State of Tax Legal & People Webcast series

Tax developments 2022

21 October 2021

pwc

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Agenda

1. Working from home allowance and stock options
2. Corporate tax and withholding tax developments
3. Looking ahead: international developments

Wage tax

1. Tax free allowance working from home costs

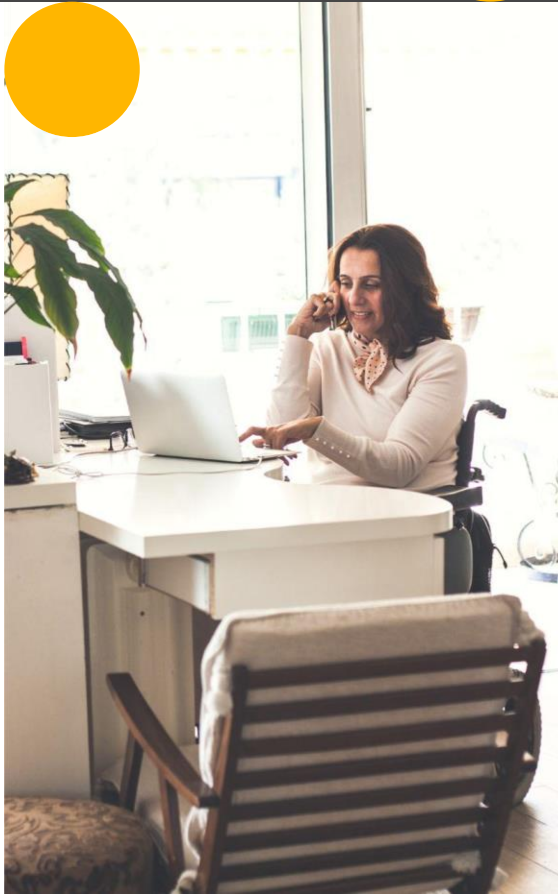
- 3rd specific exemption (1. workplace 2. IT)
- Costs for water, electricity, heating, coffee/tea
- Max. € 2 per day working from home
- Commuting allowance **or** Working from home allowance
- Mixed days → choice

Wage tax

1. Tax free allowance working from home costs

- Shape your policy:
  - Based on declaration
  - Fixed allowance (work pattern)
  - 40 days to ‘fixed’ workplace
- Example: 2 days office, 3 days home, 15 km:

Travel:	2/5 * 214 days * 15km x 2 * € 0,19
Homeworking:	3/5 * 214 days * € 2



Poll

Has your company introduced a working from home allowance?

A) Yes, policy is ready to be implemented
B) We are struggling with the policy and compliance
C) We have not looked at this
D) No, we have sufficient allowance/facilities already

Wage tax

2. Adjustment tax regime stock option rights

- Current: taxed when exercising
- New: taxed when ‘tradable’ for shares subject to contractual or legal (sale) restriction (lock-up)
- All option schemes, but not instruments such as Restricted Stock Units (RSU)
- Complicated administration
- Deferred: taxed as wage
- International allocation issue

Poll

Has your company introduced a working from home allowance?

A) Yes, policy is ready to be implemented
B) We are struggling with the policy and compliance
C) We have not looked at this
D) No, we have sufficient allowance/facilities already

Agenda

1. Stock options and working from home allowance
2. Corporate tax and withholding tax developments
3. Looking ahead: international developments

Corporate Income Tax and Withholding Taxes

- Earningsstripping
- Corporate Income Tax (‘CIT’) rate
- Introduction of tax liability measure for reverse hybrids
- Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)
- Temporal limit CIT set-off dividend withholding tax & gambling tax
- Loophole loss compensation rule holding & financing losses closed
- Loss relief
- Dividend stripping - Consultation document announced

Corporate Income Tax and Withholding Taxes

Earningsstripping rule

- Limitation of deductibility of interest costs from 30% to 20% of EBITDA
- Threshold of 1 mio euros will be maintained until further notice

