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Global Tax Developments

Accounting for Income Taxes

Summary of recent international tax developments that may have implications on accounting for income taxes under US GAAP

July 1, 2023 – September 30, 2023
September 30, 2023

Issue 2023-3

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Introduction

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Unless otherwise indicated, the content in this document is based on information available as of September 30, 2023. Accordingly, certain aspects of this document may be updated as new information becomes available. Financial statement preparers and other users of this document should take actions to remain abreast of and carefully evaluate additional events that may be relevant to accounting for income taxes matters.

Applicable US GAAP guidance

Under US GAAP, the effects of new legislation are recognized upon enactment. More specifically, the effect of a change in tax laws or rates on a deferred tax liability or asset is recognized as a discrete item in the interim period that includes the enactment date. The tax effects of a change in tax laws or rates on taxes currently payable or refundable for the current year are reflected in the computation of the annual effective tax rate after the effective dates prescribed in the statutes, beginning no earlier than the first interim period that includes the enactment date of the new legislation. However, any effect of tax law or rate changes on taxes payable or refundable for a prior year, such as when the change has retroactive effects, is recognized upon enactment as a discrete item of tax expense or benefit for the current year. While there is no specific guidance as to what constitutes "enactment" under US GAAP, it is commonly accepted that enactment takes place on the date the last step in the legislative process required to promulgate the law is complete (e.g., a law is published in an official gazette, signed by a president, or receives Royal Assent).

Enacted Tax Law Changes: July 1, 2023 to September 30, 2023

The following section includes a summary of major international income tax law changes enacted during the period July 1, 2023 to September 30, 2023.

Italy
Saudi Arabia
Switzerland

Italy

New law is in force that enables government to implement significant tax reform

Date of Enactment: August 25, 2023
Effective Date: August 29, 2023

The Italian parliament has approved the “delegation law” (Law No. 111/2023), which provides for a structural reform of the Italian tax system that is expected to result in some significant changes for entities and individuals, and the law entered into force on August 29, 2023. The delegation law includes 23 articles setting forth the general principles and directives that the Italian government must follow in the implementation of the tax reform, which will be carried out through one or more legislative decrees that must be approved within the 24 months following the date the law entered into force.

See also tax@hand - September 25, 2023

Saudi Arabia

Amendments to income tax and zakat regulations published

Date of Enactment: September 15, 2023
Effective Date: September 15, 2023

On September 15, 2023, Saudi Arabia’s Minister of Finance published Resolution No. 25 dated July 26, 2023, which is effective from its date of publication. The resolution amends certain provisions of the income tax regulations, including provisions related to deductions, objections and appeals, and withholding tax, as well as certain provisions of the zakat regulations.

See also tax@hand - September 27, 2023

Switzerland

Geneva abolishment of the Geneva municipal business tax and increase of cantonal tax rate

Date of Enactment: September 8, 2023
Effective Date: January 1, 2024

On September 8, the enactment of the changes to the Geneva cantonal tax law of May 11, 2023 was published by the Geneva State Council in the official gazette. The abolishment of the Geneva Municipal Business Tax and corresponding increase of the cantonal tax rate will take effect from January 1, 2024.

The Geneva cantonal parliament did approve the changed law and abolishment of the Geneva Municipal Business Tax with an increase of the combined corporate income tax rate from 14% to 14.7% in May 11, 2023. The elapsed referendum period and necessary enactment by the Geneva State Council have now been published.

See also tax@hand - May 12, 2023

Geneva practice on taxation of management incentive plans amended

Date of Enactment: July 3, 2023
Effective Date: July 3, 2023

On July 3, 2023, the Geneva tax authorities (GTA) in Switzerland published online an amendment to the way in which they tax management incentive plans, increasing the scope for plan beneficiaries to receive benefits in a more tax efficient way.

Previously, the principle had been that, when a manager receives shares from an employer, tax was applied to the grant, and when the shares are sold, any gain was considered a tax-free capital gain. However, in relation to shares of nonquoted companies, this practice limited the amount of the tax-free capital gain in the first five years to the formula value; if the shares were granted based on a formula value, the same formula value had to be used at exit, and only the gain resulting from the formula was tax free, while any additional gain was considered employment income and taxed accordingly. However, if the gain was realized five years following the grant, the entire gain was tax free.

The GTA has now indicated that it may agree to consider certain valuation methods reflecting the fair market value of the shares at grant. Depending on the economic circumstances of the company and other variables (i.e., its stage of development), the Swiss practitioners' method, which is the valuation method used by the tax authorities (including with adjustments), and methods based on multiples of revenue, EBIT, or EBITDA may be considered as representing the fair market value of the company at the moment of the grant. To obtain confirmation that the valuation method can be considered as representative of the fair market value of the company, an advance ruling must be obtained from the GTA.

The new practice entered into force effective immediately; it should apply to new management incentive plans as well as to existing ones.

See also tax@hand - July 5, 2023

Enacted Tax Law Changes That Are Now Effective: July 1, 2023 to September 30, 2023

The following section includes a summary of major international income tax law changes enacted before July 1, 2023, but are first effective in the period July 1, 2023, to September 30, 2023.

Thailand

Thailand

Corporate income tax incentives provided for certain asset management companies

Date of Enactment: June 1, 2023
Effective Date: January 1, 2022

Thai Royal Decree No. 765, which was issued on June 1, 2023 and applies retroactively to accounting periods commencing on or after January 1, 2022, amends a previous royal decree (No. 362) by expanding certain corporate income tax incentives for asset management companies to be available to certain asset management companies in which the Ministry of Finance is a direct or indirect shareholder.

Royal Decree No. 765 provides a corporate income tax exemption to asset management companies for net profits derived from the management of non-performing loans (NPLs) purchased or transferred from financial institutions. To qualify for the exemption, at least 95% of the asset management company's voting shares must be directly or indirectly held by the Rehabilitation and Development Fund for Financial Institutions or the Ministry of Finance.

The royal decree also allows a corporate income tax deduction for asset management companies if at least 50% of their voting shares are directly or indirectly held by financial institutions, the Rehabilitation and Development Fund for Financial Institutions, or the Ministry of Finance; the amount of the deduction is equal to the portion of the provision for bad debts or the allowance for doubtful debts that the asset management company recorded in its balance sheet for the prior accounting period, pursuant to the Bank of Thailand's policies.

See also tax@hand - July 1, 2023

Enacted Tax Law Changes That Are Effective After September 30, 2023

The following section includes a summary of major international income tax law changes enacted before October 1, 2023, but effective after September 30, 2023.

Per a review of jurisdictions that are generally monitored in this publication, there were no major international income tax law changes enacted before October 1, 2023, but that are first effective in the period July 1, 2023, to September 30, 2023.

On the Horizon

Australia
Belgium
Bermuda
Brazil
Colombia
Costa Rica
Czech Republic
European Union
France
Germany
Hong Kong SAR
Ireland
Italy
Korea
Luxembourg
Mexico
Netherlands
OECD
South Africa
United Kingdom
United States

The following developments had not yet been enacted as of September 30, 2023, but may, in certain cases, be enacted and become effective in the near future. Please follow up with your U.S. or local country tax advisor for more information.

Australia

Update on status of new interest limitation rules

This article provides an update on Australia's new interest limitation rules as contained in the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023. The timing and next steps of the interest limitation rules as contained in the bill were reset on August 31, 2023. While there is no certainty at this stage, this article sets out Deloitte Australia's current best assessment of status and likely timing. The measures are effective as from July 1, 2023 although the law is not yet finalized.

See also tax@hand - August 31, 2023

Belgium, Netherlands

New Belgium-Netherlands tax treaty signed

On June 21, 2023, Belgium and the Netherlands signed a new bilateral tax treaty to replace the 2001 treaty currently in effect between the two countries. This article addresses the most significant aspects of the new treaty, including provisions relating to the scope of application of the treaty; the tie breaker rule for dual resident companies; permanent establishments (PEs); withholding taxes; professors, artists, and athletes; company officers; the compensation rule for stock options; relief from double taxation; and the avoidance of treaty abuse. Notably, the new tax treaty does not include any rules for the taxation of cross-border workers that work from home and negotiations on this issue are understood to be ongoing.

