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The human touch

Ever since COVID-19 emerged and shook up the global status quo, we've heard a lot about the 'new normal', a term usually associated with a line-break between how things were before and how they are now, or indeed, how they might be one day.

If some experts are to be believed, the digitalisation of tax is fast becoming this industry's 'new normal', both in terms of the technology itself and those who apply it. Tax technologists are in increasingly high demand, while companies are grappling with emerging technologies like blockchain. All in all, it's an exciting time.

What's easily forgotten during any exciting new change is that, in most cases, it's human beings who make the magic happen. That's why companies are scrambling to find tax technologists, as they are known, to help them realise the benefits on offer. But here lies the problem – in some countries, these specialists are just not that easy to find. What's more, the tools on offer can be less than satisfactory.

We can expect plenty of change in the next few years as technology and technologists become a core part of the tax world. It's why we have dedicated the cover story of this PDF to these issues, providing deep analysis with the help of tax directors and advisers in a number of regions. It is also my first PDF as editor-in-chief, so I'd like to say what a pleasure it is to be here and to join a new industry.

Ed Conlon

"What's easily forgotten during any exciting new change is that, in most cases, it's human beings who make the magic happen"

Elsewhere, you can find a host of content in this issue of *ITR*, including analysis from our journalists, reports from conferences we have attended, sponsored content including local insights, and the market insight section. As always, we hope you enjoy reading what's on offer, and we look forward to seeing you next time.

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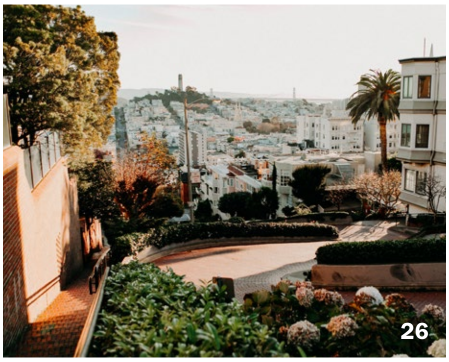

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Market insight

Andersen continues to expand brand across the globe

International tax network Andersen Global continues to expand its worldwide footprint, signing agreements with firms across the globe in regions such as Africa, Europe and South America.

In East Africa, Rwandan consultancy Maj Consulting signed a collaboration deal with Andersen Global. The Kigali-based firm was founded in 2015 and offers advice on international tax policy and transfer pricing, including risk management. Managing Director **James Muigai** leads the firm.

Meanwhile in Tanzania, Andersen signed a collaboration agreement with local firm ISHARA Consulting. The Dar es Salaam-based team was founded in 2012 and includes 20 professionals. It is led by directors **Olive Mosha** and **Isaac Saburi** and is focused on tax compliance and consulting, restructuring and accounting.

In West Africa, the network signed a collaboration deal with Ghanian firm LIMA Partners. Based in Accra, the firm was founded in 2014 and is led by co-founder and managing partner **Kwame Amporful**. Its work is focused on tax advisory and compliance, accounting and consulting, and company secretary and regulatory compliance services.

Europe

In Europe the network managed to secure partnerships with a number of different companies from across the continent, including several in the Benelux region. One of these was with thg, one of the largest accounting and tax firms in Belgium. Founded in 1983 by partner **Joseph Faymonville**, it operates four offices across the country.

Andersen also signed a collaboration agreement with Belgian firm Seeds of Law. Founded by partners **Leo Peeters** and **Koen De Puydt** in 2009, the firm has more than 10 partners and 20 professionals located in its offices in Brussels, Ghent and Antwerp.

Elsewhere in the region, the network confirmed that Taxture, a collaborating firm since 2019, was set to become a full member of the global organisation. This move makes the firm one of 11 collaborators that have become members in 2022.

Andersen expands globally

Looking further north, the group managed to extend its reach into all the continental Nordic countries with two new additions. One saw it sign a collaboration agreement with Bachmann/ Partners. The Denmark-based firm was founded in 2016 by managing partner **Christian Bachmann** and has offices in both Copenhagen and Aarhus.

The network also joined together with I&O Partners in Finland. That team is led by managing partner **Andrei Aganimov** and includes more than 16 professionals working on a range of topics.

Moving to the East, the group announced the expansion of its presence in Slovenia with the establishment of Andersen Advisory. It already has a presence in the Central European nation thought affiliate firm Law Firm Senica & Partners and it is hoped this will enhance the offering there.

Further East to the Caucasus, the network moved to further integrate its Georgian offices into the global organisation. Member firm Prime Tax changed its name to Andersen in Georgia, while affiliate firm MG Law confirmed its status as a full member, having joined the group in 2020.

Latin America

The final news from the firm was the announcement that Peruvian collaborating firm Picón & Asociados, which first joined the network in 2020 was to become a full member. The firm is led by **Oscar Picón** and specialises in tax and customs matters.

S&R Associates welcomes partner to New Delhi office

Indian firm S&R Associates announced the addition of a partner to its tax practice in New Delhi.

Sumit Bansal joins the firm from PwC, where he had been for more than seven years, most recently serving as a director. Prior to that he spent more than two years with EY. He is appointed as a partner to his new firm and will lead its tax practice.

Bansal's experience is focused on general tax advisory and tax structuring, but it also covers a wide range of disciplines including transactional tax and tax controversy.

Osborne Clarke opens new office in Poland

Osborne Clarke opens in Poland

International law firm Osborne Clarke announced the addition of an office in Poland, through a strategic partnership with a strong local firm.

The firm joins together with MDDP Olkiewicz and Partners, whose tax practice is led by **Tomasz Olkiewicz**. He has been a partner with the firm for 18 years, having previously spent almost a decade with EY.

Mattos Engelberg Echenique Advogados adds partner to tax practice

Brazilian firm Mattos Engelberg Echenique Advogados announced the addition of a tax partner to its practice based in São Paulo.

Wolmar Francisco Amélio Esteves joins the firm from Bichara Advogados, where he had been for more than nine years, most recently serving as a partner. He had previously worked for a number of different practices, including two years with KPMG.

Esteves brings with him more than 25 years of experience, with a strong track record advising clients in the pharmaceutical, agro-industrial and telecommunications areas.

Tilleke & Gibbens strengthens regional tax team in Southeast Asia

Regional Southeast Asian firm Tilleke & Gibbens announced the arrival of the new head of its regional tax practice.

Auaychai Sukawong joins the firm as a partner in its Bangkok office. He comes from KPMG, where he had served as a partner for more than eight years, having previously served as a senior associate with Tilleke & Gibbens, along with previous experience with PwC and Baker Tilly.

Sukawong brings with him more than 20 years' experience of both tax a regulatory law in Thailand and the wider regional market. His primary focus has been on structuring for inbound and outbound investment in ASEAN, and outbound investment structuring for Southeast Asian companies expanding overseas.

He does not join the firm alone, as he is accompanied by senior associate **Chanattorn Thunyaluck**. She was previously a tax associate director with KPMG, and before that held roles with DFDL and Kudun & Partners.

Thunyaluck's work is focused on M&A-related tax and transaction advisory, along with tax mitigation planning for business restructuring, tax and legal advice for inbound and outbound investment, and other tax and compliance regulatory matters. She brings with her more than 15 years' experience of working in the Thai market.

Baker McKenzie adds tax partner to Texas team

International firm Baker McKenzie announced the addition of a partner to the M&A tax team of its Dallas office.

Lane Morgan joins the firm from Kirkland & Ellis, where he had served as a partner for almost four years. Prior to that, he had worked as a senior manager for KPMG and served in roles for Albemarle and Weil Gotshal & Manges.

Morgan brings with him more than 18 years' experience of the tax market, with a focus on the tax aspects of a wide range of M&A transactions.

Yetax bolsters offering in Israel with international tax partner

Israeli tax boutique Yaron-Eldar Paller Schwartz & Co Law Offices (Yetax) announced the addition of a tax partner to its Tel Aviv practice.

Henriette Fuchs joins the firm from Pearl Cohen Zedek Latzer Baratz, where she had been for almost eight years. Her practice is primarily focused on international tax disciplines.

Miller & Chevalier adds controversy and litigation partner

US firm Miller & Chevalier announced the arrival of a partner in its tax controversy and litigation practice.

Robert Kovacev joins the firm from Norton Rose Fulbright, where he had been for more than three and a half years. He had previously served as a partner with Steptoe & Johnson and spent almost seven and half years as a senior litigation counsel with the US Department of Justice.

Kovacev brings with him more than 20 years' experience in the market, arguing in tax, federal district and appellate courts. He also advises clients on innovation tax incentives, such as the research tax credit and the impact of new technologies such as robotics and AI.

White & Case appoints local tax partner in Mexico

International firm White & Case announced the arrival of a partner to its tax practice in Mexico City.

Elizabeth González Gasca joins the team as a local tax partner from Baker McKenzie, where she had been for eight years and served as a senior associate. Prior to that role she had been a sub-administrator of international tax audit at the Servicio de Administración Tributaria.

Gasca's work is particularly focused on clients operating in energy, construction and manufacturing, as well as the technology, media and telecom sector.

Linklaters appoints global head of tax

Magic Circle firm Linklaters announced it is replacing its global head of tax.

Oliver Rosenberg, a partner in the firm's Düsseldorf office, replaces Amsterdam-based **Dick Hofland** in the role, which he had held for more than five years. He also heads the domestic tax practice in Germany and serves on the German executive team.

Rosenberg's experience in the tax space includes advising clients on cross-border tax structuring and planning, tax-orientated restructuring, M&A and asset finance, in particular real estate.

Norton Rose appoints global head of tax

International law firm Norton Rose Fulbright announced it has appoint a new global head of tax.

London-based **Dominic Stuttaford** is promoted from his current position as head of tax in Europe, the Middle East and Asia, which he had held for the past seven years and where he is replaced by Paris partner **Antoine Colonna d'Istria**. Partner **Matthew Hodkin** will replace him as London team leader.

Stuttaford's practice is focused on M&A, group restructurings and other finance structures, as well as litigation. His track record includes particular experience in the insurance, resources and technology sectors.

Holland & Knight bolsters Bogotá tax practice

US-based firm Holland & Knight announced the addition of two lawyers to its offices in Colombia, including one partner.

Gustavo Pardo Ardila joins the firm from his own firm, Gustavo Pardo y Asociados, which he had run since 2013. He brings with him more than three decades of experience working in the Colombian tax market, having served in roles with several Big Four firms including KPMG and EY. He has a varied practice that includes planning, corporate advisory, foreign exchange, litigation and controversy.

Ardila is joined at the firm by associate **José Alejandro Vivas Velásquez**, who comes to the team from Posse Herrera Ruiz. His work is focused on local and international tax planning, tax litigation, consulting and compliance.

Andersen appoints office managing director in Texas

Andersen announced the appointment of an office managing director in its Dallas office.

Brian Untermeyer takes over the role from **Ralph Pike**, who had been in the position since 2016. He has been with the firm since 2020, having previously served with Deloitte for 18 years and Arthur Andersen for 11 years.

Untermeyer brings with him a wealth of experience advising clients on a wide range of practice areas. These include structuring and restructuring, treasury, M&A and tax planning.

Andersen consolidates in Texas

EY's 'Project Everest' could boost business but not the brand

EY's plan to separate its auditing and consulting businesses might lessen scrutiny from global regulators, but the brand identity could suffer, say sources.

Danish Mehboob

Tax professionals familiar with EY's plan to separate its auditing and consulting businesses say the 'big four' accounting firm could be allowed to approach clients that were previously off limits as regulatory pressures soften after its restructure.

Advisers from inside and outside EY suggest that separating the operations will help each grow faster.

"Some data modelling shows that the full potential of the two businesses has been hindered by regulatory restrictions," says one senior tax leader at EY in Boston.

A conflict of interest arises when EY's auditors are unable to question their corporate client's management team because it may stop consultants at the same firm from acquiring more profitable advisory work.

The break-up avoids conflicts and reputational damage associated with failed audits, according to the tax leader.

EY already audits 1,009 public companies and six of the top 10 companies in the Fortune 500. The restructure plan would enable its consulting business to approach audit clients such as Amazon, Salesforce and Google, which are currently off-limits because of a conflict of interest.

Amazon and Google refused to comment on whether they would use paid advisory services from EY.

EY's plan – nicknamed 'Project Everest', which started in November 2021 and is projected to complete by 2023 – would split the firm's faster-growing consulting business and its larger auditing business into two separate entities.

Project Everest is the biggest planned shift in the accounting sector in two decades – since the collapse of Arthur Andersen in 2002. The firm's audit business would remain a network of partnerships while its consulting business would become a public company.

The plan was leaked because of discontent over partner pay after it was distributed to EY executives in May, according to news reports from Bloomberg and Reuters. Directors and managers below partner-level would only get a token amount under the plan.

Money talks

Partners in EY's consulting business who earn $850,000 on average could see raises of $2 million after the company's IPO. Senior partners could get shares worth up to $8 million, based on news reports.

EY global chairman and CEO Carmine Di Sibio said in a firm-wide announcement after the news was leaked in May that future pay for partners could be cut in some countries depending on the profitability of those businesses.

"Profitability is very good in some countries but not in others, so partners might make less money going forward," said Di Sibio.

The firm plans to sell about 15% of the consulting business for more than $10 billion, with another 15% being reserved for staff equity incentives, leaving 70% for EY's partners.

The consulting arm would be called NewCo, and would have 60% of EY's projected revenue of $42 billion in 2023. The audit arm, named AssureCo, would have the remaining 40%.

EY is being advised by investment banks JPMorgan and Goldman Sachs on the sale of its consulting business.

Under pressure

Project Everest formed following UK regulatory pressure on the big four firms in 2019 to eliminate conflicts of interest, which starts when auditors cannot question their client's management during an audit as it risks the firm from losing the same account for better paid consulting work.

The US Securities and Exchange Commission (SEC) and other authorities have also been investigating conflicts of interest in 2022. Firms face questions about audit quality despite tightening the sale of advice to clients.

EY is already facing higher scrutiny from regulators for poorly auditing the German payments company Wirecard, but it is not clear if the split business would ease those constraints. Wirecard filed for insolvency in 2019 after admitting to German regulators that €1.9 billion ($2 billion) in cash probably never existed.

Big four consultants are wary of the reputational effects of the audits and advice they provide to clients following a series of scandals including Wirecard.

Project Everest would likely affect how other firms manage clients, talent, and regulatory pressures in their audit practices. The split could force the rest of the big four to restructure their operations to lessen scrutiny from global regulators when approaching existing audit clients with consulting services that were previously off limits.

