

# The outlook for global tax policy in 2018



# Contents



The outlook for  
business taxation  
in 2018



Outlook for the tax  
work of the OECD  
in 2018



European Union  
taxation in 2018



Country outlooks



EY contacts

# Glossary

**APA:** Advance Pricing Agreement

**ATAD:** Anti-Tax Avoidance Directive

**BEPS:** base erosion and profit shifting

**BEPS IF:** BEPS Inclusive Framework

**CA:** competent authority

**CbCR:** Country-by-Country Reporting

**CCCTB:** Common Consolidated Corporate Tax Base

**CFC:** Controlled Foreign Company

**CIT:** corporate income tax

**CRS:** Common Reporting Standard

**CTPA:** Center for Tax Policy and Administration  
- a unit of the OECD

**DPT:** Diverted Profits Tax

**EC:** European Commission

**EP:** European Parliament

**EU:** European Union

**FDI:** foreign direct investment

**GAAR:** General Anti-Abuse Rule (may also refer to General Anti-Avoidance Rule)

**GDP:** Gross Domestic Product

**GST:** goods and services tax

**ICAP:** International Compliance Assurance Programme

**IMF:** International Monetary Fund

**MAP:** Mutual Agreement Procedure

**MBTA:** Mandatory Binding Tax Arbitration

**MLI:** Multilateral Instrument

**MNE:** multinational enterprise

**OECD:** Organisation for Economic Co-operation and Development

**PE:** permanent establishment

**PIT:** personal income tax

**PPT:** principal purpose test

**R&D:** research and development

**SME:** small or medium-sized enterprise

**TP:** transfer pricing

**UN:** United Nations

**VAT:** value-added tax

**WHT:** withholding tax



# The outlook for business taxation in 2018



**Chris Sanger**

EY Global Tax Policy Leader  
csanger@uk.ey.com  
+44 20 7951 0150



**Rob Thomas**

Director - Tax Policy  
rob.l.thomas1@ey.com  
+1 202 327 6000

One might have thought that 2018 would be the quiet port in the storms of tax change, that have included the G20/OECD BEPS project, the focus of the European Union and the European Parliament on corporate taxation, and fundamental US tax reform, among others. But, as this Outlook shows the global tax environment looks to be as dynamic – and challenging – as before, with activity across almost all seas.

In essence, 2018 is a year of delivery, with the move from concept discussion at the multilateral level to the reality of policy change at the country level, including:

- ▶ BEPS implementation, both via new national legislation and through the choices made with the OECD's Multilateral Instrument
- ▶ The implementation of Europe's ATAD I and ATAD II across the (currently) 28 EU Member States, ahead of 2019 and 2020 deadlines
- ▶ Responses to US tax reform, an issue of great magnitude in its own right
- ▶ Changes in the shape of tax competition, with governments balancing the need to attract jobs and investment with the constraints that the BEPS recommendations place upon them
- ▶ Reignition of the discussion on how to tax digitalized business, with differences of opinion between the members of the BEPS IF
- ▶ Continued spread of VAT, with the Gulf Cooperation Council (GCC) states joining China, India and Malaysia in recent adoptions or expansions
- ▶ The "revolution" in tax transparency, as referred to by the OECD Secretary-General: the first exchanges of CbC reports in June; new rules on mandatory disclosure of tax planning schemes in the EU; the European Parliament's desire to see CbC reports being made public
- ▶ Shifts in the tax enforcement landscape: new digital tax administration requirements, new subjective anti-avoidance tests, and a new multilateral tax assurance process

Together, these issues have the potential to change many aspects of how domestic and cross-border activity is taxed in 2018 and beyond.

## Suggested further reading



[ey.com/tpchub](http://ey.com/tpchub)

Tax competition is fundamentally driven by governments wanting to attract economic activity to their jurisdiction. And it sits at the very heart of much of the change occurring today.

## But multilateralism remains present

However, against this backdrop, the centralization of activity seen in the last five years or so continues apace.

Issues such as the continuing desire for European tax harmonization, the ongoing debate on digital taxation and the desire for tax certainty will all continue to support the need for companies and their advisors to view the world through a multilateral lens.

## Tax reform is the topic of the day

Beyond these issues, many countries are looking intensely at their own regimes, and tax reform – either BEPS-driven or more fundamental – is high on the agenda:

- ▶ It is a core element for discussion in national elections (7 in the coming 12-month period in Latin America, for example) and their aftermaths – (for example, Austria and Germany, which are trying to form coalition governments) – are driving change.
- ▶ It is an issue that countries are reassessing, following joining the IF – where 1132 countries have agreed to abide by the BEPS minimum standards.
- ▶ And, as noted, in responding to the new competitive landscape following US tax reform.