A memorandum of understanding is currently being prepared, following which the treaty text will be submitted to the parliaments of both countries for ratification. The new treaty cannot enter into force before it has been approved by both parliaments and each country has notified the other that its domestication ratification process is complete. Consequently, the new treaty is expected to apply at the earliest as from January 1, 2025.

See also tax@hand - July 5, 2023

Bermuda

Consultation paper issued on proposed introduction of corporate income tax in Bermuda

On August 8, 2023, the government of Bermuda issued a public consultation paper proposing the introduction of a corporate income tax on Bermuda businesses that are part of multinational enterprise (MNE) groups with annual revenue of EUR 750 million or more. The consultation period is from August 8 to September 8, 2023, and the proposed effective date for the tax is January 1, 2025.
More than 135 members of the OECD/G20 Inclusive Framework on BEPS have agreed on a “two-pillar” solution to reform international tax rules to ensure that large MNEs pay a minimum level of income tax. The OECD global anti-base erosion (GloBE) rules are key to the

two-pillar solution. The rules aim to ensure that income earned by an in-scope MNE group is subject to a minimum tax rate of 15% in every jurisdiction in which the group operates. The proposed corporate income tax being considered in Bermuda would be taken into account in calculating the effective tax rate of Bermuda businesses under the OECD's global minimum tax rules.

Bermuda's current tax system imposes no corporate taxes on profits, income, dividends, or capital gains. Instead, the government's operating budget is primarily funded by payroll taxes, duties, and various other taxes and fees, none of which would qualify as "covered taxes" for purposes of the jurisdictional effective tax rate calculation under the GloBE model rules.

See also tax@hand - August 11, 2023

Brazil

Draft bill would eliminate corporate income tax deduction for interest on net equity

On August 31, 2023, the Brazilian government published a draft bill, as a second attempt, that would eliminate the corporate income tax deduction for interest on net equity (INE) distributions as from January 1, 2024.

A Brazilian company generally is allowed to make INE distributions to shareholders (either legal entities or individuals), which are based on calculations that apply the public long-term interest rate (TJLP) to the company's net equity and subject to 15% withholding tax (or 25% withholding tax if payment is made to a tax haven jurisdiction). The deductibility of such distributions is limited to the greater of 50% of the retained earnings account plus profit reserves or 50% of current profit and loss before corporate income taxes. The draft bill would not eliminate the ability of companies to make INE distributions; it would only eliminate the ability to deduct such distributions for corporate income tax purposes.

See also tax@hand - August 31, 2023

Colombia

Update on regulation of SEP for purposes of taxation of digital services

The Colombian government has sought comments and recommendations from stakeholders on the proposed regulation of the new concept of significant economic presence (SEP) in Colombia in connection with the taxation of digital services which is to apply as from January 1, 2024. A draft decree (available only in Spanish) was issued on June 29, 2023, on which comments were invited by July 15, 2023. The final version of the decree, taking into account feedback received during the consultation process is awaited, and will include definitions of key terms, additional conditions required for the existence of an SEP, and confirmation of the procedure for nonresidents to be taxed on relevant income other than via withholding. The decree will be issued directly by the Ministry of Finance and does not require the approval of Congress.

See also tax@hand - August 25, 2023

Costa Rica

Commission approves amendments aiming to result in removal of Costa Rica from EU list

On August 7, 2023, the special commission working toward the removal of Costa Rica from annex I of the EU list of noncooperative jurisdictions for tax purposes (also referred to as the "black list") approved replacement text that would amend the Income Tax Law to modify the rules for the territorial tax system and introduce tax reform that would require entities that are a member of a multinational group and that lack economic substance to pay a 15% tax in Costa Rica on the offshore passive income they derive. The entities subject to this tax would be able to claim a tax credit in Costa Rica for the tax paid on the relevant income abroad. The law to enact the tax reform is expected to be approved by the first half of September 2023 and is expected to be effective as from January 1, 2024.

See also tax@hand - August 10, 2023

Legislative Assembly approves bill aiming to have Costa Rica removed from EU list

On September 7, 2023, Costa Rica's Legislative Assembly voted on an Income Tax Law amendment aiming to result in the removal of Costa Rica from annex I of the EU list of noncooperative jurisdictions for tax purposes (also referred to as the "black list").

One of the important aspects of these rules is that income that is taxed will always be considered income and capital gains will not be subject to income tax.

Following legislative procedures, the bill will be sent to the president for signature and published in the official gazette (La Gaceta).

The law will become effective as from the date it is published in La Gaceta, and the Ministry of Finance will have three months to issue related regulations.

tax@hand - September 9, 2023

Czech Republic

Amendments to recovery package propose functional currency for accounting purposes

On August 23, 2023, the Czech government issued a statement (available in Czech only) which is posted on the Ministry of Finance's website, presenting proposed changes to the fiscal consolidation and austerity package ("recovery package") (available in Czech only). The amendments, including the introduction of an option for entities to adopt a functional currency for accounting purposes, are expected to be incorporated into the legislative process as a joint amendment by all coalition. The recovery package contains a set of measures aimed at stabilizing the state budget and reducing inflation in the Czech economy and the changes generally are expected to be effective as from January 1, 2024.

See also tax@hand - September 4, 2023

European Union

European Commission proposes BEFIT as new EU-wide corporate tax base

On September 12, 2023, the European Commission ("the Commission") published its long-awaited proposal for a directive introducing a common framework for corporate income taxation in the EU. The "Proposal for a council directive on Business in Europe: Framework for Income Taxation (BEFIT)" is the replacement of previous proposals foreseeing a common (consolidated) corporate tax base (CCTB and CCCTB), which are now withdrawn. If adopted in their proposed form, the new rules would be implemented by January 1, 2028 and would apply as from July 1, 2028.

According to the Commission, the BEFIT proposal would reduce compliance costs for large businesses operating in more than one EU member state and would facilitate national tax authorities in determining the taxes that are due. The Commission estimates that the BEFIT proposal could reduce tax compliance costs by up to 65% for in-scope businesses.

See also tax@hand - September 13, 2023

European Commission publishes proposed directive on head office tax system for SMEs

On September 12, 2023, the European Commission ("Commission") published a proposal for a directive establishing a head office tax (HOT) system for micro, small, and medium-sized enterprises (SMEs). The proposed directive would allow SMEs that are growing and expanding across the border through permanent establishments (PEs) to opt in for applying the tax rules of the member state of the head office to calculate the taxable result of their PEs in other member states. Consequently, the local sets of tax rules in the member state in which the PE is located would not need to be applied.

While the optional application of these rules may create occasional competition distortions due to varying tax rules for comparable businesses, the proposed directive seeks to outweigh these risks. The benefits would, according to the Commission, include significant reductions in tax compliance costs for SMEs with PEs, making the system advantageous overall.

If the proposed directive is adopted in its proposed form, it would need to be transposed into domestic legislation by December 31, 2025 and apply as from January 1, 2026.

See also tax@hand - September 14, 2023

France

2024 draft finance bill released

France's 2024 draft finance bill was released on September 27, 2023. Parliamentary discussions should begin on October 17th and are expected to be finalized by the end of December 2023 with a vote and enactment.

The 2024 finance bill includes the draft legislation for the implementation of Council directive (EU) 2022/2523 of December 14, 2022 on ensuring a global minimum level of taxation (15%) for multinational enterprise (MNE) groups and large-scale domestic groups within the EU ("Pillar Two directive").

Additional developments are summarized in the article.

See also tax@hand - September 27, 2023

Germany

First draft of business tax reform bill of the Ministry of Finance released

On July 12, 2023, a first draft of a business tax reform bill ("Growth Opportunity Act") of the German Ministry of Finance (MOF) was released. The draft bill aims to increase growth opportunities for the German economy, enable investments and innovation in new technologies, and strengthen the competitiveness of Germany as a business location. The measures included in the 275 pages of the draft bill (including legislative material) provide for simplification through increased thresholds and allowances and many smaller measures rather than a comprehensive or fundamental overhaul of the existing rules.

See also tax@hand - July 13, 2023

Ministry of Finance issues draft decree on interpretation of anti-hybrid rules

On July 13, 2023, the German Ministry of Finance (MOF) published a long-awaited first draft of a decree on the interpretation of the German anti-hybrid rules, which are based on the EU anti-tax avoidance directive I and II (ATAD I and ATAD II) and were introduced on June 25, 2021 (with retroactive effect as from January 1, 2020). The draft decree (consisting of 52 pages with 18 examples) provides the view of the German tax authorities on the interpretation and application of the rules. Interested parties may provide comments on the draft decree until August 10, 2023.

