訊申報表 (GIR) 自動交換及經濟合作與發展組織 (經合組織, Organisation for Economic Co-operation and Development, OECD) 指南

2025年7月24日，盧森堡政府向議會提交了第8591號法案。該法案將修正盧森堡支柱二，以納入經合組織/二十國集團 (OECD/G20) 包容性架構發布的最新指南，並實施歐盟指令2025/872 (DAC9) 關於自動交換全球反稅基侵蝕資訊申報表 (GloBE Information Returns, GIRs) 的要求。

盧森堡擬議修正支柱二，旨在使盧森堡的國內法與OECD/G20包容性架構及歐盟DAC9保持一致。交換內容將遵循OECD模式，其中盧森堡GIR分為通用部分和租稅管轄區特定部分。租稅管轄區特定部分將僅與對相關實體擁有課稅權且已實施支柱二的租稅管轄區共享。這種方法在國際合作與數據保密性之間取得了平衡，在保護企業敏感資訊的同時，強化了盧森堡對全球稅務標準的承諾。

為確保及時合規，自2024年1月1日起適用支柱二的盧森堡實體，若財務年度採取歷年制，需在2026年6月30日前完成註冊並提交GIR。原則上，每個盧森堡成員實體或合資實體都應提交GIR。盧森堡支柱二允許由指定的盧森堡實體 (或在特定條件下，由外國母公司) 進行集中申報。在盧森堡，此類選擇預計將透過支柱二註冊 (或後續通知) 進行，所有受支柱二約束的盧森堡實體均需註冊。

該法案也將納入OECD於2025年1月發布的行政指南。這些變化涉及集團首次適用支柱二時，應如何處理某些遞延稅務資產。

### 資誠觀點

第8591號法案引入了GIR與歐盟及其他租稅管轄區自動交換的框架，並使盧森堡支柱二的實施與最新的OECD和歐盟標準保持一致。

納稅人應評估與當地及集團申報要求相關規定，以優化其稅務合規策略。集團可以指定一個集團申報實體來提交GIR。

## Luxembourg

# Luxembourg draft Pillar Two law implements automatic exchange of GloBE Information Returns and OECD guidance

The Luxembourg government, on 24 July 2025, submitted Bill of Law No. 8591 to parliament. The Bill of Law would amend the Luxembourg Pillar Two law to incorporate the latest guidance issued by the OECD/G20 Inclusive Framework and implement EU Directive 2025/872 (DAC9) on the automatic exchange of GloBE Information Returns (GIRs).

The proposed amendments to the Luxembourg Pillar Two Law aim to align Luxembourg's domestic legislation with the OECD/G20 Inclusive Framework and EU DAC9. The content of the exchange would follow the OECD model, whereby the Luxembourg GIR is split into a general section and a jurisdictional section. The jurisdictional section would only be shared with jurisdictions that have taxing rights over the relevant entities and that have implemented Pillar Two rules. This approach balances international cooperation with data confidentiality, reinforcing Luxembourg's commitment to global tax standards while protecting sensitive corporate information.

To ensure timely compliance, Luxembourg entities that form part of a group with a financial year that follows the calendar year and that are in scope of the Pillar Two rules as from 1 January 2024 would need to register and file GIRs by 30 June 2026. The GIR is in principle due by every Luxembourg constituent entity or joint venture entity. The Luxembourg Pillar Two law allows for centralized filing by a designated Luxembourg entity or, under certain conditions, by a foreign parent entity. In Luxembourg, such election is expected to be made through the Pillar Two registration (or subsequent notifications), required for all Luxembourg entities that are subject to the Pillar Two Law.

The Bill of Law would also incorporate the OECD administrative guidance issued in January 2025. Those changes relate to how certain deferred tax assets should be treated when groups first become subject to the Pillar Two rules.

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

PwC observation:

Bill of Law n°8591 introduces a framework for the automatic exchange of the GIR with EU and other jurisdictions and aligns Luxembourg's Pillar Two implementation with the latest OECD and EU standards.

Taxpayers should assess the relevant provisions with respect to local and group reporting requirements to optimize their tax compliance strategy. Groups could designate a group filing entity for the GIR.