Fiona Czerniawska, CEO of consulting sector analyst Source Global Research in London, says the other big four firms will most likely make or revisit their own plans to separate the audit and consulting divisions.

"It surprises me that it's taken this long," says Czerniawska. "It's becoming increasingly difficult for any accounting firm to offer a multidisciplinary service … I imagine that every firm is looking into restructuring too."

Possible impacts

More consultants would become available to corporate clients after a restructure because EY will be able to onboard more specialists with cross-service training.

Yet there are mixed reviews about whether clients want a surplus of big four advisers. One head of tax at an energy company in Norway who uses EY's services says that advice from the big four is sometimes vague.

"They usually all offer the same advice and the number of caveats to their professional input is a turn off," he says.

Project Everest might boost M&A activity in the legal sector for compliance tools, talent, and clients as EY's entities could acquire other law firms with less scrutiny on competition. Most deal-making activity in the tax market focuses on building digital, data-analytics expertise.

Ed Moore, principal direct tax consultant at boutique recruitment firm Harvey John in the UK, says that separating the business could make competition for senior talent in the consulting market even fiercer.

"The digitalisation of tax is becoming the new normal and the potential of technology is dependent on the ability of the humans behind it," explains Moore.

"This will drive competition for talent with well-established names in the market.

"However, it is not clear whether EY will be able to compete to attract talent when starting from scratch in building a brand name," he adds.

On brand

EY's rivals KPMG, PwC, and Deloitte considered spinning off their consulting businesses too, but they decided against it because of the high entry costs and complexities for new market players. Both EY's split businesses would likely face steep competition if they did not continue to operate under the umbrella brand.

"It would be difficult for them to stand out without keeping the name," says the Norwegian head of tax.

EY is lobbying regulators including the US SEC to allow it to use the EY brand for the first few years, proposed new company names will be on hold during that timeframe.

The standalone auditor may be hindered by its limited services when trying to attract new business. Consulting analysts say that if clients see the firm as primarily an auditor, then that may work against it.

Keeping the brand is important amid the recent market downturn, which makes it difficult for EY professionals to meet demanding targets for revenue growth and profit margins, according to advisers. Meeting targets would require cutting costs while increasing client share in a highly competitive market.

A strong, well-established brand can help consulting businesses sell their services such as strategy or restructuring advice to companies. This is important for EY's tax advisory services as public statements show they are projected to make almost a quarter of the company's $22.7 billion annual revenue.

Incoming vote

EY's member firms will vote on the proposals in July and there will be more to finalise before then.

For example, it is still unclear how some departments, such as tax, would be split across the business as it would be considered a part of both the auditing and consulting divisions.

The firm will announce in July whether it will advance the restructure plan, though EY's global leadership would need its partner network in 140 countries to approve the plan. It looks likely to be a busy summer ahead at the big four provider.

CHILE

PwC Chile

 

Jonatan Israel Navon and Andrés Torrejón Correa

Chilean IRS: Closing up on foreign digital services providers

The Chilean VAT on digital services ("Chilean DST") enters a new stage in Chile, almost two years after its original entry into force: Chilean IRS has implemented a new way to enforce this relatively new tax.

To give some context, within the 2020 Chilean Tax Reform, Chile introduced a series of provisions in order to levy with VAT certain digital (and other non-digital) services rendered by non residents. These provisions configure what is known as the "Chilean DST", which in earnest is part of the Chilean VAT. The services under the scope of Chilean DST include: intermediation of services and goods, the supply of digital entertainment content, the provision of software or other digital storage, platform or infrastructure, and advertising services.

As an incentive to comply, the IRS has compiled two foreign service providers catalogs. The first is a list of the Foreign Taxpayers registered to comply with their DST under a simplified regime that currently has 304 taxpayers within it. However, the most noteworthy corresponds to the second list: the List of Non-Registered Non Resident Taxpayers. This comprehends taxpayers identified by the Chilean IRS that may be rendering the services that could fall under the new provision of the Chilean DST, and that have not yet registered to comply. In this sense, up until February 2022 a total of 112 taxpayers have been identified by Chilean authorities.

In the years following the DST introduction, the Chilean IRS has taken some other measures in order to encourage non-compliant service providers to register. In this sense, there have been letter communications sent across the world to the headquarters of the aforementioned entities.

Notwithstanding the above stand of the Chilean IRS up until May, the 2020 Tax Reform also granted Chilean IRS the faculty of implementing a special form of reverse charge mechanism where the payment method issuer would be *forced* to charge the services beneficiaries the corresponding DST. This power had not been exercised by the Chilean IRS, until now.

In May 2022, the Chilean IRS issued Resolution 46 of 2022, instituting this special reverse charge mechanism mentioned above and the conditions for its application to specific foreign service providers. Accordingly, it instructed banks, payment method issuers, financial business support institutions, among others, that provide credit cards, debit cards, prepaid cards, or any similar payment method, to act as the withholding agent regarding non-compliant taxpayers. Interestingly, for these purposes, a list would be made each semester incorporating the identified service providers to which the special reverse charge mechanism applies.

In the same line, the Chilean IRS has also established the procedure to be excluded from such list, which boils down to registering in the Simplified DST regime and paying the tax due up to such registration (indexed and with interest and penalties) or accompanying the antecedents that prove the provision of services to VAT taxpayers only.

The above raises questions regarding some practical issues that may arise in the application of this special reverse charge mechanism in the future. Firstly, in a manner, this power contradicts former efforts to incentivize the compliance and registration by nonresident service providers, as these will not necessarily feel compelled to comply considering that the burden is now placed in the newly-appointed withholding agents. Having stated the above, it is clear that it is better for a foreign digital service provider to be the direct responsible of determining its own tax due and when to pay it, rather than leave that task to the withholding agents outside their control.

The latest development in this regard is that the Chilean IRS issued Resolution 49 of 2022, where it established the list of specific foreign service providers subject to this special reverse charge mechanism from August to December of 2022. Surprisingly, this is a much shorter list than the original non-compliant list. However, Chilean IRS has reserved the right to include other non-compliant service providers in the future.

These last resolutions opened questions and gave new vigor to the Chilean DST. In times where tax collection becomes relevant, the sheer amount of taxes obtained by Chilean treasury by virtue of the DST most likely explains the developments. Foreign service providers must follow the discussion closely, as their exclusion from the latest list by no means implies that the matter is over.

PwC Chile

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MEXICO

QCG Transfer Pricing Practice

 

Miguel Ángel García Piña and Jesús Aldrin Rojas

Considering the complexity of controlling beneficiaries in Mexico

The figure of a controlling beneficiary (CB) was included in Mexico's 2022 tax reform. This was following recommendations made by the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) of the OECD.

The aim is to make transactions involving flows of income and assets transparent, and facilitate the identification of beneficial owners and the exchange of information. This will help to combat illicit activities such as money laundering, financing of terrorism, tax evasion, and tax avoidance.

Therefore, as of January 1 2022, companies must implement internal control procedures to identify, verify, and validate this person or persons.

This documentation and information regarding the CB must be kept as part of the accounting in a complete and up-to-date manner, since it may be requested by the Mexican tax administration (*SAT*) at any time. The SAT is required only to grant 15 business days to meet the request, although this may be extended for ten more days, when duly justified.

Who is the CB?

Article 32-B Quarter of the Federal Tax Code FTC (*CFF*) establishes that the CB is the individual person, or group of individual persons, who obtain the benefit derived from their participation in, or control over, the legal entity, trust, or any other legal figure.

The CB can apply for their situation to be interpreted in line with the recommendations issued by FATF, the Global Forum, and the OECD, provided they are not contrary to the Mexican provisions.

Who are obligated to Inform?

The subjects that are obliged to inform are those indicated in article 32-B Ter of the *CFF*, namely:

- Legal entities, trustees, settlors, or trustees, in the case of trusts;
- The contracting parties or members, in the case of any other legal entity;

- Notaries, brokers, and any other person involved with, or who intervenes in, the formation or execution of contracts or legal acts that give rise to the creation of said persons or creation of trusts or any other legal figure; and
- Financial entities and members of the financial system for the purposes of the Income Tax Law.

What information must be kept up-to-date to comply with this obligation?

Rule 2.8.1.22, from the FMR Fiscal Miscellaneous Resolution 2022, establishes in twenty-two numerals the information that the SAT may request for compliance with this obligation, and five additional numerals for cases of chain of title, or chain of control.

For its part, Rule 2.8.1.20 of the Miscellaneous Resolution in force for 2022 establishes the criteria for determining the CB status of legal entities, when it is a benefit derived from the participation in the legal entity, either directly or indirectly.

In this latter case, it is necessary to identify, verify, and validate the chain of ownership, which is when indirect ownership is held through other legal entities.

In addition, when the CB has been created by means other than ownership, the chain of control must be identified, verified, and validated. This is the case in situations where control (strategic decision-making) is exercised indirectly through other legal entities, trusts, or other legal entities.

Sanctions for non-compliance

Articles 84-M and 84-N from the *CFF* (FTC Federal Tax Code) establish the sanctions related to non-compliance in this matter:

- Failure to obtain, retain or submit information: from MXN 1.5 to 2 million (approximately 75,000 to 100,000 USD) for each CB;
- Failure to keep information current: from MXN 0.8 to 1 million (approximately 40,000 to 50,000 USD) for each CB; and
- Present the information incompletely, inaccurately, with errors or in a different way: from MXN 0.5 to 0.8 million (approximately 25,000 to 40,000 USD) for each CB

In addition, non-compliant companies could face the following:

- Negative compliance opinion (Rule 2.1.37 *RMF*- FMR Fiscal Miscellaneous Resolution 2022); means that the authority detected an unfulfilled obligation.
- The SAT may exercise verification powers over third parties related to them, in order to verify compliance in CB matters. (Art. 42 fractions XII and XIII *CFF* (FTC Federal Tax Code); and
- The interpretation or application of tax provisions regarding CB matters may not be subject to consultation in terms of Article 34 of the *CFF* (Rules 2.1.41 and 2.1.47 RMF 2022).

Impact on transfer pricing (TP)

In the process of identifying the CB, especially in the cases of chain of title and chain of control, related parties may arise that were not preliminarily recognised.

In these circumstances, it is important to emphasise that, if the CB carries out operations with the entity it controls, or related parties thereof, these operations must be reported, submitted to evaluation, and eventually their compliance with the arm's-length principle must be confirmed.

From the point of view of the authorities and the courts, the absence of TP documentation may lead to the loss of the intercompany expense deduction, considering that it would not meet the requirements set forth in Article 27 of the *LISR* (Mexican Income Tax Law) in its subsections V and XVIII

Subsection V refers to deduction requirements for operations with foreign related parties. Meanwhile, subsection XVIII refers to the deadline to meet the requirements established by the law for each particular deduction.

In such cases, in the event that a taxable profit is established, this profit would be considered as a fictitious or non-dividend (*LISR* 140-VI).

Finally, and due to the mechanism set forth in Article 5 of the *LIVA* (VATL Value Added Tax Law), it would lose the possibility of crediting the VAT associated with the intercompany items disallowed as a deduction for income tax purposes.

Therefore, companies should initiate the necessary tasks to ensure the adequate fulfillment and proper compliance of this regulation as soon as possible. This will help to avoid, as far as possible, any sanctions.

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US

KPMG in the US

Mark Martin and Thomas Bettge

Open items in the OECD tax certainty consultations

On May 27, the OECD released two public consultation documents on tax certainty under pillar one, which together total over 150 pages – 87 pages on tax certainty for Amount A, and another 67 on tax certainty for related issues such as transfer pricing (TP) and permanent establishment disputes.

Given that the last official pronouncement regarding tax certainty was limited to two paragraphs in the Inclusive Framework's (IF) statement on October 8 2021, the consultation documents reflect an enormous technical undertaking.

Unaddressed areas

Nevertheless, a significant amount of work remains to be done. For one thing, there are key items that simply are not addressed in the consultation documents, including transition rules and coordination rules. The Amount A consultation document acknowledges the need for a transitional approach to revenue sourcing and talks about a "soft landing," but stops short of providing concrete detail. Although revised revenue sourcing rules have not yet been released, it appears the Amount A sourcing regime will be complex and difficult to apply.

A transitional approach that permits a business to apply a simplified approach during the first years it is within the scope of Amount A, while simultaneously working with tax administrations to agree on an approach to sourcing on a go-forward basis, would be very welcome. Indeed, given the number of stakeholders and the potential for disagreement, it is hard to see how Amount A could work without a robust transitional approach.

Clear coordination rules will also be vital. Amount A will not exist in a vacuum, but will interact with existing tax regimes, pillar two's global minimum tax rules, and pillar one's streamlined Amount B. The October 2021 statement promised certainty to companies within the scope of Amount A tax with respect to related issues like TP and permanent establishments because, quite simply, those issues are related to the application of Amount A. Yet the two consultation drafts that set out the rules for Amount A and related issues say almost nothing about the relationship between the two.

Related issues can take a long time to resolve: even before kicking off the dispute resolution process described in the consultation draft, a TP audit can easily last three to five years or more. If Amount A comes into effect in 2024 and a TP adjustment related to 2024 is not finally resolved until 2031, how will that be dealt with? The simplest option would be through telescoping, an approach commonly used in mutual agreement procedure (MAP) cases that would carry the income adjustment for 2024 into 2031.

Unagreed areas

Then, too, there are crucial design features that remain unagreed. These are too many to enumerate separately here, but two of the most important are the scope of advance certainty and the scope of related issues.

Advance certainty is a critical component of the certainty framework, providing efficient outcomes for tax administrations and businesses and delivering up-front certainty that can be valuable for non-tax purposes, such as financial reporting. The consultation draft contemplates that advance certainty would be available for revenue sourcing and segmentation, though it notes that the application to segmentation remains unagreed, and that the list may change as more sets of substantive rules are finalised.

Notably absent is the application of advance certainty to key areas including the elimination of double taxation and the marketing and distribution profits safe harbour. All aspects of Amount A, apart from some scope determinations, should be susceptible to advance resolution through agreement on the methodologies the business will apply. We hope that as more sets of rules are finalised, the OECD will confirm that advance certainty applies to those rules.

The handling of the scope of related issues is more troubling. The October statement delivered a clear commitment to mandatory and binding dispute prevention and resolution for related issues, such as TP and permanent establishment disputes – and 137 countries have signed on to that commitment.

Yet in a footnote to the public consultation draft, the OECD discloses that many jurisdictions wish to scale back what constitutes a related issue, by altering the qualitative definition, imposing materiality thresholds, permitting reservations, or limiting the application of certainty for related issues to cases where there is already a bilateral tax treaty in place. This development is disheartening and threatens to undermine the October statement's historic commitment to tax certainty.

