International Tax News

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Welcome

Keeping up with the constant flow of international tax developments worldwide can be a real challenge for multinational companies. International Tax News is a monthly publication that offers updates and analysis on developments taking place around the world, authored by specialists in PwC's global international tax network.

We hope that you will find this publication helpful, and look forward to your comments.

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In this issue

Tax Legislation
Greece

Greece enacts new Income Tax Code

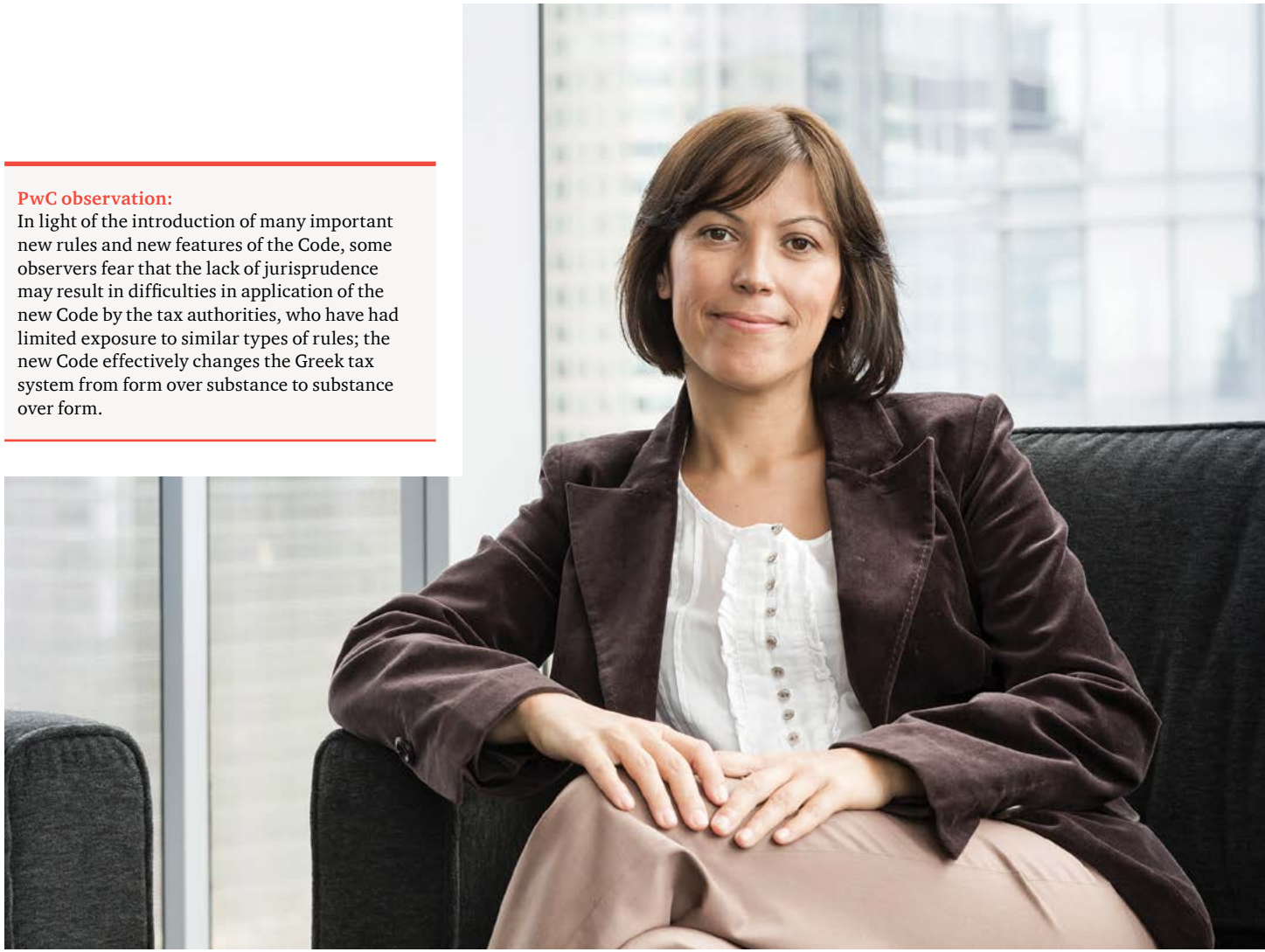
Greece has enacted a new Income Tax Code that will apply after January 1, 2014.

The new Income Tax Code, complemented by a new Tax Code of Procedures and some further changes expected before the end of 2013, is designed to make substantial changes in the Greek income tax environment, and in particular makes radical changes to most aspects of Greek corporate income taxation (CIT). Among the few key provisions remaining unchanged are the 26% CIT rate and the 10% dividend withholding tax (DWT) rate.

The new Code introduces a number of new features such as:

- Controlled foreign company (CFC) rules.
- A capital gains tax (CGT) regime.
- A broader participation exemption for incoming dividends in most parent-subsidiary relationships.
- Replacement of the 3:1 debt-to-equity ratio with interest capping rules (25% on Earnings before interest, taxes, depreciation and amortisation [EBITDA]) and certain maximum interest rate limitations (although not applicable to normal bank debt).
- A general anti-avoidance rule (GAAR).
- Explicit rules tying tax residence of corporations to the place of effective management.
- A new regime for corporate restructurings based on the European Union (EU) Merger Directive (EEC Directive 90/434, as amended).
- A new regime for corporate reorganisations based on the Organisation for Economic Co-operation and Development (OECD) framework on business restructurings.

PwC observation:
In light of the introduction of many important new rules and new features of the Code, some observers fear that the lack of jurisprudence may result in difficulties in application of the new Code by the tax authorities, who have had limited exposure to similar types of rules; the new Code effectively changes the Greek tax system from form over substance to substance over form.



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Portugal

Portugal introduces temporary extraordinary tax credit for investment

The Growth, Employment, and Industrial Development Strategy for Portugal that was approved by the Council of Ministers on May 23, 2013, includes provisions introducing an extraordinary tax credit for investment.

These provisions have been published and entered into force on July 17, 2013.

Key features are as follows:

- The tax benefit applies to taxpayers carrying on commercial, industrial, or agricultural activities, including both Portuguese-resident companies and Portuguese permanent establishments (PEs) of non-resident companies, regardless of their location in Portugal.
- The tax credit can be up to 20% of eligible investments, capped at 70% of the corporation income tax (CIT) due.
- Eligible investment should be made in new tangible fixed assets, non-consumable biological assets, and depreciable intangible assets.
- The maximum amount of eligible investment is 5 million euros (EUR).
- The credit applies only to eligible investments made between June 1, 2013, and December 31, 2013, provided the eligible assets are operating or enter into use by December 31, 2014.
- Any credits that cannot be used in the 2013 tax year can be carried forward for up to five tax years.

PwC observation:
This measure aims to increase private productive investment in Portugal and to foster economic growth.

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Uruguay

Uruguay issues rules on free zone users' activities in Uruguayan non-free-zone territory

Under Uruguay Law 19,109, dated July 23, 2013, the applicability of prohibitions of developing commercial activities by free zone users in non-free-zone Uruguayan territory has been postponed until the enactment of the law that will promote the use of free zones located outside the metropolitan area.

The pending legislation would introduce amendments to free zone law 15,921.

Commercial activities that may not be developed outside free zones are those of a substantive nature, performed by free-zone users or through third parties, involving the sale, promotion, display, delivery of goods and related activities, and collections related to those transactions with respect to goods whose destination is non-free zone Uruguayan territory.

Certain collection and exhibition activities will be permitted under limits and conditions in regulatory provisions yet to be issued.