## Tax competition is alive and well – but changing shape

One aspect of policy change is tax competition, which is fundamentally driven by governments wanting to attract economic activity to their jurisdiction. And it sits at the very heart of much of the tax change occurring today.

Nothing contained in the BEPS recommendations has changed this fundamental driver of behavior. While our 2018 *Outlook* signals a consistent picture of tax competition across some tax measures tracked by this publication, new activity in other areas demonstrates that policymakers understand that necessity may well be the “mother of invention.”

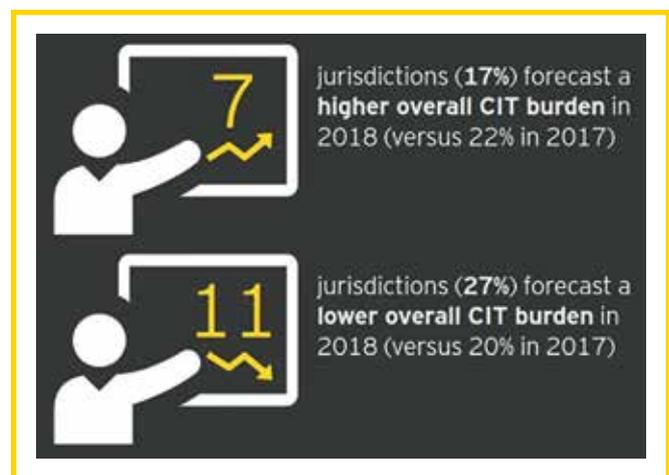
Firstly, the long term trend of “low rate, broad base” tax systems that has been playing out for many years continues with 6 of the 41 (15%) jurisdictions in our *Outlook* lowering

lower headline CIT rates in 2018 – roughly the same as the 16% in 2017 and 18% in 2016, when the same country set is compared.<sup>2</sup>

The fall in the US corporate tax rate – to a Federal/State combined average of around 26% – is by far the biggest percentage faller (a fall of more than a third), and actually puts the US rate at lower than current OECD and G7 averages. The US is joined in significant rate reductions by Argentina, Colombia, and Luxembourg. We also see small reductions in Canada and Japan due to local changes.

In contrast, we saw three increases in tax rate, driven by federal level changes, being Portugal (29.5% to 31.5%), Taiwan (17% to 20%) and Turkey (20% to 22%), with India’s increase being driven by changes in the educational surcharge.

Reviewing the “broad-base” component of the trend, we seem to have reached a potential limit, with eleven jurisdictions (27%) forecasting a lower overall CIT burden in 2018 (2017: 20%), while seven (17%) forecast a higher overall CIT burden in 2018 (22% in 2017). So potentially more countries are focusing again on remaining competitive.



This desire for tax competitiveness is more apparent within the incentives category. The leading incidence of tax change (i.e., changes that result in either a higher or lower tax burden in 2018, which we track across 13 business tax measures), is attributable to R&D incentives in 2018.

<sup>1</sup> “Inclusive Framework on BEPS.” OECD, January 2018. <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>.

<sup>2</sup> All comparisons are based upon like-for-like statistics.

Patent and innovation boxes continue their global spread, a trend validated by their adoption by non-European nations such as Singapore and the United States. The United States' new foreign-derived intangible income (FDII) measure, while not explicitly referred to as a patent or innovation box, operates with similar characteristics.

Here, 14 of 41 jurisdictions (or 34%) are forecasting new or more generous R&D incentives in 2018 (2017: 22%). So not quite a doubling, but still a significant increase. This is also a consistent theme with 9 of the 14 which enhanced their R&D incentives also doing so in 2017.

This could be explained by the fact that countries find themselves constrained by the BEPS recommendations (including Action 5 on harmful tax regimes, but as well as all BEPS Actions more widely), but at the same time, want to maintain their competitive nature. As a result, focus shifts onto improving or creating more “acceptable” incentives. In fact, that number of entirely new R&D incentives further illustrates the very strength of this trend; Austria, Denmark, Hong Kong and New Zealand have or are considering introducing completely new R&D incentives among these 14.

Other business incentives – which includes depreciation, amortization and capital allowances – also continue to foster high levels of attention, with 14 of 41 jurisdictions (again, 34%), forecasting a lower burden due to new or improved changes in this area – slightly higher than in 2017, when the figure was 30%. Six jurisdictions (China, Denmark, Germany, Hong Kong, Italy and Singapore) are enhancing both R&D and other business incentives in 2018.