Final thoughts

The consultation documents are in some ways a technical achievement, especially given the challenges inherent in designing mandatory and binding mechanisms that are sufficiently dissimilar to arbitration to be palatable to IF members that have long made their opposition to binding arbitration clear.

Yet many aspects of the documents also reveal the considerable technical and political work that remains to be done in this area. Amount A can deliver historic progress on tax certainty, but it will require continued commitment to detailed technical work, respect for the underlying political commitments made in the October statement, and careful consideration of the public comments on the consultation documents.

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The pace of change

The rise of tax technology provides businesses with new data systems, but it has also created high demand for a different kind of tax professional and changed the way tax teams work forever.

As companies step up their searches for tax technologists, sources from 3M, Microsoft, and Spotify tell *ITR* that hiring these specialists has improved compliance, certainty, and reporting in their tax functions.

The digitalisation of tax administrations with near real-time reporting and advanced analytics is building the case for in-house teams to hire technologists.

There is also higher demand for data visualisation and analytical skills on teams as many groups have been forced to upgrade their business intelligence systems to the advanced SAP's S/4 HANA within the last three years to avoid risks from SAP phasing out support for older versions by 2025.

Jed Larkin, senior vice president of tax at 3M in Minneapolis, suggests his team's technologists are faster than the IT department at merging digital compliance tools with the business's latest intelligence systems.

"I would rather be in charge of my own destiny than put my faith in the hands of the IT department with a number of priorities ahead of mine," says Larkin.

Technologists are also increasingly required to standardise VAT reporting and deliver insights into audit risk alongside upgrading parts of the tax function using unstructured data and tight budgets.

Companies stuck with legacy systems are at a disadvantage as many authorities are demanding faster responses to non-compliance, and penalties are swift.

Danish Mehboob

Leanna Reeves

Talent shortage

Despite the uptick in corporate demand for technologists, tax directors outside of the US and Europe are struggling to find the right talent to join their teams for the long term without investing in training them.

Hany Elnaggar, senior international tax manager at Al Tayer Group in the UAE, says that Middle Eastern countries with the latest administrative systems are among the toughest locations to find experienced talent with technological prowess because of the relatively new operating environment.

"The pace of change is remarkable here, but there are big gaps in the market," says Elnaggar.

"Just the systems that authorities have in place to handle data are far more advanced than that needed to maintain a digital audit trail," he adds.

"I had to look for talent in Europe in a previous role because I could not find a senior enough person from Saudi Arabia to manage, but so far I have not been able to find a person that encompasses all areas of tax with technology," explains Elnaggar.

In the Middle East region, where technologists are hard to find and the pace of digital administration is fast owing to real-time reporting, some teams are relying on specialist recruiters and 'big four' advisory firms to find the right talent.

Recruitment drive

However, the picture in Europe is different with a bigger talent pool. Most technologist jobs are opening in Germany, the UK, and the Netherlands, according to market reports from recruitment firm Harvey John. They show at least five corporate roles advertised each month in Europe so far in 2022.

Ed Moore, principal direct tax consultant at Harvey John, says indirect tax specialists have traditionally been best suited as technologists, but those working in direct tax are also starting to acquire digital skillsets.

"Ready or not, the digitalisation of tax is becoming the new normal and the potential of technology is dependent on the ability of the humans behind it," says Moore.

"We said for months that demand for tax technologists in all forms will continue to grow," he adds.

Additionally, SharePoint, Alteryx, and other data-management software solutions are changing the daily tasks teams are focused on and the kinds of skills tax directors must look for when recruiting.

Carolin Symmons, global indirect tax director at Spotify based in Sweden, says the big four firms are some of the best places to find technology experts, especially when those advisers have worked closely with the group in question and understand the business structure.

Symmons was a manager in the VAT practice at Deloitte in Sweden until 2013 before joining Spotify. "It is easier to work with a specialist when they know what the business entails and how it grows, since so many of those details cannot be included in open market solutions," she says.

Fast-growing digital companies that have the budget to hire technologists can more easily establish a fully digital tax function than traditional brick-and-mortar businesses, as they are working with a blank slate in terms of building the tax function.

Brick-and-mortar businesses with legacy systems require more expensive customisable tools to work on top of the business's existing technology.

Custom made

Despite widespread digitalisation, many tax directors prefer to build custom solutions in-house because they are disillusioned with the market's tools, including those offered by the big four firms.

These shortcomings are straining businesses' IT departments, as most have long lists of issues from other departments that need to be addressed with custom fixes. Technologists, particularly those who work with add-ons from the big four, are best suited to build fixes quickly.

> "The pace of change is remarkable here, but there are big gaps in the market"

Many tax directors are trying to structure their data and implement analytical tools to avoid disputes in the future before authorities introduce more detailed digital audits.

One former principal corporate counsel at Microsoft based in Seattle says her team built and used a SharePoint solution to tag work under an audit, in real time, to better manage controversy issues.

More large businesses are moving in this direction of building customisable solutions. This includes companies like Anglo American and Diageo, among others.

Michael Johnson, director of tax placement at finance leadership recruitment firm Brewer Morris in the UK, points out that Anglo American and Diageo have specifically budgeted to hire technologists in the last three years.

"If you ask me, the next step is to have someone on the front-lines finding solutions as to even what new technologies to introduce, whether it's OneSource, Vertex or Oracle, before we even get to the stage of actual tax work within the business intelligence systems," says Johnson.

There is a steady rise in third-party tools that do not meet market standards, which makes building on top of them difficult. In-house technologists must go through a process of elimination to set the department's technology roadmap given a fixed budget and limited number of service providers.

"You have this situation where the flow of individuals out of practice and into industry has never been in greater demand, but there have also never been fewer individuals to make that transition," adds Johnson.

Technologists are highly sought after in-house because their skillset can unblock layers of system complexities to address legislative changes.

A fragmented international tax market has led to higher demand for technologists, but tax administrations' ongoing digitalisation efforts are standardising processes that might undermine the role of technologists in the longer term.

The TP benefits of blockchain

Meanwhile, a growing number of companies are looking to blockchain technology to improve data management and documentation. Businesses could save a significant amount of time on tax compliance by adopting blockchain, according to transfer pricing directors.

Companies will need to carefully consider the cost and effort of switching to real-time data management through blockchain. It could also help them gain further visibility on their supply chain models, and increase the reliability of their in-house data.

Marc Mokrab, group tax director at security company Verisure in Switzerland, tells *ITR*: "Blockchain could definitely be of great help to secure inter-company transaction for both tax administrations and taxpayers' purposes.

"It would authenticate the primary source of the data and could be used to reconcile and cross check information easily, especially in the TP environment where data comes from everywhere," he adds.

The technology's key benefit is to provide tax administrations with more original data, meaning less uncertainty around information. This would lead tax administrations to at least challenge fewer corporate documents if not none.

Gary Ashford, partner at law firm Harbottle & Lewis in London, says: "Blockchain can provide comfort to tax authorities in that it can demonstrate a secure system of transactions.

"This can improve the audit processes. It could reduce the compliance burden by demonstrating a secure audit process," he adds.

Manuel de la Rosa, TP consultant at accounting firm TPA Austria in Vienna, explains that the time saved by and data reliability of blockchain technology could create a sense of transparency and trust between tax authorities and companies.

This is an issue highlighted in the HM Revenue and Customs (HMRC) report on diverted profits tax revenue released in May. The gain in visibility and additional information in relation to the transaction would also provide a good basis for benchmarking exercises, according to Ashford.

The technology could be particularly useful following years of tax uncertainty and data unreliability caused by the COVID-19 pandemic and the Russia-Ukraine war too. Businesses would benefit from more accurate data ahead of a potential rise in TP audits and tougher documentation checks.

Supply chain management

Businesses can use blockchain technology to keep track of cross-border transactions and manage supply chains. This may be crucial for companies to withstand the global supply chain crisis.

Neil Pereira, partner at Deloitte Australia in Sydney, explains that more and more companies are relying on blockchain for supply chain management.

"We're starting to see companies use the blockchain to verify sources of supply – such as verifying the ethical approach to supply chains. Every transaction is recorded on the blockchain," he says.

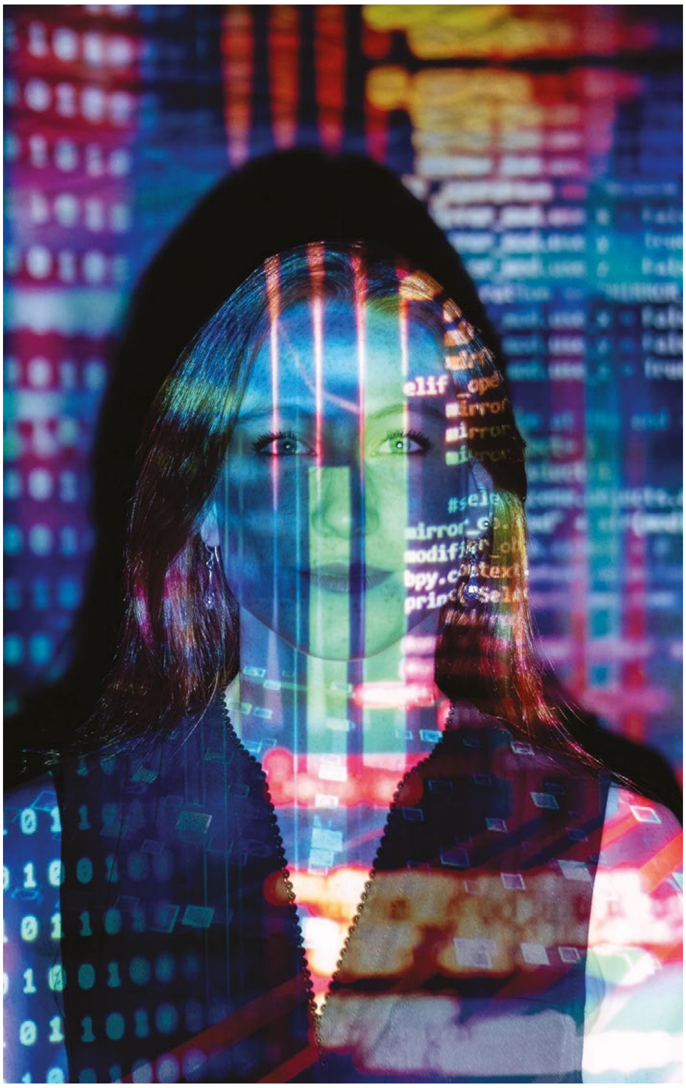
"I spoke to a client who told me their supply chain is using the blockchain technology to verify a lot of these things. It's going to enhance TP and cross-border dealings because one of the historical challenges in getting the information in the first place," adds Pereira.

Many in-house TP directors and consulting groups are considering implementing blockchain technology to enhance their data accuracy and lower the time-consuming process. The use of smart contracts – which are stored through blockchain – has particularly caught their attention.

Marcus Stelloh, head of TP at advisory firm BDO South Africa in Johannesburg, says: "Every time a transaction happens, the contract is entered in for that transaction. A lot of benefits could be derived from a TP perspective, especially for clients.

"You could implement that in a way that whenever a transaction is happening, the agreement refers to the policy and makes sure that the pricing terms of the policy can be incorporated into the agreement. When the transaction happens, it is actually aligned with the policy," he adds.

"Let's say you have 100 transactions per month, well, you can easily pull that data and then through your ERP system, you can bring it into the dashboard. You don't have to do quarterly or half yearly checks," he continues.


Technology calls for a new kind of tax professional

With the time-saving effort and real-time data enabled, companies are bound to adopt blockchain technology soon. Yet implementing the system could be a burdensome process and add layers to the technology stack for companies depending on the IT architecture already in place.

Roos Koning, blockchain and crypto specialist at Rabobank in Amsterdam, warns that the first setup might be "more complex than people think" and could generate costs for businesses starting out. Collaboration will be crucial.

"It's an entire company that needs to agree. There also needs to be an incentive for the company to want to be transparent," says Koning.

In the meantime, companies looking to ease the compliance burden caused by the overload of reporting requirements could benefit from consistent real-time reporting under blockchain.

The real-time data and fast-paced process of recording transactions would also enable companies to build better relationships of trust with tax authorities. Finance and tax teams that support blockchain record keeping may save their businesses from costly audits and penalties in the long term.

Women in Tax 2022

Tax professionals gathered at *ITR*'s Women in Tax conference on May 24 in Palo Alto, California to discuss such crucial issues as risk management, financial transparency and intangible assets.

Women tax professionals from companies like eBay and Walt Disney talked tax policy alongside World Bank officials and representatives from tax administrations. Key issues include how technology might change a company's risk exposure and the complexity of tax transparency.

Here Senior Reporter **Leanna Reeves** presents the best discussions from the conference.

Risk exposure can enable tech change, say tax directors

Tax directors must build a case for technology implementation, including with their CFOs, said panellists from eBay, Braze, and Walt Disney at ITR's Women in Tax event.

Leanna Reeves

In-house tax directors face significant hurdles when driving technological change within their organisations, but discussing risk exposure and workload caused by new tax reforms can initiate technology adoption, said speakers at *ITR*'s Women in Tax Forum in Palo Alto on Wednesday, May 24.

"When I joined, it was two people – and eBay is a tech company in the Bay," said Anitha Chakravarthi, global head of indirect tax and tax technology at eBay in the San Francisco Bay Area.

"People do not want to work on tax technology. I decided to take a different approach – the art of the impossible," she added.

"They did not want a tax technology team because they didn't understand what the benefit would be."

Raising the benefits of technology tools, such as optimising efficiency within tax departments, is key to influencing businesses into investing in software and leaving the Excel sheet behind.

Another panellist at the event, Savilla Kaltner, global head of tax and treasury at software company Braze in San Francisco, pointed out the advantage gained from a long-term discussion with her CFO.

"I talked to our CFO on risk management and where we had exposure, audits, and problems – she was willing to invest in that. One to bring in a function in-house and second because we would create efficiencies and stock controls – for ERP and revenue side," she explained.

Hiring the right talent

Kaltner said she found gaps within the company and that the technology being used was not sufficient. To automate the system, she was able to hire individuals that allowed the organisation to implement the technology and optimise efficiency.

"It was hard to accomplish that, but I got to hire some people and leveraged the experience and said that we needed a tax system. You had to take the manual upload out of the process completely, and the calculation as well, so there were no spreadsheets," added Kaltner.

Chakravarthi was also able to hire more talent for the company to implement better technology tools and tackle the workload burden that tax directors often face.