PwC observation:
This law postpones the applicability of prohibitions of developing commercial activities by free zone users in Uruguayan non-free zone territory. The Uruguayan free-zone regime is used by multinational companies (MNCs) to perform international business from Uruguay.

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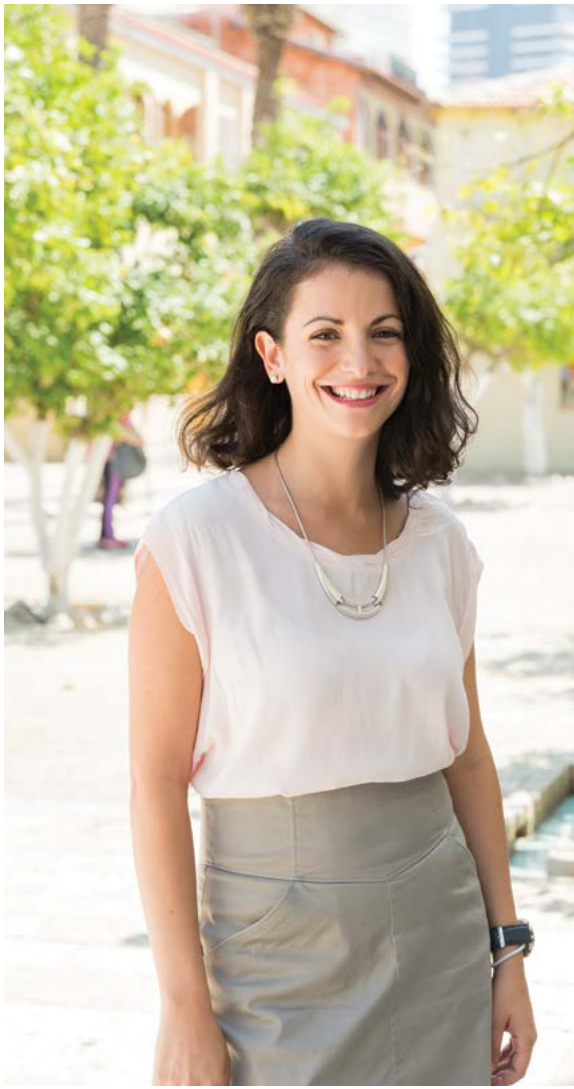


Proposed legislative changes
Canada

Canada releases draft foreign affiliate dumping rules

The Department of Finance (Canada) on August 16, 2013, released draft legislative proposals to amend the foreign affiliate (FA) dumping rules enacted on December 14, 2012.

The FA dumping rules curtail certain transactions involving an investment in an FA by a corporation resident in Canada (CRIC) that is controlled by a non-resident of Canada. A dividend is deemed paid by the CRIC to its foreign parent to the extent of any non-share consideration provided by the CRIC for an investment in an FA. This deemed dividend is subject to Canadian Withholding tax (WHT) (reduced by an applicable treaty). No paid-up capital (PUC) additions are allowed for any share consideration issued by the CRIC in exchange for an investment in a FA.

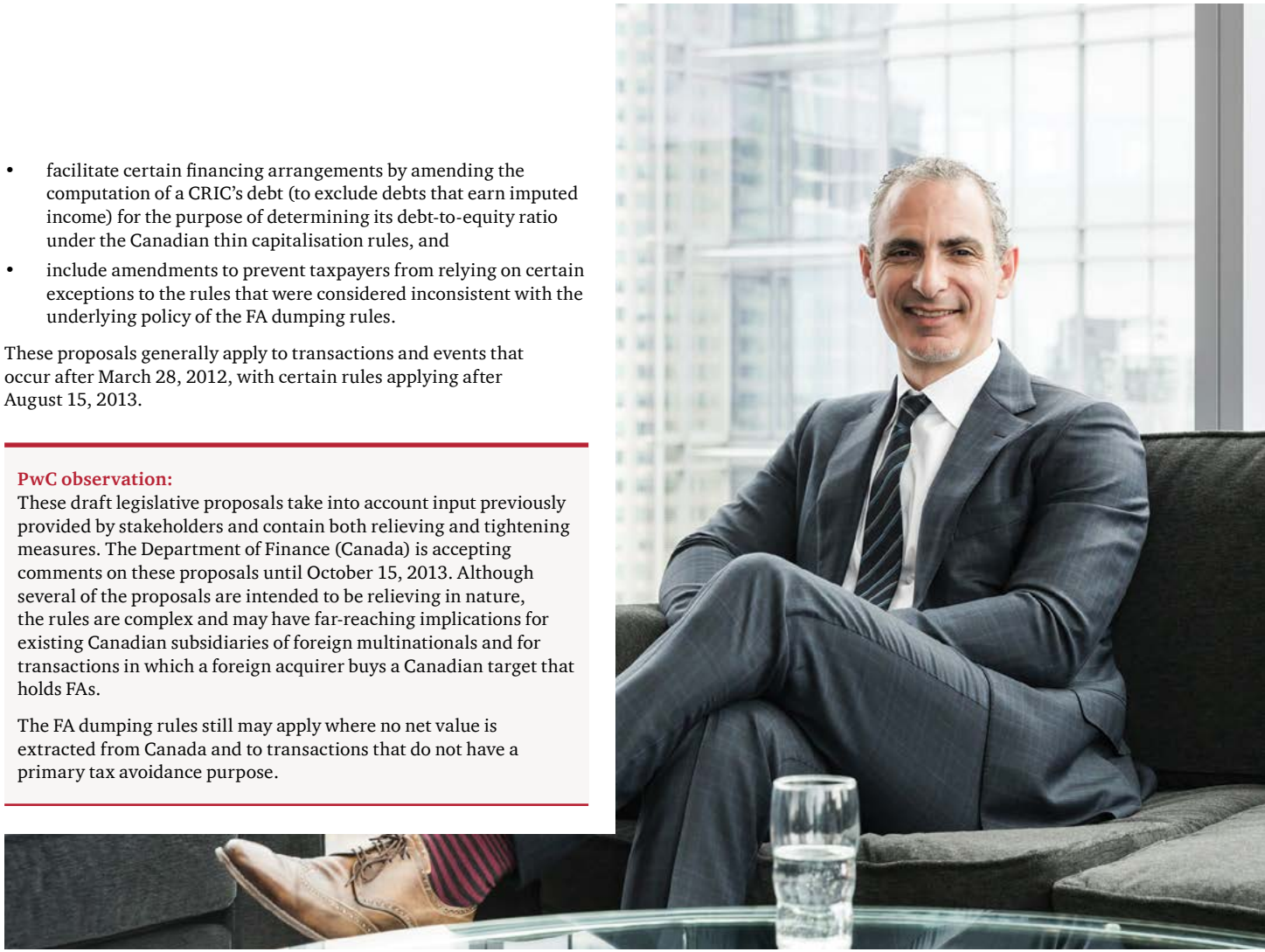
The August 16, 2013, draft legislative proposals would:

- amend the application of the FA dumping rules when a CRIC makes an investment in a FA before the CRIC becomes controlled by a non-resident corporation or a CRIC ceases to be controlled by a non-resident corporation as part of the series of transactions that includes an investment
- extend the rule reinstating a CRIC's PUC, when the CRIC distributes to its non-resident shareholder amounts it has received as interest on or from the repayment or sale of certain debt obligations owed to the CRIC by the FA
- ease compliance requirements by making application of the 'PUC offset' rule automatic
- facilitate certain financing arrangements by amending the computation of a CRIC's debt (to exclude debts that earn imputed income) for the purpose of determining its debt-to-equity ratio under the Canadian thin capitalisation rules, and
- include amendments to prevent taxpayers from relying on certain exceptions to the rules that were considered inconsistent with the underlying policy of the FA dumping rules.

