Quarterly tax developments

Things to know about this quarter's tax developments and related US GAAP accounting implications

Updated through 31 March 2023

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Building a better working world

Welcome to our March 2023 Quarterly tax developments *publication. This edition is updated for certain developments identified from 14 March through 31 March 2023. New developments are designated by a square (■) after the state or country name.*

Here we describe certain tax developments previously summarized in Tax Alerts or other EY publications or identified by EY tax professionals or EY foreign member firms. These developments may affect your tax provision or estimated annual effective tax rate.

We compile this information because we recognize that, for many companies, the most challenging aspect of accounting for income taxes is identifying changes in tax law and other events when they occur so the accounting can be reflected in the appropriate period. However, this publication is not a comprehensive list of all changes in tax law and other events that may affect income tax accounting.

*We list EY publications that you can access through our **Tax News Update website**, if you are registered. Anyone interested in registering should contact Joan Osborne at **joan.osborne@ey.com**.*

*See our **previous editions** for additional tax developments.*

Tax developments

Legislation enacted in the first quarter

Companies are required to account for the effects of tax law changes on their deferred tax assets and liabilities in the period the legislation is enacted. Similarly, companies must reflect the effects of an enacted change in tax laws or rates in their annual effective tax rate computation in the period the changes are enacted. If an interim change is significant, temporary differences may need to be estimated as of the enactment.

As this edition reports on countries introducing or enacting global minimum tax legislation, companies may want to review our **Technical Line**, which discusses the accounting implications of those rules. For discussion of a recent proposal on income tax disclosures from the Financial Accounting Standards Board (FASB), see Appendix II of this publication

Federal, state and territories

Illinois – On 3 February 2023, Illinois enacted legislation modifying certain credit and incentive programs. The changes include:

- Increasing the maximum geographic size of an Illinois enterprise zone
- Broadening eligibility for renewable energy credits to include renewable energy manufacturers
- Extending the film production services tax credit six years through 31 December 2032, and modifying when nonresident wages are considered Illinois labor expenditures, a portion of which can be claimed as a credit

The changes are effective upon enactment. See the **State and Local Tax Weekly for 10 February 2023**.

Minnesota – On 12 January 2023, Minnesota enacted legislation requiring the state Department of Revenue (DOR) to add the following when computing a nonresident's Minnesota allocation percentage or a taxpayer's alternative minimum taxable income:

- Meal expenses that exceed the 50% limitation under Section 274(n)(1) of the Internal Revenue Code (IRC) but are allowed under IRC Section 274(n)(2)(D)
- Charitable contributions deducted for tax year 2020 under Section 2205(a) of PL 116-136 (Coronavirus Aid, Relief, and Economic Security (CARES) Act)

The Minnesota DOR must also subtract the following when making those calculations, to the extent taxpayers did not deduct these expenses from their federal taxable income:

- Wages used for the computation of the Employee Retention Credit (ERC) for employers affected by qualified disasters
- Wages used for the computation of the payroll credit for required sick leave
- Wages or expenses used for the computation of the payroll credit for required paid family leave
- Wages used for the computation of the ERC for employers subject to closures due to COVID-19
- The amount required to be added to gross income to claim the credit in IRC Section 6432 (American Rescue Plan Act (ARPA) PL 117-2)

The additions and subtractions are effective retroactively to the date that the underlying changes became effective for federal tax purposes. See **Tax Alert 2023-0164**, dated 27 January 2023.

Montana[1] – On 13 March 2023, Montana enacted legislation changing its apportionment formula to a single sales factor from a double-weighted sales factor. The change is effective for tax years beginning after 31 December 2024.

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[1] A Tax Alert on the legislation's enactment has not been published. For an Alert discussing passage by the Montana legislature, see **Tax Alert 2023-0436**, dated 8 March 2023.

New Jersey — On 30 January 2023, New Jersey enacted a credit for corporation business taxes that concrete producers may claim for (1) delivering low embodied carbon concrete or concrete that used carbon capture, utilization and storage technology, and (2) the costs of conducting an environmental product declaration analysis of low carbon concrete. The credit is available for privilege periods beginning on or after 1 January 2024. See the **State and Local Tax Weekly for 3 February 2023**.

IRC conformity

The following chart lists the states that enacted legislation this quarter updating their date of conformity to the US IRC. The chart also includes the dates on which the new conformity date was enacted and became effective. Further information on a state's IRC conformity can be found in the cited reference.

State	Enactment date	Date of conformity	Effective date	Reference
Arizona	3 March 2023	1 January 2023	Tax years beginning from and after 31 December 2022	A Tax Alert has not been published on this development.
Idaho	15 February 2023	1 January 2023 (with an exception)	1 January 2023	**State and Local Tax Weekly for 17 February 2023**
Minnesota	12 January 2023	15 December 2022	1 January 2023 (Changes conforming to federal provisions with retroactive effective dates are retroactively effective to those dates)	**Tax Alert 2023-0164**, dated 27 January 2023
South Dakota	14 February 2023	1 January 2023	1 July 2023	**State and Local Tax Weekly for 3 February 2023**
Virginia	27 February 2023	31 December 2022	Upon enactment	**State and Local Tax Weekly for 3 March 2023**
West Virginia	14 February 2023	Changes made on or before 31 December 2022	Retroactive to the extent permitted under federal income tax law	**State and Local Tax Weekly for 17 February 2023**

International

India■[2] – On 31 March 2023, India enacted legislation increasing the withholding tax rate for nonresidents on royalties and technical service fees to 20% from 10%. It also characterizes capital gains from the transfer, redemption or maturity of market-linked debt instruments as short-term capital gains taxable at ordinary rates. Intangible assets or rights acquired without any consideration are treated as having no cost basis for purposes of capital gains taxes. Other changes include:

- Extending the deadline by which startup companies must incorporate to be eligible for a tax holiday by one year to 31 March 2024
- Permitting eligible startup companies to carry losses forward 10 years from their year of incorporation, rather than seven years
- Relaxing limits on interest expense deductions for nonbanking financial institutions

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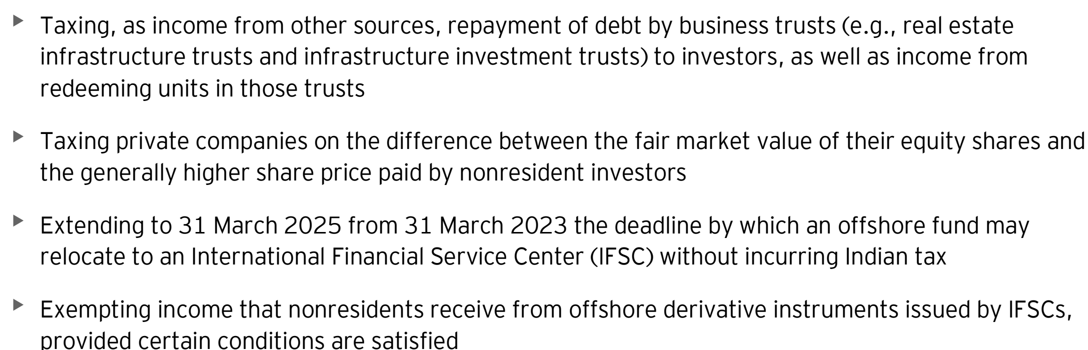
[2] A Tax Alert on the legislation's enactment has not been published. For an Alert discussing the proposals' introduction, see **Tax Alert 2023-0211**, dated 3 February 2023.



- Taxing, as income from other sources, repayment of debt by business trusts (e.g., real estate infrastructure trusts and infrastructure investment trusts) to investors, as well as income from redeeming units in those trusts
- Taxing private companies on the difference between the fair market value of their equity shares and the generally higher share price paid by nonresident investors
- Extending to 31 March 2025 from 31 March 2023 the deadline by which an offshore fund may relocate to an International Financial Service Center (IFSC) without incurring Indian tax
- Exempting income that nonresidents receive from offshore derivative instruments issued by IFSCs, provided certain conditions are satisfied

The changes are effective 1 April 2023.