## 波多黎各

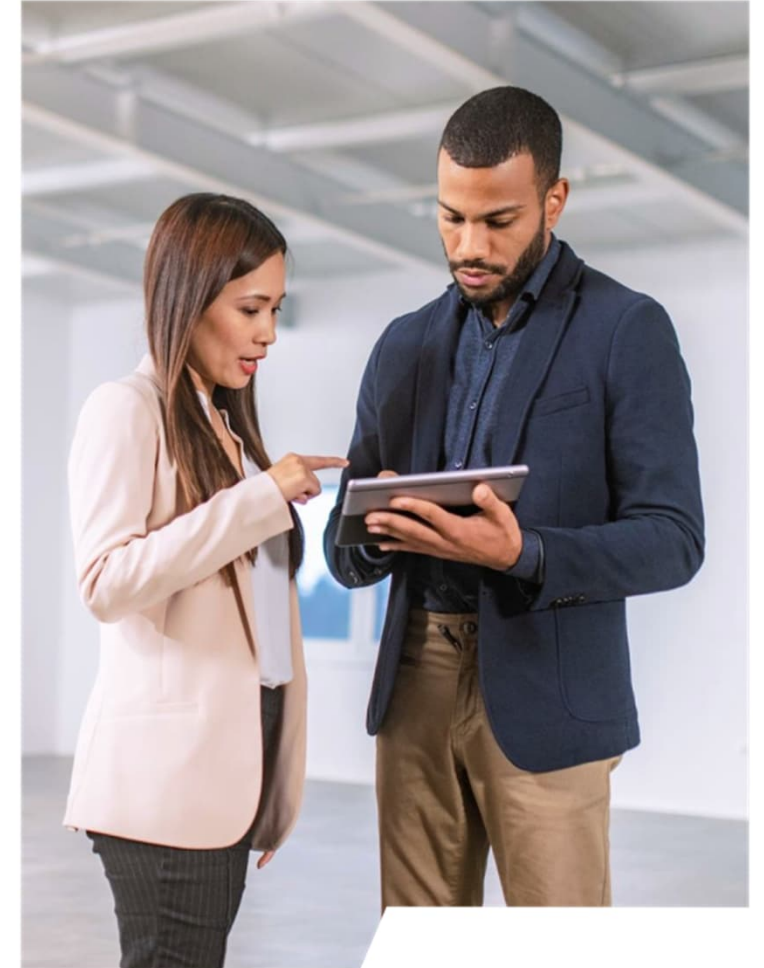
### 波多黎各稅務的修正影響實體分類規則、稅務優惠及資訊申報

2025年4月至7月，波多黎各立法機關批准了多項稅務法案，這些法案共同重塑了2011年波多黎各國內稅收法典、2019年波多黎各優惠法典以及2020年波多黎各市政法典(修正版)的關鍵領域。主要變化包括實體分類規則的更新、新的可選稅務處理方案、修正後的稅務申報要求、擴大收付實現制的適用範圍，以及針對農業等策略性行業的定向優惠措施。

這些修正旨在減輕行政負擔，使波多黎各的稅務框架與美國聯邦稅務實踐更好地保持一致，並透過提高監管清晰度和簡化合規性來推動經濟增長。

#### 資誠觀點

納稅人應考慮這些新規定對其在波多黎各的營運、合規和稅務規劃可能產生的影響，包括實體分類選擇以及是否在波多黎各從事貿易或業務的認定。納稅人應審查這些變化可能如何影響其會計流程、申報要求和整體稅務架構。



# Puerto Rico

## Puerto Rico tax amendments impact entity classification rules, tax incentives, and information reporting

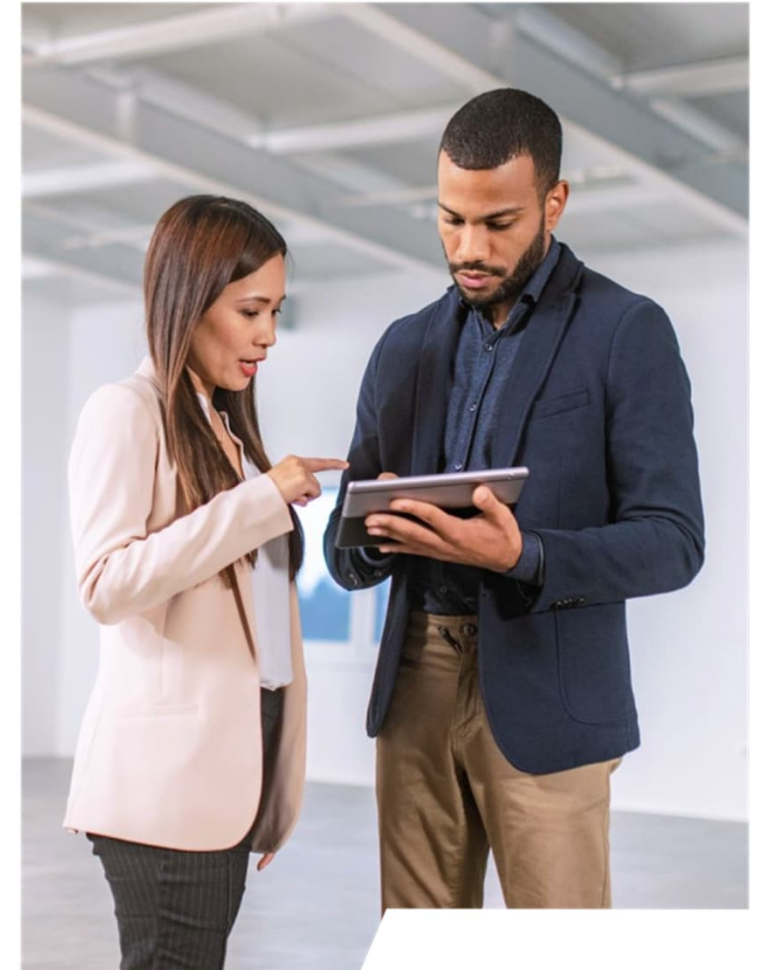
Between April and July 2025, the Puerto Rico legislature approved various tax laws that collectively reshape critical areas of the Puerto Rico Internal Revenue Code of 2011, the Puerto Rico Incentives Code of 2019, and the Puerto Rico Municipal Code of 2020, as amended. Key changes include updates to entity classification rules, new elective tax treatments, revised tax reporting requirements, expanded eligibility for the cash method of accounting, and targeted incentives for strategic sectors such as agriculture.

These amendments aim to reduce administrative burdens, better align Puerto Rico's tax framework with US federal tax practice, and drive economic growth by enhancing regulatory clarity and simplifying compliance.

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

### PwC observation:

Taxpayers should consider how these new provisions may affect their operations, compliance and tax planning in Puerto Rico, including any entity-classification elections and determinations of whether they are engaged in a trade or business in Puerto Rico. Taxpayers should review how the changes could influence their accounting processes, filing requirements and overall tax structure.