These proposals generally apply to transactions and events that occur after March 28, 2012, with certain rules applying after August 15, 2013.

PwC observation:
These draft legislative proposals take into account input previously provided by stakeholders and contain both relieving and tightening measures. The Department of Finance (Canada) is accepting comments on these proposals until October 15, 2013. Although several of the proposals are intended to be relieving in nature, the rules are complex and may have far-reaching implications for existing Canadian subsidiaries of foreign multinationals and for transactions in which a foreign acquirer buys a Canadian target that holds FAs.

The FA dumping rules still may apply where no net value is extracted from Canada and to transactions that do not have a primary tax avoidance purpose.



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Mexico

Mexican government presents 2014 tax reform package to Congress.

The Executive Branch of the Mexican government on September 8, 2013, presented its 2014 Tax Reform package to Congress.

The package's most important proposals include the following:

- A new income tax law would:
  - (i) eliminate tax consolidation, certain special regimes, and tax benefits applicable to Real Estate Investment Entities (SIBRAS);
  - (ii) impose an additional corporate-level tax on dividends paid by Mexican entities to resident individuals or foreign residents (including foreign corporations) at a rate of 10%;
  - (iii) impose a 10% income tax on capital gains realised in connection with the sale of shares listed on the Mexican stock exchange, which currently are exempt; and
  - (iv) maintain the current 30% corporate income tax (CIT) rate.

No deduction would be allowed for related-party payments abroad that are subject to an effective tax rate less than 75% of the Mexican CIT rate.

- Deductions for tax-exempt salaries and benefits would be limited to 41% of the amounts exempt from tax.
- The existing tax consolidation regime would be repealed effective January 1, 2014. The proposed law provides two options to calculate the deferred tax benefit the deconsolidation would trigger; the income tax associated with the triggering of such deferred items would be payable over a five-year period from 2014 to 2018.
- Taxpayers may elect to apply for a new simplified tax consolidation regime as a substitute for the existing regime. The new regime would allow a three-year income tax deferral period.
- A new more limited definition of 'maquila operation' would be introduced. The new rule would require 90% of total revenues to be derived from exports for existing permanent establishment (PE) protection and other favorable tax rules to apply. This would impose several restrictions on maquiladora structures that have significant domestic sales.
- Foreign residents with 'shelter maquiladora' operations in Mexico would continue to have PE protection for three years. This regime would be reviewed at the end of that period.
- Temporary imports under IMMEX (the maquiladora program) and other similar programs would be taxed at the 16% value-added tax (VAT) rate.
- Sales of goods located in Mexico between foreign residents or between a foreign resident and a maquiladora would be taxed at the regular 16% VAT rate (currently zero rated).
- Maquiladoras no longer would withhold VAT on domestic suppliers, which could have a negative impact on the maquliadoras' cash flow.
- The flat tax and the tax on cash deposits would be repealed.
- The current 11% VAT rate applicable in the border area would increase to 16%.
- To discourage obesity, a specific excise tax of one Mexican peso per litre would apply to soft drinks.
- A new Universal Retirement Pension Law proposal would provide a monthly pension. The unemployment insurance would be funded by a government subsidy and a mandatory employer contribution equal to 3% of salary and benefits.
- The proposed law would repeal the obligation to prepare statutory tax audit reports, but it would introduce an annual tax status report for corporate taxpayers due by June 30 after the calendar year end.
- The tax reform would incorporate a procedure for the Mexican tax authority to impute taxable income and recharacterise transactions in certain cases (i.e. a 'substance over form' provision).
- The tax authorities would have expanded powers for situations in which the taxpayer does not establish business purpose when Mexican taxes have been avoided, specifically when there is insufficient business purpose to justify a quantifiable economic benefit for the taxpayer.
- A fee for mining rights would be charged at the rate of 7.5% of net profits.

The Mexican Congress will debate the provisions of the tax reform package during September and October. The reform is expected to be approved - possibly with amendments - by October 31, 2013. The effective date of a final tax reform law, if passed and published in the Official Gazette, would be January 1, 2014.

PwC observation:
The 2014 tax reform package includes several significant proposals. Multinationals with affiliates or other investments in Mexico should consider and model the potential tax impact of the proposed provisions. Multinationals that file on a consolidated tax return in Mexico should immediately model the impact of a potentially imminent deconsolidation and should evaluate approaches to potentially mitigate any such effects prior to December 31, 2013. Multinationals that are using the maquiladora regime should assess the impact of a more limited regime on their value chain structures. Companies also should assess the potential impact of the new 10% dividend tax from a tax accounting and foreign tax credit perspective.

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Netherlands

Recent developments in Dutch international tax policy

On August 30, 2013, the Dutch government sent a letter to Parliament explaining the position of the Netherlands following recent Parliamentary debates on international tax planning by multinational companies (MNCs).

This letter also announces unilateral measures that should serve to preclude unintended use of the Dutch tax treaties.

The Dutch government reiterates its strong preference for addressing the issues of international tax planning in an international context. The government supports the actions the Organisation for Economic Co-operation and Development (OECD) announced in its Base Erosion and Profit Shifting (BEPS) Action Plan of July 19, 2013, and will contribute actively to the implementation of the action points. The Dutch government further favours a coordinated approach together with other European Union (EU) and OECD member states and emphasises that solutions should be binding on all states such that a level playing field between states and between multinational companies (MNCs) is safeguarded. The Dutch government still considers it appropriate to take some proactive measures regarding some conduit entities ahead of other measures that may be agreed to at a later date in an OECD or EU context.

The measures

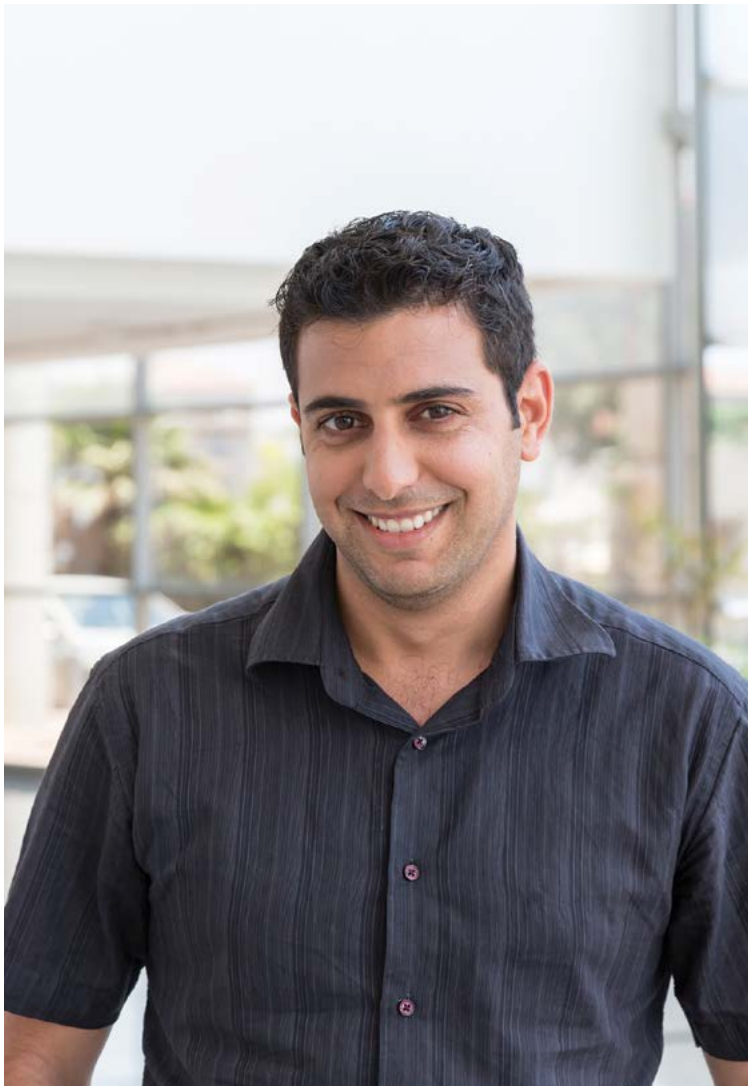
The minimum substance requirements that have been in place for some years already will be codified and companies must account for this substance on an annual basis in their Dutch corporate income tax (CIT) return. If the minimum requirements are not met, the Dutch tax authorities will exchange information with the source countries.