Corporate Income Tax and Withholding Taxes

Earningsstripping rule

Tax accounting impact

- Non-deductible interest is carried forward indefinitely → tax attribute → deferred tax asset
- In case of recognition based on forecast, i.e., expected future catch-up of non-deductible interest: limitation from 30% to 20% could affect DTA recognition

Corporate Income Tax and Withholding Taxes

Earningsstripping rule

Tax accounting impact - quick example

- Y0: disallowed and carried forward interest expense of EUR 450
- Tax rate of 25%, potential DTA of EUR 112,5
- Fiscal EBITDA forecast provides horizon of 3 years, with annual EBITDA of EUR 500; future net interest expense of nil

	Y1 *gross*	Y2 *gross*	Y3 *gross*	Total *gross*	Total *tax*	Derecognition / valuation allowance needed
Projected fiscal EBITDA	500	500	500	1,500		
Interest catch-up - 30%	150	150	150	450	112,5	0
Interest catch-up - 20%	100	100	100	300	75	(37,5)

Corporate Income Tax and Withholding Taxes

Corporate Income Tax ('CIT') rate

Rate	15%	25,8% (was: 25%)
Bracket	0 - 395,000	Over 395,000

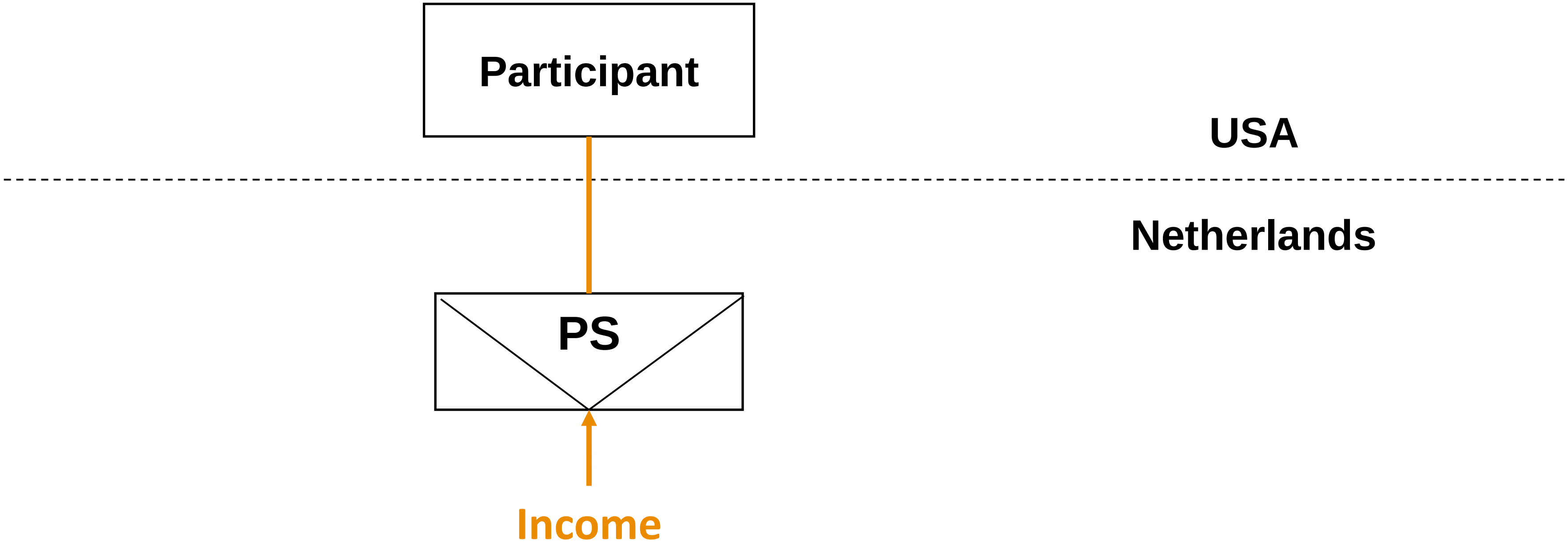
Corporate Income Tax and Withholding Taxes

Introduction of tax liability measure for reverse hybrids

- Reverse hybrid entities (transparent under Dutch law but non-transparent under foreign law) will from 2022 on be subject to CIT
- This measure results from the EU ATAD2 Directive
- For the application of ATAD2 measures introduced previously, the affiliation concept is extended to individuals as well
- No transitional rules!