Japan – On 28 March 2023, Japan enacted legislation implementing the income inclusion rule (IIR) under Pillar Two of the Base Erosion and Profit Shifting (BEPS) initiative of the Organisation for Economic Co-operation and Development (OECD). The legislation also:

- Modifies the general research and development (R&D) credit to increase how much a company may claim in credits
- Broadens eligibility for open innovation tax credits (i.e., credits based on experiment and research (E&R) expenses) to include more R&D-based startup companies and certain joint or consigned research
- Allows companies to count certain expenses for new highly skilled labor toward specified E&R costs, which are used to calculate the open innovation tax credit
- Broadens eligibility for the tax incentive to promote open innovation to include share acquisitions, provided certain conditions are satisfied
- Revises the tax rules for spin-offs to treat specific distributions in kind as a share distribution, provided certain conditions are satisfied
- Eliminates mark-to-market valuation for certain crypto assets that are expected to be held long term
- Requires gain or loss to be recognized when a corporation borrows crypto assets from a party other than a crypto asset exchange service provider, transfers them and does not repurchase the same type of assets by the end of the tax year in which the transfer occurred
- Extends by two years, to 31 March 2025, the expiration date of special depreciation or tax credits for certain acquired software under the digital transformation investment promotion tax incentive and modifying them to effectively increase the benefit that a company may claim

The changes are generally effective 1 April 2023, while the IIR applies to tax years beginning on or after 1 April 2024. See **Tax Alert 2023-0613**, dated 30 March 2023 for a discussion of the BEPS provisions. For discussion of the other provisions before their enactment, see a **newsletter from EY Japan**.

Qatar – On 2 February 2023, Qatar enacted legislation taxing certain foreign-source income, such as income from foreign immoveable property, interest, royalties and technical fees. The legislation also exempts certain foreign-source income from tax, such as income of a Qatari project earned through the activities of a foreign permanent establishment (PE), provided certain conditions are met. Other changes include:

- Amending certain definitions (e.g., PE, a Qatari project, immoveable property)
- Allowing companies to deduct taxes paid in another country, provided certain conditions are satisfied
- Amending anti-avoidance rules

The changes were effective upon enactment. See **Tax Alert 2023-0278**, dated 14 February 2023.

South Africa■[3] – On 5 January 2023, South Africa enacted legislation lowering its corporate income tax rate to 27% from 28%. The change is effective for tax years ending on or after 31 March 2023.

[3] A Tax Alert has not been published on this development.

Turkey■ — On 12 March 2023, Turkey enacted an additional 10% tax that corporations must apply, regardless of their tax base, to help address the damage caused by recent earthquakes. The 10% tax applies to:

- Certain income that is otherwise exempt from tax in 2022 tax returns under the Turkish Corporation Tax Code (CTC) or any other legislation
- Certain payments that are otherwise deductible expenses n 2022 tax returns under the CTC or any other legislation
- Tax bases in 2022 tax returns to which a discounted corporation tax rate applied under Article 32/A of the CTC

In some cases, additional tax will apply at a rate of 5%, rather than 10%. For example, a 5% rate will apply to exempted dividends from stock in Turkish companies. A 5% rate will also apply to exempted dividends from stock in foreign companies, provided the foreign companies have a 15% effective tax rate in their home country. The changes were effective upon enactment. See **Tax Alert 2023-0557**, dated 23 March 2023.

Legislation effective in the first quarter

Federal, state and territories

Arkansas — Effective for tax years beginning on or after 1 January 2023, the corporate income tax rate decreases to 5.3% from 5.9% for corporations with net income exceeding $25,000. The change was enacted 11 August 2022. See the **SALT Weekly for 5 August and 12 August 2022**.

Idaho — Effective for tax years beginning on or after 1 January 2023, the state's corporate income tax rate will be a flat 5.8%, below the top 6% rate that was in effect for tax year 2022. The change was enacted 1 September 2022. See the **State and Local Tax Weekly for 2 and 9 September 2022**.

Iowa[4] — Effective for tax years beginning on or after 1 January 2023, Iowa defines net income as taxable income properly computed for federal income tax purposes under IRC Section 63. The change was enacted 16 June 2021.

For tax year 2023, Iowa's corporate income tax rate decreases to 8.4% from 9.0% and 9.8%. Other changes effective 1 January 2023 include:

- Limiting the refundable portion of the research activities credit for tax year 2023 to 90% of the excess remaining after reducing the taxpayer's liability to zero.
- Requiring companies to compute the research activities credit in a manner consistent with the alternative simplified credit in IRC Section 41(c)(4), if they elected, or were required to use, this method for federal income tax purposes for the same tax year
- Limiting the refundable portion of the redevelopment tax credit, the third-party developer tax credit, the historic preservation tax credit and the assistive device tax credit, for tax year 2023, to 95% of the excess remaining after reducing the taxpayer's liability to zero

The changes were enacted 1 March 2022. See Tax Alerts **2022-0351**, dated 2 March 2022, and **2022-1462**, dated 29 September 2022.

The Bank Franchise Tax rate decreases to 4.7% from 5% for tax year 2023 and will decrease further in subsequent tax years. The change was enacted 17 June 2022. See **Tax Alert 2022-0964**, dated 20 June 2022.

Nebraska — For tax years beginning on or after 1 January 2023 and before 1 January 2024, the state's top corporate income tax rate for income over $100,000 decreases to 7.25% from 7.5%. Further reductions will occur in subsequent tax years. The changes were enacted 13 April 2022. See **Tax Alert 2022-0614**, dated 13 April 2022.

For tax years beginning on or after 1 January 2023, employers can claim a nonrefundable credit against their income tax liability if they employ eligible employees (i.e., individuals convicted of a felony) during the tax year. The credit equals 10% of wages paid by the employer to the eligible employee during the tax

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[4] A Tax Alert has not been published on the legislation's enactment. For discussion of the bill's passage by Iowa's legislature, see **Tax Alert 2021-1094**, dated 1 June 2021.

year and is capped at $20,000 per employee. Employers may only claim the credit for wages paid during the employee's first 12 months of employment. The change was enacted 18 April 2022. See the State and Local Tax Weekly for 13 May 2022.

Pennsylvania — For tax year 2023, the corporate income tax rate decreases to 8.99% from 9.99%. Further reductions will occur in subsequent tax years. Other changes effective 1 January 2023 include codifying the economic nexus rules and adopting market-based sourcing for sales of intangible property. The changes were enacted 8 July 2022. See **Tax Alert 2022-1085**, dated 18 July 2022.

International

Algeria — Effective 1 January 2023, a corporate income exemption applies for five years to profits from investment accounts in Islamic banks. A permanent exemption applies to income from fishing and aquaculture activities. Other changes include:

- Raising the threshold for deducting expenses paid in cash to DZD1 million from DZD300,000
- Authorizing the Ministry of Finance to develop a depreciation schedule for various assets
- Increasing the cap on deductions for R&D expenses to DZD200 million (US$1.4 million) from DZD100 million (US$727,143) but limiting the income offset by the deductions to 30% of a company's profits
- Increasing the cap on deductions for "open innovation" (i.e., startup companies) to DZD200 million (US$1.4 million) from DZD100 million (US$727,143) but limiting the income offset by the deductions to 30% of a company's profits
- Limiting deductions for R&D expenses and open innovation to a combined total of DZD200 million (US$1.4 million)
- Requiring companies that benefit from a preferential tax regime (e.g., the Algerian Investment Promotion Agency, which replaced the National Agency for Investment Development) to reinvest 30% of the income exempt from tax within four years of the close of the tax year to which the exempt income corresponds

The changes were enacted 29 December 2022. See **Tax Alert 2023-0057**, dated 9 January 2023.

Austria[5] — Effective for tax years beginning 1 January 2023 and ending before 1 January 2024, the corporate income tax rate decreases to 24% from 25%. A further reduction to 23% will occur for tax years beginning 1 January 2024. For corporations with a fiscal year ending on a date other than 31 December, composite rates apply. The changes were enacted 14 February 2022.

Canada — Effective for tax years beginning on or after 1 January 2023, Canadian tax law limits or denies deductions for the "contractual service margin," which stems from an insurance company's adoption of IFRS 17 for its contracts and represents deferred insurance profits that are gradually included in income for accounting purposes. The change was enacted 15 December 2022. See **Tax Alert 2022-1895**, dated 16 December 2022.

Chile — Effective 1 January 2023, a corporate income tax credit no longer applies for the purchase of fixed assets for companies with average annual sales of more than UF100,000 (approximately US$3.9 million) in the last three years. For financial leasing contracts entered into beginning 1 January 2023, the tax treatment now aligns with the accounting treatment, effectively permitting lessees to depreciate the property. The changes were enacted 4 February 2022. See **Tax Alert 2022-0216**, dated 4 February 2022.