## Patent and innovation boxes

Patent and innovation boxes continue their global spread, a trend validated by their adoption by non-European nations such as Singapore and the United States. The United States' new foreign-derived intangible income (FDII) measure, while not explicitly referred to as a patent or innovation box, operates with similar characteristics. Switzerland, meanwhile, proposes a patent box (which will be mandatory at cantonal level) under its Tax Proposal 7, while Greece and Italy implement changes to their boxes in 2018, bringing them in line with BEPS Action 5 requirements.

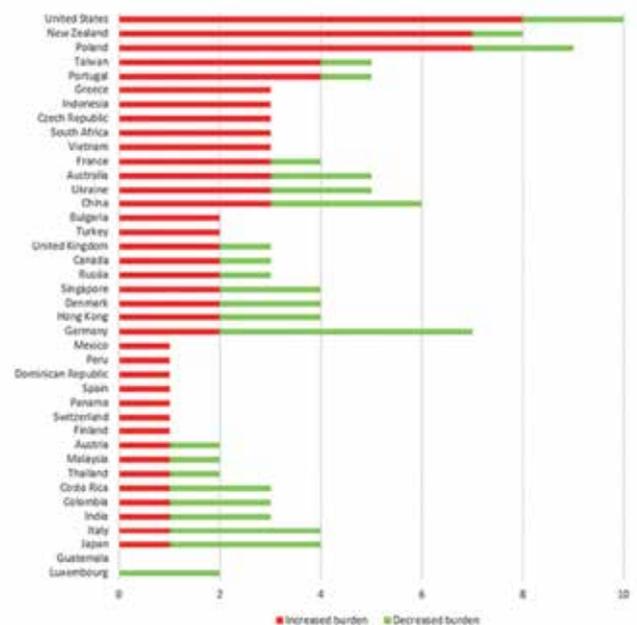
Against such positive developments, companies should therefore ensure that their processes to identify, secure and maintain incentives take these important changes into account.

This trend of improving incentives really started to become apparent at the start of 2017. In 2018, other areas of the tax system see similar – but new – competitive focus from governments:

- ▶ Eight of the 41 countries (or 20%) in our Outlook (Argentina, China, Malaysia, Poland, South Africa, Taiwan, Ukraine, United States) have either announced or are forecasting new or increased withholding taxes – in effect offering low rates to companies operating within their borders, but then

charging an extra levy when funds are spent, or profits are repatriated, elsewhere. This will be an important part of the global architecture to monitor in the coming year and beyond, and an indicator of whether protectionism is rising.