Corporate Income Tax and Withholding Taxes

Introduction of tax liability measure for reverse hybrids



Corporate Income Tax and Withholding Taxes

Introduction of tax liability measure for reverse hybrids

Tax accounting impact

Participant's financial statements

- Deferred tax accounting: look-through approach no longer needed
- Withholding taxes to be accounted for: above the line or on the tax line

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Hybrid entity's financial statements

- Tax accounting rules to be applied at PS level, resulting in current and deferred tax balances as well as tax charge in single-entity accounts, whereby opening balance tax base needs to be determined

Corporate Income Tax and Withholding Taxes

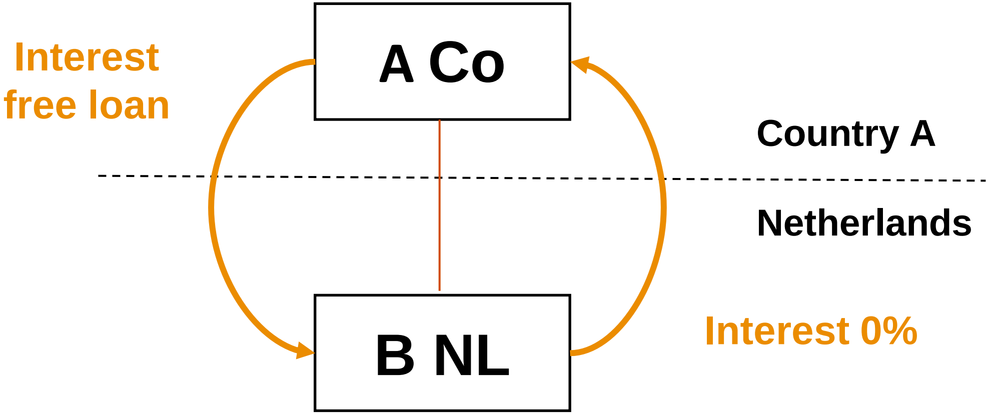
Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)

- Application of arm’s length principle
- Not every country applies this principle (in the same way), which can result into (part of) the profits of a multinational enterprise not being taxed
- These mismatches are now counteracted. In short, the measure means that for tax purposes no 'minus' can be taken in the Netherlands if there is no corresponding 'plus' abroad

Corporate Income Tax and Withholding Taxes

Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)

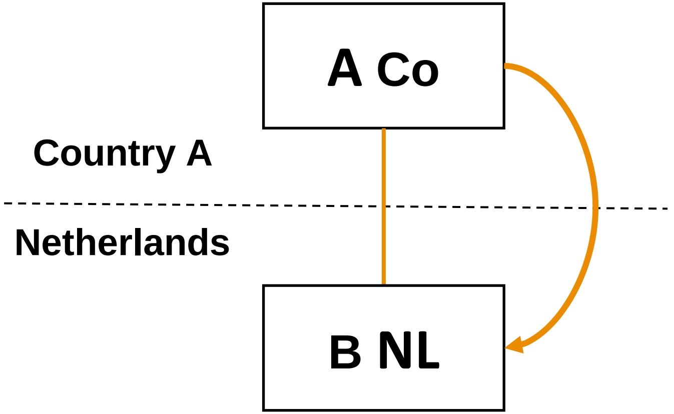
Example 1: informal capital



Corporate Income Tax and Withholding Taxes

Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)