See also tax@hand - July 17, 2023

Government approves draft legislation to implement EU Pillar Two directive

On August 16, 2023, the German government approved draft legislation on the domestic implementation of Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups (the "Pillar Two directive"). The approved version was published on the Ministry of Finance (MOF) website on August 17, 2023.

The first discussion draft on the domestic implementation of the Pillar Two directive was published on March 20, 2023. After comments were provided by several business groups and the OECD administrative guidance was published in February, a second discussion draft on the domestic implementation of the Pillar Two directive was published by the MOF on July 10, 2023. The approved version of the Pillar Two draft implementation law takes into account the additional comments from business groups but did not incorporate the OECD administrative guidance published in July.

See also tax@hand - August 21, 2023

Government approves draft business tax reform bill

On August 30, 2023, the German government approved a draft of a business tax reform bill ("Growth Opportunity Act"), which was published by the Ministry of Finance (MOF) on July 12, 2023. The draft bill was stalled for two weeks due to discussions in the governing coalition unrelated to the content of the draft bill but has now been successfully approved. The draft bill aims to increase growth opportunities for the German economy, enable investments and innovation in new technologies, and strengthen the competitiveness of Germany as a business location. The measures included in the 291 pages of the draft bill (including legislative material) provide for simplification through increased thresholds and allowances and many smaller measures rather than a comprehensive or fundamental overhaul of the existing rules.

See also tax@hand - August 30, 2023

Hong Kong SAR

Updates to proposed tax certainty enhancement scheme for onshore capital gains

Hong Kong SAR's proposed tax certainty enhancement scheme for onshore gains from the disposal of equity interests has been updated after taking into consideration the comments received from the consultation exercise launched in March 2023. The Inland Revenue Department (IRD) held various engagement sessions with stakeholders from late July through early August 2023 to provide details of the updates to the proposed scheme.

Broadly, under the scheme, onshore disposal gains on equity interests that have been held for at least 24 months by an investor entity holding at least 15% of the total equity interest of the investee entity would be regarded as capital in nature and hence not taxable. This would provide a "safe harbor" for eligible disposal gains, enhancing certainty of the tax treatment of the transaction without the need to apply the "badges of trade" analysis to determine whether gains are taxable revenue or non-taxable capital. The amendments relax the safe harbor qualifying conditions by allowing related party holdings to be taken into account in calculating the 15% equity interest and permitting disposals to be made in two or more tranches within a 24-month period.

The government is in the process of drafting the amendment bill, which is expected to be introduced into the Legislative Council in October 2023 and enacted in time for the scheme to become effective as from January 1, 2024.

See also tax@hand - August 11, 2023

Proposed refinements to FSIE regime for disposal gains amended

Following negotiations between the Hong Kong SAR government and the European Union (EU), the government has suggested some amendments to the proposed refinements to the foreign-sourced income exemption (FSIE) regime for foreign-sourced disposal gains. The refinements are intended to align the regime with the latest guidance on such regimes issued by the EU and initially were presented to relevant stakeholders in a consultation paper issued in April 2023. Details of the further revisions were shared with stakeholders by the Inland Revenue Department (IRD) at various engagement sessions held in late July and early August 2023.

Hong Kong SAR is required to amend the regime by December 31, 2023 and the government is in the process of drafting the amendment bill. It is expected that the bill will be introduced into the Legislative Council for reading in October 2023, with the refined regime entering into effect as from January 1, 2024.

See also tax@hand - August 22, 2023 and tax@hand - July 11, 2023

Consultation on proposed patent box tax incentive launched

On September 1, 2023, the Hong Kong SAR government circulated to stakeholders a consultation paper on the proposed "patent box" incentive for Hong Kong SAR-sourced intellectual property (IP) income announced in the 2023-24 budget. The incentive would provide a concessionary tax rate for profits sourced in Hong Kong SAR from qualifying patents generated through research and development (R&D) activities and is intended to encourage businesses in Hong Kong SAR to engage in more R&D and IP trading activities.

Views from stakeholders are sought by September 30, 2023 and the government will take the comments received into account when formulating the regime. The government aims to submit the legislative amendments to the Legislative Council in the first half of 2024.

See also tax@hand - September 8, 2023,

Ireland

Second feedback statement proposes legislative approaches to implement Pillar Two

On July 27, 2023, Ireland's Department of Finance published *Pillar Two Implementation Second Feedback Statement* ("July consultation"). On August 21, 2023, Deloitte Ireland responded to the July consultation, setting forth comments on the draft legislative approaches that aim to transpose into domestic law the EU Pillar Two directive (Council Directive (EU) 2022/2523) on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the EU.

Further developments on Irelands implementation of Pillar Two are expected as part of the Finance Bill which will be released in October 2023.

See also tax@hand - August 22, 2023

Italy

Draft legislation to implement EU Pillar Two directive published

On September 11, 2023, the Italian Ministry of Economy and Finance published a draft legislative decree on the domestic implementation of Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU ("EU Pillar Two directive"). The directive is required to be implemented by each EU member state by December 31, 2023 so that certain provisions may be applicable to fiscal years beginning on or after December 31, 2023.

The Italian legislation has been published in draft form on the Ministry of Economy and Finance's website for public consultation (from September 11 to October 1, 2023) and is part of a broader tax reform formally enacted in mid-August 2023 (Law No. 111/2023) that aims to reduce tax burdens, fight and prevent tax avoidance, and introduce measures that would increase Italy's global competitiveness, in line with EU rules and OECD recommendations.

See also tax@hand - September 12, 2023

Korea

Proposed 2023 tax revision bill announced

On July 27, 2023, the Korea (ROK) Ministry of Economy and Finance announced its proposed 2023 tax revision bill, which covers a wide range of issues, including corporate tax, international tax, transfer pricing, individual tax, VAT, and tax incentives, among others. The purpose of the bill is to improve economic circumstances, actively support investments by companies, protect taxpayers' rights, and rationalize the tax system. The bill will be submitted to the National Assembly for discussion, then finalized and promulgated upon approval at the end of the year.

See also tax@hand - August 1, 2023

Luxembourg

Draft legislation to modernize current investment tax credit published

The Luxembourg government presented to parliament a draft law on July 13, 2023 that proposes an in-depth modernization of the current investment tax credit. This reform is part of a package of measures (*Solidaritéitspak* 2.0) agreed upon during a September 2022 tripartite meeting between the government and social partners to support the competitiveness of Luxembourg companies. It targets mining, craft, commercial, and industrial businesses. The parliament will now review, potentially modify, and vote on the draft law.

See also tax@hand - July 19, 2023

Pillar Two draft law—Phase one: To be or not to be in scope of Pillar Two

On August 4, 2023, the Luxembourg government submitted to the Luxembourg parliament the draft law ("the draft") for implementation of EU Council Directive 2022/2523 of December 14, 2022 on ensuring a global minimum level of taxation (15%) for multinational enterprise (MNE) groups and large-scale domestic groups ("domestic groups") within the EU ("Pillar Two directive" or "Pillar Two"). This step underscores Luxembourg's ongoing commitment to comply with the tax standards approved at the international and EU levels.

See also tax@hand - August 8, 2023 and tax@hand - September 7, 2023

Pillar Two draft law—Phase two: Demystification of the top-up tax

On August 4, 2023, the Luxembourg government submitted to the Luxembourg parliament the draft law ("the draft") for the implementation of Council Directive (EU) 2022/2523 of December 14, 2022 on ensuring a global minimum level of taxation (15%) for multinational enterprise (MNE) groups and large-scale domestic groups (DGs) within the EU ("Pillar Two directive"). Given the numerous provisions from the Pillar Two directive included in the draft, this and future articles follow a phase-by-phase approach to help groups understand and assess the potential impact of the Pillar Two rules on their businesses.

See more at tax@hand - September 18, 2023

Pillar Two draft law—Phase three: Diving into the effective tax rate computation

On August 4, 2023, the Luxembourg government submitted to the Luxembourg parliament the draft law ("the draft") for the implementation of Council Directive (EU) 2022/2523 of December 14, 2022 on ensuring a global minimum level of taxation (15%) for multinational enterprise (MNE) groups and large-scale domestic groups (DGs) within the EU ("Pillar Two directive"). The draft still needs to complete the legislative process but must be implemented by December 31, 2023 to comply with the EU deadline.