The Dutch tax authorities will further exchange information about the content of Advance Pricing Agreements (APAs) concluded with Dutch resident companies that receive and pass on interest and royalties if the MNC does not undertake more activities in the Netherlands than these conduit financing/licensing activities. In addition, the Dutch ruling team will deal with Advance Tax Rulings (ATRs) and APA requests of Dutch resident holding companies only if there is sufficient substance in the Netherlands (i.e. the minimum substance requirements must be met).

The Dutch debate on international tax planning also addresses the fair treatment of developing countries. To encourage fair treatment, the Netherlands will reach out proactively to developing countries (e.g. various African countries are mentioned) to propose the introduction of anti-abuse measures in the tax treaties concluded with these countries. The Netherlands prefer clear limitation-on-benefits tests to general main-purpose tests.

PwC observation:
The Dutch government has taken a balanced approach by clearly stating its preference for a coordinated multilateral approach while emphasising the importance of having sufficient substance in the Netherlands for Dutch entities.

We believe that MNCs with Dutch resident holding, financing, or licensing companies should review their substance level in the Netherlands, and if necessary, adjust to the new requirements once they are published. We would expect that most of our clients already meet these requirements. These requirements are in line with PwC's global tax code of conduct.



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Portugal

Corporation income tax reform commission presents draft legislation

The Portuguese Commission for the reform of the Corporation Income Tax (CIT), which was appointed in January 2013, on July 30, 2013, presented its draft legislation.

The tax measures proposed by the Commission include the following:

- Progressive reduction of the standard CIT rate (currently at 25%), until it reaches 19% in 2018; under two alternative scenarios the CIT rate would be reduced to 18% and 17%, respectively.
- Elimination of the State Surtax and the Municipal Surtax in 2018; the State Surtax, first introduced as a temporary measure to be applicable until 2014, applies to the taxable profit of Portuguese taxable entities - before the use of tax loss carryforwards - at the rate of 3% on profit between 1.5 million euros (EUR) and EUR 7.5 million and 5% on profit above EUR 7.5 million; the rate of the Municipal Surtax, which varies depending on the municipality, is capped at 1.5% of taxable income before the use of tax loss carryforwards.
- Introduction of a 'participation exemption' regime, in line with those in other preferred holding company locations, with the following key provisions:
  - Dividends received by Portuguese corporate taxpayers from resident and non-resident subsidiaries would be exempt from taxation provided there is a 2% minimum holding percentage (currently 10%), and the participation is held for 12 months or maintained during that period; dividends received from subsidiaries resident in blacklisted jurisdictions or subject to a CIT rate lower than 10% would be excluded from the regime.
  - Capital gains realised by Portuguese corporate taxpayers on the sale of shares or on the liquidation of resident or non-resident subsidiaries would be exempt from taxation provided there is a 12-month minimum holding period, regardless of the percentage of participation (currently, the exemption is available only to Portuguese holding companies (SGPS); as in case of dividends, capital gains derived from subsidiaries resident in blacklisted jurisdictions or subject to a CIT rate lower than 10% would be excluded from the regime.
  - Capital losses on the disposal of participation and financial expenses related to debt raised to acquire participation would not be tax deductible.
- The distributions of profits by tax-resident companies in Portugal to non-resident parents (corporations or permanent establishments [PEs]) would become exempt from withholding tax (WHT), among others, if:
  - The payee holds, direct or indirectly, at least 2% of the share capital (currently 10%) of the payer.
  - The payee/parent company is tax resident in a non-European Union (EU)/European Economic Area (EEA) country other than a blacklisted jurisdiction; a jurisdiction that subjects the parent company to a CIT rate lower than 10%; or a jurisdiction with which Portugal has not concluded a double tax treaty (DTT) that foresees cooperation on tax matters similar to the EU model.
- Introduction of a 'patent box' tax regime for intangibles that would provide relief from taxation for 50% of the income arising from certain patents, models, and industrial drawings.
- Extension to 15 years from the current five years of the period to carry forward tax losses realised in previous tax years, maintaining at 75% the cap of taxable income that could be offset by tax loss carryforwards; the new period would apply to tax losses generated in tax years starting on or after January 1, 2014.
- Reduction to 75% from the currently 90% of the minimum participation to apply for the special group taxation regime.

The draft proposal is available for public consultation and discussion until September 20, 2012. Following discussion and approval by the Parliament, the tax measures are expected to take effect on January 1, 2014. Which measures will be approved, and their final form, are still uncertain

PwC observation:
These measures aim to promote and increase private productive investment in Portugal. Foreign investors should analyse the possible benefits these measures would provide and consider relocating their investment projects to Portugal, because they will, if enacted, increase the competitiveness of the Portuguese tax system and reduce the tax burden on Portuguese and non-resident entities.

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Portugal

Portugal creates Foreign Investors Tax Support Office

The Portuguese Council of Ministers on May 23, 2013, approved a 'Growth, Employment, and Industrial Development Strategy' for Portugal that includes a proposal for the creation of a Foreign Investor Tax Support Office.

The Office, which would operate within the Portuguese Tax Authorities, would work to promote and facilitate contacts and relationships with potential foreign investors.

PwC observation:
These measures are designed to promote and increase private productive investment in Portugal.

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Portugal

EC approves increased tax benefits in Portugal's Madeira International Business Centre

Following a request by the Portuguese Government, the European Commission (EC) has ruled that the proposed amendments to the special tax regime applicable to entities licensed to operate in the Madeira International Business Centre (MIBC) are compatible with European Union (EU) state aid rules.

Under the MIBC special tax regime, licensed entities benefit from a reduced corporate income tax (CIT) rate of 5% on taxable income derived from transactions with non-residents, according to thresholds that depend on the number of jobs created. The MIBC special tax regime currently applies to entities licensed until December 31, 2013, and the respective tax benefits are available until December 31, 2020.

The EC has given a green light to significant increases in the amounts of taxable profit to which the reduced rate will apply, as follows:

Taxable income taxed at reduced rate (EUR millions)		
New caps approved	Current caps	Number of jobs created
2.73	2	1 to 2
3.55	2.6	3 to 5
21.87	16	6 to 30
35.54	26	31 to 50
54.68	40	51 to 100
205.5	150	More than 100

The standard tax rates will apply to taxable profits in excess of these amounts.

The new caps are expected to be enacted through an amendment to the Tax Benefits Code, effective retroactively on January 1, 2013.

Portugal also is expected to submit to the EC a request for extension of the MIBC special tax regime beyond 2020.

PwC observation:
These measures will increase the competitiveness of the Portuguese tax system and reduce the tax burden on Portuguese and non-resident entities.