Example 2: transfer of assets



Transfer assets:
- **transfer price: 40**
- **arm’s length price: 200**

Corporate Income Tax and Withholding Taxes

Informal capital situations ('preventing mismatches when applying the arm's length principle')

Transitional rule (article 35 CITA 1969)

Transfer of assets in fiscal years starting before 1 July 2019: no consequences

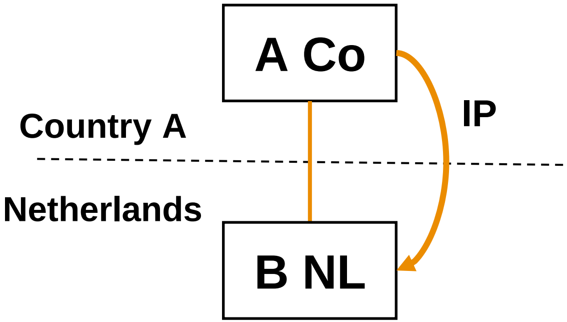
1 January 2022

1 July 2019

Transfer of assets in fiscal years starting between 1 July 2019 and 1 January 2022: limitation of depreciation but no adjustment of book value

Corporate Income Tax and Withholding Taxes

Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)
Tax accounting impact



Base case (before tax law changes)

- IP transferred from A Co to B NL
- Transfer price at old book value at A Co: EUR 40
- At arm’s length value: EUR 200

- Temporary difference:

Tax base	EUR 200
Carrying value	EUR 40
Temp difference	EUR 160

- Tax rate of 25% → DTA of EUR 40

Corporate Income Tax and Withholding Taxes

Informal capital situations (‘preventing mismatches when applying the arm’s length principle’)
Tax accounting impact

Transfer of assets between 1 July 2019 and 1 January 2022: limitation of depreciation but no adjustment of book value for tax purposes

Re-assessment of tax base required

- **Use?** Depreciation limited → lower tax base → lower DTA
- **Sale?** Lower taxable profit allowed due to higher (non-adjusted) book value for tax purposes → tax base remains book value for tax purposes → no impact

Corporate Income Tax and Withholding Taxes

Informal capital situations ('preventing mismatches when applying the arm's length principle')
Tax accounting impact

Transfer of assets after 1 January 2022: no step-up to the higher at arm's length value if not taxed in foreign state

Re-assessment of tax base

- **Use?** Depreciation limited → lower tax base → lower DTA
- **Sale?** Lower taxable profit not allowed due to lower (adjusted) book value for tax purposes → lower tax base → lower DTA

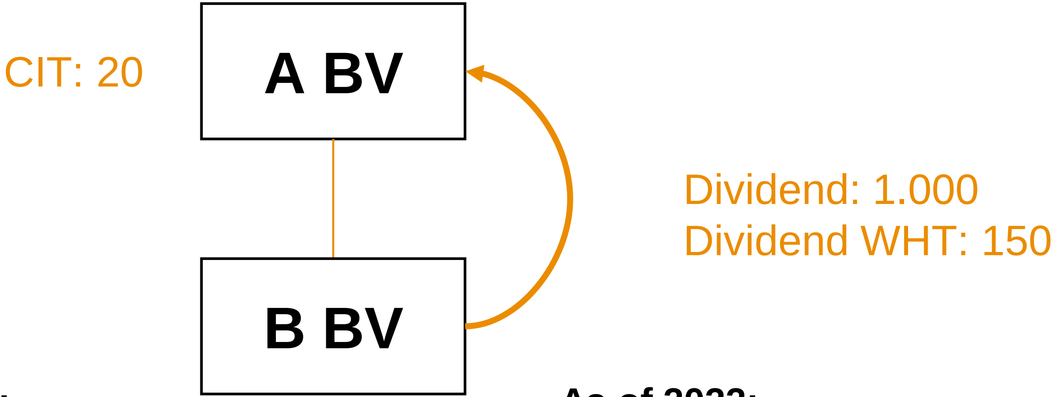
Corporate Income Tax and Withholding Taxes