**Figure 1:** Incidence of tax changes resulting in a burden change (increased or decreased burden)

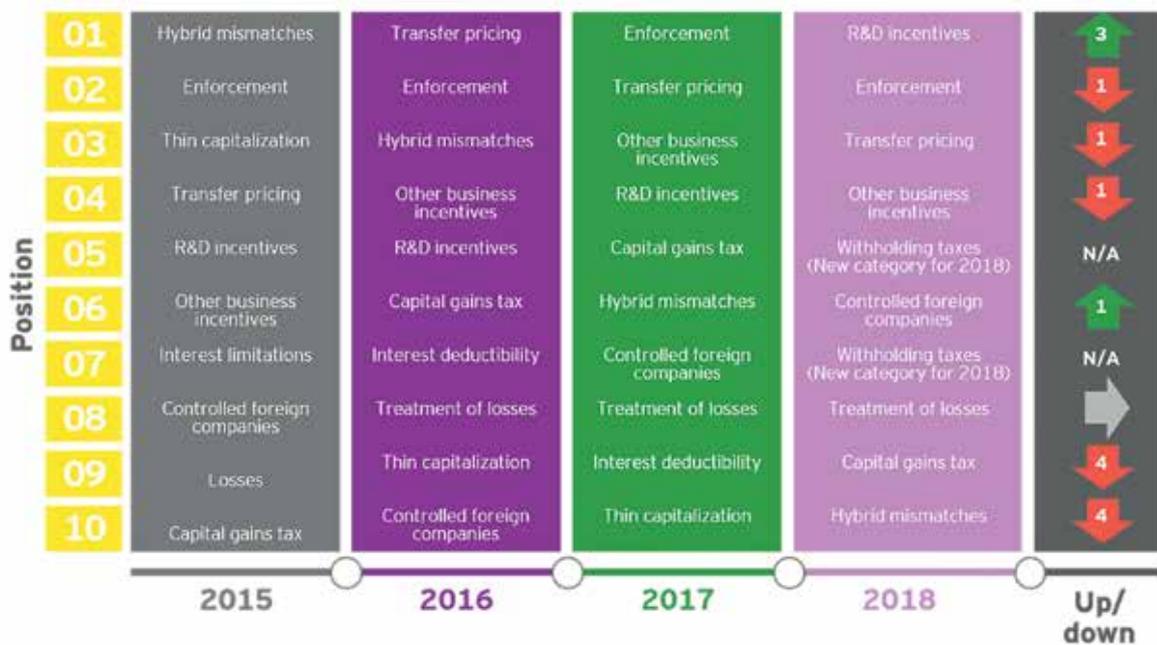


- ▶ Four of the 41 jurisdictions forecast a slightly lower tax burden in relation to their CFC rules. Two of these four, China and Russia, are BRICS nations, while the other two, Germany and Japan, are G7 nations. Against the backdrop of BEPS Action 3 (which aimed to strengthen CFC rules) this might seem unusual.
- ▶ The treatment of losses delivers an interesting result; while five jurisdictions (Argentina, Czech Republic, Japan, New Zealand and Poland) forecast higher burdens in this area, Australia, Costa Rica and Germany forecast lower burdens. Unlike CFCs, losses are not the focus of any specific BEPS recommendations, and the last time we saw significant, multi-country action relaxing the treatment of losses was following the global financial crisis, when many countries looked at this measure to stimulate their economies. Three jurisdictions may not represent a move of significance, but is something to watch in the coming year.

So tax competition, albeit in a subtly changed shape, continues. It will be interesting to see whether these issues expand into trends in 2019 or, indeed, whether they are joined (or perhaps replaced) by other issues as the world transitions to a post-BEPS context.

At the heart of the matter is a growing sentiment in Europe – to which not all EU Member States subscribe – that the consensus position developed within BEPS Action 1 that there is “no such thing as a separate digital economy, but that companies are now participating in the digitalized economy” is not sustainable, and that action – as well as a closer focus on the division of taxing rights – needs to occur sooner, not later.

**Figure 2:** Ranking of most active business tax measures: 2015-2018 (total incidence - burden increasing and decreasing)



## Other drivers of change in 2018

### Digital

It is probably fair to say that the taxation of digitized business is now receiving far more attention than in 2013, when the BEPS Action Plan (incorporating Action 1 on digital) was being developed. Indeed, in the words of the OECD’s tax leader in 2017, “A big thing which has not been dealt with adequately by the BEPS project is the digital economy.”<sup>3</sup>

Fifteen of the 41 jurisdictions (37%) are already forecasting higher tax burdens as a result of digitally focused changes in 2018.

Here, the scope of change is wide, encompassing direct tax changes (Greece, Italy, and United Kingdom), indirect tax

changes (Argentina, Singapore, and Turkey), redefinitions of Permanent Establishment (PE) (Italy, India) and anti-avoidance measures (New Zealand) targeting companies that may be data-intensive and/or of low physical presence in a jurisdiction.

2018 is set to see this highly contentious debate play out, with the EC and OECD as key players. At the heart of the matter is a growing sentiment in Europe – to which not all EU Member States subscribe – that the consensus position developed within BEPS Action 1 that there is “no such thing as a separate digital economy, but that companies are now participating in the digitalized economy” is not sustainable, and that action – as well as closer focus on the division of taxing rights – needs to occur sooner, not later. The EC is certainly acting quickly, detailing a number of both short- and long-term proposals, which in turn increased the pressure on the OECD to move more quickly and resolutely.

<sup>3</sup> Remarks of Pascal Saint-Amans at EY’s 2017 International Tax Conference, ey.com, October 2017. ey.com/gl/en/services/tax/tax-policy-and-controversy/remarks-of-pascal-saint-amans-at-ey-s-2017-international-tax-conference.

<sup>4</sup> Estonia, at the time, with the Presidency having passed to Bulgaria on 1 January 2018.

15 of 41 jurisdictions (37%) are forecasting **higher tax burdens** as a result of digitally-focused changes in 2018

Many countries are already known to be actively assessing their options for unilateral digital action, including Brazil, France, India, Slovakia and the United Kingdom. Let us hope that technological disruption does not bring unwelcome tax disruption in 2018.

The European Presidency has proposed two measures: one as a short-term, transitional fix, the other as what it believes will be more of a viable, long-term proposition. For the short-term, a new gross revenues tax is seen by the EC as a straight-forward option, as it would operate outside existing double tax treaties (and so would not violate them), but, as it will be a new tax, agreement would need to be reached on the tax base, rate and who it should target.