# 烏拉圭

## 烏拉圭合格國內最低稅負制 (Qualified Domestic Minimum Top-up Tax, QDMTT) 的最新進展

根據近期政府公告和最新資訊，烏拉圭行政部門於八月底向議會提交了五年預算案。該預算案包含引入符合OECD標準的合格國內最低稅負制(Qualified Domestic Minimum Top-up Tax, QDMTT)的條款，同時也授權行政部門根據全球反稅基侵蝕(Global Anti-Base Erosion, GloBE) 規則授予稅務抵免，並重新設計現有稅務優惠措施以確保其符合新的國際框架。

根據OECD的數據，預計到2025年底，其中90%符合合併營收超過7.5億歐元的跨國集團中的公司將適用全球最低稅負制(Global Minimum Tax, GMT)，即有效稅率為15%。該預測基於以下事實：除歐盟的27個成員國外，另有17個國家已採用所得涵蓋原則 (Income Inclusion Rule, IIR)，超過30個國家已將徵稅不足支出原則(Undertaxed Profits Rule, UTPR) 納入其國內法。此外，在支持全球最低稅負制的140個包容性架構成員中，超過50個國家已核准QDMTT。

### 資誠觀點

儘管許多細節仍不確定，且法案草案尚未公布，但這些發展顯示烏拉圭有意調整其稅制以適應新的國際格局。

如果跨國公司的母公司 (例如歐洲或日本公司) 已實施GMT，且其子公司在烏拉圭享有稅務優惠，烏拉圭的QDMTT將防止這些最終母公司所在國 (或跨國架構的其他中間層) 課徵補充稅。換句話說，如果烏拉圭沒有課徵補充稅，外國稅務機關將可向該跨國公司課徵烏拉圭放棄的這部分稅款 (本為吸引投資至烏拉圭而提供的稅務優惠)。

**雙重挑戰：**既要維持投資吸引力，又要防止稅收流向國外。然而，這預設了一個並非總是成立的條件：即如果沒有稅務優惠，投資仍會進入或留在烏拉圭。從經濟學角度來看，這僅適用於對稅率彈性敏感的投資。那些重視投資其他屬性的公司，肯定會權衡稅務優惠之外的因素。毫無疑問，這個難題並不容易解決，至少意味著優惠措施需要重新調整以適應新的標準。



# Uruguay

## Updates on Uruguayan QDMTT

In line with recent government announcements and emerging information, the Uruguayan Executive Branch is expected to submit the Five-Year Budget Bill to Parliament later this month. The bill will include provisions for the introduction of a Qualified Domestic Minimum Top-up Tax (QDMTT) aligned with OECD standards. It will also empower the Executive to grant tax credits following the GloBE Model Rules and to redesign existing tax incentives to ensure they comply with the new international framework.

According to the OECD, by the end of 2025, 90% of companies belonging to Multinational Groups (MNGs) reporting consolidated revenues of more than 750 million Euros are expected to be subject to the Global Minimum Tax (GMT), at an effective income tax rate of 15%. This forecast was based on the fact that in addition to the 27 members of the European Union, 17 other countries had adopted the Income Inclusion Rule (IIR), and more than 30 had incorporated the Undertaxed Profits Rule (UTPR) into their domestic legislation. Likewise, more than 50 (of the 140 members of the Inclusive Framework supporting this system) had approved a QDMTT.

PwC observation:

While many details remain uncertain and the draft bill has not yet been published, these developments signal Uruguay's intention to adapt its tax system to the new international landscape.

If we consider parent companies of MNCs that have already implemented the GMT—such as, for example, European or Japanese companies—and have subsidiaries enjoying tax benefits in Uruguay, a Uruguayan QDMTT would prevent the country of these ultimate parent companies (or possibly another intermediary involved in the MNC structure) from collecting the minimum tax. In other words, the absence of a tax of this nature in Uruguay (as is currently the case) could lead those foreign tax authorities to collect from the MNC the tax that Uruguay sovereignly has decided to forgo (by granting tax benefits in pursuit of attracting investments to the country).

A dual challenge exists: preserving investment attraction while at the same time preventing revenue from ending up abroad. However, this presumes a condition that does not necessarily always holds true: that investments would arrive or remain in Uruguay if tax benefits do not exist. Economically speaking, this occurs only for investments that are elastic with respect to the tax variable. Those who value other attributes for investment, certainly weigh factors beyond tax exemptions. Undoubtedly, this is not an easy dilemma to resolve and at least implies the readjustment of incentives to the new standards.



要聞

Administrative

行政

# 澳洲

## 澳洲稅務局關於軟體跨境支付的合規指南草案

澳洲稅務局 (Australian Taxation Office, ATO) 發布了實務合規指南(該指南)的草案 (PCG 2025/D4)，主題是軟體相關的低風險支付的合規方法。該指南概述了對軟體跨境支付及相關權利金扣繳稅風險的合規方法。該指南旨在為需要支付款項給非居民軟體供應商的特定企業提供更高的確定性，釐清ATO將這類支付款項認定屬於低風險的具體情形，且不會因權利金扣繳稅的問題而被ATO審查。

### 資誠觀點

納稅人若有跨境支付軟體費用的情況，應根據此指南審查其現有及規劃中的軟體相關交易，並確保能夠提供風險評估的依據以證實其符合所謂的低風險區的交易。透過對照白區和綠區標準自我評估其軟體相關交易，納稅人可以確信，只要備妥適當的文件且其交易安排沒有實質性變更，其低風險的交易安排將不會受到ATO的進一步審查。

更值得關注的是，ATO正持續審視其關於軟體和權利金的草擬立場，而這將受到近期高等法院一項判決的影響：該判決多數意見認為，納稅人沒有義務支付權利金扣繳稅或移轉利潤稅 (Diverted Profits Tax, DPT)。在該案中，儘管多數的法院認同智慧財產權授權是獨立商業協議的重要組成部分，但仍駁回稅務官員 (Commissioner) 主張的「根據另一協議下，就有形產品支付的款項中有部分構成使用智慧財產權的對價」。



# Australia

## ATO draft guidance on cross-border payments for software

The Australian Taxation Office (ATO) has released draft Practical Compliance Guideline [PCG 2025/D4 Low-risk payments relating to software arrangements](#) – ATO compliance approach, outlining its compliance approach to cross-border payments for software arrangements and the associated risk of royalty withholding tax. This guidance aims to provide greater certainty for certain businesses making payments to non-resident software suppliers, clarifying when the ATO will consider such payments to be low risk and unlikely to attract ATO scrutiny for the application of royalty withholding tax. For further information refer to this [Tax Alert](#).