Colombia[6] — Effective for tax years beginning on or after 1 January 2023, Colombia's new tax reform law applies. Changes in the new law include:

- Extending through 2024 the 20% corporate income tax rate for eligible industries operating in a free-trade zone (FTZ)

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[5] A Tax Alert has not been published on these developments.

[6] A Tax Alert has not been published on the legislation's enactment. For discussion of congressional approval of the bill, see **Tax Alert 2022-1757**, dated 22 November 2022.

- Applying a 5% surtax (total corporate income tax rate of 40%) to the income of some financial institutions, insurance companies and stockbrokers, among others, until 2027
- Applying a permanent surtax, which will range from 0% to 15% for oil companies (total corporate income tax rate from 35% to 50%) and from 0% to 10% for coal mining companies (total corporate income tax rate to 45% from 35%)
- Applying a 3% surtax (total corporate income tax rate of 38%) to the income of certain hydropower generators
- Applying a 15% corporate income tax rate for 10 years to the income of hotels and theme parks that are developed in some municipalities and approved by the Ministry of Commerce
- Extending through 2024 the 20% corporate income tax rate for eligible industries operating in an FTZ
- Allowing companies operating in an FTZ to continue applying a 20% corporate income tax rate to income derived from export activities, beginning in 2024, if the company signs an agreement with the Ministry of Commerce, establishing an international sales plan (a 35% rate applies to income from local sales)
- Requiring certain companies to have a 15% minimum tax rate (as determined under local rules, which do not necessarily align with the global minimum tax rules under Pillar Two of the OECD's BEPS initiative and to adjust that rate if it falls below the minimum 15%
- Applying a 20% withholding tax to certain dividends paid to nonresident companies
- Increasing the 10% capital gains tax rate to 15%, rather than the previously proposed 30%, for capital gains of resident and nonresident companies
- Disallowing deductions on royalties paid for the exploitation of nonrenewable resources
- Repealing accelerated amortization for investments in exploratory activities carried out between 2017 through 2027 and the incentive credit for oil, gas and mining investments
- Limiting certain nontaxable income, special deductions, exempt income and tax credits to 3% of net taxable income, calculated without including the special deductions subject to the limit
- Imposing a 10% withholding tax on the Colombian-sourced income of nonresident companies with a "significant economic presence" in Colombia and generally basing that economic presence on the number of Colombian customers and gross income from transactions with Colombian customers
- Narrowing the circumstances under which profit on the sale of listed shares on the Colombian Exchange Market will be considered nontaxable income

The changes were enacted 13 December 2022.

France[7] — For 2023 only, the business contribution on added value (BCAV) decreases by half (e.g., the BCAV rate decreases to 0.375% from 0.75% for companies with annual revenue exceeding EUR50 million); the BCAV will be abolished in 2024. For tax years beginning on or after 1 January 2023, a three-year holding requirement does not apply to eligible shareholders that receive shares as part of a spin-off transaction and ask the French tax authority for an advance ruling on the application of the French neutral income tax regime. The changes were enacted 31 December 2022.

Effective 1 January 2023, a temporary nondeductible 33% "solidarity contribution" (effectively, a windfall tax) applies to "surplus profits" of certain companies in the oil, gas, coal and refinery sectors (i.e., the taxable profits exceeding a 20% increase in a company's average taxable profits over the four tax years beginning on or after 1 January 2018). The change was enacted 31 December 2022. See Tax Alert 2023-0104, dated 17 January 2023.

[7] A Tax Alert has not been published on the legislation's enactment. For discussion of Parliament's approval of the bill, see Tax Alert 2022-1917, dated 20 December 2022.

Germany[8] — Effective 1 January 2023, German tax generally no longer applies, either prospectively or retroactively, to certain royalty income and capital gains that an unrelated party pays to nonresident licensors of intellectual property (IP) registered in Germany. For intercompany transactions, the payments remain subject to tax unless an applicable income tax treaty bars German taxation. Companies must apply German anti-treaty shopping rules in determining whether an income tax treaty bars German taxation.

Other changes include imposing a nondeductible 33% "solidarity contribution" (effectively, a windfall tax) for tax year 2023, which applies to "surplus profits" of certain companies in the oil, gas, coal and refinery sectors (i.e., the taxable profits exceeding a 20% increase in a company's average taxable profits over the four tax years beginning on or after 1 January 2018). The changes were enacted 20 December 2022.

Hong Kong — Effective 1 January 2023, Hong Kong will deem a multinational company's specified foreign-source income (e.g., interest, dividends, income from the use of IP and disposal gain on equity interest) to be taxable in the country if the company received the income in Hong Kong while operating a trade, profession or business there. Exceptions to this deemed sourcing apply to companies meeting requirements for economic substance, participation exemption or nexus, among others.

A new unilateral tax credit also applies to offset foreign taxes paid to non-treaty jurisdictions on specified foreign-source income that is no longer exempt in Hong Kong as a result of the changes. For dividends received from treaty or non-treaty jurisdictions, companies may claim the credit for foreign taxes paid on the dividend and the underlying profits from which the dividend was paid.

The changes were enacted on 23 December 2022. See **Tax Alert 2022-1898**, dated 16 December 2022. For discussion of a related proposal, see the Things we have our eyes on section of this publication.

Italy — Effective 1 January 2023, Italian companies may elect to pay a 9% transition tax (rather than the 24% corporate income tax rate) on qualified undistributed earnings of subsidiaries in low-tax jurisdictions or a 6% tax if those earnings are actually repatriated and placed in a special reserve for two years. Other tax changes include:

- Limiting deductions for expenses from transactions with entities in a jurisdiction that is noncooperative for tax purposes to a "normal value" of the relevant goods and services
- Imposing under certain circumstances a capital gains tax on nonresidents (with an exception for qualifying investment funds) upon the sale of a foreign entity that derived, directly or indirectly (i.e., holding stock in other foreign or Italian entities), most of its value during any of the 365 days preceding the sale from Italian real estate used in a passive business
- Allowing foreign entities to elect to pay a 16% substitute tax to step up the shares in Italian companies (as well as qualifying Italian land or Italian shares traded on regulated markets or multilateral trading systems) to the current fair market value as certified by a sworn appraisal
- Modifying Italy's PE definition to exclude, under certain circumstances, nonresident investment vehicles whose asset managers operate in Italy
- Requiring for tax year 2023 certain energy companies to pay a 50% "solidarity surcharge" (effectively, a windfall tax) on the portion of their 2022 corporate income that exceeds, by at least 10%, their average income for the four years preceding tax year 2022, but limiting the surcharge to 25% of the value of the companies' equity on 31 December 2021 (for calendar-year entities)
- A package of tax amnesty measures

The changes were enacted 29 December 2022. See **Tax Alert 2023-0061**, dated 10 January 2023.

Morocco — For tax year 2023, the standard corporate tax rate increases to 32% from 31% for taxable income of MAD100 million or more. For taxable income ranging from more than MAD1 million to less than MAD100 million, the standard corporate tax rate decreases to 28.25% from 31%. For taxable income up to MAD300,000, the rate increases to 12.5% from 10%. These standard rates will change in subsequent tax years. The standard rate for taxable income ranging from more than MAD300,000 to MAD1 million will remain 20%.

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[8] A Tax Alert has not been published on the legislation's enactment. For discussion of the legislation's approval by one chamber of the German Parliament, see **Tax Alert 2022-1800**, dated 2 December 2022.

For industrial companies, the corporate income tax rate for tax year 2023 will decrease to 24.5% from 26% for taxable income ranging from more than MAD1 million to MAD100 million. In contrast, the rate for financial companies will increase in 2023 to 37.75% from 37%. The corporate tax rate for companies with Casablanca Finance City (Casablanca FC) status and those located in Industrial Acceleration Zones (IAZs) will increase to 16.25% from 15%. These rates, among others, will change in subsequent tax years.

Other changes effective 1 January 2023 include:

- Capping the corporate income tax rate at 20% for four years for companies that agree to invest MAD1.5 million over five years in tangible fixed assets and hold those assets for 10 years (applies from 1 January 2023 to 31 December 2026, for the benefit of companies incorporated beginning 1 January 2023)
- Reducing the withholding tax rate on income from shares and similar revenues to 13.75% from 15% (rate will decrease further in subsequent tax years)
- Reducing the minimum contribution rate (effectively, a minimum corporate income tax) to 0.25% from 0.50% for all companies
- Imposing a 5% withholding tax on fees, commissions and other similar remuneration paid to a legal entity by the government, local authorities, and public institutions and enterprises
- Extending for three years, through tax year 2025, the 70% exemption for net capital gain that results from the sale of certain fixed assets (excluding land and buildings), provided certain conditions are satisfied

The changes were enacted 23 December 2022. See **Tax Alert 2023-0152**, dated 25 January 2023.