Temporal limit re set-off of dividend withholding tax and gambling tax with CIT

- Bill in response to CJEU 22 November 2018, C-575/17 (Sofina)
- From 2022 on, credit of dividend withholding tax and gambling tax will be limited to the amount of CIT due in a year
- Non-credited withholding taxes can be carried forward indefinitely to subsequent years

Corporate Income Tax and Withholding Taxes

Temporal limit re set-off of dividend withholding tax and gambling tax with CIT - example



Currently:
- **credit: 20**
- **restitution: 130**

As of 2022:
- **credit: 20**
- **carry forward: 130**

Corporate Income Tax and Withholding Taxes

Temporal limit re set-off of dividend withholding tax with CIT - example

CIT: 20

A BV

Dividend: 1.000
Dividend WHT: 150

B BV

Currently:
- credit: 20
- **restitution: 130**
- current tax receivable

As of 2022:
- credit: 20
- **carry forward: 130**
- deferred tax asset
  ! perform DTA recognition assessment

Corporate Income Tax and Withholding Taxes

Loss relief

- As of 1 January 2022, an unlimited loss carry forward will apply (currently, this is six years forward)
- However, losses (both carry forward and carry back) are only fully deductible up to €1 million in taxable profit
- If taxable profits exceed € 1 million, the loss settlement is limited to € 1 million plus 50% of the profits exceeding € 1 million

Corporate Income Tax and Withholding Taxes

Loophole in loose compensation rule for holding and financing losses closed

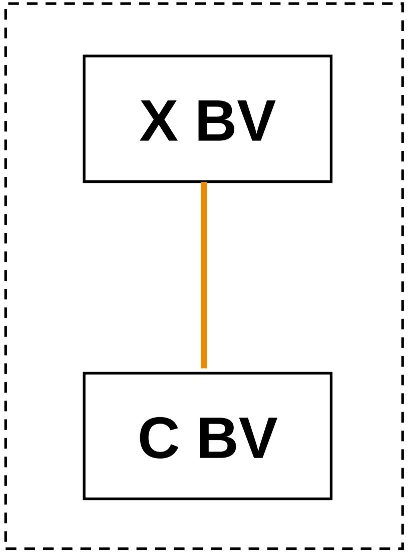
- Change in loss settlement added to Memorandum of Amendment to Bill ‘Overige Fiscale Maatregelen 2022’
- Supreme Court ruled in favor of taxpayer who settled operating profits with holding and financing losses (HOF losses) through fiscal unity - see HR 11 June 2021, BNB 2021/116
- In principle, HOF losses cannot be set off against operating profits. With a fiscal unity, this turned out to be possible
- This unintended effect will be repaired as of 2022

Corporate Income Tax and Withholding Taxes

Loophole in loose compensation rule for holding and financing losses closed

Pre-merger holding and financing losses (2010)

Operational profits (2016)



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HR 11 juni 2021, BNB 2021/116

Grammatical explanation Article 20a, para. 4 and Article 15ae, para 1, subpart a, sub 3 CITA implies that pre-merger holding and financing losses of X BV (2010) may be offset against operational profits C BV (2016)

Loss relief - example

Year 1	Year 2	Year 3
500.000 <500.000> nil	<4.000.000> 500.000 <3.500.000> 2.000.000 <1.500.000>	3.000.000 <2.000.000>*) 1.000.000

(*) 1.000.000 + 50% x (3.000.000 - 1.000.000) = 2.000.000

Poll

The tax law change on loss settlement rules will always result in an increase in losses recognised (DTA)

A) Correct
B) Incorrect
C) Depends on the situation

Corporate Income Tax and Withholding Taxes

Loss relief

Tax accounting impact

- Losses available of EUR 3,000
- Tax rate of 25% → potential DTA of EUR 750

	Y1 *gross*	Y2 *gross*	Y3 *gross*	Total *gross*	Total *tax*	Derecognition / valuation allowance needed
Forecasted taxable profit	1,000	1,000	1,000	3,000	(750)	
Loss settlement - current rules	(1,000)	(1,000)	(1,000)	(3,000)	750	0
Loss settlement - tax law change	(500)	(500)	(500)	(1,500)	375	(375)