PwC observation:

Taxpayers that may have cross-border payments for software should review their current and planned software arrangements in light of this guidance and ensure that for those arrangements that fit within the low-risk zone, they can substantiate their risk assessment. By self-assessing their software arrangements against the white and green zone criteria, taxpayers can gain confidence that their low-risk arrangements will not be subject to further ATO review, provided they maintain appropriate documentation and there are no material changes to their arrangements.

Of further interest is that the ATO continues to review its draft position in relation to software and royalties, and this will now be informed by a recent High Court decision where it was held by majority that none of the taxpayers were liable to pay royalty withholding tax or diverted profits tax (DPT). In this matter, the majority of the Court concluded that although a licence for Intellectual Property was a significant part of the architecture of a separate commercial agreement, the Commissioner's contention that the payments in question that were made for a tangible product under another agreement were in part 'consideration for' the right to use the Intellectual Property was rejected.



要聞

Judicial

司法

## 印度

### 雲端運算服務收入不應作為權利金或包含服務費(fees for included services, FIS)課稅

德里高等法院 (ITA 150/2025 & CM APPL. 29405/2025) 認為，雲端運算服務收入不構成印度-美國租稅協定第12(4)(b)條下的「使可用」(Make Available) 條款的要求，所以不應作為包含服務費(FIS) 課稅。另外，該收入根據租稅協定第12(3)條的規定，也不應作為權利金課稅。

#### 資誠觀點

德里高等法院的判決對雲端服務產業是一個積極的發展。這個判決與德里高等法院先前對類似服務發布的命令一致。法院再次明確了雲端服務的稅務處理方式，確認其收入不應被歸類為FIS或權利金。



## India

### Receipts from cloud-computing services are not taxable as 'royalty' or 'FIS'

The Delhi High Court (ITA 150/2025 & CM APPL. 29405/2025) held that receipts from cloud-computing services are not taxable as fees for included services (FIS) as they do not satisfy the 'make available' clause under Article 12(4)(b) of the India-US tax treaty. Moreover, the receipts are also not taxable as 'royalties' under the provisions of Article 12(3) of the tax treaty.

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

#### PwC observation:

The Delhi High Court's decision is a positive development for the cloud service industry. This decision is consistent with the previous order issued by the Delhi High Court for similar services. The court has once again provided clarity on the taxability of cloud services, confirming that payments for such services are not subject to tax as FIS or royalty.



## 印度 公司轉為有限責任合夥 (Limited Liability Partnership, LLP) 屬於應稅轉讓，除非適用豁免

孟買法庭 (ITA No.457/Mum/2025) 就1961年所得稅法下將私人有限責任公司轉為有限責任合夥的稅務處理做出裁判，重點涉及該法第45、47(xiiib)和47A(4)條下資本利得稅、豁免條件及豁免撤銷。

法庭認為公司轉為LLP構成該法第2(47)條下的「轉讓」，若不符合該法第47(xiiib)條所列的條件 (如本案中資產規模超過門檻)，則不能享受資本利得的豁免待遇。

然而，法庭也得出結論，由於資產是按帳面價值轉讓的，且取得成本也是帳面價值，因此資本利得的計算結果為「零」，從而沒有稅負。

### 資誠觀點

法庭重申其先前裁判，即公司轉為LLP將構成應稅轉讓，除非符合該法案第47(xiiib)條規定的條件並申請豁免。需要注意的是，儘管該轉換被視為轉讓，但由於轉讓以帳面價值進行，且納稅人可主張取得成本，因此不會產生資本利得。



# India

## Conversion of company into a LLP is a taxable transfer unless exemption applies

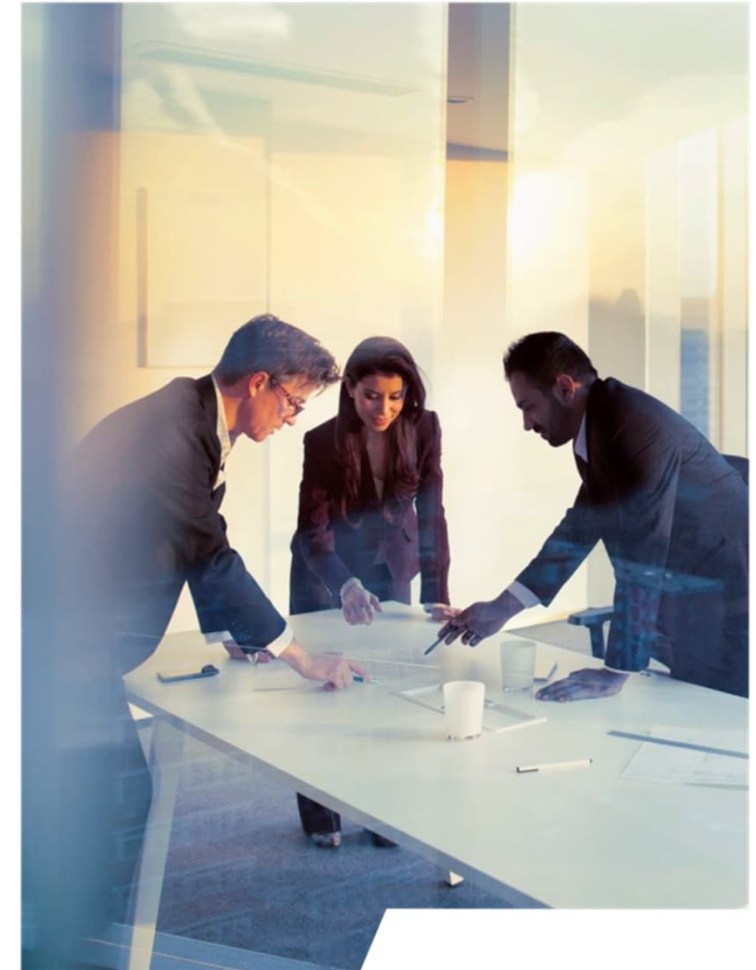
The Mumbai bench of the Tribunal (ITA No.457/Mum/2025) ruled on the taxability of the conversion of a private limited company into a Limited Liability Partnership (LLP) under the Income-tax Act, 1961 (the Act), specifically regarding the applicability of the capital gains tax, exemption, and withdrawal of the exemption under sections 45, 47(xiiiib), and 47A(4) of the Act, respectively.