According to the draft, when an MNE group or DG is within the scope of the Pillar Two rules (as discussed in our phase one article), an additional amount of tax (top-up tax) would have to be paid in relation to each jurisdiction in which the effective tax rate (ETR) is below the agreed 15% minimum level of taxation.

The amount of top-up tax determined would be levied through the application of what the draft presents as three new taxes. These new taxes relate to the income inclusion rule (IIR), the undertaxed profits rule (UTPR), and the qualified domestic top-up tax (referred to as the QDMTT based on the acronym used by the OECD).

Special rules have been included in the draft to potentially delay the application of the Pillar Two rules to some in-scope MNE groups and DGs. These rules would provide certain exclusions from the application of the Pillar Two rules, based either on the group being in its first phase of international expansion, or on a specific parameter (e.g., revenue or profit).

See more at tax@hand - September 27, 2023

Mexico

2024 economic package submitted to Chamber of Deputies

Mexico's federal executive branch submitted the 2024 Economic Package for review to the Chamber of Deputies on September 8, 2023 (in Spanish only). The package comprises the General Economic Policy Criteria, the Federal Revenue Law (LIF), the Federal Expenditure Budget, and the Fees Law. However, as previously announced, given the absence of an omnibus tax bill, there will be no change to the Income Tax Law, Value-Added Tax Law, Excise Tax Law, or Federal Tax Code (CFF), and certain tax surcharges, incentives, and exemptions will remain in effect, as further discussed in the article.

If approved by Congress, the proposals will become effective on January 1, 2024. A summary of the most relevant reforms is detailed in the article.

See also tax@hand - September 9, 2023

Netherlands

Ministry of Finance publishes tax plan for 2024

On September 19, 2023, the Dutch Ministry of Finance published the government's tax plan for 2024. The tax plan includes several proposals that are relevant for international companies, such as amendments related to the tax classification of certain entities and the rules against dividend stripping.

The legislative proposals will be discussed by parliament and are expected to be adopted by the end of 2023.

See also tax@hand - September 20, 2023

OECD

New OECD guidance provides needed detail regarding Pillar Two implementation

On July 17, 2023, the OECD/G20 Inclusive Framework on BEPS ("inclusive framework") released a package of materials related to the 15% global minimum tax on multinational corporations and the subject to tax rule that together form Pillar Two of the ongoing project relating to the tax challenges of the digitalization of the economy.

The guidance with respect to the 15% minimum tax (the global anti-base erosion (GloBE) rules) forms part of the "common approach." Under the common approach, countries are not required to adopt the GloBE rules, but if they choose to do so, they agree to implement and administer the rules in a way that is consistent with the outcomes provided for under the Pillar Two model rules ("model rules") released in December 2021 and any subsequent guidance agreed by the inclusive framework.

See also tax@hand - July 21, 2023, tax@hand - July 19, 2023, tax@hand - July 18, 2023 and tax@hand - July 12, 2023

Working papers released on tax and investment by MNEs, tax incentives for R&D

Tax and Investment by Multinational Enterprises (MNEs) addresses investment responses to taxation across multinational firms and how tax changes at the host jurisdiction level affect investment at the MNE group level. The working paper includes findings suggesting that "the well-documented negative relationship between taxation and MNE investment within a host jurisdiction masks the MNE rebalancing the location of its investment to other host jurisdictions in response to changes in cross-jurisdictional tax rate differentials rather than purely decreasing its investment globally."

A time series perspective on income-based tax support for R&D and innovation covers changes regarding the availability and design of income-based tax incentives (IBTIs) for research and development (R&D) and innovation activities from 2000 onward for 48 jurisdictions, including all OECD and EU member jurisdictions. The working paper also analyzes trends relating to the generosity of income-based tax support over time and examines the impact of BEPS action 5.

Effective tax rates for R&D intangibles considers tax incentives that provide for reduced taxation of income derived from R&D and innovation activities. The working paper indicates that it "develops a modelling framework to analyze the effect of IBTIs on firms' effective tax rates on an intangible investment that results from R&D."

See also tax@hand - July 30, 2023

Webcast replay: OECD Pillar One and Pillar Two—Coming into focus

On July 17, 2023, the OECD/G20 Inclusive Framework released a public consultation document containing updated design elements of Amount B of Pillar One, as well as extensive Pillar Two administrative guidance. How will these updates affect multinational entities?

On an August 17, 2023 webcast, Deloitte US tax experts discussed:

- Scoping criteria, pricing methodology documentation, and tax certainty considerations as described by the OECD for Pillar One Amount B.
- New detail on currency conversion rules, tax credits, application of the qualified domestic minimum top-up tax (QDMTT), safe harbors, and the "subject to tax" rule; and
- The GloBE information return.

View the webcast on demand to review the new Pillar One Amount B framework, changes to the GloBE rules, and requirements of the GloBE information return.

See also tax@hand - August 18, 2023

2023 report on tax policy reforms released

On September 13, 2023, the OECD announced the publication of *Tax Policy Reforms 2023: OECD and Selected Partner Economies*, the latest edition in a series of annual reports that provide comparative information on tax reforms across jurisdictions, track tax policy developments over time, and provide an overview of the latest tax reform trends. The OECD announcement indicates that the findings from the 2023 edition of the report include that "[t]ax policy has played a central role as governments sought to shield households and businesses from the impact of decade-high inflation levels."

The 2023 edition of the report focuses on tax reforms introduced or announced during the 2022 calendar year and covers 75 jurisdictions, including all OECD members and selected members of the OECD/G20 Inclusive Framework on BEPS. The information on tax policy reforms is based primarily on jurisdictions' responses to the OECD's annual tax policy reform questionnaire and the report examines trends relating to personal income taxes and social security contributions, corporate income taxes and other corporate taxes, taxes on goods and services (including VAT, sales taxes, and excise duties), environmentally related taxes, and taxes on property. The report also includes chapters providing background on relevant macroeconomic conditions and tax revenue trends.

See also tax@hand - September 13, 2023

Public comments published on aspects of "Amount B" under Pillar One

As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS on a two-pillar solution to address the tax challenges arising from the digitalization and globalization of the economy, the OECD issued an announcement on September 20, 2023 on the publication of responses to its July 17, 2023 invitation for public comments on a consultation document relating to the simplification of transfer pricing rules. The consultation document contains updated design elements of "Amount B" of Pillar One and outlines a new process for pricing baseline marketing and distribution activities in accordance with the arm's length principle.

More than 70 responses were published from a variety of stakeholders, including feedback from businesses, industry and trade associations, and professional services organizations. The public comments are available through the OECD website and can be downloaded in a zip file.

See also tax@hand - September 22, 2023

South Africa

2023 Draft Tax Bills and Draft Regulations published, and open for public comment

On July 31, 2023, South Africa's National Treasury and the South African Revenue Service (SARS) published the 2023 Draft Tax Bills and Draft Regulations. The draft 2023 publications are intended to give effect to the tax proposals outlined in the 2023 budget review that formed part of the Minister of Finance's budget speech delivered on February 22, 2023. The closing date for public comments on the draft 2023 publications was August 31, 2023.

See also tax@hand - August 7, 2023

United Kingdom

'L-Day' announcements

On July 18, 2023 ('L-Day'), the government published a number of draft clauses intended for the next Finance Bill for technical consultation.

Key measures for businesses for which draft legislation has been published include:

- Research and development (R&D) relief – including draft clauses to potentially combine the existing separate R&D enhanced deduction rules for small and medium-sized entities and the R&D Expenditure Credit (RDEC) rules for large businesses, into a single R&D regime. Any merged regime would be, like RDEC, an 'above-the-line' tax credit regime. A decision on whether to proceed has not yet been made and would be announced at a future fiscal event. If taken forward, the merged scheme would be expected to apply for expenditure incurred on or after 1 April 2024. A summary of responses to HM Treasury's initial January 2023 consultation has also been published.
- Audio-visual creative tax reliefs – including draft clauses to reform the existing separate audio-visual tax reliefs (Film Tax Relief, High-End TV Tax Relief, Animation Tax Relief, and Children's TV Tax Relief) to become above-the-line tax credits combined under a single Audio-Visual Expenditure Credit regime. Similarly, a Video Games Expenditure Credit will replace the existing Video Games Tax Relief. Film, high-end TV and video games will be eligible for a credit rate of 34%, whilst animation and children's TV will be eligible for a rate of 39%.
- Multinational top-up tax – draft clauses to introduce a 'backstop' Undertaxed Profits Rule (UTPR) based on the OECD Pillar Two Model Rules have been published. The start date is to be confirmed, but the UTPR will take effect no earlier than 2025. HMRC also published draft guidance on multinational top up tax ('Income Inclusion Rule') and domestic top-up tax ('Qualified Domestic Multinational Top-up Tax') following their introduction in the Spring 2023 Finance Bill.
- Proposed amendments to the already enacted Multinational top-up tax ('Pillar Two') legislation were also published, mainly to ensure consistency with the OECD Pillar Two rules.