The Presidency also sees the possibility of a new, more permanent nexus definition and profit attribution rules, which would be delivered via a stand-alone Directive and work within current corporate income tax systems, current corporate income tax systems, while introducing changes to ensure the rules work with digital presence. In the view of the Presidency, this would ensure that international dispute resolution mechanisms could continue to apply, unlike for an equalization levy.

The OECD, meanwhile, published its interim report on 15 March 2018.<sup>5</sup> As expected, the OECD report - reflecting the difficult position the OECD finds itself in - does not make concrete policy recommendations, but instead notes that BEPS IF members will undertake a coherent and concurrent review of the "nexus" and "profit allocation" rules, attempting to work towards a consensus-based solution, producing a final report in 2020, with an update to the G20 in 2019. The OECD report further notes that there is no consensus on the need for, or merits of, interim measures, with a number of countries opposed to such measures. Again, instead of making recommendations, the interim report studies the design considerations, identified by countries in favor of introducing interim measures,

All things considered, then, and assuming the European Commission moves forward, this situation may result in one set of rules for EU Member States and another (or, indeed, others, if jurisdictions move unilaterally) for the rest of the world. That is in no-one's best interest. Many countries are already known to be actively assessing their options for unilateral digital action, including Brazil, France, India, Slovakia and the United Kingdom. Let us hope that technological disruption does not bring unwelcome tax disruption in 2018.

### *Transfer pricing*

Given the importance of Actions 8-10 at the heart of the BEPS project, it is perhaps not surprising that TP represents the leading case of burden increases in our 2018 Outlook. Indeed, almost half of the 41 responding jurisdictions (45%) say that they expect an increased tax burden with respect to TP.

<sup>5</sup> *Tax Challenges Arising from Digitalisation - Interim Report 2018*, OECD, 16 March 2018. <http://www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm>

Given the scope and complexity of TP as a discipline, it is unsurprising that the burden-increasing changes range far and wide; generally speaking, we see three key themes in the data:

1. Technical changes designed to address base erosion: the changes are typically driven by BEPS Actions 8 to 10, or, in some cases, are specific to a single jurisdiction's national approach. In New Zealand, for example, taxpayers will need to contend with a "restricted transfer pricing rule" for pricing inbound related party loans in 2018, a novel new measure that will in many circumstances cap the deductible interest rate in respect of related party borrowing.
2. Technical changes designed to further implement elements of BEPS Action 13 on transfer pricing transparency and reporting: Indonesia, for example, released its implementing regulations on CbCR and TP reporting as recently as 24 January 2018, showing that while we have already seen such regulations in more than 70 jurisdictions, the expansion of the BEPS IF means that change in this area is far from complete.
3. Transfer pricing audit and enforcement activity: South Africa is just one of a range of countries increasing their enforcement focus in this area, investing in capacity building of new technical resources. The United States, meanwhile, issued new instructions for examiners on transfer pricing selection issues as recently as 25 January 2018.

Transfer pricing enforcement has been a key risk identified in successive EY Tax risk and controversy surveys for more than a decade. In that regard, in a new development for our 2018 Outlook we asked responding countries to identify their most common audit triggers.

21 of the 41 reporting jurisdictions forecast that TP will be the leading trigger of tax audits in 2018. Related party transactions, business restructuring, inter-company interest payments and management fees all appear multiple times as specific TP issues that countries will be scrutinizing.



TP is identified in our Outlook as one of the leading sources of retroactive scrutiny in some countries. Of the six reporting countries that expect the retroactive application of BEPS concepts to past structures or transactions to continue in 2018, several note that this phenomenon is focused on historic TP issues.

Perhaps more worrying still, TP is identified in our Outlook as one of the leading sources of retroactive scrutiny in some countries. Of the six reporting countries that expect the retroactive application of BEPS concepts to past structures or transactions to continue in 2018, several note that this phenomenon is focused on historic TP issues. Our respondents in Canada, for example, note that “the Canada Revenue Agency generally considers that the additional OECD guidance is largely clarificatory in nature with respect to the arm’s length principle, and can be applied to transactions that occurred prior to the release of the BEPS recommendations.”

TP is, of course, one of the key focuses on a new, multilateral program - ICAP - that recognizes the potential of transfer pricing to consume large amounts of private and public sector resource in terms of dispute management.