The Tribunal concluded that the conversion of a company into an LLP constitutes a 'transfer' under section 2(47) of the Act, and if the conditions of section 47(xiiiib) of the Act are not satisfied (as in this case, where the asset threshold was exceeded), exemption from capital gains will not be available.

However, the Tribunal also concluded that, since the assets were transferred at book value and the cost of acquisition was also the book value, the computation of capital gains results in 'nil' capital gains, and consequently, there should be no tax liability.

### PwC observation:

The Tribunal reconfirmed its earlier ruling that the conversion of a company into an LLP will be a transfer unless an exemption is claimed under section 47(xiiiib) of the Act upon satisfaction of prescribed conditions. Note that in spite of the conversion being treated as transfer, no capital gains will arise, since the transfer took place at book value, and the taxpayer was entitled to the cost of acquisition.



## 印度

### 出售權益型共同基金 (Equity-Oriented Mutual Funds, EOMF) 不構成租稅協定下的「股份轉讓」

納稅人 (ITA No. 1963/Del/2025) 是一家外國公司，因出售EOMF在印度產生了資本利得，並根據印度-模里西斯租稅協定第13(4)條要求享受豁免待遇。

稅務官員認為，出售EOMF時，納稅人實質受益於底層資產 (即股份) 轉讓所產生的資本利得，故應適用印度-模里西斯租稅協定第13(3A)條。

然而，所得稅上訴法庭的德里分庭認為出售EOMF不等同於「股份轉讓」，因為二者在投資者權利和回報性質方面存在顯著差異。因此，根據印度-模里西斯租稅協定第13(4)條的嚴格解釋，此類EOMF的出售應享受豁免。

#### 資誠觀點

德里分庭的判決對共同基金及其他類似證券是一個積極的發展。該判決與先前對類似證券的判決一致；再次明確了共同基金的稅務處理，確認其出售應適用租稅協定的剩餘條款 (Residual Clause)。



# India

## Sale of equity-oriented mutual funds is not 'alienation of shares' under the tax treaty

The taxpayer (ITA No. 1963/Del/2025), a foreign company, earned capital gains in India from the sale of Equity-Oriented Mutual Funds (EOMF) and filed its return of income, claiming exemption under Article 13(4) of the India–Mauritius tax treaty.

The Tax Officer was of the view that, on sale of EOMF, the taxpayer becomes the beneficiary of capital gains arising from the alienation of the underlying asset, i.e. shares. Accordingly, the Tax Officer believed it would be covered under Article 13(3A) of the India–Mauritius tax treaty.

However, the Delhi bench of the Income-tax Appellate Tribunal (Tribunal) concluded that the sale of EOMF is not tantamount to 'alienation of shares', as the securities have significant differences in terms of the rights of the investors and nature of return. Thus, on strict interpretation under Article 13(4) of the India–Mauritius tax treaty, such sale of EOMF should be exempt.

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

### PwC observation:

The ruling by the Delhi bench of the Tribunal is a positive development for mutual funds and other similar securities. The ruling is consistent with the previous decision on similar securities. This ruling has once again provided clarity on the taxability of units of mutual funds, confirming that their sale should be covered under the residual clause of the tax treaty.



# 以色列

## 地方法院關於Gotex案實質受益人的裁判

2025年7月29日，地方法院就Gotex Swimwear Brands, Ltd. (以下簡稱「該公司」)一案發布了判決。

該公司與以色列稅務局 (Israeli Tax Authority, ITA) 之間的主要爭議涉及ITA評估該公司應對其所分配股利按30%稅率扣繳，儘管以色列公司間的股利分配通常免稅。

ITA主張，該公司透過一家荷蘭公司轉讓給另一家以色列公司的交易，存在人為安排交易，因此股利分配應被視為從該公司分配給荷蘭公司 (而非以色列公司之間分配股利)。

ITA更進一步指出，荷蘭公司並非以色列-荷蘭稅務條約中所定義之股利的受益所有人，因此應按國內稅率30%課徵扣繳稅。

在此案件中，法院支持ITA存在人為安排交易的觀點。然而，法院認定該荷蘭公司符合以色列-荷蘭租稅協定下實質受益人，因此適用5%的扣繳稅率。

該判決還涉及了本文未提及的其他問題。

需注意的是，ITA有權就地方法院的判決向最高法院提出上訴。

### 資誠觀點

Gotex案是以色列法院首次就租稅協定下的實質受益人問題作出裁判。

ITA歷來對授予租稅協定優惠採取嚴格的處理方式，尤其在實質受益人的認定方面 (遵循2004年發布的ITA第22/2004號通函)。ITA的通常做法是審查整體情況，包括接收實體的實質內容。在許多情況下，ITA會質疑中間控股公司是否符合適用租稅協定下的減免資格。

因此，地方法院在實質受益人問題上作出判決，對於在以色列投資的外國公司而言具有重大意義。ITA是否會向最高法院上訴，仍有待觀察。

# Israel

## District Court Rules in the Gotex Case on Beneficial Ownership

On 29 July 2025, the District Court issued a judgment in the case of Gotex Swimwear Brands, Ltd. (the 'Company').

The main dispute between the Company and the Israeli Tax Authority (ITA) was part of a withholding tax assessment related to the Company's taxation at a 30% rate on dividends distributed, even though such dividends between two Israeli companies are generally exempt from tax.

The ITA argued that the intercompany arrangements, whereby the Company was sold by a Dutch company to another Israeli company, included an artificial transaction, and as such, the dividend distribution should be considered as being from the Company to a Dutch company (rather than a dividend between two Israeli companies).