Draft clauses are accompanied by explanatory and impact notes, and HMRC invite comments by September 12, 2023.

See also TaxScape | Deloitte | Behind L-Day 2023 and tax@hand - July 24, 2023

United States

Webcast replay: Direct-pay and transferability of clean energy credits

On June 14, 2023, the US Treasury and the Internal Revenue Service released proposed and temporary regulations addressing the direct-pay and transferability of clean energy credits.

On a June 28, webcast, Deloitte Tax LLP specialists discussed:

- An overview of the temporary and proposed regulations.
- Considerations specific to tax credit buyers.
- Considerations specific to tax credit sellers.
- Considerations specific to tax-exempt entities claiming direct payments; and
- Considerations specific to partnerships and LLCs.

View the webcast on demand to develop insights into the new regulations and understand their potential impact on your organization.

See also tax@hand - June 30, 2023

Ways and Means subcommittee schedules hearing on Pillar Two issues

US House Ways and Means Committee Chairman Jason Smith, R-Mo., and Tax Subcommittee Chairman Mike Kelly, R-Pa., announced the week of July 10, 2023 that the Tax Subcommittee will hold a hearing on July 19, at 2:00 p.m. EST to examine issues related to the new global corporate minimum tax rules—known collectively as "Pillar Two"—that are being advanced through the OECD.

Pillar Two, which calls for jurisdictions to impose a minimum tax of 15% on the world's largest multinational entities (MNEs) and includes several backstop rules to ensure these MNEs pay at least that level of tax on all of their worldwide income, has gained a broad base of support internationally but has hit a roadblock on Capitol Hill.

See also tax@hand - July 15, 2023

JCT dynamic score for Build It in America Act shows minimal impact on economic growth

The Build It in America Act—one of the components of an economic growth package that cleared the US House Ways and Means Committee in June 2023 solely on the strength of Republican votes—would have just a minimal impact on the economy outside the 10-year budget window, according to a "dynamic" scoring analysis released by the Joint Committee on Taxation (JCT) staff on July 11.

Release of the dynamic revenue score complies with a rule reinstated by House Republicans when they took control of the chamber at the start of the 118th Congress in January that requires the JCT staff to estimate the budgetary feedback effects that certain major legislation may have on macroeconomic variables such as economic growth. A similar requirement applies to the nonpartisan Congressional Budget Office.

See also tax@hand - July 15, 2023

Ways and Means subcommittee schedules hearing on employee retention tax credit issues

The US House Ways and Means Oversight Subcommittee announced that it will hold a hearing on July 27, 2023 at 2:00 p.m. EST to examine what the Republican majority has called "confusion, delays, and fraud" related to the now-expired employee retention tax credit (ERTC).

The ERTC was originally enacted in 2020 as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) to encourage certain businesses experiencing financial hardships because of the COVID-19 pandemic to keep their workers on the payroll. It initially applied to wages paid after March 12, 2020 and before January 1, 2021, but was expanded and extended in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and again in the American Rescue Plan Act of 2021 (P.L. 117-2).

House taxwriters on both sides of the aisle have raised concerns about a backlog of unprocessed ERTC claims at the Internal Revenue Service with Commissioner Daniel Werfel, who acknowledged at a hearing in April that these claims pose processing challenges for the agency because they span multiple years and present a high potential for fraud.

See also tax@hand - July 22, 2023

House taxwriters square off over global tax pact as OECD releases new guidance

In a week when international tax issues were front and center for the corporate tax community, the OECD released much-anticipated technical guidance on various aspects of its emerging global tax agreement on July 17, 2023. Meanwhile, on Capitol Hill, US House Republican taxwriters criticized the Treasury Department's role in negotiating the agreement on behalf of the US during a July 19, Ways and Means Tax Subcommittee hearing and unveiled a new retaliatory tax measure against companies based in countries that implement the new OECD rules.

See also tax@hand - July 22, 2023

IRS chief counsel nominee pressed on Pillar Two, Inflation Reduction Act guidance

Marjorie Rollinson, US President Biden's pick to serve as the next chie f counsel for the Internal Revenue Service (IRS), fielded questions from Senate Finance Committee members—particularly on the Republican side of the aisle—on the OECD's Pillar Two initiative, guidance related to tax provisions in the Inflation Reduction Act of 2022 (P.L. 117-169), the agency's audit priorities, and a range of other topics during a September 28, 2023 hearing to consider her nomination.

See also tax@hand - September 30, 2023

GOP budget writers leave room for "pro-growth" tax cuts in FY 2024 budget resolution

The House Budget Committee on September 20, approved a budget resolution for the coming fiscal year that appears to call for extending the temporary tax relief provisions enacted in the Trump-era Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), while also dismantling certain key provisions in President Biden's Inflation Reduction Act of 2022 (P.L. 117-169).

The resolution is a nonbinding document that lays out the panel's budget priorities. It is unclear if the committee-approved measure will be brought up for a vote on the House floor, but even if it were to clear the chamber, it would be rejected in the Democratic-controlled Senate.

See also tax@hand - September 23, 2023

Did you know

The following section contains information that may be relevant at the date of publication

Australia
Belgium
Colombia
Cyprus
El Salvador
France
Germany
Guatemala
India
Indonesia
Israel
Italy
Philippines
Saudi Arabia
Singapore
Thailand
United Kingdom
United States

Australia

Tax Transformation Trends 2023 Executive Summary Report available

Deloitte's *Tax Transformation Trends 2023 Executive Summary Report: Insight-driven compliance* has been published.

Deloitte's biannual reports on tax transformation trends have been published for more than 10 years. The 2023 report shows tax and regulatory changes like OECD Pillar Two and environmental, social, and governance (ESG) measures are prompting companies to address long-standing data challenges, and many are leveraging outsourcing relationships to access the technology needed to move to an insight-driven tax compliance approach.

The 2023 report covers some key themes that emerged from Deloitte's research on tax transformation trends, including a global survey of 300 senior tax and finance executives and a series of qualitative interviews with the heads of tax at large multinational companies.

See also tax@hand - August 30, 2023

Weekly tax round-up (September 25, 2023)

These articles provide a summary of key commonwealth tax developments in Australia up to September 25, 2023.

See also tax@hand - September 25, 2023, tax@hand - September 18, 2023, tax@hand - September 4, 2023, tax@hand - August 28, 2023, tax@hand - August 21, 2023, tax@hand - August 14, 2023, tax@hand - August 7, 2023, tax@hand - July 31, 2023, tax@hand - July 10, 2023 and tax@hand - July 3, 2023

Belgium

Investment deduction/credit for qualifying investments increased for tax year 2024

Owing to high inflation rates in 2022, the rate of the increased investment deduction applicable to eligible capital investments by companies during financial year 2023 (tax year 2024) will increase by 7%.

Eligible expenditure includes mainly energy-saving investments, environmentally friendly investments in research and development (R&D), investments in security, and expenditure on patents.

See also tax@hand - September 7, 2023

Colombia

DIAN revises opinion on loss offset by domestic branches of merged foreign companies

Colombia's National Tax Administration (DIAN) has amended its position on the offset of tax losses by Colombian branches of foreign companies that have undergone a merger. Opinion 3343 (742) of 2023 (available in Spanish only) issued on June 1, 2023, reverses the DIAN's position as stated in Opinion 908121 of 2022 (available in Spanish only) that it is not possible for an integrated Colombian branch resulting from the merger of foreign companies each with a Colombian branch to offset any brought forward losses of the individual branches. The DIAN has revised its opinion to state that such tax losses may be offset, since branches are deemed to be the same entity as their head office.