### Tax reform

2018 is also marked by a number of countries carrying out comprehensive tax reform. Among others, Argentina, Belgium, Poland, South Korea, Turkey and the United States all fall under this banner. Many of the reform programs are, naturally, BEPS (including ATAD) focused. Poland’s January 2018 tax reform package, for example, included new thin capitalization

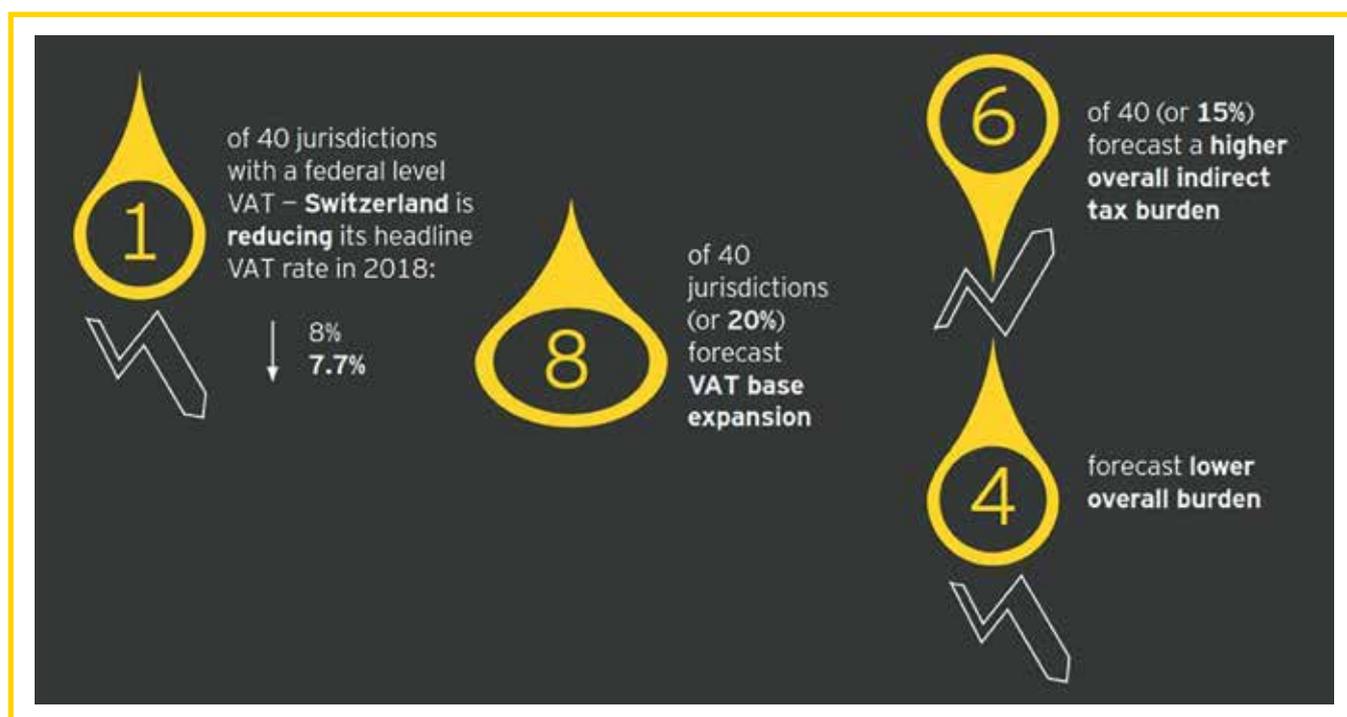
rules (which in turn also covered third-party financing), the disallowance of interest on debt-pushdown strategies, the majority of royalties and service fees now becoming non-deductible and finally, new controlled foreign company rules. Poland’s resulting interest restrictions, incidentally, go much further than the BEPS Action 4 recommendations. Likewise, Argentina’s 2018 reform is heavily BEPS-focused.

Other countries are carrying out more root-and-branch reform of their regimes. Switzerland, as noted, awaits decisions on whether its Tax Proposal 7 will move forward, while Portugal and Taiwan are also making moves to enact comprehensive reforms designed to reduce inequality.

Of course, these approaches are dwarfed by the long-awaited US tax reform; here, despite forecasted business tax burden increases across 8 of our 13 measures, the overall burden is forecast to fall as a result of the corporate tax rate reduction from 35% to 21%.

### VAT

Indirect taxes have long been popular with policy-makers. Going forward, technology will likely further boost their popularity – digitalization and automation will make the taxation of consumption more important, and has also positively impacted the administration of these taxes.



The OECD has recognized that such uncertainty potentially may create hurdles to investment and thus trade and economic growth and for those reasons working with the International Monetary Fund, it launched a tax certainty project.