"I hired one person and that person would go around the tax department and find out the most painful thing they were doing – most of it was Excel and things like that," she said.

"The first thing was, can we just have a tool that makes Excel simpler? The provision was updating the sheet and then if something went wrong, then everything went wrong," added Chakravarthi.

Risk and reward

Tax directors must ensure their organisations understand the core benefits of implementing technology, according to panellists.

"I created a list of all the exposures and why they happened. That list was an hour-long discussion with our CFO," said Kaltner.

She said the billion-dollar revenue company she previously worked at was able to leverage the technology to manage the significant exposure risk.

Shanna Steed, lead tax principal of tax operations at Walt Disney Company in the US, added that businesses that fail to implement technology skills within their tax departments risk becoming obsolete.

Her company collects around 80,000 invoices annually using ERP systems that pull files and submit them to auditors. Technology would, instead, provide real-time data that would prevent tax directors from collecting two-year-old invoices.

"Think about the things that are going to be the most impactful to your organisation," she said.

ITR's Women in Tax Forum was held in Palo Alto on May 24.

Global tax transparency is essential, but too complex

Speakers from the World Bank and Astra Space at ITR's Women in Tax Forum said tax authorities must strike a balance between the need to boost tax revenue and collect data.

Global tax transparency standards are a burden for corporations that have to collect a significant amount of data, according to female tax professionals at *ITR's* Women in Tax Forum, held in Palo Alto on May 24.

"How to implement policies can sometimes get impractical when getting the information," said Hanifa Ismail, vice president of tax at Astra Space, an aerospace company based in Alameda, California.

"It's very data-driven, so we might not have the right resources. I understand the importance of transparency, but part of collecting that data is not easy," she added.

Businesses are expected to comply with a variety of tax transparency rules including

Leanna Reeves

the Corporate Transparency Act, the Global Forum on Transparency and Exchange of Information for Tax Purposes, and the Anti-Tax Avoidance Directive III (ATAD III).

Giulia Spaggiari, associate risk officer at the International Finance Corporation (IFC), a sister organisation of the World Bank, emphasised the importance of domestic resource mobilisation and focus on illicit financial flows to enable tax transparency across borders.

The IFC is one of five organisations that constitute the World Bank Group, providing loans to companies investing in the financial market.

"At the World Bank Group, on both private and public sides, we are committed to certain activities and actions to ensure there is high domestic revenue mobilisation. For example, our colleagues at the World Bank advise government, trying to make tax collection more efficient as well as their transfer pricing (TP) methodologies," said Spaggiari.

Spaggiari said the IFC, from the private sector side, encouraged tax governance compliance through diligence while being an observer for BEPS and the Inclusive Framework, as well as having recently joined the regional initiatives of the Global Forum.

Reputational risk

As a private-sector organisation, the IFC must consider the reputational risk of each company it provides funding to. The risk can be multi-dimensional, with issues ranging from tax to conflict of interest.

Before deciding to provide a loan to a company, the IFC conducts research which will assess any tax dispute or risk that has taken place.

Transparency regulations are valuable when conducting such research, particularly when looking at a company's full corporate profile, such as any entities operating abroad and whether any shell affiliates exist.

"We also have an eligibility criterion around the Global Forum's information request – that a country must be compliant with the Global Forum," said Spaggiari.

While global tax transparency is necessary for domestic revenue mobilisation to fund public services as well as to measure a company's compliance, Spaggiari acknowledged the difficulty of collecting a vast amount of information

for companies, stating it was a "work in progress".

Data burden

Online marketplaces have often been the target of these tax transparency measures.

Prior to joining Astra Space, fellow speaker Ismail worked at e-commerce company Wish, where collection took months to complete because of digital tax requirements.

"My issue here is that governments create these policies but don't make it easy for us to pay the tax," said Ismail.

Laws including EU directive 2018/822 (DAC6) as well as 2021/514 (DAC7) have caused a significant compliance burden for tax directors.

DAC6 demands cross-border financial arrangements be disclosed to local authorities, while DAC7 is a continuation of the transparency measure designed for marketplace facilitators such as Amazon.

"You have to disclose the name of the vendor, bank account information; [there are] six or seven pieces of information that you are required to do," said Ismail.

"A lot of these information requests are sometimes not practical. They don't think about how we provide that information. E-commerce companies try to come together to understand how they can implement these rules," she added.

Ismail said governments must work towards more practicality when requesting certain data from corporations.

"Even when they have that information, no one tells me what to do with it. It's important to have that transparency. But how to use it and how they are going to be extracting it is an issue for me," she added.

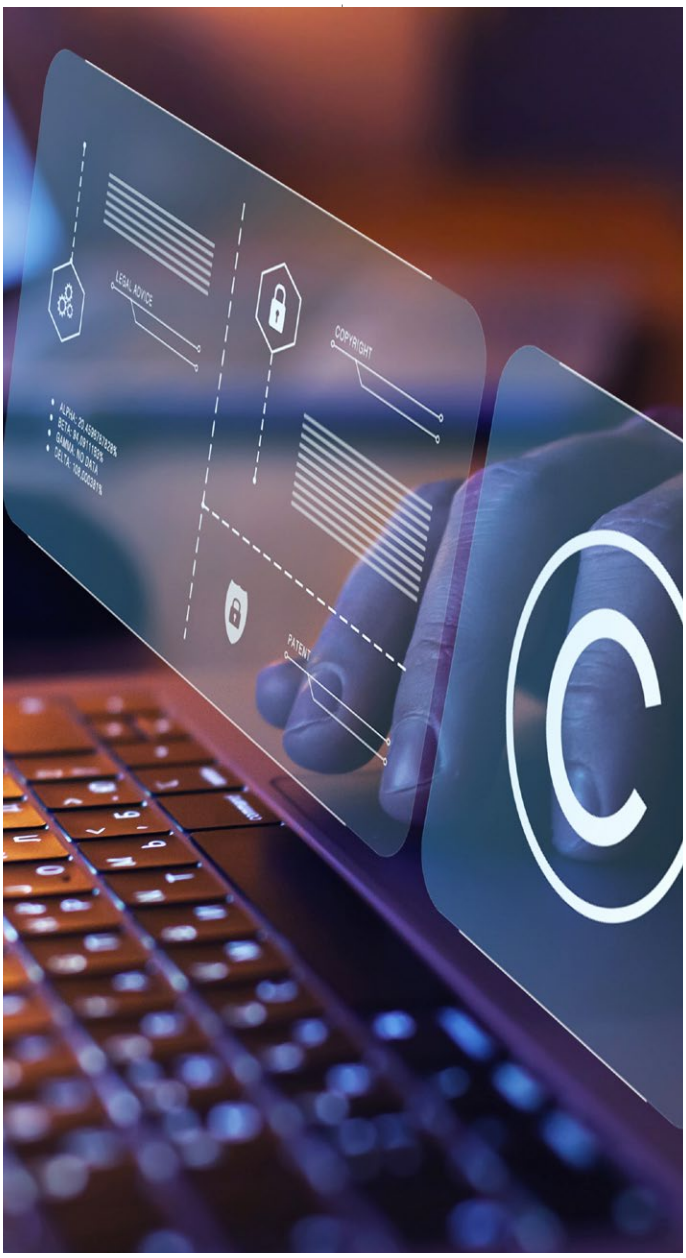
In future, both speakers agreed, governments must strike a balance by introducing global tax transparency standards that are simpler and easier to implement for corporations.

ITR's Women in Tax Forum was held in Palo Alto on May 24, grouping hundreds of female tax professionals to discuss the present tax challenges and latest updates in TP.

Tax directors share struggle of hard-to-value intangibles

Female tax professionals from Uber and elsewhere shared concerns over how to approach the valuation of intangible assets at ITR's Women in Tax Forum.

Leanna Reeves



Transfer pricing (TP) directors said it is more and more difficult to value intangibles, particularly when it comes to locating the assets, at *ITR*'s Women in Tax Forum, held in Palo Alto on May 24.

Traditional TP methods are being applied to new sectors that deal with hard-to-value intangibles. Tax professionals have shared their concerns over the lack of guidance to value these assets.

"I feel like I'm doing what I can only call TP in the metaverse. I'm working with a lot of young professionals – operating differently than your traditional business models and industries," said a TP specialist at a semiconductor company based in the US who was commenting on industry trends rather than her organisation's position.

Valuating these intangibles that are impossible to "pinpoint" makes the process challenging, she added.

"I've been known to say to my team 'doesn't anybody make anything anymore?'. There are no products now being made, everything is out there, and I must understand where the transactions are. It's fascinating," she said.

The speaker has followed the OECD's 2022 TP guidelines related to financial transactions to analyse whether a company should consider the financial risk or the economic risk as well. The corporation can then decide whether to maintain the risk-free return or the risk-adjusted return.

In short, TP teams need to document and characterise assets properly. Otherwise, these teams could risk mischaracterising them as equity, which could lead to errors in the TP documentation.

Lisa Li, director, global TP and special projects at transport company Uber, also stressed the importance of valuing intellectual property (IP) within a business. The valuation process meant that she understood the corporation better.

"We are a high-tech company, but that technology is the most important IP in our business," said Li.

The GCC's emerging tax order

Like medicine, tax is an evolving science. EY's Norah Al Khalaf explains how tax policies have changed across the member states of the Gulf Cooperation Council and what tax departments should prepare for next.

Tax policy is changing and developing rapidly in the GCC region. Taxpayers interested in expanding their operations to new jurisdictions may face high risks of audits and investigations with regards to international taxation. Understanding the relevant laws and regulations is essential and, therefore, the demand for tax consultations is increasing accordingly.

In the GCC countries, tax policy is maturing and becoming increasingly complicated. In the past five years, various tax laws have been amended and numerous others have been introduced.

The UAE

In 2017, excise tax was introduced in the UAE at various rates between 50% to 100% on certain products. On December 1 2019, the Federal Tax Authority (FTA) added a few more products to the list. In 2018, the UAE implemented a VAT for the first time in accordance with the GCC agreement.

Furthermore, the FTA announced on January 2022 the introduction of a corporate income tax (CIT) at a rate of 9% on businesses net profits. Effective for financial years starting on or after June 1 2023. The CIT regime is expected to cover transfer pricing rules and requirements on eligible taxpayers.

Saudi Arabia

On the other hand, Saudi Arabia implemented VAT for the first time in 2018 as well. The Zakat, Tax, & Customs Authority (ZATCA) amended the regulations on several occasions since they were first published. The VAT rate increased from 5% to 15% on July 1 2020 due to the pandemic.

Transfer pricing regulations were published in 2019. However, the arm's-length principle was embedded in the Income Tax Law.

The real estate transaction tax (RETT) regulation was effective as of October 4 2020 at rate of 5%. The regulations were amended a couple of times.

Moreover, several amendments were made to the existing regulations of Zakat and Corporate Income Tax and final versions were published by 2019.

Oman

A royal decree in 2017 introduced major changes in CIT in Oman, increasing the rate from 12% to 15%, introducing a 3% CIT rate on small taxpayers, extending

> "Tax policy is maturing and becoming increasingly complicated"

Saudi Arabia leads the GCC on tax reform

withholding tax of 10% to dividends, interest, and payments for services, and more.

Moreover, Oman was the fifth country to implement excise tax, which took effect on June 15 2019. The excise tax rate was either 50% or 100% depending on the type of product. Furthermore, Oman was the fourth GCC country to implemented VAT at 5% in 2021 with some exempted items.

Bahrain

The Bahrain National Bureau for Revenue (NBR) introduced excise tax on December 30 2017 with a rate of either 50% or 100% depending on the type of product.

Moreover, and due to the pandemic, the Council of Ministers approved the increase rate of VAT from 5% to 10%, which took effect on January 1 2022.

The future of tax in the GCC

Qatar and Kuwait are in the process of introducing VAT since both countries are under a common GCC framework for value added tax.

Moreover, couple of countries may introduce or increase their corporate income tax rate to 15% in alliance with the global minimum tax rate which will ensure that multinational enterprises (MNEs) will be subject to a minimum 15% tax rate from 2023.

Other countries may introduce digital service taxes (DSTs)" which may target the big tech companies. On the other hand, countries that increased VAT rates to recover from covid-19, may decrease it once their economies recover.

How to prepare for these tax changes?

There are various ways for business to prepare for tax changes. Some of these are:

The best way to prepare is to tax plan

Tax planning is a legal method in which you can make use of tax exemptions and benefits to reduce your tax liability. You need to set a tax strategy for your business and plan accordingly. The first step would be to analyze your current tax situation, especially if you are an MNE.

Understand what are the applicable laws and regulations that applies to your business. Make use of any exemption or tax benefits. Familiarise yourself with relevant tax treaties and agreements. Understand your tax rights and how to use the laws in your advantage.

Be proactive

If believe you are facing a complex tax situation, seek answer. Either by communicating with the relevant tax authority to get a tax ruling or by seeking advice from tax experts.

Always have proper records of your tax accounting.

You may be required to maintain proper books of accounting. In Saudi Arabia for example, you are required to maintain records for ten years and they should be kept in Arabic.

While in the UAE, for VAT purposes, VAT-registered companies are required to keep books of accounting for a minimum of five years. Nevertheless, keeping proper books of accounting will help you keep track of your records and makes it easier to navigate through.

Tax provisions

Keeping records can also give you a historical view on previous tax trends which may help in forecasting future tax changes. Accordingly, revise your tax provisions periodically to have better estimates.

Be aware of double taxation

Changes in tax law can make you a resident in multiple jurisdictions, which can lead to double taxation.

In some case you may be double taxed in two countries or more on the same transaction, which is called "jurisdictional double taxation".

This occurs when two countries apply similar taxes on the same income or capital in the hands of the same individual or an entity. This may occur when a taxpayer is considered a resident in two jurisdiction and would possibly be subject to pay taxes in both jurisdictions.

These sorts of conflicts are solved through double taxation agreements, which gives the right to one of the jurisdictions involved to tax that transaction.

In other cases, you may be taxed on the same income twice from, which is called "economic double taxation". This occurs when one or more than one country apply similar taxes on the same income or capital but in the hands of more than one person.

For example, when income earned by a corporation is taxed both to the corporation and to its shareholders when distributed as a dividend. You need to be alert and aware of those two forms of double taxation.