The ITA argued that the Dutch company was not the beneficial owner of the dividend for the purposes of the Israel-Netherlands tax treaty, and therefore the rate of withholding tax on the dividend to the Dutch company should be the domestic rate of 30%.

In this matter, the Court ruled in favor of the ITA that there was an artificial transaction. However, the Court determined that the Dutch company was the beneficial owner of the dividend such that the 5% withholding tax rate under the Israel-Netherlands tax treaty applies.

The judgment dealt with additional issues that are not addressed here.

Note that the ITA has the right to appeal the decision of the District Court to the Supreme Court.

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

PwC observation:

The Gotex case marks the first time that an Israeli Court has ruled on beneficial ownership in the context of a tax treaty.

The ITA has historically taken a strict approach with respect to the granting of tax treaty benefits in general, and beneficial ownership in particular (in line with the ITA Circular 22/2004 published in 2004). The ITA approach has often been to scrutinize the overall circumstances, including the substance in the receiving entity. In many cases the ITA has challenged whether intermediate holding companies are eligible for relief under the applicable tax treaty.

As such, the decision of the District Court against the ITA on beneficial ownership is a significant development for foreign companies investing in Israel. It remains to be seen whether the ITA will appeal the decision to the Supreme Court.

## 歐盟

# 歐洲法院 (Court of Justice of the European Union, CJEU) 認為對義大利金融中介機構股利徵收IRAP稅 (Italy's regional tax on production activities) 違反歐盟法

歐洲法院於8月1日在Banca Mediolanum案 (合併案件C-92/24至C-94/24) 中認定義大利對金融中介機構作為母公司從其他成員國的子公司收到的股利課徵的IRAP稅違反了歐盟母子公司指令 (Parent Subsidiary Directive, PSD)。

該判決適用範圍廣泛，不僅限於被課徵IRAP稅的義大利金融中介機構，更擴及所有透過公司所得稅以外的稅種對PSD適用範圍內的股利課稅的成員國母公司。因此，這些公司可考慮在其所在成員國提出退稅申請。

與先前總檢察長Kokott的立場不同，歐洲法院強調PSD應被解釋為旨在最大程度地避免股利的雙重課稅，因此IRAP稅對股利課徵的稅率超過5%的行為亦在禁止之列。

歐洲法院的主要論點包括：

- 從字面意義來看，PSD第4(1)(a)條規定，採用豁免制度的成員國對居住於該成員國的母公司從其他成員國的子公司收到的股利，課稅不得超過5%，且不限制稅種類型；
- 從上下文來看，附件I第B部分所列的公司稅清單 (未提及IRAP稅) 僅用於確定PSD的主觀適用範圍，不應被解釋為限制PSD其他方面的適用；以及
- 從目的解釋來看，根據PSD的序言3和相關判例，可推斷出PSD旨在「從經濟角度」避免利潤分配的雙重課稅。因此，PSD中規定的豁免條款適用於任何將股利或其部分納入稅基的稅種，無論所涉稅種的性質。

基於以上論點，歐洲法院最終認定，在成員國採用豁免制度以避免雙重課稅的情形下，PSD應被解釋為禁止該成員國對居民母公司從其他成員國子公司收到的股利徵收超過5%的稅。

即使該稅種並非特定的公司所得稅，但只要稅基中包含這些股利或其部分的情況即適用。

### 資誠觀點

儘管並非首例，但其創新性在於明確指出無論股利被課徵的種稅性質為何，PSD的適用範圍均旨在避免母公司收到的股利被雙重課稅。另外，上述原則也可能適用於採用抵免法以避免PSD下雙重課稅的成員國。

就義大利而言，立法者須採取行動以遵守歐洲法院的判決。義大利金融中介機構若在PSD適用範圍內，收到股利需繳納IRAP稅的，則可考慮對尚未超過時效的財務年度 (即對於歷年制的納稅人，從IRAP 2022年首次預繳開始) 提出退稅申請；對已提交申請的，須評估進一步適當行動，以保障其已繳IRAP稅的退款權利。

# European Union

## CJEU Rules IRAP Tax on Dividends to Italian Financial Intermediaries Infringes EU Law

The Court of Justice of the European Union (CJEU), ruled in the Banca Mediolanum case (joined cases C-92/24 to C-94/24) on 1 August, that Italy's regional tax on production activities ('IRAP tax') on dividends received by Italian financial intermediaries as parent companies from subsidiaries in other Member States violates the Parent Subsidiary Directive (PSD).

This judgment's scope is broad, as it is not limited to Italian financial intermediaries who have received dividends subject to IRAP tax, but extends to all parent companies in a Member State that have been taxed on dividends within the scope of the PSD through taxes other than corporate income taxes. Therefore, these companies might consider filing a refund claim in their Member State.

The CJEU – disagreeing with the earlier position taken by AG Kokott in her opinion on the case – ruled that the PSD must be interpreted as aiming to avoid double taxation of dividends to its broadest extent and it therefore should also cover the prohibition of taxing dividends by more than 5% through IRAP tax.

According to the CJEU this is supported by these main arguments:

- from a literal point of view, Article 4(1)(a) of the PSD states that a Member State applying the exemption system should not tax dividends received by a parent company resident in that Member State from its subsidiaries in other Member States for more than 5% of that amount, without restricting this rule to any specific type of tax;
- from a contextual point of view, the list of corporate taxes contained in Annex I, Part B - which do not mention IRAP tax - is relevant for the identification of the subjective scope of the PSD only and it shall not be interpreted as limiting the scope of the PSD for other means, and
- from a teleological point of view, from recital 3 of the PSD and the relevant CJEU case law on the matter, it shall be derived that the PSD seeks to avoid double taxation of distributed profits 'in economic terms'. Therefore, the exemption provided in the PSD applies with respect to any tax that, in the Member State of the parent company's residence, includes in its basis of assessment even a part of those dividends, irrespective of the nature of the tax at issue.