- Forecasting period is not likely to increase

Poll

The tax law change on loss settlement rules will always result in an increase in losses recognised

A) Correct
B) Incorrect
C) Depends on the situation

Agenda

1. Stock options and working from home allowance
2. Corporate tax and withholding tax developments
3. Looking ahead: international developments

Looking ahead: international developments

- OECD Pillars One and Two
- EU developments, a.o.:
  - EU Digital Levy
  - EU Fit for 55 package
- Public country by country reporting

Looking ahead: international developments

OECD Pillars One and Two

- Agreement in G20 on 13 October 2021 on statement of the OECD Inclusive Framework of 8 October 2021(for PwC Tax Policy alert click here)
- Agreement by 136 out of 140 countries (holdouts: Nigeria, Kenya, Sri Lanka and Pakistan)
- Implementation in 2023 (Undertaxed Payment Rule in 2024)
- Pillar One: minimum standard (implementation required)
- Pillar Two: common approach (implementation not required)
- Model legislation pillar Two in November 2022
- Draft Multilateral Tax Convention to implement Pillar One/amount A in spring 2022

Looking ahead: international developments

OECD Pillars One and Two

Pillar 1
Reallocation of profits

AMOUNT A

Scope

- MNEs with profitability >10%

AND

- Global turnover > EUR 20bn

New Nexus

- Unconstrained by physical presence
- Nexus based on Revenue in market jurisdiction
- Revenues > EUR 1mn

Profit allocation

- Residual profit-profit in excess of 10% of revenue
- 25% of residual profit allocated to market jurisdictions

Pillar 2
Minimum tax

GloBE Rules

"Common approach"

Income inclusion rule ("IIR")

Tax at shareholder level if subsidiary/investment is taxed below minimum rate.

Undertaxed payments rule ("UTPR")

Applies where the IIR has not resulted in a top-up tax.

Formulaic substance based carve-out for tangible assets and payroll

Subject to tax rule ("STTR")

Treaty based rule

- WHT/taxes at source on interest, royalties & certain other related party payments that are not sufficiently taxed.
- Applicable to IF members with rates <9%.
- WHT tax limited to difference 9% and actual tax levied.

Switch-over rule

Looking ahead: international developments

Position EU Pillars One and Two

- EU president Ms Von der Leyen and the Commissioner for Taxation, Mr. Gentiloni expressed strong support for the agreement reached
- Pillar One: EU will align timeline and implementation with the OECD’s (2023)
- The Commission is examining whether a Directive is needed for effective implementation of Pillar One in the EU
- The Commission will propose a Directive for the implementation of Pillar Two
- Timelines very optimistic; agreeing on the Directive (requires unanimity) is a priority of the French presidency of the EU
- Compatibility Income Inclusion Rule with EU-law?
- Position of Cyprus

Looking ahead: international developments

EU Digital Levy

- Own resource for the EU
- Funding the Recovery and Resilience Package of € 750 billion agreed in 2020
- Part of the Multiannual Financial Framework of the EU (budget 21-26)
- Inclusive framework agreed to remove unilateral Digital Services Taxes (DST), and
- Agreed a standstill for new DSTs between 8-10-21 and 31-12-23
- Is the Digital Levy (DL) a DST?
- Commission: DL is supplementary to Pillar One and non-discriminatory
- However: DL delayed again
- If no DL, another own resource is needed: EU Single Market Levy?