> "If you don't appeal in time, you may never be able to defend your position and you'd find yourself overtaxed with no right to object"

Avoid penalties

If you are not updated with recent tax law changes, you may commit mistakes and tax penalties may arise. Penalties can be a huge burden on taxpayers. In some cases, penalties exceeded tax due amounts. Therefore, it should be taken seriously. It can be avoided by following very simple steps, to name a few:

- Know what taxes apply to your business
- File on time to avoid late-filling penalties
- Double check the numbers
- Be honest
- Match your tax returns with your audited financial statements
- Be responsive to tax authorities to avoid non-cooperation penalties
- Provide supporting documents (if it can be obtained and verified from a third party, it will serve as a more authentic evidence)

Prepare for audit

Tax audits generally cannot be avoided. It is never a matter of "will you get audited" but a matter of "when will you get audited". Therefore, the right way of thinking would be "how to prepare for an audit".

The best way to prepare is to first get a better understanding of tax regulations, being aware of what taxes apply to your business, make sure you are complying, and finally enhance your credibility by maintaining supporting documents.

Appeal when you can

In any case, you may receive a tax assessment from tax authorities which would have been made based on the available information to that tax authority. Therefore, it is very important to familiarise yourself with the appeal process in the countries in which you conduct business.

If you don't appeal in time, you may never be able to defend your position and you'd find yourself overtaxed with no right to object. When you appeal, always make sure to refer to the relevant tax laws and regulations and prepare to be representing your case during hearings, if needed.

Conclusion

A lot of changes have happened in a short period of time and it is expected that more and more changes will occur in the near future. It can be cumbersome for taxpayers to stay updated on changes and amendments.

Consequently, taxpayers usually seek professional consultation on the tax implications to avoid penalties and paying more taxes than expected. When taxpayers are updated and well informed on the coming tax changes, they can be prepared and avoid having audits and assessments from tax authorities.

Businesses left vulnerable by lack of strong VAT planning

Tax directors warn that a lack of adequate planning for VAT rule changes could leave businesses exposed to regulatory errors and costly fines.

Siqalane Taho

Tax directors fear that companies that fail to properly plan for VAT and legislative changes could leave themselves open to regulatory mistakes and costly fines for non-compliance.

The concerns have been voiced by tax professionals who warned in-house tax practitioners to establish systems and procedures for managing changes to VAT and tax legislation.

"One of the main challenges is just staying aware of changing global indirect tax requirements, new mandates, and regulations," says Alex Baulf, senior director for global indirect tax at tax technology firm Avalara in the UK.

These include building online and internal tracking systems to monitor international VAT developments including the digital services tax (DST) regimes. Tax professionals could combine the legislative planning with project management functions to ensure that businesses are aligned from planning to implementation.

"A big chunk of what people in the tax area want from businesses is to stay in control and to keep on top of things," says a tax professional at an e-commerce company in Europe.

Baulf stresses that there are the risks involved for businesses.

"There are genuine risks of not being able to meet new requirements on time, ranging from penalties and interest all the way through to not being able to do business in a country," he says.

Companies do have a choice in the matter when it comes to strategy. They can implement a range of measures to help meet the regulatory requirements.

Marta Pankiv, senior director and head of group tax at software company Tricentis in Austria, says businesses can either adopt a reactive or proactive strategy for dealing with legislative changes or issues in their businesses.

She says firms that use the reactive strategy often find themselves behind the legislative curve and scrambling to find out where they need to register for VAT only once legislation has been announced.

This locks businesses into difficult situations with little possibility for alleviating the anxiety or problems they face.

"When you are proactive, you can plan, you can work with your business, you can see how to structure your flows and delivery from those flows," says Pankiv.

A changing VAT landscape

The only certainty is that taxpayers will continue to face legislative changes to the VAT landscape. The tax authorities are unlikely to back off following the COVID-19 pandemic.

Europe has largely been at forefront of VAT regulation. This has seen the EU increase efforts to harmonise VAT rules across the union through measures such as the One-Stop Shop (OSS), the EU's VAT reporting central processing mechanism.

These measures have tried to streamline the EU's VAT rules by ensuring that businesses register for VAT in one member state instead of multiple jurisdictions. Some

European tax authorities have also introduced e-invoicing and e-reporting to attempt to close the compliance gap.

At the same time, there has been an international shift towards hiking indirect taxes while also increasing the VAT compliance burden on businesses.

"We've seen that with increasing rates of VAT in Europe there have also been lots of other types of indirect taxes coming on board and now there are moves towards finding ways to have digitised taxes [returns]," says a tax professional at a toy company in the UK.

Pankiv says that there is also this trend towards continuous changes in the Asia Pacific region where indirect tax rules have been frequently introduced even for business-to-business (B2B) services.

She says it is important for tax practitioners to be informed about both legislative changes as well as the business priorities of their firm so that they can better plan their tax strategies.

"Talk to your management, your salespeople and so they can tell you in advance about what opportunities they are looking at, in what regions, so that you are prepared, says Pankiv.

Maybe you can find other ways to sell into those countries either through partnerships, joint ventures or whatever business model you can think of".

Scanning the horizon

It is not just commercial considerations that businesses use when assessing growth opportunities. Some firms have adopted proactive methods of looking at both internal processes and expansion prospects.

"We are seeing more businesses adopt a proactive horizon scanning approach, using technology and processes to detect and monitor possible tax regulatory changes, from a rumour or public consultation all the way through to the final legislation going live," says Baulf.

He says some multinational companies use risk registers to develop scoring systems for assessing possible regulatory changes and their impact on the business.

There are also significant benefits for firms that invest in global and scalable tax technology platforms to help with e-invoicing, e-reporting or filing VAT returns in different countries.

However, there are strategies that tax directors can use to ensure that their businesses are ready for legislative changes and that their systems are fit for purpose.

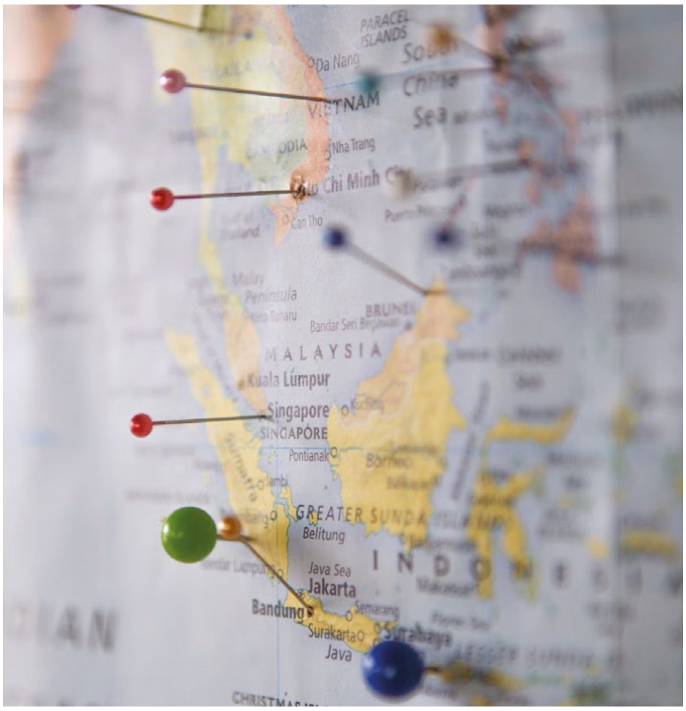
The first step is to do a thorough assessment of the company's tax processes around formulation and collection of data. This involves analysing the automation and analytics capabilities of internal systems.

Once these have been analysed, businesses would need to come up with a plan to implement the necessary IT-enabled tax processes.

It is also important to ensure that everyone in the organisation buys into the strategic vision and processes, including senior management.

A tax professional at a global luxury goods company in London says that tax technology is key to ensuring that tax practitioners can continue to meet their company's compliance requirements.

He says automated technology systems have the potential to be an asset and to build trust between tax departments, the wider business and tax authorities.



Drawing a new roadmap

It is not just technology systems that in-house tax professionals need to invest in, but they also on need to be aligned with their firm's commercial strategy. This could involve assessing what markets the business is hoping to enter and to plan for the tax or VAT requirements.

"A key challenge is getting clear, concise certainty over new digital services regimes for VAT or corporate income taxes from international tax authorities. This involves understanding the scope of the regulatory changes and when they will apply," says Baulf.

Baulf says that companies should monitor the similarities in the VAT/GST sales tax rules on digital services in different countries. They should try to identify similarities and see where there is likely to be a difference.

"You can't have an individual tax policy, an individual process or different technology solutions for every single country in the world that introduces a specific tax. It's got to be scalable," says Baulf.

He says that many countries almost copy and paste international tax laws into their own domestic legislation or guidance.

"Do look at the requirements you have today, then start building the roadmap of upcoming changes, quickly identifying where the rules are similar," says Baulf.

"Is the location of evidence that you need the same? Sometimes, there are deviations which can often lead to double taxation or cumbersome local tax calculation policies," he adds.

It is through monitoring tax amendments in different countries that businesses can develop a comprehensive picture of potential changes that are likely to affect their organisations.

This also helps companies to establish effective tax policies that enable them to be ahead of the regulatory curve. This will allow businesses to gain more control through proactive strategies rather than merely reacting to changes.

AUSTRALIA

DLA Piper

Kelvin Yuen

Australia publishes synthesised text of double tax treaty with Malaysia

On May 20 2022, Australia published the synthesised text of the Malaysia-Australia DTA. Australia has issued several synthesised texts on the overlay and modification of specific DTAs, but the Malaysian DTA text reflects important aspects of Australian DTA policy.

Of particular note are aspects related to transparent entities, permanent establishment (PE), dispute resolution, and the practical application of the principal purpose test (PPT), also known as the integrity rule.

The Malaysian DTA text was prepared by the Australian Taxation Office (ATO) as a guide only. As such, it does not diminish the importance of the authentic legal texts of the DTA and the multilateral instrument (MLI), which have primacy in statutory interpretation.

The DTA was first signed on August 20 1980 with three subsequent amending protocols taking effect in 1999, 2002, and 2010. The implementation of the MLI was signed by both Australia and Malaysia and ratified on February 18 2021. The key MLI articles adopted by the two countries, as reflected in the DTA, are summarised below.

Article 1 of the Malaysian DTA: transparent entities

Australia has adopted the transparent entity article of the MLI (Article 3 of the MLI) addressing hybrid mismatch issues. The adoption of this MLI article means that treaty benefits will be provided to fiscally transparent entities only to the extent that one of the jurisdictions recognises the income of that entity under its domestic law.

Article 5 of the Malaysian DTA: PE

Australia has adopted option A of Article 13 of the MLI. Broadly, the existing exclusions to the definitions of PE include a place used for storage and warehousing of goods or stock. These exclusions will continue to apply but the effect of the MLI makes the exclusions in Article 5(3)(a) to (e) of the DTA subject to the condition that the activity is of a preparatory or auxiliary character.

> **"The changes and synthesised text of the Malaysian DTA further prevent the avoidance of PEs"**

Further, Australia has adopted, without reservation, the 'closely related enterprise' provision of the MLI (Article 15). A closely related enterprise is to be test-based on the relevant facts and circumstances, and the provision applies where one entity controls the other or both are under the control of the same entity. It also applies where one entity has a 50% beneficial interest in the other entity (directly or indirectly), determined by aggregated voting rights and by value.

The introduction of the term 'closely related enterprise' effectively extends the definition of a PE and reduces instances of companies avoiding a PE where a closely related enterprise operates an activity that falls within the exceptions in Article 5(3) of the Malaysian DTA. In other words, where the same enterprise or a 'closely related enterprise' carries on business activities at the same place or another place in the same jurisdiction, that place will constitute a PE, even if one of the activities was preparatory or auxiliary in character.

Article 24 of the Malaysian DTA: MAP

Australia has also adopted Article 16 of the MLI, the mutual agreement procedure (MAP), without reservation. Article 16 of the MLI provides a new minimum standard to allow a taxpayer to present a case to the competent authorities of either jurisdiction where the taxation of the entity is not in accordance with the DTA. The adoption of this article means that a taxpayer may present the case within three years, rather than two years, from the first notification of the action.

The MLI further amends Article 24(2) of the Malaysian DTA by removing the six-year time limit to bring a claim. Any mutual agreement reached shall now be implemented regardless of any time limits imposed by domestic law of each jurisdiction.

Lastly, Article 24(3) of the DTA is further amended by the MLI to allow jurisdictions to consult together for the elimination of double taxation in cases not provided for in the DTA.

Article 27 of the Malaysian DTA: limitation of relief

Article 7 of the MLI is a mandatory article that Australia has adopted. It relates to the prevention of treaty abuse, and Australia has adopted the PPT which satisfies the BEPS minimum standard.

Broadly, the PPT provides that the benefit of an article under the Malaysian DTA will not be granted to the taxpayer if obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted (directly or indirectly) in that benefit.

Whilst the terms of the treaty are not quite as modernised compared to, for instance, Australia's tax treaty with Israel, the changes and synthesised text of the Malaysian DTA are in line with Australia's stance to further prevent the avoidance of PEs and to allow for more flexible relief for taxpayers using the MAP.

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CHINA

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China's income tax deductions for pensions and child-raising costs

As China introduces deductions on individual income tax (IIT) for child-rearing costs, companies should be aware that many individuals may choose to access this deduction through their employer. In order to facilitate this, businesses should modify their tax information collection and HR policies and procedures.

Meanwhile, the Chinese government is encouraging its citizens to invest in private pensions. A similar scheme to the existing piloted IIT deduction for commercial endowment insurance plans could soon follow for private pensions to encourage uptake.

Government encourages private pensions

The ageing of China's population is leading to increased demands on China's state pension regime. In consequence, the government is seeking to encourage investment in private pensions. In due course, IIT deductions may be provided for private pensions, though no announcement on this has yet been made.

China's national pensions framework consists of three pillars. These are:

1) The state pension regime, funded with social security contributions;
2) A so-called 'enterprise annuity' scheme under which companies can choose to

fund pension benefits for employees. Corporate income tax (CIT) deductions are available for this, though the regime is little used in practice; and

3) Private pensions financed by individuals.

Previously, the government had not provided much elaboration on the third pillar, but recently the State Council (that is, the national cabinet) announced a framework for the design of private pension plans to be offered by private insurers.

The State Council envisages voluntary participation by individuals (who continue to make their social security contributions), with annual contributed premiums of up to RMB 12,000 ($1,800).

Premiums can be invested in qualified financial products, such as bank wealth management products, saving deposits, and commercial endowment insurance. The State Council's framework details the circumstances in which contributions can be withdrawn and how they should be handled for inheritance purposes.

In 2018, a pilot scheme for pension IIT deductions was run in Shanghai, Fujian, and Suzhou. This applied an exemption-exemption-taxation (EET) system, similar to the US 401K regime, for a special pension product termed a 'commercial endowment insurance plan'.