See also tax@hand - June 30, 2023

Cyprus

Overview of tax treatment of corporate reorganizations

In Cyprus, reorganizations of corporate groups occur frequently across all sectors and industries and are usually driven by various factors including group strategy, market conditions, and regulatory changes. Companies and corporate groups have traditionally undertaken reorganizations to address business challenges and achieve strategic objectives, and corporate reorganizations enable companies to adapt to changing markets, streamline business operations and processes, improve operational efficiency and reduce costs, and in general align their structure with strategic objectives. In addition, they may be necessary when exploring new opportunities, and can be a tool to facilitate expansion in a constantly evolving business environment.

Group reorganizations may also have a positive long-term effect on profitability and drive ongoing success. To help companies or corporate groups thrive in a competitive and ever-changing business environment, it is important for them to reorganize in a tax-efficient manner.

See also tax@hand - August 3, 2023

El Salvador

Tax implications of law relating to issuance of digital assets

A legislative decree (No. 643) containing the "Digital Assets Issuance Law," which aims to attract foreign investment from technology companies around the world, was passed by El Salvador's legislative assembly on January 11, 2023. The law was subsequently published in the official gazette and is now in force. The law allows public and private sector entities to issue public offerings of digital assets and establishes a legal framework to protect the interests of investors. In addition, the law offers certain tax incentives for digital asset issuers, service providers, and investors. The most relevant provisions of the law are described in the article.

See also tax@hand - July 4, 2023

France

Court rules former tax consolidation scheme infringes freedom of establishment

On July 18, 2023, the French Administrative Supreme Court (Conseil d'Etat) issued its judgment in cases n°458579 and n°454107 concerning the reimbursement of French corporation tax in respect of dividend income received from subsidiaries established in European Union (EU) member states other than France. The cases had been referred to the Court of Justice of the European Union (CJEU), and the Conseil d'Etat's ruling reflects the CJEU's May 11, 2023 decision in joined cases C-407/22 and C-408/22 that former French legislation providing a dividend exemption only for a French resident parent company that has opted for tax integration with French resident subsidiaries infringed the EU principle of freedom of establishment.

See also tax@hand - July 26, 2023

Germany

CJEU rules German trade tax treatment of dividend income compatible with EU law

On June 22, 2023, the Court of Justice of the European Union (CJEU) issued its judgment in a German case (C-258/22) regarding the differential treatment of dividend income received from resident and nonresident companies in the calculation of the German trade tax basis. The CJEU held that the difference in treatment does not infringe the free movement of capital as both types of dividends face the same tax burden.

See also tax@hand - July 5, 2023

Tax court confirms trade tax loss forfeiture on partnership change in tax group

The lower tax court of Muenster in a decision dated March 21, 2023 and published in June 2023 ruled on the forfeiture of current year losses for German trade tax purposes where a partner in a controlling partnership in a tax consolidated group exits the partnership during a financial year (FY). In the court's view, the change of shareholder results in a current year trade tax loss forfeiture at the level of the controlling partnership even if the consolidated income of the tax group for the FY results in a profit. The court held that for trade tax purposes, the income of a controlling entity and a controlled entity in a tax consolidated group must be determined on a standalone basis as a first step and can only be consolidated at year end as a second step. Where there is a change of shareholder during an FY, a current year loss is (partially) forfeited for trade tax purposes without any current year profit of a controlled subsidiary being taken into account.

See also tax@hand - July 10, 2023

BFH rules "arrangement fees" not interest expense under interest deduction limitation

In a decision dated March 22, 2023 (and published on July 20, 2023), Germany's federal fiscal court (BFH) ruled against the tax authorities and in favor of the taxpayer that certain "arrangement fees" that are paid to lenders do not qualify as interest expense under the interest deduction limitation rules.

See also tax@hand - August 1, 2023

MOF advisory board issues statement on EU debt-equity bias proposal

On August 17, 2023, the German Ministry of Finance (MOF) published a statement of its Independent Advisory Board (Wissenschaftlicher Beirat) dated July 11, 2023 regarding the draft EU directive on debt-equity bias reduction allowance (DEBRA) rules and a limitation on the deductibility of interest for corporate income tax purposes. In the 12-page statement, the Independent Advisory Board agrees with the goals of the draft EU directive to strengthen the equity financing of companies and to reduce incentives for debt financing but does not see the approach chosen by the draft EU directive as a viable path to achieve these goals.

The Independent Advisory Board advises the MOF by regularly publishing expert opinions and reports on current issues. It is an expert body consisting of 31 academics (not just tax academics) that has existed for more than 70 years. Its opinions and reports are informal in character and non-binding on the government.

See also tax@hand - August 25, 2023

Germany signs new protocols to tax treaties with Austria and Switzerland

On August 21, 2023, Germany signed protocols to the double tax treaties (DTTs) with Austria and Switzerland during a joint meeting of the finance ministers of the German-speaking countries Germany, Austria, Switzerland, Luxembourg, and Liechtenstein. The DTTs with Austria and Switzerland were last amended in 2010. The protocols aim to incorporate into the DTTs: (1) various measures related to base erosion and profit shifting (BEPS) and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), (2) new developments to the OECD Model Tax Convention on Income and on Capital, and (3) updated general treaty policies of the countries.

See also tax@hand - September 6, 2023

Federal tax court broadens concept of permanent establishment

In a decision dated June 7, 2023 (and published on August 17, 2023), Germany's federal tax court (BFH) ruled that a UK resident individual's use of a designated locker for personal clothing and items in connection with the provision of aircraft maintenance services at a German airport, even if not used to store tools or other business equipment, was a sufficient nexus to create a permanent establishment under domestic legislation and the Germany-UK tax treaty.

See also tax@hand - September 6, 2023

Guatemala

New guidance on crediting of late payments of solidarity tax is in effect

Guatemala's Superintendency of Tax Administration (SAT) has published new guidance (Institutional Tax Opinion No. 2-2023) dated June 5, 2023 on the crediting of solidarity tax (ISO) payments against a taxpayer's corporate income tax liability in a situation in which the ISO is paid to the SAT after the relevant payment deadline. The ISO is a form of alternative minimum tax applicable to companies that have opted for the general income tax regime (under which tax is levied on net taxable income from trade or business activities), and payments of ISO and income tax may be credited against each other under certain circumstances. Based on the new guidance, which is now in effect and repeals certain previous guidance, late payments of ISO may be credited against a taxpayer's corporate income tax liability for the three years immediately following the year of the ISO payment, even if the ISO payment is made after the annual final settlement period established in article 37 of the Tax Update Law (Decree 10-2012).

See also tax@hand - August 9, 2023

India

Prior losses already offset cannot be used to calculate profit-linked deduction

India's Delhi High Court has issued a decision that for the purpose of calculating the profit-linked deduction under section 80-IA of the Income-tax Act, 1961 (ITA) a loss arising in a year prior to the "initial assessment year" that has already been set off against the profit of another business cannot notionally be brought forward and set off against the profits of the eligible business. Although sunset dates have been introduced under section 80-IA which vary depending on the nature of the business, with the last sunset date being March 31, 2017, the provisions and the High Court's ruling may be relevant for taxpayers who have satisfied the relevant conditions for the deduction prior to the sunset date and for whom the eligible tax holiday period has not yet elapsed. The High Court's decision was issued on February 20, 2023 and made publicly available on June 27, 2023.

See also tax@hand - July 31, 2023

Indonesia

Implementing regulation on new tax treatment of benefits in kind issued

On June 27, 2023, Indonesia's Minister of Finance (MoF) issued Regulation Number 66 of 2023 (PMK-66) as the implementing regulation for the income tax treatment of benefits in kind (BIK) in terms of both the liability to tax on the BIK of employees and other recipients of BIK (referred to hereafter as "recipients") and the tax deductibility for employers or other BIK providers (referred to hereafter as "providers"). PMK-66 acts as the further implementing regulation on this topic as stipulated in Government Regulation Number 55 of 2022 (PP-55). PP-55 was issued by the Indonesian government to implement the income tax provisions of Law Number 7 of 2021 regarding the Harmonization of Tax Regulations (*Harmonisasi Peraturan Perpajakan* (HPP Law)). A key measure in the HPP Law was the change in the taxation treatment of BIK, which, prior to financial year 2022, were not taxable on employees and not tax deductible for employers.