Looking ahead: international developments

EU Fit for 55

- June 2021: EU Climate Law
  - Climate neutrality by 2050 and 55% reduction by 2030 enshrined in binding legislation (Regulation of the European Parliament and of the Council)
- Expected large part of the measures are to be implemented 1 January 2023
- Measures include:
  - Extension of the Emissions Trading System (ETS)
  - Introduction Carbon Border Adjustment Mechanism (CBAM)
  - Adjustment Energy Taxation Directive
- Impact on: companies in Energy, Utilities & Resources (incl. energy intensive industries), logistics, transport and construction

Looking ahead: international developments

Broader EU developments

- Targeting shell companies ('ATAD3', for PwC response to the consultation click here):
  - assess whether companies have substantial presence and real economic activity
  - deny tax benefits linked to the existence or the use of abusive shell companies
  - proposal for a directive in 2021
- Debt equity bias reduction allowance (DEBRA, for PwC response to proposal click here)
  - address the debt-equity bias in corporate taxation via an allowance system for equity financing
  - proposal in 2023
- Annual publication of effective tax rates by companies with a revenue over € 750 million (proposal in 2022)

Looking ahead: international developments

Public CbCR

- Public country-by-country reporting (CBCR) directive (see PwC Tax Policy Bulletin)
- Final vote in plenary European Parliament in November 2021
- MNEs with revenue over € 750 million will be required to disclose information on the income tax they pay per EU member state
- Aggregated reporting of income tax paid in countries outside the EU, except for “blacklisted” and “greylisted”countries
- Information to be disclosed: total revenue, PBT, tax paid & accrued, average # of employees, total accumulated earnings
- Transposition deadline expected to be in April/May 2023
- PCbCR effective per 2025, although some member states may move faster

Closing

- Questions? Please contact your PwC advisor
  or let us know in the evaluation of this webcast.
- View this webcast or presentation at a later stage
- Stay up to date: register for our PwC Tax Newsletter on pwc.nl
- ‘State of Tax’ webcast series continues on pwc.nl/evenementen
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Three key actions to take away

Prepare for the impact of Europe's ambitions towards becoming climate neutral

Future legislation may impact current year financial statements

Look ahead and prepare for expected international tax developments

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Thank you!

Annex 1 Looking ahead: international developments

Summary Pillars One and Two

2021 — 2022 — 2023

October 2020	June 2021	July 2021	October 2021	2022	2023
Publication of blueprints for Pillar 1 and Pillar 2	G7 Summit-Certain agreements reached on Pillar 1 & Pillar 2	131 IF countries agree to new international tax system	G20 Summit Resolution of issues & Implementation plan	MTC for Pillar 1 Work to be completed on Amount B	Pillar 1 and Pillar 2 implementation UTPR 2024

Pillar 1
Reallocation of profits

AMOUNT A

Scope
- MNEs with profitability >10%

AND

- Global turnover > EUR 20bn

New Nexus
- Unconstrained by physical presence
- Nexus based on Revenue in market jurisdiction
- Revenues > EUR 1mn

Profit allocation
- Residual profit-profit in excess of 10% of revenue
- 25% of residual profit allocated to market jurisdictions

Pillar 1
Removal of DSTs+standstill
Dispute prevention and resolution are key!
Amount B (2022)

Sourcing of revenues to end markets
Mechanism for identifying surrendering entities

A number of technical issues remain outstanding

Cyprus:
Not a member of the IF/
Nigeria, Kenya, Pakistan, Sri Lanka did not sign up.

Pillar 2
How will timing differences be addressed?
Interaction with GILTI and SHIELD?

Pillar 2
Minimum tax

GloBE Rules

"Common approach"

Income inclusion rule ("IIR")

Tax at shareholder level if subsidiary/investment is taxed below minimum rate.

Undertaxed payments rule ("UTPR")

Applies where the IIR has not resulted in a top-up tax.

Formulaic substance based carve-out for tangible assets and payroll

Subject to tax rule ("STTR")

Treaty based rule
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- Applicable to IF members with rates <9%.
- WHT tax limited to difference 9% and actual tax levied.