The expectation is that something akin to this IIT deduction will eventually be rolled out at the national level, to buttress the State Council's drive for greater use of private pensions.

IIT deduction for child-raising costs

On March 19 2022 the State Council announced the new IIT deduction in Circular Guofa No 8 (2022), and the State Taxation Administration (STA) followed on March 25 with detailed rules. This provides that from January 1 2022, guardians of infants under the age of three can take an IIT deduction of RMB 1,000 per child per month.

This is the latest step in the process of China adjusting its IIT regime so that tax burdens reflect the personal circumstances of individual taxpayers. Starting with the 2018 IIT reform, China sought to impose IIT based on taxpayers' comprehensive income, rather than on separate tax calculations for each category of income. However, the schedular remains for investment income types.

> "The deduction for child-raising costs reflects the government's desire to raise the national birth rate"

The move towards comprehensive income taxation was coupled with the introduction of IIT deductions for children's education and further education for adults, medical fees for serious illness, mortgage interest and housing rental costs, and the expenses associated with supporting elderly relatives.

The introduction of a deduction for child-raising costs reflects the increasing expense of doing so, as well as the government's desire to raise the national birth rate.

Administratively, the individual taxpayer can access the new deduction by providing supporting documentation to their employer (as a withholding agent) or through the filing of the post-fiscal year end annual reconciliation filing (March-June).

Given that a large number of employees may choose to claim the deduction through their employers, companies will need to modify their tax information collection and HR policies and procedures.

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HONG KONG SAR

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Lewis Lu and John Timpany

Proposed profits tax concessions for various maritime services in Hong Kong SAR

The Inland Revenue (Amendment) (Tax Concessions for Certain Shipping-related Activities) Bill 2022 was officially announced on June 2 2022. The Bill introduced a concessionary tax regime for profits derived from qualifying ship agency, ship management, and ship broking activities in Hong Kong SAR.

The proposed tax regime

The tax concessions

See Table 1.

The qualifying criteria

1) The entity-based approach

- The ship agent, ship manager or ship broker must be a standalone corporation predominantly carrying out the qualifying shipping-related activities in Hong Kong SAR.
- Under the safe harbour rules, the ship agent, ship manager or ship broker is allowed to engage in non-qualifying activities provided that the amount of profits derived from the qualifying shipping-related activities is not less than 75% of its total profits, and the value of assets used to carry out the qualifying shipping-related activities is not less than 75% of the total value of all assets at the end of:
  - The subject year of assessment (YOA); or
  - The subject YOA and the preceding one or two YOAs on an average basis.
- Ship agents and brokers need to carry out at least one qualifying ship agency or broking activity for a YOA, while ship managers need to carry out at least two qualifying ship management activities.
- The commissioner of inland revenue may, on application by a corporation, determine that it is a qualifying ship agent, ship manager or ship broker for a YOA even though the corporation does not satisfy the requirements discussed above.

2) The central management and control (CMC) requirement

The ship agent, ship manager or ship broker must exercise its CMC in Hong Kong SAR.

Table 1

Profits derived from qualifying shipping-related activities carried out for:	Corresponding tax concession
• An associated ship lessor or ship leasing manager in respect of its activities that generate income entitled to the 0% tax rate under the existing ship leasing tax regime.	0% tax rate
• An associated ship leasing manager in respect of its activities that generate income entitled to the 8.25% tax rate under the existing ship leasing tax regime; • An associated shipping principal (for example, a ship lessor or ship leasing manager) that is subject to the 16.5% tax rate (see the anti-tax arbitrage rule discussed below); or • An unrelated shipping principal.	8.25% tax rate
• A connected ship operator in respect of its ship operation activities that generate income entitled to a tax exemption under section 23B of the Inland Revenue Ordinance (IRO).	Tax exemption

> **The proposed concessions would help develop a more vibrant maritime ecosystem**

3) The substantial activity requirements

- The ship agent, ship manager or ship broker must employ at least one full-time qualified employee, and incur at least HKD 1 million ($130,000) of annual operating expenditure for carrying out the core income generating activities (CIGAs) in Hong Kong SAR.
- The CIGAs can be outsourced to a group company and, in this case, the employees of and the operating expenditure incurred by the group company would be considered if certain conditions are met.
- The qualifying activities must be carried out or arranged to be carried out by the ship agent, ship manager or ship broker in Hong Kong SAR.

The anti-avoidance provisions

1) The main purposes test

The proposed tax concessions would not apply if the main purpose, or one of the main purposes, of an arrangement entered into by the ship agent, ship manager or ship broker is to obtain a tax benefit under the IRO or a tax treaty.

2) The anti-tax arbitrage rule

The tax deduction for service fees paid by an entity that is subject to the full-profits tax rate to a connected qualifying ship agent, ship manager, or ship broker that is subject to the half-rate would be reduced by reference to the amount of tax saving obtained by the service fee recipient.

3) The arm's-length principle

Transactions entered into between a qualifying ship agent, ship manager, or ship broker and its associates in connection with the qualifying activities that are not on an arm's-length basis would be subject to transfer pricing (TP) adjustments.

Our observations

We welcome the proposed concessionary tax regime for various high-value added maritime services in Hong Kong SAR. It would help develop a more vibrant maritime ecosystem and consolidate Hong Kong SAR's position as an international maritime centre, which is in line with its economic development strategies, as set out in the 14th National Five-Year Plan of the People's Republic of China (PRC).

For further comments on the proposed tax regime, along an overview of the similar tax incentives in Singapore, please see KPMG's Hong Kong SAR Tax Alert.

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NEW ZEALAND

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New Zealand launches OECD "Pillar Two" consultation

Many will be aware of the ongoing OECD proposals aimed at reducing incentives for aggressive international tax planning by multinational enterprises and harmful tax competition between jurisdictions. Most recently, the OECD-sponsored "Inclusive Framework" has formulated a two-pillar solution to address changes and tax challenges arising from the digitalisation of the global economy.

In May of this year, the New Zealand Inland Revenue released an officials' issues paper ("Officials' Paper") that provides the basis for consultation on whether New Zealand should adopt the OECD's Pillar Two initiative and how these rules could apply to multinational corporate groups ("MNEs") headquartered or operating in New Zealand. The default position is that an MNE would fall within the scope of the rules if its annual turn-over exceeds €750 million in two of the last four years.

Pillar Two comprises two main rules, being the Income Inclusion Rule ("IIR") and the Undertaxed Profits Rule ("UTPR"), the purpose of which is to ensure that "in-scope" MNEs pay at least 15% tax on their income in each jurisdiction where they report income. Although the Model Rules for the IIR and the UTPR have been formulated, each jurisdiction will implement the rules independently through domestic legislation.

New Zealand has signalled its commitment to the OECD proposals and endorsed the two-pillar solution, but this endorsement is not binding and the Government has not officially decided to adopt either Pillar One or Pillar Two. A unilateral New Zealand specific "digital services tax" has not been ruled out.

The Officials' Paper details the complexities involved with the implementation of Pillar Two and its impact on MNEs doing business in New Zealand.

One interesting aspect in that regard is the potential interaction of Pillar Two initiatives with New Zealand's imputation system. The purpose of Pillar Two is to impose additional tax on MNEs where they have been deemed to have under-paid tax on overseas income. This poses certain policy challenges in New Zealand for imputation purposes given the additional tax imposed may strictly relate to foreign income.

The New Zealand imputation system reflects the policy that income earned through a company should ultimately be taxed at a shareholder's marginal rate. However, imputation credits are confined to income tax paid in New Zealand and are not recognised for foreign income tax paid as that has no benefit to New Zealand in the form of Government funding.

Although the imposition of tax under Pillar Two, particularly the IIR, is technically a New Zealand tax that would benefit the New Zealand economy, the Officials' Paper identifies certain arguments against recognition of imputation credits in these circumstances.

First, the IIR is an attempt to correct insufficient tax being paid in a country outside New Zealand. Providing imputation credits would be against the objective of the Model Rules to provide a "level playing field" among all jurisdictions and to avoid distortions. The perceived risk is that the imposition of the IIR would be unwound on distribution of profits to shareholders. There is also a risk of incentivising companies with a substantial New Zealand shareholder base to migrate to, and pay tax in, New Zealand rather than overseas.

Second, the Officials' Paper also discusses whether the availability of imputation credits would mean that the IIR imposed by New Zealand would not be recognised under Pillar Two as a qualified IIR. This would be due to the credits being considered a "benefit" being provided in relation to the IIR. This would potentially expose New Zealand headquartered MNEs to the UTPR in other jurisdictions which would be unacceptable for New Zealand as the MNEs

> **One interesting aspect is the potential interaction of pillar two with New Zealand's imputation system**

would still be subject to New Zealand's IIR in respect of their worldwide income.

There is also a question here as to whether imputation credits should be considered a "benefit" in the relevant sense. While that may strictly be the case on a literal interpretation, arguably imputation credits that arise commensurately with the top-up tax paid under the IIR are more a mechanism to prevent double taxation rather than a "benefit" of the type that the Model Rules are concerned with.

The Officials' Paper concludes by proposing that tax paid in New Zealand under the new rules should not give rise to an imputation credit.

We now wait to see how these proposals develop further through the consultation process and what recommendations will ultimately be made by Inland Revenue Officials to the Government. The proposed implementation timing is tight and the expectation is that, if New Zealand does decide to implement the rules, a Bill will be enacted in 2023 following a comprehensive consultation process.

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SINGAPORE

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Singapore announces end to withholding tax concessions

Generally, payments made to non-residents for services rendered in Singapore are subject to withholding tax in Singapore under section 45A(1) of the Income Tax Act 1947 (2020 Revised Edition).

The withholding tax rate is 17% on the gross service fee if the payment is made to a non-resident person who is not an individual. However, this may be reduced or relieved if the non-resident is a resident of a jurisdiction with which Singapore has a Double Tax Agreement (DTA), subject to the conditions in the relevant tax treaty.

The withholding tax of 17% on the gross service fee is not the final tax. If the non-resident company wishes to claim deduction for the expenses incurred in deriving the service income, it must submit the certified accounts and tax computation to the Inland Revenue Authority of Singapore (IRAS) for examination.

Service fees paid to a professional firm, or professionals and public entertainers who are individuals, are covered by separate provisions and are outside the scope of this discussion.

There are two administrative concessions, as detailed below.

Administrative concession for cost reimbursement made to a related party

Where the payment is made on a cost reimbursement basis (i.e. without a profit element) to a non-resident related party for services rendered in Singapore under a cost-pooling arrangement, and the cost-pooling conditions under the IRAS e-Tax Guide Transfer Pricing Guidelines have been satisfied, withholding tax is not applicable.

The concession also applies to a situation where the non-resident related party is the head office of a Singapore branch.

The IRAS has announced that the administrative concession is only applicable for cost reimbursements liable to be paid on or before October 31 2022, after which the administrative concession will be withdrawn.

Withholding tax will be applicable to any cost reimbursement payment liable to be made on or after November 1 2022 to a non-resident related party, if the services are rendered in Singapore.

Administrative concession for reimbursement of accommodation, meals, and transportation expenses

Withholding tax is not applicable to the reimbursement of accommodation, meals, and transportation expenses (including airfares) made to a non-resident company for its employees to travel to Singapore to provide services.

This is provided that the payer can obtain a detailed breakdown of the expenses showing that the expenses were reimbursed at the actual costs incurred, without any mark-up or profit element.

> "Tax treaties may reduce or relieve the withholding tax burden borne by non-resident companies"

The IRAS has announced that the administrative concession is only applicable for reimbursements liable to be paid to a non-resident company on or before October 31 2022, after which the administrative concession will be withdrawn.

Withholding tax will be applicable at 17% to any cost reimbursement of accommodation, meals, and transportation expenses liable to be paid on or after November 1 2022 to a non-resident company.

Take-aways

With the withdrawal of the withholding tax concessions above, all payments made to non-resident companies, apart from Singapore branches of non-resident companies, for services rendered in Singapore will be subject to withholding tax on or after November 1 2022 unless there is a specific incentive to exempt such payments from tax. However, tax treaties may reduce or relieve the withholding tax burden borne by non-resident companies, provided the conditions for tax treaty relief are satisfied.

If tax treaty relief is available, the non-resident company (that is, the recipient of the service fee) should provide its Certificate of Residence to the local payer. This should be passed on to the IRAS to substantiate that it is a resident of the tax treaty country and qualifies for the treaty benefits.

As any penalties for non-compliance will be imposed on the payer, Singapore businesses should review any service contracts with non-resident companies to ensure proper compliance under withholding tax rules.

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McDonald's court settlement makes case for TP reviews

The fast-food company's tax settlement with French authorities strengthens the need for businesses to review their TP arrangements and documentation.

McDonald's may have settled its tax dispute in France, but the example shows the importance of consistent reviews of transfer pricing arrangements and documentation, according to tax directors.

Leanna Reeves

"We advise companies to do an annual review, so that it aligns with the intellectual property licensing, justify the pricing on that basis, and the evidence to show that," says Ivan Hanna, partner at law firm LCN Legal in London.

"All of that needs to be tied together. If you have decent documentation and words to back up, then there could be much more sensible conversations with tax authorities," he adds.

Hanna considers incorrect TP documentation to be "even worse" than incomplete data.

A significant portion of McDonald's France's profits was moved abroad, and royalties were increased from 5% to 10% in 2009. The transactions concern royalties that had gone through a permanent establishment (PE) in Switzerland and a Luxembourg entity.

The US fast-food company agreed to pay €1.25 billion ($1.31 billion) to the French tax administration following an investigation into its TP arrangements for the years 2009 to 2020. This settlement resolved allegations that the company engaged in tax evasion.

Documents seized during the preliminary investigation showed that the amount of royalty fees doubled. The company sought to justify this by reference to the rise in profits of McDonald's France and the corresponding increase of the amount of tax due.

The investigation questioned the economic substance of the Luxembourg affiliate, which confirmed the lack of taxes paid by the McDonald's Europe franchise in Luxembourg, Switzerland and the US.

Corporations need robust documentation to justify their pricing and to find a balance between efficiency and compliance. This is crucial to understand the value change within inter-company agreements and where the value has been generated, particularly for IP and royalties.

Consistency and transparency

Christian Kaeser, global head of tax at Siemens in Munich, says that while corporations can still face a dispute with documentation in place and prices being within range, "consistency and transparency" remain key parameters.

Evidence on commercial rationale for inter-company terms, especially, must be documented. This again includes IP, royalty fees, and licensing of IP.

Hanna says that this key message comes time and time again. "Either there is no documentation to justify an allocation of risk or TP, or insufficient documentation that does not match what the TP is saying."