See also tax@hand - August 8, 2023

Israel

Acquisition of listed "shell" company to utilize losses is an artificial transaction

The Jerusalem District Court has accepted the position of the Israeli Tax Authority (ITA) that the purchase of a stock exchange listed "shell" company to utilize the company's losses was fiscally motivated and should be classified as an artificial transaction. The court delivered its ruling on September 22, 2022 and the decision was made publicly available on March 1, 2023.

See also tax@hand - July 6, 2023

Italy

Supreme Court rules on participation exemption for cross-border capital gains

The Italian Supreme Court issued a decision (No. 21261) on July 19, 2023 in which it ruled that a non-Italian company could benefit from the favorable Italian participation exemption regime for Italian-source capital gains realized by the company that were derived from a sale of shares, based on the fundamental freedoms set forth in the Treaty on the Functioning of the European Union (TFEU). In light of the decision, nonresident companies that do not have a permanent establishment in Italy and that have been subject to tax in Italy on capital gains derived from the sale of an Italian participation (e.g., due to the provisions of an applicable double tax treaty) may wish to consider filing a refund request, provided they meet the relevant conditions for the application of the Italian participation exemption regime and the statute of limitations has not yet expired.

See also tax@hand - August 9, 2023

Supreme Court rules on creditability of foreign taxes for IRAP purposes

The Italian Supreme Court issued a decision (No. 21047/2023) on July 18, 2023, in which it ruled that the principle that the provisions of a double tax treaty (such as provisions relating to tax credits) take precedence over domestic rules applies not only for corporate income tax (IRES) purposes but also for regional income tax (IRAP) purposes, provided the IRAP is covered by the relevant double tax treaty. Therefore, if an applicable double tax treaty covers the IRAP and includes provisions that would allow a foreign tax credit for IRAP purposes, to the extent that certain conditions are met, the foreign tax paid by an Italian resident entity is creditable against the IRAP. In light of the decision, resident entities that have paid excess foreign tax that cannot be used against their IRES liability may wish to consider claiming a credit for IRAP purposes and filing a refund request for IRAP that has been paid, provided certain conditions are fulfilled and the statute of limitations has not yet expired.

See also tax@hand - August 12, 2023

Philippines

Certain temporary tax rate reductions under CREATE Act expire

On June 20, 2023, the Philippines Department of Finance, Bureau of Internal Revenue issued Revenue Memorandum Circular (RMC) No. 69-2023, providing for the following tax rates amended under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act to revert to their previous rates as from July 1, 2023

See also tax@hand - July 3, 2023

Saudi Arabia

ZATCA further extends tax amnesty

On July 25, 2023, Saudi Arabia's Zakat, Tax, and Customs Authority (ZATCA) announced an extension of the tax amnesty program for an additional seven months, from June 1, 2023 until December 31, 2023. This extension provides individuals and businesses with an expanded timeframe to leverage the exemption of fines on specific taxes.

The tax amnesty covers a range of taxes, including corporate income tax, withholding tax, VAT, and real estate transaction tax. It offers relief from fines related to late registration with ZATCA, delayed payments, overdue submission of returns, corrections to VAT returns, and violations of e-invoicing and general VAT requirements.

See also tax@hand - August 15, 2023

Singapore

IRAS publishes advance ruling on income tax issues on transfer of business

On July 3, 2023, the Inland Revenue Authority of Singapore (IRAS) published Advance Ruling Summary No. 9/2023 addressing the income tax issues relating to the transfer of a business. The IRAS held that the transfer of a business due to restructuring is a capital transaction, and the tax implications arising from the transfer would depend on the nature of the specific underlying assets that make up the business being divested.

The IRAS publishes summaries of advance rulings to enhance taxpayers' understanding of the IRAS' interpretation and application of the tax legislation in specific scenarios. The summaries are published in a redacted form that does not identify the applicant, the arrangement, any other parties to the arrangement, the date of the transaction, or the transaction values.

See also tax@hand - July 3, 2023

Thailand

Implementing regulation on depreciation and amortization issued

On July 17, 2023, Indonesia's Minister of Finance (MoF) issued Regulation Number 72 of 2023 (PMK-72) as the implementing regulation for the income tax treatment of depreciation of tangible assets and amortization of intangible assets for fiscal purposes. PMK-72 acts as the further implementing regulation on this topic that was stipulated by Government Regulation Number 55 of 2022 (PP-55) issued on December 20, 2022.

See also tax@hand - September 1, 2023

United Kingdom

HMRC issue guidance on fixed place of business permanent establishment and employees

On June 20, 2023, HM Revenue & Customs (HMRC) updated their International Manual to include a new page with additional guidance on the meaning of fixed place of business for the purposes of the UK corporation tax permanent establishment rules. The page sets out examples where employees of overseas resident companies spend blocks of time working in the UK and considerations of what this may mean in terms of fixed place of business permanent establishments.

See also tax@hand - June 30, 2023

Upper Tribunal rules on extended application of substantial shareholdings exemption

The UK Upper Tribunal on August 31, 2023 dismissed a corporation tax appeal by a taxpayer company on the extended application of the substantial shareholdings exemption (SSE) to a gain arising from the disposal of shares following a "hive-down" transaction.

See also tax@hand - September 4, 2023

Upper Tribunal dismisses appeal on nondeductibility of redress payments

The UK Upper Tribunal has dismissed an appeal by the taxpayers, and allowed a cross-appeal by HM Revenue & Customs (HMRC), in *ScottishPower (SCPL) Limited and others v. HMRC*, concerning the corporation tax deductibility of payments made pursuant to settlement agreements with regulators.

The taxpayers, regulated by the UK energy regulator Ofgem, entered into various agreements with Ofgem in settlement of a number of regulatory investigations. Under the various settlement agreements, the taxpayers paid sums called "penalties" in nominal amounts, together with "redress" payments to consumers, consumer groups, and charities totaling approximately GBP 28 million, which HMRC considered to be nondeductible.

See also tax@hand - September 8, 2023

United States

Five-year FAA reauthorization clears House of Representatives

The US House of Representatives voted 351-69 on July 20, 2023, to approve legislation (H.R. 3935) that would extend expenditure authority for the Federal Aviation Administration (FAA), along with the excise taxes on fuel and passenger tickets that supply the agency's dedicated revenue stream, through September 30, 2028.

The FAA's current expenditure authorization and the related excise taxes are set to expire on September 30, 2023.

The Senate's version of the legislation remains stuck in that chamber's Commerce, Science, and Transportation Committee (the committee of jurisdiction) while lawmakers attempt to reach consensus on an assortment of nontax issues. It is currently unclear if the committee will mark up a proposal before Congress adjourns for its scheduled month-long August recess. (The Senate is set to be in session through July 28, with members returning to Capitol Hill on September 5.)

See also tax@hand - July 22, 2023

Taxpayers granted temporary relief from certain provisions in final FTC regulations

On July 21, 2023, the US Treasury Department and the Internal Revenue Service issued Notice 2023-55 announcing temporary relief for taxpayers from certain provisions in the final foreign tax credit regulations (the "2022 final regulations"). The temporary relief applies to the definition of a foreign income tax and the net gain requirement in Treas. Reg. section 1.901-2(a) and (b), and to the jurisdiction to tax excluded income and source-based attribution requirement in Treas. Reg. section 1.903-1(c)(1)(iv) and (c)(2)(iii), respectively.

See also tax@hand - July 27, 2023

Podcast: Pillar Two spotlight series—Exploring accounting adjustments

The added layer of calculating GloBE (global anti-base erosion) income, and the subsequent income tax rules, has leaders at multinationals rethinking their tax provision processes and financial statement controls. In this episode of the Tax News & Views podcast (released on July 27, 2023), Deloitte Tax leaders Jay Morris and Krystle Kort discuss key considerations around Pillar Two calculations and global minimum tax liabilities, including how to consider deferred taxes and the technology and process improvements companies might need to make to meet Pillar Two requirements.

See also tax@hand - July 27, 2023 and tax@hand - July 13, 2023

Guides look at direct pay and transferability of tax credit elections, Pillar Two

New "5x5" resource guides from Deloitte US offer five insights that taxpayers need to know and five actions taxpayers can take now regarding recent guidance on direct payment and transferability options for certain tax credits enacted in the Inflation Reduction Act of 2022 (P.L. 117-169) and issues related to the "Pillar Two" minimum tax on certain large multinational corporations under the global tax pact being advanced by the OECD.