Switch-over rule

Annex 2 Looking ahead: international developments

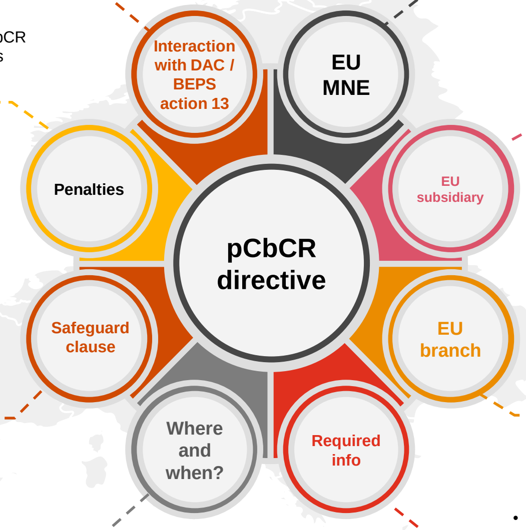
EU directive Proposal on public Country-by-Country Reporting

Proposal to amend the Accounting Directive (Directive 2013/34/EU) in order to:

Provide an essential element to further foster corporate transparency and responsibility, thereby contributing to the welfare of EU societies

Promote a better-informed public debate on the level of tax compliance of MNEs and the impact of this on the economy

Serve the general economic interest by providing for safeguards for the protection of investors, creditors and other third parties generally



Interaction with DAC/BEPS Action 13

- It would be permissible for the data to correspond to the reporting specifications for the CbCR covered by DAC (Directive 2011/16/EU) – And thereby effectively BEPS Action 13 if this is published.

Penalties

- Penalties to be set by each Member State in accordance with Article 51 of the Directive.
- The penalties provided are to be effective, proportionate and dissuasive.
- Would apply to the detailed components of the report, timing, and other requirements.
- Excludes "comply or explain" subsidiaries and branches for consolidated group info reporting

Safeguard clause

- Possibility to defer disclosing certain commercially sensitive information for a number of years (max 5 years) if deferral disclosed and includes a reasoned explanation for it in the report.

Where and When?

- Parent company, EU subsidiary or EU branch website or that of an affiliate, or free publicly available Member State's corporate register (referenced at the website).
- Within 12 months from balance sheet date for 5 years

Ultimate EU parent company

- EU MNE with >€750m consolidated revenues in each of the last 2 financial years if there is at least one large or medium-sized entity in the EU
  - Exclusion for single jurisdiction operations undertakings

An EU subsidiary of a non-EU MNE

- EU subsidiary of a non-EU MNE with group consolidated revenue >€750M and the report was not suitably published elsewhere (including identifying any EU presence), OR
  - If the report is not available to the subsidiary, explain the reasons for the omission and publish its own report with information it has
- Small subsidiaries are excluded, i.e., where (2 of 3) – Balance sheet ≤4.4M, turnover ≤€8M, average number of employees ≤50

An EU branch, if non-EU MNE & no EU subsidiary

- An EU branch, if non-EU MNE & no EU subsidiary if group consolidated revenues >€750M and the report was not suitably published elsewhere (including identifying any EU presence OR
- If the report is not available to the branch, explain the reasons for the omission and publish what it has.
  - "Small branches" are excluded, i.e., where turnover ≤€8M

Required info

- Info broken down by each Member State & EU "Blacklisted" countries or 'Greylisted" for two consecutive years; aggregate number for all other 3rd countries
- Total revenue, PBT, tax paid & accrued, average # of employees, total accumulated earnings

Date	Event
2016	Commission pCbCR proposal
2019	COMPET meeting with no QMV support + 10 MS joint statement against QMV
Feb/March 2021	QMV mandate agreed by Council and the "Coreper"
November 2021	Adoption + entry into force
Apr/May 2023 (?)	Transposition deadline
1 Jan 2025 (?)	pCbCR effective [for Dec y/e groups – But could be as early as a Member State requires, eg 1 Jan 2023?]
31 Dec 2026 (?)	Publication of report