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Administration and case law
Brazil

Brazilian Revenue issues internal tax ruling on profits earned by foreign controlled corporations

The Brazilian federal tax authorities (Receita Federal do Brasil or [RFB]) on August 8, 2013, issued Internal Tax Ruling No.

18/13 (the Ruling), which formally expresses the RFB's understanding regarding the compatibility of Article 74 of Provisional Measure No. 2.158-35 with the provisions of double tax treaties (DTTs) such as Article 7 of the Organisation for Economic Co-operation and Development (OECD) Model Convention. Article 74 provides that profits earned by controlled foreign corporations (CFCs) are taxed at the level of the Brazilian parent on December 31 of each calendar year on an accrual basis, regardless of whether they are actually distributed.

The RFB's inspectors already have adopted this approach in several assessments issued against taxpayers, although not consistently. The RFB has now formally declared its understanding that Art. 74 does not conflict with DTT provisions regarding the taxation of profits of a resident in the other Contracting State (Article 7) because it merely enables Brazil to tax profits of a Brazilian resident company based on the income earned through its investment abroad. Thus, taxation reaches only the Brazilian taxpayer and not the non-residents of a DTT Contracting State. According to the Ruling, the Model Convention addresses the exclusive competence of the residency state to tax a company located in its territory and does not preclude the taxation of profits earned by its shareholders.

This understanding was based primarily on the facts that Brazilian corporate and tax law uses the equity method to record the earnings of a controlled company at the level of the parent's investment on an accrual basis and also that Brazilian legislation provides mechanisms to eliminate double taxation, allowing income tax paid on foreign income to be offset against income tax due in Brazil, regardless of any DTTs. Moreover, the Ruling also encompasses the argument that whenever a Contracting State opts not to tax undistributed profits of a controlled company in the other Contracting State, that provision is expressly provided in Article 23 of the Model Convention (as seen, for example, in the DTTs between Brazil and Denmark, the Czech Republic, and Slovakia).

PwC observation:
The Ruling is very controversial in terms of its legal grounds and actually rekindles the debate regarding the application of Article 74, as recently discussed by the Brazilian Supreme Court, which is working on a decision regarding the specific issue of a conflict involving DTTs. The Ruling likely will lead to continued debate because it merely serves as a means of consolidating the tax authorities' understanding on the matter and will not have any direct impact on the understanding to be adopted by the Brazilian courts on the subject.

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Brazil

Brazilian tax authorities issue new rules regarding the Transitional Tax Regime: portion of dividends may now be taxable

The Brazilian Revenue Service (Receita Federal do Brasil or [RFB]) issued Normative Instruction (NI) No. 1,397 on September 17, 2013, providing new regulations with regards to the Transitional Tax Regime (Regime Tributário de Transição or [RTT]), which may render a portion of dividends paid to a non-resident beneficiary subject to withholding income tax.

The RTT was introduced by Provisional Measure No. 449 (enacted on December 4, 2008), converted into Law No. 11,941/2009, with the purpose of guaranteeing fiscal neutrality in view of the new accounting practices established by Law No. 11,638/2007 (which sought to bring Brazilian accounting rules into conformance with International Financial Reporting Standards [IFRS] standards). The RTT provides that no adverse tax consequences should be triggered by the adoption of the new accounting rules in relation to the recognition of revenues, costs, and expenses computed on the assessment of net profits.

The divergence between the new accounting practices and the tax rules have generated important discussions with respect to the use of a specific balance sheet for purposes of tax computation that is different from the corporate balance sheet based on the new Brazilian Generally accepted accounting principles (GAAP).

In this regard, although Brazilian legislation does not expressly provide for the use of a tax balance sheet, the Brazilian tax authorities have consistently expressed their opinion in the sense that it could be used for thin capitalisation, dividends, and interest on net equity calculations.

This understanding has been confirmed, first informally, and then with the arguments provided in Opinion No. 202/2013, issued by the National Treasury's Attorney General's Office (PGFN); and in Tax Ruling No. 03/2013, issued by the RFB.

Opinion No. 202/2013 basically states that, for purposes of distribution of profits and dividends by legal entities subject to the RTT, such profits and dividends are considered tax exempt up to the amount of tax profit computed in the period, that is, the net profit assessed according to the accounting methods and criteria in force as of December 31, 2007. The Procuradoria-Geral da Fazenda Nacional (PGFN) clarified that the purpose of the RTT was to maintain the accounting criteria provided by Law No. 6,404/1976, before the enactment of Law No. 11,638/2007, so that the new accounting rules would not influence the assessment of income/wealth to be considered for tax computation.

The Tax Ruling followed the same rationale, stating that the composition and value of the companies' net equity must be defined according to the accounting methods and criteria in force as of December 31, 2007, for purposes of calculating the deductible amount of distributable interest on net equity (INE).

In view of the above, the NI now confirms the understanding of the Brazilian tax authorities in adopting the tax result (calculated according to the corporate law in force as of December 31, 2007) to neutralize any distortions caused by the application of the new accounting criteria, i.e. to neutralise the impacts of the new accounting rules on the companies' profits and losses, assets, liabilities, and net equity accounts.

In summary, the NI states that for purposes of assessing tax-exempt distributable dividends and deductible INE expenses, the equity balances to be considered are the ones based on accounting practices in force up to December 31, 2007.

The portion of dividends paid to a non-resident beneficiary that exceeds that calculated under the tax balance sheet would be subject to withholding income tax at 15% (or 25% if the beneficiary is located in a tax haven). The portion of INE paid that exceeds the tax balance sheet no longer would be deductible for income tax purposes.

PwC observation:
The Opinion issued by the PGFN has been much criticised due to the lack of support in Brazilian legislation. Much debate is expected regarding the terms of this new NI.

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Canada

Tax Court of Canada rules on applicability of specific anti-avoidance provision

The Tax Court of Canada (TCC) on May 29, 2013, released its decision in Lehigh Cement Limited on the application of the specific anti-avoidance provision found in paragraph 95(6)(b) of the Income Tax Act (Canada).

When this provision applies, the subject non-resident corporation will be determined not to be a foreign affiliate (FA) of the Canadian taxpayer when it would otherwise qualify as such. In turn, its application can result in Canadian denial of a deduction taken by the Canadian taxpayer for dividends received from the subject non-resident corporation. At issue was whether paragraph 95(6)(b) applied to the Canadian taxpayer's acquisition of shares in a US corporation.

The Canadian taxpayer was able to demonstrate that no Canadian tax was avoided because there was an alternative transaction that would have achieved the same result for Canadian tax purposes. Accordingly, the TCC concluded that no Canadian tax was avoided a result of the share acquisition. The TCC found that the principal purpose for the acquisition was avoidance of US tax rather than Canadian tax. The TCC therefore found that paragraph 95(6)(b) did not apply and the dividends received from the US corporation were deductible for Canadian tax purposes.

PwC observation:
It is unclear whether this decision will be appealed. Despite a win by the taxpayer, many aspects of the decision are viewed as contentious by the Canadian tax community. Canadian taxpayers investing in foreign affiliates may be faced with uncertainty in identifying alternative transactions and in offering evidence that they would not result in a different Canadian tax result.

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Singapore

Singapore releases draft amendments to Income Tax Act regarding exchange of information

The Singapore Ministry of Finance (MOF) on July 18, 2013, issued draft amendments to the Income Tax Act for public consultation.