Switzerland, in fact, is the only jurisdiction of the 38 in our survey to reduce federal VAT rates in 2018, from 8% to 7.7%. Eight of 38 jurisdictions (or 21%) forecast VAT base expansion in 2018 (versus 18% in 2017) - with 3 forecasting base contraction. Six of 38 (or 16%) forecast a higher indirect tax burden overall, while 4 forecast a lower overall burden – compared to just 1 jurisdiction (China – which reports the same forecast in 2018) in 2017.

In terms of indirect taxes impacting digital (the OECD, within BEPS Action 1 recommended that countries should apply VAT to digital transactions) four of the 13 jurisdictions (Argentina, Singapore, Turkey and the United Kingdom) forecast a higher burden from indirect tax-focused digital tax measures.

### *Will US tax reform have global implications?*

No outlook for 2018 could ignore tax reform in the United States.

The impacts of US reform on business will be significant, irrespective of whether a company has US operations or non-US operations that are held under the US. Moreover, with additional guidance and clarifying bills expected in the coming months, the dust may take some time to settle.

Likewise, there is every possibility of a compelling policy response from governments elsewhere (and especially from the US' nearest neighbors), but that too may take some time; policy changes, in effect, follow the money (and jobs) and so governments with strong capital flows between themselves and the US will be looking to see whether and how businesses change their behavior.

Many factors will play into any decision-making and, therefore, any policy responses: What volume of funds will be repatriated, and what effect will that have? Will these funds be used to pay down debt in the US, with a subsequent relocation of debt to other nations? Will businesses invest more heavily into the US, coupling that investment with a relocation of intellectual property assets?

Of course, these behavioral changes are not the only factor at play. Many countries – Canada, China and Mexico included – will also be looking to see how the heated debate on global trade plays out, before making any tax-focused decisions.

### *What didn't we see in the 2018 data?*

Sometimes it can be the things that did not occur (or were not said) that shed an interesting light on developments. What was

perhaps less expected in the 2018 data is the drop off in the number of BEPS-specific legislative measures which, according to the last two editions of our Outlook, have driven so much of the base-broadening, burden-increasing outcomes that have characterized the last few years.



Indeed, the ranks of the BEPS IF continue to swell, and many countries will be adopting BEPS-related changes as a result of either MLI-led implementation or the need to adopt ATAD I and ATAD II measures.

But those future changes notwithstanding, the data do tell a story of reaching a new plateau:

- ▶ Changes to hybrid mismatch rules, another focus of both the OECD BEPS project and the EU's ATAD are only forecast in five jurisdictions in 2018, so far.
- ▶ New or revised CFC rules, as we outlined on page 4, are forecast to also increase the business tax burden in just 5 countries. But it is also worth noting that both hybrids and CFCs are both key focal points of the ATAD (I and II, in the case of hybrids) and one should therefore expect that figure to rise.
- ▶ Interest limitations are only forecast (so far) in 4 of 40 countries. That seemingly small number should not be taken at face value, though. The US's tax reform, which includes limiting interest deductions limited to 30% of EBITDA (further restricted to EBIT beginning 2022) may well trigger change elsewhere in the future.

So, all things considered, it would probably be safer to view this shift as a plateau, and not a distinct change of direction.

All things considered, 2018 –even at this early point in time – looks set to be a tumultuous time.



# Outlook for the tax work of the OECD in 2018



**Marlies de Ruiter**  
EY International Tax Services  
Policy Leader  
marlies.de.ruiter@nl.ey.com  
+31 88 40 77887

In the 2016-2017 publication<sup>6</sup> detailing the Tax Work of the OECD, Pascal Saint-Amans, Director of the OECD's Center of Tax Policy and Administration says:

“Working together with our members and an ever-growing group of countries representing different levels of development, the OECD has made major advances in recent years to put an end to tax evasion and avoidance, ensuring a stronger and fairer international tax system. These achievements have built on the historical focus of our work on tax to remove undue tax barriers to cross-border trade and investment. Moreover our work on tax policy is increasingly relied upon, not only to achieve revenue objectives, but also to meet broader policy goals, such as stemming climate change and spurring innovation. This is opening up exciting new opportunities for policy-makers.”

This article discusses what the OECD focus will be in relation to BEPS implementation in 2018 and whether this implementation will indeed ensure a “stronger and fairer international tax system” for governments and taxpayers alike.

I would also like to further illustrate that many issues now pose a risk to one of the primary goals of the OECD – to remove undue tax barriers to cross-border trade. These include uncertainty created by the implementation of the BEPS measures, new policy developments in the area of the digital economy, and the introduction of domestic legislation by individual countries that is not necessarily aligned with the OECD BEPS and treaty framework.