On the basis of all the points above, the CJEU concluded, in this particular case where a Member State used the exemption system for the avoidance of double taxation, that the PSD should be interpreted to prevent that Member State from imposing a tax on more than 5% of the dividends received by a resident parent company from subsidiaries in other Member States.

This applies even if the tax is not specifically a corporate income tax but includes those dividends or part of them in its tax base.

PwC observation:

This judgment, although not the first on the matter, is innovative to the extent made clear that the scope of the PSD is to avoid double taxation on dividends received by a parent company regardless of the nature of the tax to which such dividends are potentially subject. Additionally, the principles outlined in the present judgment might also apply to Member States adopting the credit method for the avoidance of double taxation under the PSD.

With specific reference to Italy, action is now expected from the lawmaker in order to comply with the CJEU judgment. Italian financial intermediaries that are subject to IRAP tax on dividends received in scope of the PSD might consider filing refund claims for the fiscal years not yet statute barred (i.e. from IRAP 2022 first advance onwards, for calendar-year taxpayers) and to evaluate taking further appropriate actions in respect of claims already filed in order to safeguard their rights to the refund of the IRAP tax paid.

## 墨西哥

### 墨西哥最高法院發布具有拘束力判例，重塑退稅程序

近期，墨西哥最高法院發布了兩項判例，影響稅務機關處理退款請求的方式。這些判決引入了更嚴格的規定，可能導致公司喪失追回多繳稅款的權利。

墨西哥最高法院發布了具有拘束力的判例，實質性地改變了墨西哥稅務機關 (Mexican Tax Authorities, MTA) 執行退稅程序的方式。這些標準對墨西哥的稅務法院具有強制性，並將直接影響MTA未來處理退稅申請的方式。

根據上述法院判例，納稅人在退款程序中只有一次機會完全遵守MTA的首次資訊請求。若該請求未完全滿足，MTA可能不會發出後續請求，且必須在未經實質審查的情況下結案。在這種情況下，退稅申請將被視為因沒有遵守規定而被撤回，這意味著不完整的回應將自動終止請求。

當MTA因形式缺陷 (例如缺少文件或簽名) 而拒絕退稅，且納稅人未透過適當的法律途徑對該決定提出異議時，即使後續形式缺陷得到糾正，納稅人也將失去重新申請的權利。

法院強調，必須及時對不利的決定提出異議，無論是透過行政上訴還是無效訴訟；否則將導致永久性放棄退稅請求。

#### 資誠觀點

儘管這些判決涉及法律程序，但主要資訊很明確：公司在提交退稅請求或回應稅務機關時，應更加謹慎和具策略性。這使得對MTA首次資訊請求的完整性和及時性回應變得至關重要，並消除了形式上的拒絕可以被視為可重啟程序的觀念 (除非及時提出異議)。墨西哥納稅人也應考慮MTA可能試圖將這些規定追溯適用的可能性；主動評估有助於識別風險，並制定針對任何追溯適用情況的法律應對措施。

鑑於這些發展，納稅人應立即審查待處理和先前被拒絕的退稅請求，以確認文件完整且對任何不利的情況均已及時提出上訴；強化內部控制和回應流程，以便能在適用期限內向MTA的首次資訊請求做出完整的回應；並評估未決事項的爭議準備情況行，包括程序權利的維護和法律策略的制定。

# Mexico

## Mexican Supreme Court Issues Binding Precedents Reshaping Tax Refund Procedures

Recently, Mexico's Supreme Court published two jurisprudences that affect how tax authorities must handle refund requests. These decisions introduce stricter rules that could cause companies to lose their right to recover overpaid taxes.

The Mexican Supreme Court issued binding precedents that materially alter how the Mexican tax authorities (MTA) must conduct refund procedures. These criteria are mandatory for tax courts in Mexico and will directly influence how the MTA processes refund claims going forward.

In accordance with the aforementioned court precedent, taxpayers have only a single opportunity to fully comply with the MTA's initial request for information in a refund procedure. If that request is not completely satisfied, the MTA may not issue a follow-up request and must close the file without a review on the merits. In such cases, the refund application is deemed tacitly withdrawn due to non-compliance, meaning that an incomplete response automatically terminates the request.

The Court also held that when the MTA denies a refund because of formal defects, such as missing documents or signatures, and the taxpayer does not challenge that decision through the appropriate legal avenues, the right to reapply is lost even if the formal defects are later corrected.

The Court emphasized that unfavorable determinations must be contested in due time, whether by administrative appeal or by a nullity lawsuit; failure to do so results in a permanent waiver of the refund claim.

PwC observation:

While the rulings involve legal procedures, the main message is simple: companies need to be more careful and strategic when submitting refund requests or responding to tax authorities. These holdings make completeness and timeliness in responding to the MTA's initial information requests critical, and they eliminate the notion that a formal denial can be treated as a re-startable process absent a prompt challenge. Mexican taxpayers should also consider the possibility that the MTA may attempt to apply these rules to prior periods; proactive assessments can help identify exposure and frame legal responses to any retroactive application.

In light of these developments, taxpayers should promptly review pending and previously denied refund claims to confirm that documentation is complete and that any adverse resolutions were timely appealed; strengthen internal controls and response protocols so teams can deliver a complete reply to the MTA's initial request within applicable deadlines; and evaluate open matters for dispute readiness, including preservation of procedural rights and development of legal strategies.