Peru — For tax years 2023 and 2024, the corporate income tax rate increases to 20% from 15% for taxpayers engaged in agribusiness, aquaculture and forestry. Further rate increases will occur in subsequent tax years. The changes were enacted 30 December 2021. See **Tax Alert 2022-0005**, dated 4 January 2022.

Effective 1 January 2023, taxpayers may claim an increased annual depreciation rate of 33.33% (previously 5% straight-line or 20% under special circumstances) for buildings whose construction began on or after 1 January 2023 and are at least 80% completed by 31 December 2024. Taxpayers may also claim a 50% annual depreciation rate for hybrid and electric vehicles acquired in 2023 and 2024. The changes were enacted 28 December 2022. See **Tax Alert 2023-0073**, dated 11 January 2023.

Effective 1 January 2023, taxpayers may continue claiming "super deductions" for R&D expenses for another three years. The super deductions were previously scheduled to expire 31 December 2022.

For taxpayers whose net income exceeds 2,300 Tax Units (approx. US$2,996,000), the deduction increases to (1) 190% of R&D expenses, rather than 175%, provided the taxpayer executes the R&D project itself or in a Peruvian R&D center, or (2) 160% of R&D expenses, rather than 150%, if the taxpayer executes the R&D project in a non-Peruvian R&D center.

For taxpayers with income at or below 2,300 Tax Units, the deduction increases to (1) 240% of R&D expenses, rather than 215%, provided the taxpayer executes the R&D project itself or in a Peruvian R&D center, or (2) 190% of R&D expenses, rather than 175%, if the taxpayer executes the R&D project in a non-Peruvian R&D center.

The changes were enacted 30 December 2022. See **Tax Alert 2023-0116**, dated 18 January 2023.

Effective 1 January 2023, tax benefits for real estate investment funds and real estate investment trusts are available for four more years, through 31 December 2026. The benefits include:

- Deferred payment of capital gains taxes on property transferred to a real estate investment fund or real estate investment trust
- A 24% withholding tax (normally 30%) on income that nonresident companies receive from property leases

The changes were enacted 29 December 2022. See **Tax Alert 2023-0181**, dated 31 January 2023.

South Korea — Effective 1 January 2023, corporate income tax rates decrease to:

- 24% from 25% for taxable income exceeding KRW300 billion
- 21% from 22% for taxable income ranging from more than KRW20 billion to KRW300 billion
- 19% from 20% for taxable income ranging from more than KRW200 million to KRW20 billion
- 9% from 10% for taxable income up to KRW200 million

Other changes include:

- Increasing the annual deductibility limit for net operating losses (NOLs) to 80% of taxable income (previously 60%) for domestic corporations
- Extending the expiration date of the accumulated earnings tax regime to 31 December 2025 from 31 December 2022
- Deferring until 1 January 2025 the imposition of withholding taxes on gains from the disposal of virtual assets (e.g., digital currency) by nonresidents (withholding tax otherwise applied beginning 1 January 2023)
- Exempting withholding taxes on interest and capital gains derived from government bonds and certain monetary stabilization bonds by nonresidents or foreign corporations

The changes were enacted 31 December 2022. See Tax Alerts 2023-0068, dated 11 January 2023, and 2023-0069, dated 11 January 2023.

Spain[9] — Effective 1 January 2023, a consolidated group can only use 50% of each member's net tax losses to offset the consolidated taxable income for tax year 2023. The change was enacted 28 December 2022.

Turkey — Effective for tax years beginning on or after 1 January 2023, the corporate income tax rate decreases to 20% from 23%. The change was enacted 22 April 2021. See Tax Alert 2021-0835, dated 23 April 2021.

For income derived by exporters and certified manufacturers, the corporate income tax rate decreases to 19% from 23% for tax years beginning on or after 1 January 2023. The change was enacted 22 January 2022. See Tax Alert 2022-0184, dated 2 February 2022.

Uruguay — Effective 1 January 2023, foreign corporations may exempt interest income from Uruguay's nonresident income tax if:

- The interest income comes from the corporation's debt securities and financial trusts
- More than 90% of the corporation's assets generate nontaxable income

The changes, among others, were enacted 3 November 2022. See Tax Alert 2022-1664, dated 4 November 2022.

Also effective 1 January 2023, new sourcing rules subject certain passive income of multinational companies to Uruguay corporate income tax. Other changes include:

- Extending the new sourcing rules to capital gains from assets that could potentially generate passive income abroad
- Eliminating the corporate income tax exemption for dividends that are now taxed under the new sourcing rules
- Introducing a tax credit for passive income that is taxed abroad

The changes were enacted 7 December 2022. See Tax Alert 2022-1879, dated 15 December 2022.

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[9] A Tax Alert has not been published on this development.

Other considerations

Court decisions, regulations issued by tax authorities and other events may constitute new information that could trigger a change in judgment in recognition, derecognition or measurement of a tax position. These events also may affect your current or deferred tax accounting.

Federal, state and territories

Federal — In a revenue procedure, the Internal Revenue Service (IRS) outlined guidance on the alternative cost method, which real estate developers may use to account for certain common improvement costs. See **Tax Alert 2023-0227**, dated 7 February 2023.

In a notice, the IRS provided interim guidance to help insurance companies and certain other taxpayers comply with the new corporate alternative minimum tax (CAMT) until proposed regulations are issued. The notice addresses how to determine adjusted financial statement income (AFSI) with regard to:

- Variable (and similar) contracts
- Funds-withheld reinsurance and modified coinsurance agreements
- The basis of certain assets held by previously tax-exempt entities that received a "fresh start" basis adjustment

The notice suggests that the AFSI does not include (1) fair value adjustments associated with nonconsolidated corporate equities and partnership investments or (2) unrealized gains and losses recorded in other comprehensive income. However, as the notice is intended to avoid adverse consequences to the insurance industry, those outside the insurance industry should analyze these items and make their own determination regarding the intent of the statute as written when determining whether to include in AFSI for purposes of determining applicable corporation status and the amount of any CAMT. See **Tax Alert 2023-0384**, dated 28 February 2023.

District of Columbia — The Office of Tax and Revenue outlined the requirements for transferring the District's low-income housing tax credit between taxpayers. See the **State and Local Tax Weekly for 17 February 2023**.

Illinois — The Department of Revenue amended regulations to reflect recent statutory changes to the state's net loss deduction. Under the revised regulations, any unexpired NOLs a corporation has in Illinois may now to be carried forward 20 years from the year generated. See the **State and Local Tax Weekly for 10 February 2023**.

Montana — The Department of Revenue amended its apportionment rules to provide multistate railroad companies with a formula for apportioning their income from sources within and outside Montana. See the **State and Local Tax Weekly for 20 January 2023**.

New Jersey — The Division of Taxation issued updated guidance on its credit for income tax paid to other jurisdictions. Topics covered in the guidance, among others, include:

- Components of the credit calculation
- Procedures for claiming the credit
- The proportional credit limitation formula
- Income from Pennsylvania and New York

See the **State and Local Tax Weekly for 17 February 2023**.

Oregon — The Department of Revenue amended state regulations to require companies that deduct capital losses for federal income tax purposes to add those losses to their Oregon tax base before calculating the Oregon capital loss deduction. See the **State and Local Tax Weekly for 27 January 2023**.

Tennessee — The Department of Revenue is updating its franchise and excise tax manual to reflect its determination that Tennessee conforms to the IRC Section 250 deduction for foreign-derived intangible income (FDII). Taxpayers computing net earnings under Tennessee law may claim the full amount of FDII deducted for federal purposes, but are still precluded from claiming an IRC Section 250 global intangible low-taxed income (GILTI) deduction for federal purposes. See the **State and Local Tax Weekly for 10 February 2023**.

Texas — In a memo, the Comptroller of Public Accounts identified the federal statutes and regulations on internal-use software that the state's franchise tax law incorporates by reference for purposes of its recently amended rules on the R&D credit. See the **State and Local Tax Weekly for 10 February 2023**.

The Comptroller of Public Accounts amended Texas apportionment rules to source sales of services based on where a taxpayer's employees or equipment performed the services, rather than the location of the customer receiving them. The changes reflect a recent holding by the Texas Supreme Court, which determined that sales of services should be sourced based on an "origin-based" system. See **Tax Alert 2023-0438**, dated 8 March 2023.