See also tax@hand - September 9, 2023

IRS Insights (September 2023)

The September 2023 edition of *IRS Insights* includes coverage of the following US tax controversy developments:

- Supreme Court to hear challenge to section 965 transition tax:
- IRS offers relief for estimated tax payments for new corporate alternative minimum tax:
- District Court upholds IRS denial of charitable deduction as assignment of income and due to lack of sufficient contemporaneous written acknowledgement:
- Supreme Court rules on notice required for third-party bank account summons:
- Court holds that signature defects in a claim for refund do not raise jurisdictional issues:
- US Tax Court holds that IRS assessment was untimely following adequate disclosure of gift:

See also tax@hand - September 12, 2023

Treasury, IRS issue additional interim guidance on corporate AMT

The US Treasury Department and Internal Revenue Service (IRS) issued additional interim guidance (Notice 2023-64) on September 12, 2023 that is intended to help corporations determine whether they are subject to the new corporate alternative minimum tax (CAMT) and how to compute the tax.

Under the corporate AMT, which was enacted in the Inflation Reduction Act of 2022 (P.L. 115-169), “applicable large corporations”—generally defined as those with average annual adjusted financial statement income exceeding USD 1 billion—are subject to a 15% minimum tax on their adjusted financial statement income for taxable years beginning after December 31, 2022. The legislation provides that estimated income tax payments are required in four installments of 25% of a taxpayer’s required annual payment.

See also tax@hand - September 15, 2023 and tax@hand - September 20, 2023

House rank-and-file present tax priorities at Ways and Means “Member Day” hearing

The US House Ways and Means Committee on September 14, 2023 held a “Member Day” hearing at which Chairman Jason Smith, R-Mo., and other taxwriters heard from lawmakers—mainly Republicans—who are not on the panel about their tax and nontax legislative priorities that fall under the committee’s jurisdiction.

In addition to taxation, the expansive roster of issues that Ways and Means oversees includes tariffs and other revenue-raising measures, as well as programs such as Social Security, unemployment insurance, Medicare, enforcement of child support laws, Temporary Assistance for Needy Families, and foster care and adoption programs.

See also tax@hand - September 15, 2023

IRS issues notice on amortization of specified research or experimental expenditures

On 8 September 2023, the US Treasury Department (Treasury) and the Internal Revenue Service (IRS) published Notice 2023-63 (“the notice”) to provide interim guidance intended to clarify the application of section 174 for expenditures paid or incurred for tax years beginning on or after January 1, 2022, as well as announce their intent to issue proposed regulations consistent with the interim guidance provided in the notice.[1]

The notice provides interim guidance and gives notice that Treasury and the IRS plan to address the following topics in forthcoming proposed regulations:

- Capitalization and amortization of SRE expenditures
- Scope of costs considered SRE expenditures
- Software development
- Research performed under contract
- Disposition, retirement, or abandonment of property resulting from SRE expenditures
- Treatment of SRE expenditures under section 460
- Treatment of SRE expenditures incurred as part of a qualified cost sharing arrangement under Treas. Reg. section 1.482-7

See also tax@hand - September 16, 2023 and tax@hand - September 15, 2023

Example Disclosures

The following section contains example financial statement disclosures that may be considered relevant, in part or in whole, at the date of publication.

FASB Accounting Standards Codification (ASC or the "Codification") Topic 740, Income Taxes states that deferred tax liabilities and assets should be adjusted for the effect of changes in tax laws or rates in the period that includes the enactment date. Before enactment, financial statement preparers should consider whether potential changes represent an uncertainty that management reasonably expects will have a material effect on the results of operations, liquidity, or capital resources. If so, financial statement preparers should consider disclosing information about the scope and nature of any potential material effects of the changes. After enactment, when material, financial statement preparers should consider disclosing in Management's Discussion & Analysis (MD&A) the anticipated current and future impact on their results of operations, liquidity, and capital resources. In addition, financial statement preparers should consider disclosures in the critical accounting estimates section of MD&A, the footnotes to the financial statements, or both, to the extent that the changes could materially impact existing assumptions used in making estimates of tax-related balances.

Certain legislation that has been discussed in other sections of this document may lead to an adjustment to the deferred tax balances and current taxes payable recorded on an entity's books and, if material, may need to be disclosed in the company's financial statements. In addition, proposals to change tax laws, rules, regulations, and interpretations could impact an entity's accounting for income taxes in the future. In preparation for possible impacts of the changes in tax laws, companies should consider including disclosure of the impacts of these proposed changes in their financial statements or in MD&A.

The link below provides sample disclosures with respect to issues including but not limited to the US tax reform, indefinite reinvestment, and intra-entity transfers.

See Roadmap to Accounting for Income Tax and Deloitte Financial Reporting Alerts

Quick Reference Guide for Income Tax Rates

The following section includes a summary of combined tax rates applicable in jurisdictions with rate changes in 2023, the related dates of enactment, for US GAAP purposes, of certain income tax rate changes, and supplemental information with respect to certain jurisdictions.

For other jurisdictions see 2023 Global Tax Rates as well as a comparative table of 2019-2023 Global Tax Rates.

Jurisdiction	Combined national/local rate (incl. surcharges, etc.)		Date the combined national/local rate enacted	Notes
	2022	**2023**	**National and Local**	
Austria	25%	24%	February 14, 2022	See tax@hand - June 2022
Korea	10% - 25%	9% - 24%	December 23, 2022	On December 23, 2022, the Korean National Assembly officially passed the 2022 Tax Revision Bill originally announced by the Ministry of Economy and Finance in July 2022. Corporate tax rates for each taxable income bracket are reduced by one percentage point. This amendment will be effective for fiscal years beginning on or after January 1, 2023. See also tax@hand - December 25, 2022
South Africa	28%	27%	February 23, 2022	Rate reduced from 28% for years of assessment ending on or after March 31, 2023. See also tax@hand - February 24, 2022
United Arab Emirates	0-9%	0%	December 9, 2022	The government introduced on December 9, 2022 a corporate tax law, which is effective for financial years starting on or after June 1, 2023. See also tax@hand - February 1, 2023
United Kingdom	19%	25%	Enacted June 10, 2021; effective April 1, 2023.	On October 14, 2022, the then UK prime minister announced her decision to keep in place the increase in the main rate of corporation tax to 25% as from April 1, 2023, reversing the announcement made in September's "mini-budget" that legislation would be introduced to maintain the rate at 19%. See also tax@hand – October 17, 2022

Additional Resources

A Roadmap to Accounting for Income Taxes—This Roadmap includes all of Deloitte's interpretive guidance on the accounting for income taxes, combining the income tax accounting rules and implementation guidance from ASC 740 with Deloitte's interpretations.

Accounting for Income Taxes—Global Tax Developments archive

Accounting for Income Taxes Hot Topics archive—A quarterly publication that highlights certain recent tax and accounting developments that may have accounting for income taxes (ASC 740) implications.

Click to subscribe to receive Accounting for Income Taxes Hot Topics directly via email.

Deloitte tax@hand—An app that delivers focused news and tax information.

Download Deloitte Tax@hand for iOS (App Store), Android (Google play) or BlackBerry (BlackBerry World) or visit the Tax@hand website, www.taxathand.

World Tax Advisor—Biweekly bulletin of international tax developments written by professionals of the member firms of Deloitte. The newsletter focuses on analysis of cross-border tax developments that reflect the dynamic business environment faced by multinationals.

Click to subscribe to receive *World Tax Advisor* directly via email.

Transfer Pricing Alerts—The latest updates in transfer pricing from around the world.

Click to subscribe to receive an email when a new Transfer Pricing Alert is issued.

Deloitte International Tax Source (DITS)—An online database featuring corporate, withholding and tax treaty rates and information for 66 jurisdictions worldwide.

Tax Accounting & Provisions Dbriefs Webcasts—A collection of live and archived Dbrief webcasts that give you valuable insights on important developments impacting financial reporting for taxes.

Tax Publications—Various tax publications issued by Deloitte to help clients stay informed on tax legislation and regulations and the potential impact on their businesses.

Deloitte COVID-19 hub—A collection of all the latest Deloitte content in relation to COVID-19.

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