The proposed amendments to the Income Tax Act relate mainly to the changes in relation to the exchange of information (EOI) regime announced in May 2013 and include:

- Lifting the requirement of 'domestic tax interest' for EOI assistance and the confidentiality provisions under the Banking Act and Trust Companies Act.
- Removing the requirement for the tax authorities (Inland Revenue Authority of Singapore or IRAS) to obtain a court order to obtain bank and trust information from financial institutions for EOI purposes.
- Harmonising the information gathering framework applicable for domestic tax enforcement and EOI administration.
- Expanding IRAS's information-gathering powers to meet Singapore's obligations under the Singapore-US Model 1 Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement.

PwC observation:
While the draft bill provides much-anticipated details of changes to the EOI regime, it is still subject to further changes.

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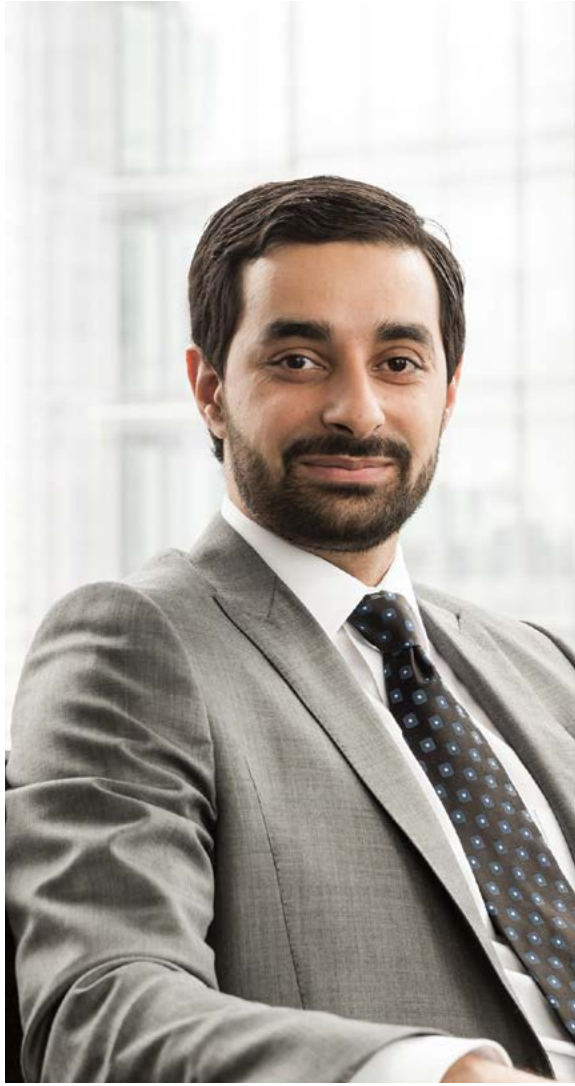

Singapore

Singapore introduces new aspect to its administration of tax incentives

The Singapore Economic Development Board (EDB) has piloted a new Annual Progress Report format for incentive conditions, including a mandatory requirement to obtain an external auditor's statement on the achievement of certain quantitative incentive conditions.

The pilot scheme is being implemented for selected businesses and will allow the EDB to monitor the economic outcomes of approved projects. Following this pilot, it is expected that the EDB eventually will expand the program to all businesses enjoying tax incentives awarded by the EDB.

PwC observation:
The new format of the annual progress report, together with the need for an external auditor's statement, increases the compliance requirements for incentive companies. However, this will help incentivised businesses and the EDB to monitor the level of compliance with its quantitative incentive commitments.

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Singapore

Singapore case law update

A recent Singapore High Court case dealt with the deductibility of a lump-sum payment of 100 million Singapore dollars (SGD) paid by a mobile telecommunication operator to the Singapore Infocomm Development Authority.

The payment was made to secure a 3G Facilities Based Operator (3G FBO) licence and the right to use a specific radio frequency spectrum (3G spectrum right) for 20 years. These enabled the taxpayer to establish, install, and maintain the 3G communication system and to provide 3G services to its customers. The court upheld the Board of Review's decision that the payment was capital in nature and therefore not deductible.

PwC observation:
This judgment provides guidance on the distinction between capital and revenue expenditure and is particularly relevant to other taxpayers in the telecommunications industry.

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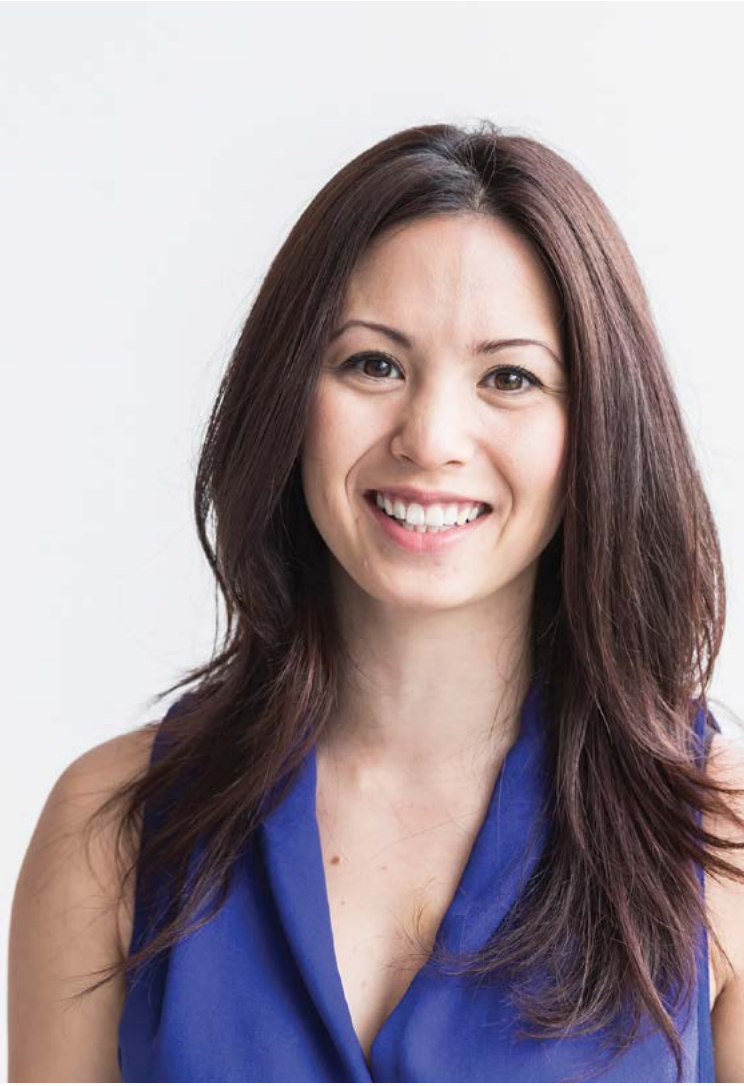

United States

IRS opens FATCA online registration system to provide a beneficial user testing period

The Internal Revenue Service (IRS) announced the opening of the Foreign Account Tax Compliance Act (FATCA) registration system on August 19, 2013.

The registration system will enable financial institutions (FIs) to register and obtain a global intermediary identification number (GIIN). FIs are requested to submit the required information online as final on or after January 1, 2014 - no Global Impact Investing Networks (GIINs) will be issued before this date. Between now and December 31, 2013, FIs are permitted to establish their online account, input preliminary information, refine such information, and become familiar with the system, thereby resulting in a user testing period.

The IRS release included:

- A 75-page user guide and overview providing instructions for completing the online registration process, including step-by-step instructions for each question and the registration information required for each type of FI as well as information on how to edit and delete a registration.
- Tips for logging into the FATCA registration system.
- A GIIN Composition document that explains the components of the 19-character GIIN.