Wisconsin — The Department of Revenue noted that the state has not conformed to changes that were made to research and experimental (R&E) expenses by the Tax Cuts and Jobs Act (TCJA) in 2017 and became effective in tax year 2022. Taxpayers with R&E expenses may elect to:

- Deduct the expenses in the year paid or incurred
- Defer the expenses and deduct them ratably over at least 60 months

  or

- Treat the expenses as capital expenditures amortizable over a useful life, if determinable

See the **State and Local Tax Weekly for 27 January 2023**.

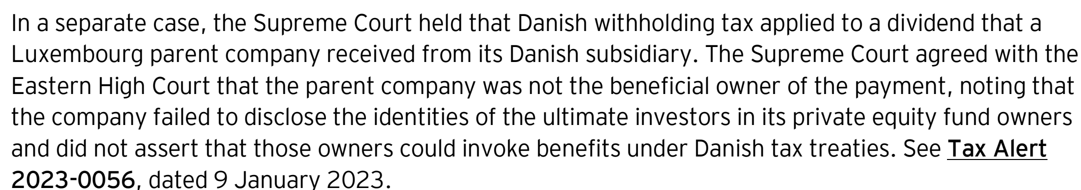
The Wisconsin Tax Appeals Commission ruled that a California footwear company that hired a tax adviser to design and implement a holding company structure for its IP could not deduct royalties and interest expenses paid to the affiliate that held the company's IP and licensed it back to the company. Citing planning documents from the tax advisor, the Commission found the transactions were designed to lower state income taxes, lacked a valid nontax business purpose and lacked economic substance. See **Tax Alert 2023-0462**, dated 10 March 2023.

International

Argentina — In a decree, the government removed 15 jurisdictions from Argentina's list of non-cooperating jurisdictions for income tax purposes. The updated list includes 80, rather than 95, non-cooperating jurisdictions. See **Tax Alert 2023-0193**, dated 2 February 2023.

Brazil — In a normative instruction (NI), the Federal Revenue Office outlined how taxpayers may elect early adoption of new transfer pricing rules that were included in a December 2022 provisional measure (PM) currently awaiting congressional approval. Once approved, the PM will be effective in calendar year 2024. The NI allows taxpayers to adopt the rules for controlled transactions executed in calendar year 2023 as long as they do so during September 2023. It also establishes criteria for carrying out transfer pricing adjustments throughout the year and adopting regulations in the PM on royalty deductions. It does not, however, generally permit companies to use transfer pricing adjustments to reduce their corporate tax base or increase their tax losses. See **Tax Alert 2023-0437**, dated 8 March 2023. For additional information on the PM, see the "Things we have our eyes on" section of this publication.

Denmark — The Supreme Court reached different conclusions on the applicability of Danish withholding tax to dividends that were declared by a Danish subsidiary in 2005 and 2006 through a series of intermediary companies in Cyprus and Bermuda and then ultimately paid to its ultimate US parent in 2006 and 2010, respectively. The Supreme Court concluded that Danish withholding tax applied to the 2005 dividend because the Danish subsidiary did not prove the US parent was the originally intended recipient and is, therefore, not the beneficial owner of that dividend. In contrast, the Supreme Court concluded that the Danish-US tax treaty precluded the imposition of withholding tax on the 2006 dividend, as the Danish subsidiary had proven the 2006 dividend was part of a contemplated distribution to the US parent, even though 2006 dividend was not paid until 2010. See **Tax Alert 2023-0056**, dated 9 January 2023.



In a separate case, the Supreme Court held that Danish withholding tax applied to a dividend that a Luxembourg parent company received from its Danish subsidiary. The Supreme Court agreed with the Eastern High Court that the parent company was not the beneficial owner of the payment, noting that the company failed to disclose the identities of the ultimate investors in its private equity fund owners and did not assert that those owners could invoke benefits under Danish tax treaties. See **Tax Alert 2023-0056**, dated 9 January 2023.

European Union — The Council of the European Union (EU) added the British Virgin Islands, Costa Rica, Marshall Islands, and Russia to Annex I of its list of noncooperative jurisdictions for tax purposes, which identifies jurisdictions whose tax policies fail to meet EU standards by the required deadline. The latest additions increase the number of countries on the list to 16.

For Annex II, the Council added Albania, Aruba and Curaçao, while removing Barbados, Jamaica, North Macedonia, and Uruguay. Eighteen countries are now on Annex II, which identifies jurisdictions that are making progress on reforming their tax policies to meet EU standards but remain subject to close monitoring. See Tax Alerts **2023-0281**, dated 15 February 2023; **2023-0283**, dated 15 February 2023; **2023-0332**, dated 20 February 2023; and **2023-0353**, dated 23 February 2023.

India – The Income Tax Appellate Tribunal of New Delhi held that computer terminals used by Indian airlines to access a nonresident company's online travel-related products and services, which were housed on US computer servers, did not create an Indian PE for the company. The tribunal reasoned that the nonresident company did not have a fixed place of business in India as it had not installed its equipment with its Indian clients. See **Tax Alert 2023-0247**, dated 9 February 2023.

Ireland — The Revenue Commissioners said that they will disregard the presence in Ireland, for corporation tax purposes, of Ukrainian employees, directors, service providers or agents of a Ukrainian tax resident company, if they would have continued to be present in the Ukraine but for the war there. This treatment, which previously applied only for tax year 2022, requires employers and employees to keep appropriate documentation and is subject to satisfying certain conditions, which are outlined in Revenue eBrief No. 090/22. See **Tax Alert 2023-0440**, dated 9 March 2023.

Kenya – The Cabinet Secretary for the National Treasury and Economic Planning issued regulations operationalizing the imposition of a 15% withholding tax on gains from financial derivatives earned by nonresidents. The regulations define terms associated with financial derivatives, including call options, currency swaps, forward contracts, put options, option contracts and futures contracts. They also specify when a gain or loss from a financial derivative is deemed to have been realized. See **Tax Alert 2023-0288**, dated 16 February 2023.

Mauritius — The Supreme Court held that a company could not deduct the cost of air travel for its employees unless the related expenses have been disbursed. The Supreme Court also deemed the company to have interest income on interest-free loans it made to five wholly owned subsidiaries. See **Tax Alert 2023-0366**, dated 24 February 2023.

Netherlands — In a decree, the State Secretary of Finance clarified that the transfer pricing anti-mismatch rules do not preclude a Dutch corporation from recognizing the fair market value of an asset contributed by an affiliate exempt from profits tax or residing in a jurisdiction where it is not subject to a profits tax. Both the transferor and the Dutch corporation, however, must record the asset's fair market value in their annual financial statements and legal documents. The same treatment applies to assets transferred via a profit distribution, return of paid-up capital, liquidation distribution or similar legal act. See **Tax Alert 2023-0149**, dated 24 January 2023.

Organisation for Economic Co-operation and Development — In administrative guidance, the OECD addressed key issues around the implementation of global minimum tax rules under Pillar Two of its BEPS initiative, including:

- Treatment of certain nonrefundable tax credits that flow through a tax-transparent entity and arise from an equity method investment (e.g., the low-income housing tax credit and investments in many renewable energy tax credits)
- Allocation of taxes under blended controlled foreign corporation regimes (e.g., the US GILTI regime)
- Design elements for a qualified domestic minimum top-up tax (QDMTT), which will be used for assessing whether a domestic minimum tax meets the requirements for qualified status

See Tax Alerts **2023-0199**, dated 2 February 2023; **2023-0206**, dated 3 February 2023; **2023-0254**, dated 9 February 2023; and **2023-0256**, dated 10 February 2023.

Spain — In a ministerial order, the Ministry of Finance listed 24 jurisdictions and harmful tax regimes that Spain considers non-cooperative jurisdictions for tax purposes. Of those, 10 appear on the EU's list of non-cooperative jurisdictions for tax purposes and two (Barbados; Trinidad and Tobago) have a tax treaty in force with Spain. The list is final and generally applies as of 11 February 2023. See **Tax Alert 2023-0290**, dated 16 February 2023.

Switzerland — The Swiss Federal Tax Administration (SFTA) published the 2023 safe harbor interest rates for Swiss Franc (CHF) and foreign currencies (e.g., USD, EUR) for loans to and from shareholders and related parties. Adherence to the safe harbor rates generally lessens the likelihood that the SFTA and Cantonal Tax Authorities will challenge a Swiss company's interest income or deductions from related party loans. The safe harbor interest rates published for 2023 are generally higher than those for 2022. See **Tax Alert 2023-0309**, dated 16 February 2023.