Multinational groups have faced similar charges to McDonald's when they have deviated from the terms of legal agreements or change the terms of intra-group loans.

Referring to the fast-food chain's settlement, Hanna says the document needed was "completely absent" and tax authorities could not find "any justification at all for the changes".

A group tax director at a French multinational enterprise says their company has recognised the need for a robust TP policy following the McDonald's settlement.

The corporation has decided not to implement trademark royalties due to a concern that it could initiate further discussions with tax authorities.

"We prefer to avoid that," says the group tax director. "The environment is changing the way we are doing things.

"We are trying to strengthen the TP documentation, making sure the subsidiaries are documented, to make sure we capture the new business organisation – which is sometimes complicated to have the information," adds the tax director.

The company is also regularly reviewing its TP arrangements to ensure the pricing is still appropriate and fits within the business.

However, the ever-changing nature of TP makes the process challenging, as well as having teams in different countries.

"It can be difficult to assess where the economic ownership is, to implement the proper flows, and document it. It's difficult to explain to tax authorities where the IP is," explains the group tax director.

Towards more security

Some tax directors claim corporations could mitigate the risk of tax disputes by building more efficient security models and relying more on strategies such as dispute prevention methods.

This could include advance pricing agreements (APAs), but this is just a starting point.

Raphael Coin, founder of the law firm Affidavit-avocat in Paris, says having a "pre-damage tool" would enable businesses to send the right message to foreign investors and lower the risk of a fine.

"We need something to protect groups against that type of assessment," he says. "The advance pricing agreement – or whatever process – should be boosted. More tax dispute resolution methods being more accessible, with more resources."

Tax authorities may consider adopting security models to collect more money rather than pursuing a multinational group at once.

"An agreement costs less money to the state," says Coin.

Michael Beard, senior tax manager at business advisory firm Evelyn Partners in London, says businesses would benefit from certainty within the tax agreements of their TP.

It can take a long time to secure and implement an APA. Sometimes the APA process takes so long that the regulations change before the policy is approved.

Clément Coirault Quinquet, group head of tax at Technicolor in Paris, says that APAs are useful tools but are also "complicated and time-consuming".

Companies with bilateral APAs need to have conversations with other jurisdictions, which can take a lot of time and lead to surprising results.

"I'm not sure APAs are the best tool," says Quinquet.

Some tax directors prefer different tax dispute resolution methods such as mutual agreement procedures (MAPs). Yet some tax questions can only be solved through litigation in national courts.

A cultural difference

The McDonald's settlement has reminded businesses of the French administration's sceptical attitude to TP. However, the issues raised by the settlement are far from unprecedented.

The landmark decision of the French Supreme Court in December 2020 around PE issues, which involved digital company Conversant, shows that the French tax authorities are more sceptical when it comes to TP.

"The best thing to do is to look at what is the practice of the tax authorities in the jurisdictions involved. In Germany, they are very aggressive. Even if you have good documentation in place, you cannot be sure what they'll do," says the French group tax director.

"Look at what the trends are, what will happen if we go to court, whether we will have to negotiate or adapt," adds the speaker.

Corporations that adapt to the changing tax landscape and put in place local policies could further mitigate the risk of disputes.

"Even if the rules are derived from the OECD, every country has a different approach. Some are more flexible and rely on the documentation that you have. Canada and New Zealand are countries where it's easier to justify TP," explains the group tax director.

After the COVID-19 pandemic, the tax authorities are seeking extra revenue to fill in the tax gap left over by emergency spending. McDonald's paying a settlement of €1.25 billion to the French tax authorities is a significant sum given the economic climate.

Beard says areas such as TP, in particular, will be on the radar of tax authorities. TP has developed into a significant number of audits over the past years. This has only been strengthened by the importance of intangible properties within the scale of cross-border licensing.

The OECD's BEPS project also initiated the trend, according to Quinquet. "It's at the heart of everything you do. Because of BEPS, things have changed massively – we've seen audit teams in TP, and tax authorities have improved their knowledge.

"In the case of McDonald's – there is a Swiss dimension and a US dimension. The public transaction will add extra pressure to deliver the pillar one and pillar two agenda," he adds.

The McDonald's settlement can serve as a reminder to corporations to review their TP arrangements to ensure all pricing is adjusted and in line with the arm's-length principle.

Any mismatch could lead to a large tax bill, which could have been avoided if the right documentation had been in place. Prevention is always better than cure.

FRANCE

Sumerson

 

Nicolas Duboille and Clément Riccio

French Supreme Court clarifies company residence relating to DTT benefits

The decision of the French Administrative Supreme Court (Conseil d'État) demonstrates the subtleties of interpreting double tax treaties (DTTs) when it comes to the legal concept of residence for entitlement to treaty benefits.

The cases No. 446664 and No. 443018 clarify the situation with regard to the companies *Société Cegid* and *Société Observatoire d'économie appliquée*, which were subject to a hybrid fiscal regime leading to non-taxation.

Legal background in French tax law

Tax treaties generally refer to domestic law when it comes to characterising a taxpayer's residence status. Under Article 4 of the OECD Model Tax Convention, being treated as a taxpayer in a contracting state is not sufficient for qualifying as a resident in such a state.

Instead, it is necessary that the tax liability results from a personal link (such as domicile, residence, place of management, or another criterion of a similar nature) between the taxpayer and the relevant contracting state.

Over the past ten years, the Conseil d'État has built complex case law on that issue, in the light of the main object of the DTTs, which is the avoidance of double taxation situations. Under this case law, in addition to the above-mentioned personal link criterion, the taxpayer must not be "structurally exempt".

This means that, apart from some DTTs concluded by France with jurisdictions that do not levy any income tax, a resident under domestic tax law but entirely tax-exempt "by virtue of its status or activity" cannot claim the benefit of tax treaties concluded by the French Republic. This was confirmed by the Conseil d'État in cases No. 371132 and No. 370054 on November 9 2015.

In the event of partial exemptions, the Conseil d'État is more lenient, stating: "The scope of the tax liability to which a taxpayer is subject in that State is, in itself, irrelevant to the characterisation of the resident status." (Conseil d'État, June 9 2020, No. 434972*)*.

A hybrid offshore regime brought before the *Conseil d'État*

This issue of residence for DTT benefits arose in the context of a hybrid tax regime that was applicable in Tunisia to specific companies called, under Tunisian law, "totally exporting companies".

On the one hand, those companies were taxable in Tunisia only with regard to the profits derived from domestic sales, while profits derived from sales realised outside of Tunisia were excluded from the taxable basis. Pursuant to this hybrid offshore regime, if a company incorporated in Tunisia was operating sales only to clients situated abroad, it never had to pay corporate income tax in Tunisia.

Nevertheless, contrary to many other offshore tax regimes, Tunisian law granted the entities that chose this regime the possibility to carry out domestic transactions, the profits of which were subject to Tunisian corporate income taxation (CIT). As a result, this regime, in itself, still implied a potential risk of double taxation.

On the other hand, those "totally exporting companies" were considered, in any case, as non-resident when at least 66% of their share capital was held by foreign or non-resident individuals or legal persons.

This hybrid offshore regime was modified in 2014, with the introduction of a reduced CIT for offshore profits at the rate of 10%, later increased to 15%. Tunisian finance bill for 2021 decreased the standard Tunisian CIT rate from 25% to 15%. Thus, removing any preferential tax regime on offshore profits.

In the cases submitted to the Conseil d'État, at the time, the Tunisian "totally exporting companies" only realised export transactions and did not pay any corporate income tax in Tunisia.

It was notably held that there was no legal provision prohibiting the companies from carrying out local transactions and, consequently, forcing them to only perform transactions on the export market, which is CIT-exempt. Such situations, even if the companies were not carrying out any local taxable profits, still involve a double taxation-risk.

Furthermore, an essential point was raised by the Advocate General of the Court ("Rapporteur public"): the companies tax exemption arose from a taxable basis deduction and not from a taxpayer status or a territoriality rule. As such, from a statutory standpoint, these Tunisian entities were falling within the scope of Tunisian CIT.

As a result, following the opinion of its Advocate General, the Conseil d'État concluded that the companies were residents within the provisions of the France-Tunisia tax treaty and could claim double taxation relief.

The Conseil d'État may have come to a different conclusion if the French tax authorities had argued that one of the companies could be considered as a non-resident under Tunisian law regarding its non-Tunisian shareholding (the 66% criterion mentioned above).

What can we learn from this decision?

A partial and temporary tax exemption regime, leading to a cyclical absence of income taxation, does not hinder, in itself, the characterisation of the resident status. Particularly if a potential double taxation remains.

Finally, it is crucial to keep in mind that, in the case of double non-taxation situations due to treaty provisions, such situations could fall within the scope of Article 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) and Article 7 (Prevention of Treaty Abuse) of the OECD's Multilateral Convention (MLI). In the case at hand, it has been noted that Tunisia has not yet ratified the MLI.

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LUXEMBOURG

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Transfer pricing considerations for outsourcing arrangements in the financial services industry

Financial services providers are increasingly using related and unrelated parties to undertake certain activities previously performed in-house to reduce costs and enhance efficiency. Due to the risks and challenges of outsourcing arrangements, regulators have set precise guidelines to ensure financial institutions have proper governance in place.

The European Banking Authority (EBA) issued its guidelines on outsourcing (EBA/GL/2019/02), which different EU regulators have adapted further and implemented locally. This is especially the case for the Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg, which recently published Circular 22/806 on outsourcing arrangements (circular).

This article addresses the main transfer pricing (TP) implications of intragroup outsourcing activities.

The circular

While the circular implements the requirements of both the EBA guidelines and the European Securities and Markets Authority (ESMA) guidelines on outsourcing to cloud service providers, it also makes specific distinctions. The circular's key features are as follows:

- Personal scope: While the EBA guidelines only apply to credit institutions, investment firms, and payment and electronic money institutions, the circular's widened scope includes other professionals in the financial services industry and certain entities—including their respective branches—that perform information and communications technology (ICT) outsourcing. The entities covered are defined as "in-scope entities."
- Objective scope: The circular provides detailed rules for in-scope entities that engage in outsourcing arrangements. These include:
  - General principles relating, inter alia, to the adoption of appropriate oversight, monitoring, and auditing of outsourcing arrangements, the responsibility of the management body, etc.; and
  - Rules to ensure sound internal governance for planning, implementing, monitoring, and managing outsourced activities relating, among others, to contractual requirements.
- Effective date: The circular enters into force on 30 June 2022; thus, in-scope entities must ensure that any outsourcing arrangements reviewed, amended, or entered into comply with the new requirements as from this date. Existing outsourcing arrangements must be aligned with the new provisions no later than 31 December 2022.

TP implications

It is important to note that the circular does not apply only to services outsourced to third parties; its principles and requirements apply equally to arrangements between related parties. Chapter 3, "General principles governing outsourcing arrangements and intragroup outsourcing," states that intragroup outsourcing is no less risky than outsourcing to an uncontrolled entity. Therefore, intragroup outsourcing "is subject to the same regulatory framework and conditions as outsourcing to service providers outside the group." The circular further requires that in-scope entities set all the conditions for intragroup outsourced services at arm's length.

To fulfill this requirement, in-scope entities must carefully consider the general principles of the OECD TP guidelines (i.e., perform an accurate delineation of the transaction, a functional and risk analysis, a comparability analysis, etc.) and local regulations.

When setting the contractual terms at arm's length, entities must give special consideration to the "parties' financial obligations" and select an appropriate TP method, depending on the outsourced services' economically relevant features.

While entities can explicitly reference a TP method and arm's length remuneration in the "parties' financial obligations," the circular does not expressly require this *per se*. Instead, entities often make broader reference to the applicable TP policy—supported by the relevant documentation—in the intragroup outsourcing arrangements. This allows for greater flexibility (e.g., when transfer prices are revisited) while remaining fully compliant with the circular (to the extent, of course, that transfer prices are at arm's length).

This can prompt additional questions for in-scope entities, including:

- How can we price the services to ensure we comply with the arm's length principle?
- How should we address potential group synergies in the pricing?
- Do additional considerations apply if branches are involved?
- How can we reflect and disclose the pricing policy in the agreements?
- Should we remunerate the outsourced services' oversight function? If so, how?

Conclusion

Although financial services providers generally should expect scrutiny of tax matters, primarily from tax authorities, the risk of regulators challenging TP-related aspects—in particular, the absence of the parties' financial obligations—regarding intragroup outsourcing arrangements during audits cannot be excluded.

Therefore, in-scope entities must consider the relevant TP implications and have proper TP documentation and policies in place to ensure that they comply with the arm's length principle, minimizing the potential risk of tax and regulatory challenges.

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NETHERLANDS

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DAC7 adds reporting obligations for EU digital platform operators

On March 22 2021, the Council of the European Union adopted Directive 2021/514 amending Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7). DAC7 introduces a new reporting obligation for digital platform operators that conduct business in the EU.

In addition, the capabilities of exchange of information (EOI) between EU member states is enhanced. It is anticipated that DAC7 will become effective from January 1 2023, making it mandatory for digital platform operators to report information on the sales of certain types of goods and services on their platform.

Digital platform operators that fall under the scope of DAC7

The obligations under DAC7 apply to a broad range of digital platform operators:

- Those that operate a digital platform that is accessible to users and sellers for the sale of goods and certain types of services. (The definition of platform encompasses both websites and mobile phone applications);
- Those that have a legal or commercial presence in EU; and
- Those whose platform is used by sellers for carrying out a 'relevant activity'.

The reporting obligations of DAC7 only apply to (i) platform operators that are tax-resident or established in the EU (either by incorporation or permanent establishment), and (ii) foreign platform operators that perform commercial activities in the EU but do not have any legal or tax presence in the EU.

Platform operators only have a reporting obligation if their platform is used by sellers for carrying out a relevant activity. These sellers are known as reportable sellers. A relevant activity is defined as carrying out the following activities:

- The rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces;
- A Personal Service (time- or task-based work performed by one or more individuals, carried out at the request of a user, either online or physically

offline after having been facilitated via a platform);
- The sale of goods; or
- The rental of any mode of transport.

Digital platform operators falling under DAC7 rules are qualified as 'reportable platform operators'.

Digital platform operators established in a jurisdiction outside the EU which has reporting obligations equivalent to the DAC7 rules are exempt from reporting under DAC7. The European Commission will publish a list of jurisdictions that it considers to have equivalent reporting obligations.

Reporting obligations under DAC7

Reporting platform operators first need to obtain information from the sellers active on their platform to identify which of them qualify as reportable sellers. The reporting platform operator then needs to verify whether the information provided by sellers is reliable and correct.