The available testing period and new IRS guidance are long awaited and welcome developments for stakeholders. The ability to gain a practical understanding of the registration system before the information is formally submitted is intended to enable the registration process to be conducted in a more orderly fashion.

The IRS is encouraging preparedness by suggesting that registrants input and edit information early during the testing period so they are ready to submit the final information starting in January 2014. It should be noted that the user guide does not contain information about registering sponsored entities; that guidance is forthcoming.

The registration site and materials also make reference to the foreign financial institution (FFI) Agreement a significant number of FFIs are expected to enter. However, stakeholders are still awaiting a draft of such agreement.

PwC observation:
The new IRS guidance is consistent with the revised timelines announced by the IRS in July of this year for implementing various provisions under FATCA. The delay in FATCA implementation provides a unique opportunity for stakeholders to have more time to gather complete and accurate information about their entities, make necessary key business decisions, and conduct the registration process in an orderly manner. The registration process, however, continues to demand that taxpayers work through their FATCA strategy upfront - how they are going to prepare for their compliance requirements going forward and avoid potentially costly FATCA withholding. A detailed analysis of the registration process and required data should occur before registration.

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EU law
Portugal

Portuguese withholding tax exemption for certain interest and royalties takes effect

Following the publication in the Official Gazette on August 8, 2013, of Law no. 55/2013, the Portuguese corporate income tax (CIT) code now provides a full withholding tax (WHT) for interest and royalty payments made by Portuguese tax-resident entities to European Union (EU) or Swiss corporations or permanent establishments if the conditions set forth in EU Council Directive 2003/49 - a minimum 25% holding and a consecutive holding period of at least two years - are met. The measure is effective as of July 1, 2013.

Publication of the law finalised the Portuguese transposition - that is, the incorporation of an EU Directive into domestic law - of the Directive, which sets forth a common system of taxation applicable to interest and royalty payments between associated companies of different EU Member States.

PwC observation:
Foreign companies should be aware of the WHT exemption on interest and royalties paid by a Portuguese company to its associated companies and how to take advantage of the benefits of entering into transactions with Portuguese-resident companies, such as financing and royalty agreements.

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Treaties

Canada

Canada explores how to prevent treaty shopping

The Canadian Department of Finance on August 12, 2013, released a consultation paper inviting comments with respect to possible measures aimed at preventing treaty shopping.

The consultation paper indicates that treaty shopping is generally perceived to arise when a non-resident that is not entitled to the benefits of a tax treaty with Canada seeks to obtain tax treaty benefits by using an entity resident in a country with which Canada has concluded a tax treaty to earn, through that entity, income from Canada.

The consultation paper explores available measures. The Department of Finance is accepting comments on these measures until December 13, 2013.

PwC observation:
The Canadian Department of Finance has determined that the Canadian tax authorities require clearer legislative authority to successfully challenge treaty-shopping arrangements and - based on the commentary in the consultation paper - appears to favour a specific domestic anti-treaty-shopping approach. As Canada considers how it should address perceived treaty shopping, Canadian taxpayers and foreign residents earning income from Canada will want to follow developments in this area closely.

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China

China signs Convention on Mutual Administrative Assistance in Tax Matters

On August 27, 2013, China signed the Convention on Mutual Administrative Assistance in Tax Matters (the Convention).

This represents a milestone in China's efforts to strengthen cooperation with the international tax community. The Convention provides for all possible forms of administrative cooperation between states in the assessment and collection of all categories of taxes, which include exchange of information (EOI), assistance in recovery, and service of documents. The scope is broader than that of cooperation in most existing bilateral double taxation treaties (DTTs) and tax information exchange agreements (TIEAs).

PwC observation:
Signing the Convention enables China to join the world's biggest network of international cooperation on tax administration. It is believed that China's State Administration of Taxation will take further steps to prepare for the implementation of the Convention, which may include: deciding whether to make reservations before depositing the instrument of ratification; devoting more resources to make all forms of EOI more efficient; and providing domestic guidelines for new forms of assistance such as simultaneous tax examination (also known as 'joint audit') and tax examination abroad.

The Convention must now be ratified by China's legislative body. It may take several months to complete all the diplomatic procedures before the Convention enters into effect. Multinational companies (MNCs) operating in China need to be aware of the changes resulting from China entering the Convention and the potential impact on tax compliance. They should get prepared for the growing challenges in the future tax administrative environment.

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Portugal

Portuguese tax treaty update

Portugal/Switzerland tax treaty: Amending protocol

Following approval by the Portuguese Parliament, the President of Portugal on June 27, 2013, ratified the Protocol amending the tax treaty signed between Portugal and Switzerland. The Protocol aims to improve cooperation between the authorities of the two countries on tax matters by allowing the appropriate exchange of information (EOI) with the goal of a more effective control of financial flows. The Protocol provides for a reduction from 10% to 5% of the tax due on the payment of dividends on shareholdings of at least 25%. Also, in line with the agreement between the European Union (EU) and Switzerland, the Protocol provides an exemption from taxation for the payment of dividends, interest, and royalties in case of shareholdings of at least 25% held for at least two years.

Portugal/Republic of Peru tax treaty: ratification

Following approval by the Portuguese Parliament, the President of Portugal on June 27, 2013, ratified the tax treaty signed between Portugal and the Republic of Peru. The tax treaty provides for a maximum tax rate of 10% on dividends paid to an effective beneficiary owning at least 10% of the share capital of the Portuguese subsidiary, or of the voting rights of the Peruvian subsidiary (15% in other cases); 10% on interest paid to a bank (15% in other cases); and 10% on payments for technical assistance related to the use, or granting of the use, of intellectual property, assets, or information (15% in other cases).

Portugal/Singapore tax treaty: Amending protocol

Following approval by the Portuguese Parliament, the President of Portugal on July 11, 2013, ratified the Protocol amending the tax treaty signed between Portugal and Singapore. The Protocol replaces Article 27 (EOI) with wording in line with Article 26 of the Organisation of Economic Co-operation and Development (OECD) model tax convention on income that addresses the procedures and obligations regarding the exchange of information to be complied with by the tax authorities of the signing countries.