Turkey — In a presidential decision, the government reduced the withholding tax on amounts regarded as dividends distributed as a result of a share buyback to 0% from 15%. See **Tax Alert 2023-0286**, dated 15 February 2023.

Uruguay — Tax authorities announced that the withholding tax on interest under the Uruguay-Chile income tax treaty decreased to 10% from 15% after the income tax treaty's Most Favored Nation clause was triggered by a 10% withholding tax on interest under the subsequent Chile-India income tax treaty. See **Tax Alert 2023-0280**, dated 14 February 2023.

Things we have our eyes on

National, state and local governments continue to seek to increase their revenues. Companies should continue to monitor developments in this area. Some of these potential tax law changes are summarized here.

Federal, state and territories

Corporate tax — The Biden Administration released its fiscal year 2024 budget and explanation of its revenue proposals (the Green Book). Proposed changes to US corporate income tax rules include:

- Raising the corporate income tax rate to 28% from its current 21%, and, together with other changes to the GILTI regime, raising the effective rate on GILTI to 21% from 10.5%
- Taxing carried interests as ordinary income
- Eliminating a corporation's ability to transfer property to its shareholders without the transfer qualifying as a dividend
- Changing the requirements for tax-free divisive reorganizations
- Tightening rules on limiting deductions for executive compensation under IRC Section 162(m) and loss deferrals under IRC Section 267, and moving the effective date of IRC Section 162(m)'s expansion to non-officers forward three years to tax years ending after 31 December 2023
- Modifying the GILTI regime to comply with the global minimum tax rules under Pillar Two of the OECD's BEPS project
- Replacing the base erosion and anti-avoidance tax with an undertaxed-payments rule and introducing a domestic minimum top-up tax consistent with the OECD's Pillar Two model rules
- Repealing the tax benefit for FDII and replacing it with unspecified R&D benefits
- Providing a new general business credit for businesses that bring back jobs to the US
- Repealing deferral of gain from like-kind exchanges
- Eliminating tax preferences for fossil fuels

See **Tax Alert 2023-9001**, dated 10 March 2023.

International tax — Rep. Lloyd Doggett (D-TX) and Senator Sheldon Whitehouse (D-RI) introduced a bill that would eliminate deductions for GILTI and FDII. The bill would also apply GILTI on a per-country basis and restrict interest expense deductions for multinational companies with excess domestic debt. Other provisions would:

- Repeal the 10% exemption from GILTI income for qualified business asset investments
- Treat corporations managed and controlled in the US as domestic corporations
- Eliminate tax incentives for oil and gas companies for foreign oil and gas extraction income

See **Tax Alert 2023-0262**, dated 10 February 2023.

Windfall profits tax — Sen. Sheldon Whitehouse (D-RI) and Rep. Ro Khanna (D-CA) introduced a bill to impose a windfall profits excise tax on crude oil. The tax would apply per barrel of oil and would equal 50% of the difference between the current price of a barrel of oil and the average pre-pandemic price per barrel between 2015 and 2019. See **Tax Alert 2023-0314**, dated 17 February 2023.

California — In the 2023-24 State Budget, the governor proposed extending California's film and television tax credit for five years and making it refundable. Refunded credits would be discounted and spread over multiple years to lessen revenue loss, while credits against tax liability would retain their full value. The governor also proposed expanding access to California's existing New Employment Credit by removing the geographic requirement for qualifying semiconductor manufacturing and R&D firms. See the **State and Local Tax Weekly for 13 January 2023**.

Connecticut — The governor proposed extending the 10% corporate tax surcharge two years through income year 2025. See the **State and Local Tax Weekly for 10 February 2023**.

Nebraska — The governor's proposed tax relief plan would reduce the corporate income tax rate to 5.84% from 7.25% for tax year 2024. The rate would continue to drop annually until it reached 3.99% by 2027. See the **State and Local Tax Weekly for 20 January 2023**.

Tennessee — In the FY 2023-24 budget, the governor proposed transitioning to a single sales factor apportionment formula for franchise and excise tax purposes. Other proposals include:

- Conforming to changes to federal bonus depreciation made by the TCJA
- Extending the manufacturing exemption from the business tax to sales of manufactured goods made from a manufacturer's storage facility that is within 10 miles of the manufacturing location
- Reducing the business tax rate for industrial loan and thrift companies
- Providing a standard reduction from excise tax up to $50,000 of net earnings

See the **State and Local Tax Weekly for 10 February 2023**.

Wisconsin — In the 2023-2025 biennial budget, the governor proposed increasing the state's research credit for businesses to 50% from 15%, beginning in tax year 2024. He also proposed limiting the manufacturing portion of the manufacturing and agricultural tax credit to the first $300,000 in qualified production income and leaving the agricultural portion of the credit unchanged. See **Tax Alert 2023-0340**, dated 21 February 2023.

International

Belgium — The Finance Minister launched the first phase of a tax reform, which includes the implementation of the global minimum tax rules under Pillar Two of the OECD's BEPS initiative by the end of 2023. These rules would apply at the Belgium group level, rather than the entity level. Other corporate income tax proposals include:

- Tightening eligibility for the participation exemption by requiring shares (below the 10% minimum) with an acquisition value of at least EUR2.5 million to qualify as financial fixed assets
- Converting the dividends-received deduction into a tax exemption for dividends to better align with the EU Parent-Subsidiary Directive
- Expanding the investment deduction to sustainable investments
- Modifying various R&D/IP-related tax incentives (innovation income deduction and payroll withholding tax exemption)

See **Tax Alert 2023-0428**, dated 7 March 2023.

Brazil [10]– Congress is considering an urgent provisional measure (PM) that would establish arm's-length transfer pricing rules in Brazil. The deadline for Congress to approve, or reject, the PM is the beginning of June. The PM would be enacted for US GAAP purposes upon approval by both chambers of Congress.

Germany — In discussion draft legislation, the Federal Ministry of Finance proposed implementing the global minimum tax rules under Pillar Two of the OECD's BEPS project into German law. The draft legislation includes an IIR, under taxed payment rule (UTPR) and QDMTT and would be effective in 2024 (2025 for the UTPR, except in certain cases). See **Tax Alert 2023-0540**, dated 22 March 2023.

Hong Kong — In draft legislation, the government proposed expanding the scope of disposal gains under its exemption for foreign-source income to cover more asset classes. The related legislative amendments are expected to be enacted by the end of 2023, with the revised exemption becoming effective 1 January 2024. See **Tax Alert 2023-0329**, dated 20 February 2023.

In the 2023-24 budget, the Financial Secretary proposed implementing the global minimum tax rules under Pillar Two of the OECD's BEPS initiative, including a qualified domestic top-up tax. The rules would apply starting from 2025. Other proposals include:

- Introducing a patent box regime that would give preferential tax treatment to qualifying income from the use of patents and patent-like IP rights in Hong Kong

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[10] A Tax Alert on the PM's current status has not been published. For discussion of the PM's publication by the Federal Revenue Service in December 2022, see **Tax Alert 2023-0006**, dated 3 January 2023.

- Allowing telecommunication companies to deduct one-off lump-sum fees paid for the right to use radio spectrums in their business for multiple years
- Improving the preferential tax regime for aircraft leasing by allowing lessees to deduct 100% of their aircraft acquisition costs in the first year

See **Tax Alert 2023-0358**, dated 23 February 2023.

Singapore — In the FY 2023 budget, the Finance Minister proposed implementing the global minimum tax rules under Pillar Two of the OECD's BEPS initiative, including a qualified domestic top-up tax, an IIR and a UTPR. The rules would apply for businesses with financial years beginning on or after 1 January 2025. The implementation would not affect the availability of various tax incentives and programs, including the Pioneer Certificate Incentive, Development and Expansion Incentive, the Intellectual Property Development Incentive, the Investment Allowance Scheme, and financial sector incentives (e.g., Financial Sector Incentive Scheme, Qualifying Debt Securities Scheme), which are effective in financial years ending in 2023 and are proposed to be extended and/or refined.