Once a reporting platform operator has identified the reportable sellers, it must collect and provide the following information to the competent authority of the member state in which the reportable seller is resident:

- Sufficient information on reportable sellers so that local authorities can identify them. This includes the full name of the seller, the primary address or place of establishment, the tax and VAT ID numbers, and business registration number; and
- The income earned by reportable sellers by using the platform, as well as other relevant information. This could include a description of each relevant activity, and the fees or commissions charged to reportable sellers. Where the reportable seller leases immovable property through the platform, the reporting platform operator needs to provide information that allows the authorities to identify the immovable property (such as the address, property registration number, and type of property listing) and the number of days for which the property was rented.

Administrative requirements and sanctions

The reporting platform operator needs to inform the relevant authority before January 31 of the year following the calendar year in which the seller is identified as a reportable seller. The reporting platform operator must keep records for at least five years (but not more than 10 years) following the end of the reportable period.

In cases of non-compliance with DAC7, reporting platform operators will be subject to sanctions that are similar to the sanctions imposed for violations of DAC6. Although every EU member state is required to impose effective and deterrent sanctions, there is no uniform set of sanctions across the EU.

This implies that sanctions may vary amongst EU Member States, but penalties should be deterrent and effective in each EU member state. For example, in the Netherlands, reportable platform operators can be subject to a maximum penalty of €900,000 ($950,000) or criminal prosecution for non-compliance with the DAC7 rules.

Concluding remarks

With the proposed entry into effect of DAC7 on January 1 2023, digital platform operators doing business in the EU should assess whether they fall under the scope of DAC7. If the reporting obligations of DAC7 apply to a platform operator, it is important to set up a process for collecting relevant information from the reportable sellers that are active on the platform already in 2022.

This process should include:

- An assessment of the exact activities of reportable sellers;
- The collection and verification of the relevant data from reportable sellers; and
- Determining a process for reporting this information to the local tax administration.

The information reported may subsequently be subject to the automatic exchange of information (AEOI) between tax administrations. Non-compliance with these new reporting obligations will lead to substantial penalties.

The earliest reporting deadline to bookmark likely will be January 31 2024 (for the calendar year 2023). Furthermore, platform operators should also determine whether changes to their IT systems and technology are required to allow reporting under DAC7.

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NORWAY

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Norway proposes cash flow tax on petroleum

On April 8 2022, the Norwegian Ministry of Finance proposed significant changes to the tax rules governing the Norwegian oil sector. The proposed rules were largely in line with the proposal that was circulated for public consultation by the former Norwegian government in September 2021. The proposals are expected to be passed and to enter into force from 2022.

Under today's tax regime, the Norwegian oil sector is subject to both ordinary corporate income tax (CIT) at 22%, and a special petroleum tax with a rate of 56%. The latter only applies to companies engaging in the pipeline transport, exploration, and production of petroleum. It is a resource rent tax that is conceptually similar to the one that applies to the Norwegian hydropower industry.

Both the CIT and the special petroleum tax are profit-based. The basis for calculating the taxes is income minus costs in the petroleum business. However, investment-based deductions ("uplift") in addition to straight-line depreciation applies for the calculation of the special petroleum tax. The government is of the view that this deduction can give companies incentives to make investments that are not socioeconomically profitable.

Under the proposal from the Norwegian Ministry of Finance, the special petroleum tax is therefore converted into a neutral cash flow tax, where the companies can make immediate deductions for expenses incurred. The standard CIT that the companies are also subject to will continue to apply, but with some modifications.

Main changes to the Norwegian petroleum tax regime

When calculating the special petroleum tax going forward, 100% of the expenses relating to pipelines and production equipment or appliances will be deductible the year they are incurred, rather than being depreciated on a linear basis over a period of six years, as is the case today. The uplift deduction will also be discontinued.

This change will apply to investments carried out from 2022 onwards. The tax value of losses and unused uplift incurred during the income years 2002-2019 will be repaid as part of the tax settlement for the 2022 income year (in other words, in 2023).

When calculating the special petroleum tax, a deduction will be made for calculated CIT on ordinary income. The calculation of CIT on ordinary income will be based on the same costs and income that are included in the base for the special petroleum tax, but with some modifications. For example, the operating assets that – according to the incoming rules – will be immediately deductible in the base for the calculation of the special petroleum tax will still be depreciated for the purposes of calculating CIT on ordinary income.

Since a calculated CIT on ordinary income will be deductible from the basis for the special petroleum tax, the tax rate for the special petroleum tax is technically increased to 71.8% from 56%. The reason for this is that the current effective tax rate of 78% could not be sustained if it was possible to deduct CIT on ordinary income at 22% and if the special petroleum tax rate remained at 56%.

The system for refunding exploration losses and wind-down losses is also discontinued. Instead, the tax value of new losses (both exploration losses and other losses) in the special petroleum tax is refunded at a rate of 71.8%. The general loss refund will be paid annually, as part of the ordinary income tax settlement.

The current rules allow for deductions for interest costs based on an allocation formula between interest-bearing debt and depreciated tax values when calculating the special petroleum tax. These rules are retained. However, the Ministry of Finance expects the deductions to lapse within a few years when old investments and tax bases are fully depreciated.

Considerations

The Ministry of Finance expects the new rules to improve the liquidity of companies subject to the rules, ensure socioeconomically viable investments, and provide the oil sector with stability and predictability. However, the taxation of the Norwegian oil sector is likely to remain politically controversial.

Although it is likely that the new rules will benefit the liquidity of companies with commercially viable discoveries, some companies may be adversely affected. The new rules will have a negative impact on exploration companies without commercially viable discoveries, as losses under ordinary income will not be paid out as under the current rules. Only 71.8% of the costs will be refunded, rather than 78% as things currently stand.

Furthermore, companies with costs related to the closure of the business will, in some instances, only receive a refund of 71.8% of the costs. This would be the case for the costs related to the last oil field being closed, if the company does not have any other income in the year of closing and the two years prior.

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POLAND

MDDP

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Poland gets green light for mandatory e-invoicing from 2024

An EU Council decision allowing Poland to introduce a mandatory e-invoicing system has been published in the Official Journal of the EU (L 168/81). The starting date of obligatory e-invoicing in Poland was originally planned for 2023, but has now been postponed to January 1st, 2024.

The derogation is granted for three years, until December 31 2026. It may be extended further, but Poland will still need to prove that this tool led to reducing VAT fraud and abus as well as simplifying VAT settlement for taxpayers.

Aside from Poland, a number of other member states plan to introduce obligatory e-invoicing in the coming years: Germany, France, Denmark, and Belgium. Real time e-invoicing is already operational in Italy, Spain, and Portugal.

It is worth mentioning that Poland is one of the countries that has already implemented a number of measures aimed at fighting VAT fraud, including:

- SAF-T VAT monthly reporting;
- A split payment mechanism;
- A system for the electronic analysis of financial flows (STIR, which detects fraud based on bank transfers and blocks bank accounts when the risk indicator is high); and
- An online fiscal cash register system for monitoring transactions in the retail sector.

Polish e-invoices will be issued and received in real time in a standardised XSD format through a governmental clearing system (the local abbreviation KSeF is often used, which comes from the Polish for 'National System of e-Invoices'). All invoices will be accessible by tax authorities.

This will allow for the more effective prevention and identification of irregularities and errors, which in turn will help to combat VAT fraud and VAT evasion (especially VAT carousel fraud), and to reduce the VAT gap. Therefore, e-invoicing should reduce the number of tax audits and allow the tax authority to focus on real problem areas.

E-invoicing has already been introduced in Poland as of January 1 2022 under a voluntary model. The experience to date shows that not many taxpayers decided to switch to e-invoices, although there are incentives to do so. The main benefit is the shorter period of VAT refund (40 days instead of 60 days). In the current voluntary model, the supplier should receive the purchaser's consent for receiving e-invoices via the KSeF central system.

Remaining questions about mandatory e-invoicing in Poland

According to the Council derogation decision, only entities established in Poland will be obliged to issue and receive standardised e-invoices. This means that foreign companies, even if registered for VAT purposes in Poland, will not fall under mandatory e-invoicing. They will still be allowed to issue and receive standard invoices – in electronic form or even on paper.

At this point, it is not certain whether the mandatory e-invoicing regulation will also cover foreign entities operating in Poland via a fixed establishment (such as a branch). The entities for which the system will be mandatory should be clearly specified in the regulations. No draft provisions have been issued so far in this matter.

In addition, it remains unknown whether invoices for private individuals will be issued in the central e-invoicing system or not. The Ministry of Finance's plan is for the system to cover all invoices in B2B and B2C transactions.

Practicalities of e-invoicing

Businesses will be able to prepare e-invoices in their financial and accounting software and send them to the KSeF system via an application programming interface (API) – with relevant authorisation and authentication. Taxpayers can also use an online application prepared by the Ministry of Finance, which allows companies to issue and receive invoices one by one.

Each invoice will be validated by the government KSeF system from a technical perspective. In other words, the KSeF will check the invoice is compliant with the XSD schema and that the person or entity is authorised to issue an invoice. After verification, the invoice will be assigned a unique number. In cases where the invoice cannot be approved in the KSeF, the invoice will be rejected by the system.

There is a major issue for large companies issuing large numbers of invoices to be sent to the central system in batches. The verification may take a few days and, if one invoice fails verification, the whole batch of invoices will be rejected. Moreover, the system will not give any hint as to which invoice was incorrect.

Another practical issue is the lack of an option to add attachments to invoices issued in the KSeF system. The solution in this case may be to apply an external IT tool, a platform connecting the company's system with the central KSeF system, where the attachments can be added to the e-invoices and transferred to the client.

The new e-invoicing system is a real revolution in invoicing in Poland. In the future, after the implementation process is successfully finalised, the taxpayers will benefit from the automation of accounting processes and the simplification of tax payments and tax reporting due to standardised invoices. However, the implementation process itself is very complex and time-consuming.

The main challenges of the implementation process

- Switching to KSeF involves IT, financial, and organisational challenges. This is especially the case for businesses that use several different financial or invoicing systems, and that issue multiple invoices.
- The new system requires developing or adapting multiple internal processes and procedures, including verifying invoices before sending them to the KSeF system, monitoring rejected invoices, changes in contracts, an invoices workflow, and methods of delivering invoices to customers who have no access to KSeF (such as foreign businesses or private individuals).
- The implementation of structured e-invoices requires coordinating the work of teams involving IT specialists, finance experts, accountants, tax specialists, and invoice issuing and processing personnel.

Only comprehensive and early planning for the new e-invoicing implementation process will allow companies to properly prepare for upcoming changes. Taxpayers should start to plan now, to ensure they will be ready on time.

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SWEDEN

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Sweden investigates amendments to interest deduction limitation rules

In 2019 the Swedish corporate income tax system was subject to major changes with regard to the treatment of interest expenses. Based on the EU's Anti-Tax Avoidance Directive (ATAD), Sweden introduced a new tax-specific definition of interest expense and interest income, as well as new EBITDA-based rules on general limitations on the deductibility of interest.

In October 2021, the Swedish government appointed a special investigator to review the Swedish rules on interest deductibility, in order to follow up on parts of the new legislation and propose necessary amendments. However, in April 2022, the scope of the investigation was substantially extended to include the targeted interest deduction limitation rules (the targeted rules), among other things.

The targeted rules have been subject to much legal debate as they, in practice, mainly target cross-border arrangements. Within Sweden, groups may generally consolidate through taxable or deductible group contributions (*koncernbidrag*).

However, in January 2021 the question of the Swedish rules' compliance with EU law was finally subject to judgment by the European Court of Justice (CJEU). The CJEU examined whether the 2013 version of the targeted rules could be considered to be in breach of EU law (*Lexel AB v Skatteverket*, C-484/19, referred to hereafter as the Lexel case).

The Lexel case

In the Lexel case, a Swedish company (Lexel) had paid interest on a loan from a French group company. The interest was taxed by the French company at a rate of 34.43% on a consolidated basis (French group taxation) but was offset against consolidated losses within the tax group.

The Swedish Tax Agency (STA) denied Lexel's claim for a deduction of the paid interest based on the targeted rules. According to the STA, the targeted rules should be disregarded if the relevant debt had been incurred mainly for tax reasons. The STA claimed this had been the case.

The CJEU initially concluded that Lexel and the French company would have been able to exchange group contributions, if both companies had been subject to tax in Sweden. Therefore, according to the CJEU, the application of the targeted rules was a restriction of the freedom of establishment. Furthermore, the CJEU found no justification for the restriction.

Notably, the Court held that the provision in the Swedish rules, that the debt should be incurred mainly for tax purposes, was not limited to such wholly artificial arrangements that may justify some restrictive measures. Based on the CJEU's ruling, the Swedish Supreme Administrative Court (SAC) ruled in favor of Lexel in the domestic proceedings (HFD 2021 not. 10).

The Swedish government as well as the STA initially took the view that the CJEU's conclusions in the Lexel case did not apply to the new wording of the targeted interest deduction limitation rule introduced in 2019. This is because the 2019 targeted rules set a higher threshold for the anti-abuse provision ("almost entirely" for tax reasons instead of "mainly" for tax reasons). Therefore, the targeted rules were left out of scope in the government's instructions to the special investigator appointed in October 2021.

However, in December 2021, the SAC ruled that the Lexel case was also applicable to the 2019 rules (HFD 2021 ref. 68). In the light of this, questions have been raised concerning the current targeted rules' compliance with EU law.

Therefore, according to the instructions, the targeted rules should be amended or adapted to comply with EU law. In addition, the investigator should analyse whether there should be an exemption for companies that can exchange group contributions.

Take-aways from the case

The instructions to the committee provide some insight on possible changes. There are several possible outcomes and potential proposals.

The investigator will present the final proposal by November 1 2023. It is not likely that the findings will result in new legislation before the end of 2023, considering the complexity of Swedish legislative procedure. This indicates that the current rules will remain in effect for a considerable time, despite their (at least partial) incompatibility with EU law.

Although we will have to wait for the rules to be amended, it is important to remember the CJEU's statements in the Lexel case and the fact that EU law has precedence over Swedish national law.

Therefore, if circumstances arise that are similar to those in the above case rulings (HFD 2021 not. 10 or HFD 2021 ref. 68), it might be possible to get a deduction for certain intra-group interest payments, even if the wording of the current law might not allow it.

However, as there is not much certainty regarding the exact scope of the case law, we recommend making an open disclosure about such a deduction in the income tax return. This will mitigate the risk of Swedish tax surcharges (*skattetillägg*) if the deduction is not granted.

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