要聞

OECD/EU

經合組織/歐盟

## 經合組織

### 全球最低稅負制與國際投資條約：風險與機會

全球最低稅負制 (Global Minimum Tax, GMT) 作為支柱二的組成部分，是由經合組織包容性架構 (Inclusive Framework, IF) 於2021/2022年經140餘個國家達成政治共識的規則。這些規則旨在解決稅基侵蝕與利潤移轉問題，並將各國稅務競爭的底線設定為最低有效稅率 (Effective Tax Rate, ETR) 15%。截至2025年中，已有55個租稅管轄區全部或部分實施了GMT。在那些管轄區內，僅使用GMT規則就已涵蓋了大部分大型跨國集團的全球企業，因此這些規則能夠有效發揮作用。

在許多情況下，GMT可能會影響企業的投資回報率 (Return on Investment, ROI)，這可能違反全球多數國家簽署的國際投資協議 (International Investment Agreements, IIA) 中的要求。值得注意的是，GMT可能與投資保護標準相悖，這可能促使跨國集團根據IIA對國家提起仲裁，或者至少透過協商以尋求替代解決方案。

這個議題目前非常重要，尤其不僅因為美國-G7協議推進GMT與美國稅務規則之間的「並行」方法，也因為比利時憲法法院於2025年7月17日將UTPR提交給歐洲法院。兩者都可能影響GMT對 (特別是美國) 跨國公司投資回報的影響程度，以及納稅人在相關IIA下的合理預期。

#### 資誠觀點

GMT與國際投資協定 (IIAs) 之間的相互作用，對於跨國集團和國家而言，具有(i)法律層面 (確定性和保護) 和(ii)經濟層面的重大意義：

(i) 在大多數租稅管轄區，IIAs (國際法) 優於GMT (國內法)。即使憲法允許條約凌駕 (Treaty Override)，習慣國際法 (Customary International Law, CIL) 通常規定國內法應尊重國際義務。GMT與IIA之間的任何衝突都可能導致跨境訴訟或仲裁；

(ii) GMT與IIA之間的緊張關係可能影響國家的投資環境，使投資者卻步並增加預期項目的成本。尤其是低收入開發中國家，因為這些國家為外國投資者提供稅務優惠 (0% ETR) 從而吸引外資，而GMT直接影響其邏輯。策略性地管理二者關係可以優化投資回報、提升投資吸引力、控制風險、維護聲譽和確保合規。

# OECD

## Global Minimum Tax and International Investment Treaties: Risks & Opportunities

The Global Minimum Tax (GMT) rules forming part of Pillar Two consist of a set of rules politically agreed by the OECD Inclusive Framework (IF) in 2021/2022 by more than 140 countries. The rules aim to solve remaining BEPS issues and to set the floor for tax competition at a country-specific minimum Effective Tax Rate (ETR) of 15%. As of mid-2025, 55 jurisdictions have implemented the GMT wholly or partly. The GMT rules in those jurisdictions alone bring into scope most of the global entities of large multinational groups, thereby representing critical mass for the rules to take effect.

In many instances, the GMT might impact a business's return on investment (ROI) in a way that poses the risk of infringement of obligations of jurisdictions under international investment agreements (IIAs) ratified by a majority of states globally. Notably, the GMT may be at odds with investment protection standards, which could prompt multinational groups to initiate arbitration under IIAs against states, or, at least, to negotiate with states to find alternative solutions.

This topic is currently very important, not least because of the US-G7 agreement to pursue a 'side-by-side' approach between the GMT and the US tax rules, and the Belgian Constitutional Court decision of 17 July 2025 which refers the Undertaxed Profits Rule (UTPR) to the Court of Justice of the European Union. Both of these developments may have an impact on the extent to which the GMT influences (particularly US) multinationals' ROI, and therefore the taxpayer's legitimate expectations under the relevant IIA.

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

PwC observation:

The interplay between the GMT and IIAs is significantly relevant for multinational groups and states for (i) legal (certainty and protection) and (ii) monetary reasons: (i) IIAs (international law) override the GMT (domestic law) in most jurisdictions. Even if constitutional law allows for treaty override, customary international law (CIL) generally provides that the domestic laws should respect these international obligations. Any conflict between the GMT and IIAs is open to cross border litigation or arbitration; (ii) Tensions between the GMT and IIAs may affect the investment climate of states, discourage investors and increase the price of contemplated projects. The most vulnerable are low-income developing countries insofar as the GMT directly affects the rationale of special economic zones (most often found in these countries) that provide tax holidays (0% ETR) for foreign investors. Strategically managing these interactions can optimize investment outcome, investment attractiveness, risk profile, reputational exposure and compliance.

# 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



# 歡迎掃描QRcode 成為資誠會員

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## 資誠稅務一點通系列影片已上線

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

- 兩岸與國際租稅Update (川普2.0：OECD Pillar 2的新走向)：<https://youtu.be/PEvZEGCIRVI>
- 台灣稅務與投資法規Update-8月號 (企業併購法修法與跨國薪資課稅議題)：<https://youtu.be/40pHCHRTt-k>

2025 資誠前瞻研訓院線上講堂 (8月)：

美國關稅政策解析及因應策略綜覽：<https://youtu.be/5LpjwLhyQGc>

2025年美國稅改-現況及展望：<https://youtu.be/OnZ6joRyix0>

全球最低稅負制最新發展及合規策略：<https://youtu.be/jWHLHYLte6zl>

東南亞稅務法令更新及因應：越南×泰國×馬來西亞×印尼×印度：<https://youtu.be/Wbnw42feYfA>

台灣稅務法令更新及因應：[https://youtu.be/XMe\\_M0hgXGo](https://youtu.be/XMe_M0hgXGo)

兩岸稅務法令更新及因應：<https://youtu.be/SPwkw2baOtA>

台灣資本市場資訊揭露新里程：<https://youtu.be/qUW8fPOZEns>

碳費與自主減量計畫：<https://youtu.be/labhjBfrSCI>

會計暨審計法令更新：<https://youtu.be/Nv74tu5nCHI>

智財法令新近發展：<https://youtu.be/qkafLgk3PwI>

勞動法令新近發展：<https://youtu.be/vF37LQZd6nQ>

## 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>



# 與我們專業國際租稅團隊聯絡：



**曾博昇**

全球稅務服務 主持會計師

Tel: (02) 2729 5907

Email: paulson.tseng@pwc.com



**謝淑美**

併購稅務服務 主持會計師

Tel: (02) 2729 5809

Email: elaine.hsieh@pwc.com

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