Other proposals include:

- Allowing companies to choose between increased "super" deductions for R&D, IP and training expenditures of up to 400% from 250% (subject to a cap) or a 20% partial cash payout (also subject to a cap) relevant for tax years ending 2023 through 2027
- Broadening the scope of the Internationalization Scheme to cover e-commerce campaigns, which may use the 200% tax deduction for qualifying market expansion and investment development expenses
- Permitting companies to accelerate tax depreciation (capital allowances) over two years instead of three years, and renovation and refurbishment deductions over one year instead of three years, subject to a cap (relevant for tax year 2023)

See **Tax Alert 2023-0359**, dated 24 February 2023, and a **Tax Alert from EY Singapore**.

Spain — In a public consultation document, the Ministry of Finance summarized the EU Directive implementing the global minimum tax rules under Pillar Two of the OECD's BEPS project. The document directs Spain to implement the directive into Spanish law before 31 December 2023 (31 December 2024 for the UTPR). As such, Pillar Two rules would apply in 2024. See **Tax Alert 2023-0451**, dated 10 March 2023.

Sweden[11] — In draft legislation, the Government proposed implementing the global minimum tax rules under Pillar Two of the OECD's BEPS initiative, including a QDMTT, an IIR and a UTPR.

Thailand — The Thai Cabinet approved in principle the implementation of the global minimum tax rules under Pillar Two of the OECD's BEPS project and instructed the Revenue Department to draft legislation implementing the rules for consideration in 2023, with an effective date of 2025. It also instructed the Board of Investment to consider measures that would alleviate the effects of Pillar Two's implementation on existing tax incentive programs. See **Tax Alert 2023-0452**, dated 10 March 2023.

United Kingdom — In the 2023 Spring Budget, the Chancellor reaffirmed the scheduled increase in the main corporate income tax rate to 25% from 19%, effective 1 April 2023, but announced targeted tax incentives to offset the increase. Among other proposals, the budget would replace the expiring UK super-deduction with immediate capital expensing for the next three years for firms investing £1m+ a year on plant and machinery. See **Tax Alert 2023-0492**, dated 16 March 2023.

In the Spring Finance Bill that followed the 2023 Spring Budget, the government proposed legislation to implement the OECD Global Anti-Base Erosion Model Pillar Two rules in the UK. The legislation is expected to be enacted in summer 2023. It builds on draft legislation previously published but adds other key developments. The bill also contains details of the announced changes to the Energy Profits Levy and of the new Electricity Generator Levy. See **Tax Alert 2023-0589**, dated 28 March 2023, for discussion of the proposed Pillar Two rules.

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[11] A Tax Alert has not been published on this development.

Appendix I

Treaty changes

Tax treaties are agreements between countries that typically address withholding tax rates or exemptions on dividends, interest and royalties paid in multiple jurisdictions. Exceptions may apply based on tax treaty (for instance, reduced rates may apply to certain categories of investors, capital gains from immovable property or property-rich companies may be taxable). All of the following tax treaty changes were effective in the first calendar quarter, except where indicated.

Countries involved		Summary of changes
Andorra	Hungary	Provides general withholding tax rates of 10% on dividends and 5% on royalties; exempts interest and capital gains.
Angola	China	Provides general withholding tax rates of 8% on dividends, interest and royalties; exempts capital gains.
Austria	United Arab Emirates	Provides general withholding tax rates of 10% on dividends; exempts interest, royalties and capital gains.
Benin	Morocco	Provides general withholding tax rates of 5% on dividends and 10% on interest and on royalties; exempts capital gains.
Chile	India	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains (effective 1 April 2023 in India).
Chile	Netherlands	Provides general withholding tax rates of 15% on dividends and 10% on interest and royalties; exempts capital gains.
Chile	United Arab Emirates	Provides general withholding tax rates of 10% on dividends, interest, and royalties; exempts capital gains.
China	Congo	Provides general withholding tax rates of 10% on dividends and interest, and 5% on royalties; exempts capital gains.
China	Rwanda	Provides general withholding tax rates of 7.5% on dividends, 8% on interest and 10% on royalties and technical services fees; exempts capital gains.
Colombia	France	Provides general withholding tax rates of 15% on dividends and 10% on interest and royalties; exempts capital gains.
Colombia	Japan	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Cyprus	Jordan	Provides general withholding tax rates of 10% on dividends, 5% on interest, and 7% on royalties and technical service fees; exempts capital gains.
Czech Republic	Qatar	Provides general withholding tax rates of 10% on dividends, 0% on interest and 10% on royalties; exempts capital gains.
Czech Republic	San Marino	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Czech Republic	Senegal	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Denmark	Ukraine	Provides general withholding tax rates of 15% on dividends, 10% on interest and 5% on royalties; exempts capital gains.
Germany	Mauritius	Provides general withholding tax rates of 15% on dividends and 10% on royalties; exempts interest and capital gains.
Germany	Netherlands	Provides general withholding tax rates of 15% on dividends; exempts interest, royalties and capital gains.
Ghana	Morocco	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.

Countries involved		Summary of changes
Greece	Singapore	Provides general withholding tax rates of 10% on dividends and 7.5% on interest and royalties; exempts capital gains.
Ireland	Kosovo	Provides general withholding tax rates of 10% on dividends and 5% on interest; exempts royalties and capital gains.
Japan	Morocco	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Japan	Switzerland	Provides general withholding tax rates of 10% on dividends and interest; exempts royalties and capital gains.
Kyrgyzstan	United Kingdom	Provides general withholding tax rates of 15% on dividends and 5% on interest and royalties; exempts capital gains (effective regarding capital gains on 6 April 2023 in the United Kingdom).
Lithuania	Morocco	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Madagascar	Morocco	Provides general withholding tax rates of 10% on dividends, interest, and royalties; exempts capital gains.
Malta	Poland	Provides general withholding tax rates of 10% on dividends, 4% on interest and 5% on royalties and technical service fees; exempts capital gains.
Morocco	Saudi Arabia	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Morocco	Serbia	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Morocco	Slovenia	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Netherlands	Poland	Provides general withholding tax rates of 15% on dividends and 5% on interest and royalties; exempts capital gains.
Oman	Qatar	Provides general withholding tax rates of 5% on dividends and 8% on royalties and technical service fees; exempts interest and capital gains.
Portugal	Timor-Leste	Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains.
Russia	Ukraine	The 1995 tax treaty between these two countries was terminated.

Appendix II

FASB proposes improvements to income tax disclosures

What you need to know

- The FASB is proposing to require public business entities to disclose in their rate reconciliation table additional categories of information about federal, state and foreign income taxes and to provide more details about the reconciling items in some categories if items meet a quantitative threshold. Entities that aren't public business entities would have to provide qualitative disclosures about the new categories.
- The proposal would require all entities to disclose year-to-date income taxes paid, net of refunds, disaggregated by federal (national), state and foreign taxes for interim and annual periods and to disaggregate the information by jurisdiction annually.
- The proposal would require all entities to provide separate disclosures about foreign and domestic pre-tax income (loss) from continuing operations and other disaggregated disclosures about tax expense (benefit).
- The proposal would eliminate requirements to disclose certain information related to unrecognized deferred tax liabilities and uncertain tax positions.
- Comments are due by 30 May 2023.

Overview

The Financial Accounting Standards Board (FASB or Board) issued an exposure draft proposing to require entities to provide more information in the rate reconciliation table and about income taxes paid, including certain disclosures that would be disaggregated by jurisdiction and other categories.

The proposal is intended to address investors' calls for more information about income taxes, particularly related to the rate reconciliation and income taxes paid information. The FASB had proposed broader changes to the income tax disclosure requirements in 2016 and 2019 but decided to focus on the rate reconciliation table and disclosures about income taxes paid after evaluating feedback on those proposals and responses to its 2021 Invitation to Comment, Agenda Consultation.

The proposal would align the rate reconciliation requirements in Accounting Standards Codification (ASC) 740, Income Taxes, with certain requirements of the Securities and Exchange Commission (SEC) Regulation S-X, and should reduce diversity in practice by prescribing the categories of information entities need to present in the table.

The proposal would also eliminate certain existing requirements related to uncertain tax positions and unrecognized deferred tax liabilities and would replace the term public entity with public business entity (PBE) in ASC 740.

Key considerations

Rate reconciliation

The proposal would require PBEs to disclose, on an annual basis, in their rate reconciliation table both percentages and amounts in their reporting currency for the following categories, with accompanying qualitative disclosures:

- State and local income tax in the country of domicile, net of federal income tax effect

- Foreign tax effects, including any state or local taxes in foreign jurisdictions
- Enactment of new tax laws
- Effect of cross-border tax laws
- Tax credits
- Valuation allowances
- Nontaxable or nondeductible items
- Changes in unrecognized tax benefits

The last six categories in the list would apply to federal (national) income taxes imposed by the country of domicile.