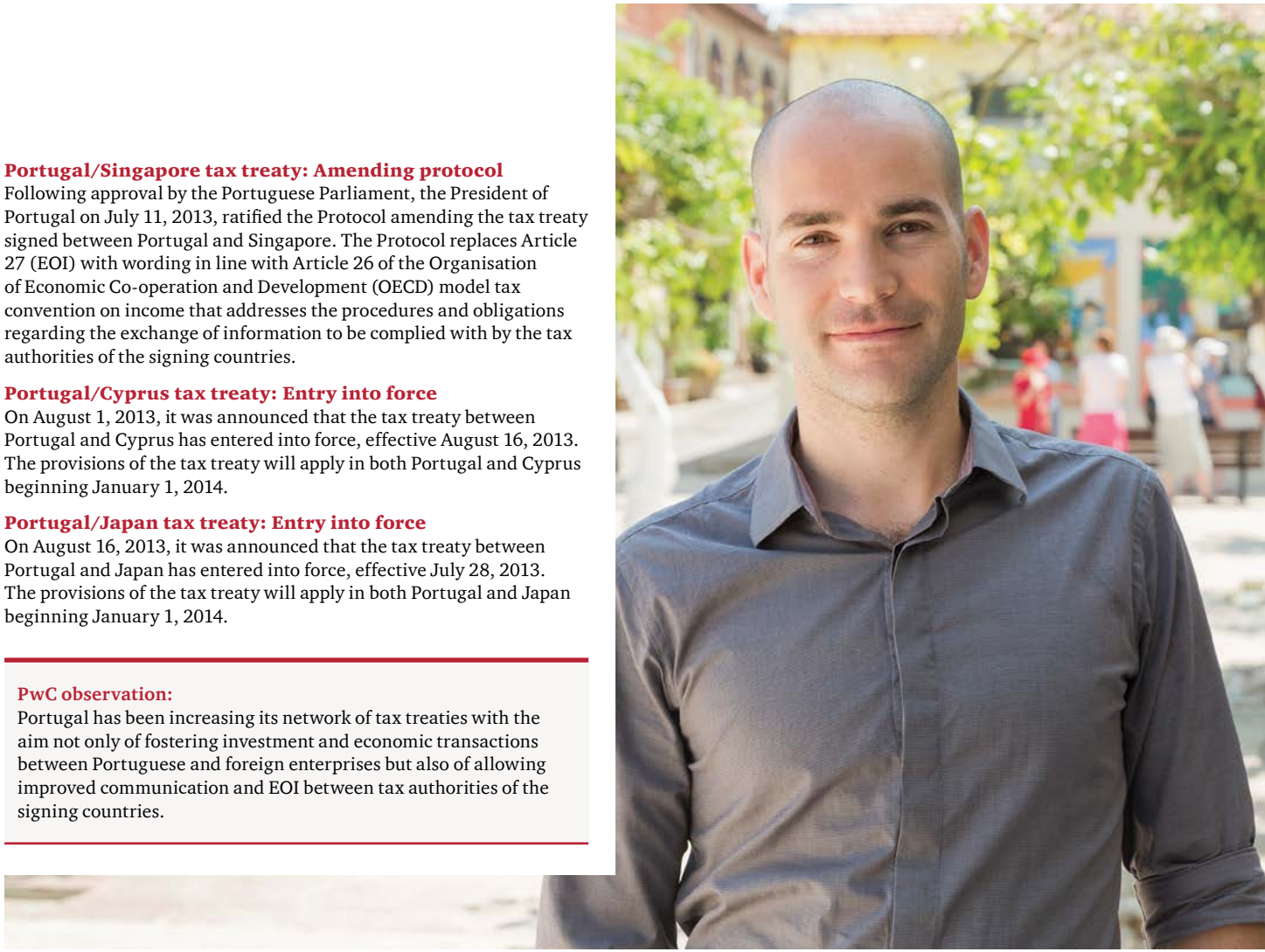
Portugal/Cyprus tax treaty: Entry into force

On August 1, 2013, it was announced that the tax treaty between Portugal and Cyprus has entered into force, effective August 16, 2013. The provisions of the tax treaty will apply in both Portugal and Cyprus beginning January 1, 2014.

Portugal/Japan tax treaty: Entry into force

On August 16, 2013, it was announced that the tax treaty between Portugal and Japan has entered into force, effective July 28, 2013. The provisions of the tax treaty will apply in both Portugal and Japan beginning January 1, 2014.

PwC observation:
Portugal has been increasing its network of tax treaties with the aim not only of fostering investment and economic transactions between Portuguese and foreign enterprises but also of allowing improved communication and EOI between tax authorities of the signing countries.



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Singapore

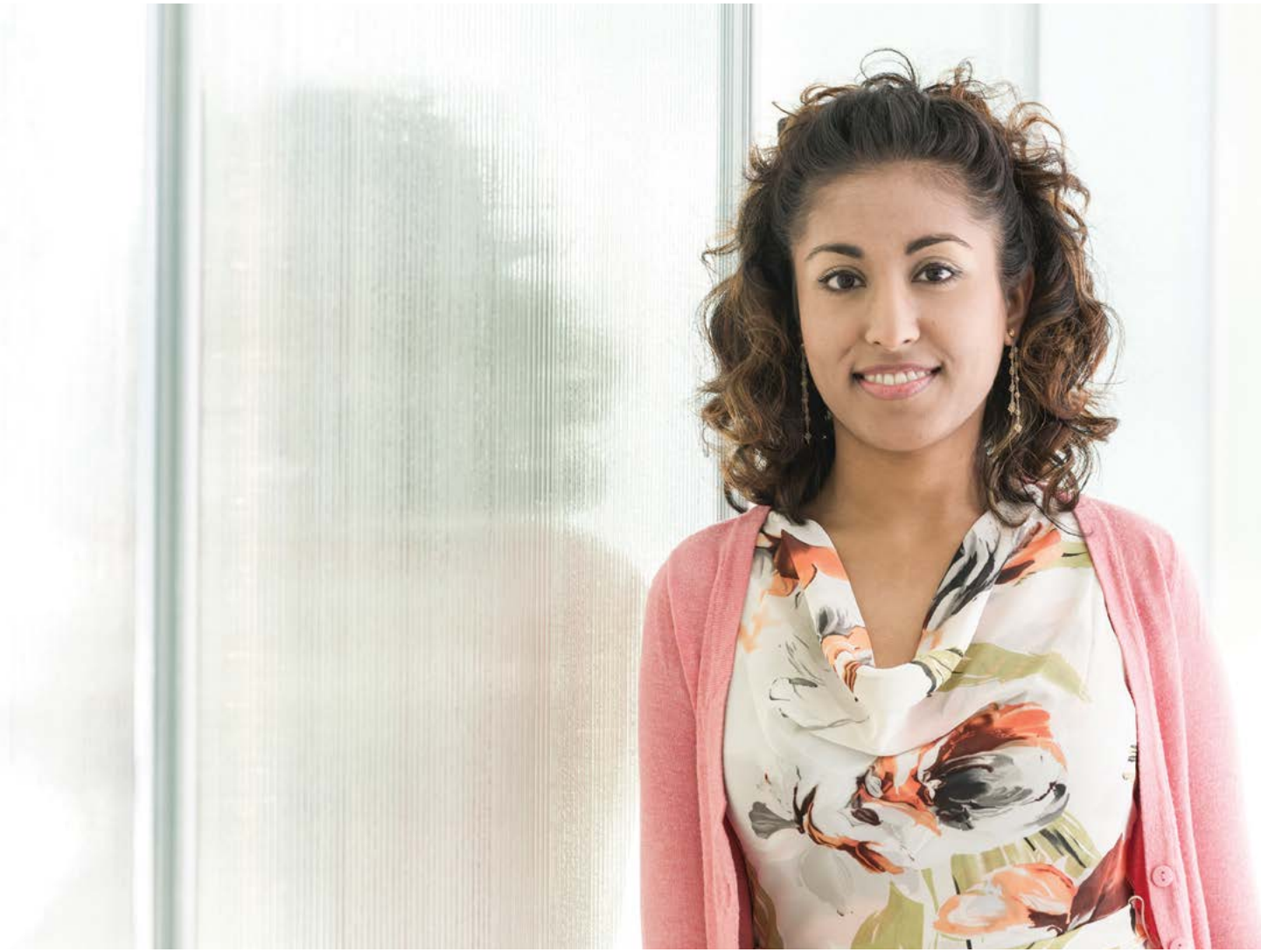
Singapore tax treaty update

The Protocol to Singapore's tax treaty with Belgium will enter into force on September 20, 2013.

It amends the treaty to incorporate the internationally agreed Standard for Exchange of Information (EOI).

Singapore also signed a treaty with Barbados on July 15, 2013, that incorporates the internationally agreed EOI. This treaty is not yet ratified and does not have the force of law.

PwC observation:
The amendments to these treaties should facilitate the EOI between Singapore and its respective treaty partners and demonstrates Singapore's commitment to tax transparency.



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