For foreign tax effects,[1] the effect of cross-border tax laws, tax credits and nontaxable or nondeductible items, the proposal would require further disaggregation when the individual reconciling items in the categories equal or exceed a threshold of 5% of the amount computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate.

Reconciling items in the foreign tax effects category that meet the threshold would have to be disaggregated by both jurisdiction (country) and nature. Reconciling items in the effect of the cross-border tax laws, tax credits and nontaxable or nondeductible items categories that meet the threshold would have to be disaggregated by nature. To determine the nature of a reconciling item, an entity would consider the item's fundamental or essential characteristics, such as the event that caused the reconciling item and the activity with which the reconciling item is associated.

If a foreign jurisdiction meets the 5% threshold, the tax impact for that category would be separately disclosed as a reconciling item in the foreign effects category. An entity would then evaluate whether any reconciling items in that jurisdiction should be separately disclosed based on the 5% threshold. In some cases, a jurisdiction may not meet the 5% threshold, but there could be individual reconciling items in that jurisdiction that meet the 5% threshold. Reconciling items in a foreign jurisdiction would be separately disclosed by nature (consistent with the categories listed above) if the gross amount of the individual reconciling item (positive or negative) meets the 5% threshold.

Any other reconciling item that meets the 5% threshold but does not fall in one of the listed categories would have to be disaggregated by nature. A PBE would also have to disclose the states and local jurisdictions that contribute to the majority of the effect of the state and local income tax category.

In addition, a PBE would have to provide an explanation, if not otherwise evident, of the individual reconciling items disclosed, such as the nature, effect and year-over-year changes of the reconciling items.

The Board acknowledged that the proposed categories do not cover all possible income tax effects, and judgment could be required to determine how to categorize income tax effects that would not clearly be in one of the prescribed categories. The Board said companies would need to consider the proposed disclosure objective and consider making additional disclosures to explain the categorization of individual reconciling items.

On an interim basis, a PBE would be required to provide a qualitative disclosure about the reconciling items that cause significant year-to-date changes of the estimated annual effective tax rate from the effective tax rate of the prior annual reporting period.

Entities that are not PBEs would be required to provide qualitative disclosures about specific categories and individual jurisdictions that result in a significant difference between the statutory federal tax rate and the effective tax rate.

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[1] That is, taxes imposed by countries other than the country of domicile of the reporting entity.

Income taxes paid

The proposal would require all entities to disclose income taxes paid, net of refunds received, disaggregated by federal (national) taxes in the country of domicile, state taxes and foreign taxes. As with the rate reconciliation, the state and local taxes category would reflect those paid in the country of domicile while foreign taxes would include all state and local taxes paid in the foreign jurisdictions. This disclosure would be required for the year-to-date amount of income taxes paid on both an interim and annual basis.

All entities would be required to disclose annually income taxes paid, net of refunds received, by jurisdiction if the amount equals or exceeds a quantitative threshold of 5% of total income taxes paid (net of refunds).

Disaggregated domestic and foreign income statement disclosures

The proposal would require all entities to disclose the following income statement information in addition to what is already required:

- Income (or loss) from continuing operations before income tax expense (or benefit), disaggregated between domestic and foreign
- Income tax expense (or benefit) from continuing operations, disaggregated between federal or national, state and foreign

The proposed guidance to disclose this information is similar to the guidance applied by public companies required by SEC Regulation S-X 210.408(h)1.

The proposal would require income tax expense and income taxes paid on foreign earnings that are imposed by the jurisdiction of domicile to be included in the amount for that jurisdiction of domicile. For example, income taxes on global intangible low-taxed income of a US reporting entity would be classified as federal because the income tax is imposed by the US government.

Undistributed earnings of subsidiaries and corporate joint ventures

The proposal would eliminate the requirement to disclose the cumulative amount of each type of temporary difference when a deferred tax liability is not recognized because of the exceptions to comprehensive recognition in ASC 740-30 related to subsidiaries and corporate joint ventures. For example, an entity would no longer be required to disclose the cumulative amount of undistributed earnings when it asserts that it is indefinitely reinvesting foreign earnings. However, the entity would still be required to make disclosures about unrecognized deferred tax liabilities under ASC 740-30-50-2(c).

Unrecognized tax benefits

The proposal would eliminate for all entities the requirement to disclose certain information when it is reasonably possible that the total amounts of unrecognized tax benefits will significantly increase or decrease within 12 months of the reporting date.

Use of the term PBE

The proposal would eliminate references to a public entity in ASC 740 and replace them with the term public business entity, which is defined in the ASC Master Glossary.

How we see it

The proposal would require entities to provide more disclosures than are currently required for the rate reconciliation and income taxes paid. Entities should evaluate whether additional processes and controls would be necessary to obtain all of the information they would need to provide the new disclosures.

Effective date and transition

The guidance would be applied retrospectively for all periods presented. The FASB said it would determine an effective date and whether early adoption would be permitted after it receives feedback on the proposal.

Illustration of rate reconciliation disclosure under proposal

The proposal includes an illustration[2] (see the next page) of a rate reconciliation to be disclosed by a PBE in accordance with paragraph 740 10-50-12A. In the illustration, the entity is domiciled in the United States and presents comparative financial statements. For the disclosure of foreign tax effects in accordance with paragraph 740-10-50-12A(b)(2), it is assumed that the 5% threshold, computed by multiplying the income (or loss) from continuing operations before tax by the applicable statutory federal (national) income tax rate of the jurisdiction of domicile, is met:

a. For Ireland, both at the jurisdiction level and for certain individual reconciling items of the same nature within Ireland

b. For the United Kingdom, for certain individual reconciling items of the same nature within the United Kingdom, but not at the jurisdiction level

c. For Switzerland and Mexico, at the jurisdiction level, but not for any individual reconciling items of the same nature within each jurisdiction

	Year Ended December 31, 20X2		Year Ended December 31, 20X1		Year Ended December 31, 20X0	
	Amount	Percent	Amount	Percent	Amount	Percent
US Federal Statutory Tax Rate	$ AA	Aa %	$ BB	bb %	$ CC	cc %
State and Local Income Taxes, Net of Federal Income Tax Effects*	AA	Aa	BB	bb	CC	cc
Foreign Tax Effects						
United Kingdom						
Tax rate differential	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Share-based payment awards	AA	Aa	BB	bb	CC	cc
Changes in unrecognized tax benefits	(AA)	(aa)	(BB)	(bb)	CC	cc
Other	(AA)	(aa)	BB	bb	(CC)	(cc)
Ireland						
Tax rate differential	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Valuation allowances adjustments	(AA)	(aa)	(BB)	(bb)	CC	cc
Enactment of new tax laws	-	-	BB	bb	-	-
Other	AA	Aa	(BB)	(bb)	(CC)	(cc)
Switzerland	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Mexico	AA	Aa	BB	bb	CC	cc
Other foreign jurisdictions	(AA)	(aa)	(BB)	(bb)	CC	cc
Enactment of New Tax Laws						
Change in tax rate	-	-	-	-	(CC)	(cc)
Effect of Cross-Border Tax Laws						
Global intangible low-taxed income	AA	Aa	BB	bb	CC	cc
Foreign-derived intangible income	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Base erosion and anti-abuse tax	AA	Aa	BB	bb	CC	cc
Other	AA	Aa	-	-	-	-
Tax Credits						
Research and development tax credits	-	-	(BB)	(bb)	(CC)	(cc)
Energy-related tax credits	(AA)	(aa)	-	-	-	-
Foreign tax credits	(AA)	(aa)	(BB)	(bb)	(CC)	(cc)
Other	-	-	(BB)	(bb)	-	-
Valuation Allowances	AA	Aa	(BB)	(bb)	(CC)	(cc)
Nontaxable or Nondeductible Items						
Share-based payment awards	AA	Aa	BB	bb	CC	cc
Goodwill impairment	AA	Aa	BB	bb	-	-
Other	AA	Aa	(BB)	(bb)	CC	cc
Changes in Unrecognized Tax Benefits	(AA)	(aa)	BB	bb	(CC)	(cc)
Other Adjustments	AA	Aa	(BB)	(bb)	(CC)	(cc)
Effective Tax Rate	$ AA	Aa %	$ BB	bb %	$ CC	cc %

* State taxes in California and New York contributed to the majority of the tax effect in this category.

2 ASC 740-10-55-231

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