Significant double taxation may be the result of those factors. In 2018, major developments will occur at the OECD level that will shed light on whether and to what extent this risk may materialize.

## Suggested further reading



[ey.com/tpchub](http://ey.com/tpchub)

<sup>6</sup> “OECD work on taxation.” OECD, <http://www.oecd.org/tax/centre-for-tax-policy-and-administration-brochure.pdf>

Jurisdictions have provided a commitment to the OECD saying that they will be making changes to such regimes to remove any potentially harmful elements. It is likely that many of these jurisdictions made similar commitments to the EU, as the EU also requires jurisdictions to amend or abolish harmful elements of regimes in 2018.

## Implementation of BEPS recommendations

2017 saw the BEPS project of the OECD and G20 move quickly into its implementation phase, with 111 jurisdictions, representing more than 90% of world trade, having joined the BEPS IF, (the group of OECD and non-OECD countries, committing to implement the four minimum standards) by January 2018.

More countries are expected to join in 2018, as a commitment to implement the OECD/G20 BEPS minimum standards is required by the EU as one of the conditions for not being included on the EU list of non-cooperative jurisdictions, as Klaus von Brocke and Steve Bill discuss on page 15. To avoid such listing, a relevant number of jurisdictions at the end of 2017 and early 2018 made the political commitment to join the Inclusive Framework in 2018.

### *Treaty changes*

The minimum standard on treaty abuse requires the introduction in the bilateral treaties of specific preamble language regarding treaty abuse and of one of the anti-abuse rules identified as effective in countering, amongst others, treaty shopping. Most countries expressed a preference for the so-called PPT. Besides that, jurisdictions may also introduce other recommended treaty related BEPS measures, such the permanent establishment measures designed to address the perceived artificial avoidance of the permanent establishment status. In fact, 19 of the 40 jurisdictions covered in this publication forecast the adoption of a PPT in 2018 (or 2019, depending on when the MLI enters into force – see below.)

In order to make it possible to introduce these measures in bilateral tax treaties in an efficient and effective way, the MLI was developed by the OECD and introduced at the end of 2016. This instrument makes it possible for jurisdictions to change all of their bilateral treaties that require tax treaty-related BEPS changes with one signature and one ratification process, instead of via the renegotiation of all bilateral treaties, one-by-one. By 24 January 2018, 78 jurisdictions had signed the MLI, and 4 jurisdictions notified their ratification of the MLI to the OECD. The MLI enters into force once the fifth jurisdiction has notified its ratification, with the changes coming into effect according to specific timetable.

For withholding taxes, and thus for the PPT, the provisions will come into effect on the first of January following notification of the ratification to the OECD by both parties. As it is expected that the fifth ratification of the MLI will take place in early

2018 and that many additional jurisdictions will be ratifying in 2018, it is expected that the treaty-related BEPS changes, in particular the PPT, will be included in a great number of bilateral treaties as of 1 January 2019. This will be the most significant overhaul of the global tax treaty network in the history of bilateral tax treaties.

### *Harmful tax practices*

In addition, the minimum standard on Harmful Tax Practices (BEPS Action 5) will prompt significant changes in many jurisdictions in 2018. The Forum of Harmful Tax Practices, supported by the secretariat of the OECD, has reviewed more than 160 regimes of Inclusive Framework members in 2017, mainly focusing on the non-OECD jurisdictions as the OECD jurisdictions had been reviewed previously. Regimes offering a preferential treatment were assessed to determine whether they contained harmful elements, such as ring-fencing, non-transparency, or lack of substance. In an intermediary report published in October 2017, it was indicated that about half of the regimes which were reviewed were in the process of being amended or eliminated. For these regimes, jurisdictions have provided a commitment to the OECD to remove potentially harmful elements. It is likely that many of these jurisdictions made similar commitments to the EU, as the EU also requires jurisdictions to amend or abolish harmful elements of regimes in 2018, in order to not be included in the EU listing of non-cooperative jurisdictions. This will mean that legislative changes in these regimes will have to occur in 2018, and indeed, we already see such changes starting to occur. The OECD and EU will be monitoring whether changes made do indeed meet the requirements.

### *Transparency*

Finally, 2018 will also be a remarkable year for transparency and certainty. The third minimum standard involves the exchanges of CbC reports. June 2018 marks the first time that CbC reports will be automatically exchanged between governments, and thus will be analyzed by tax administrations using data analytics routines. Some of the types of data analytics tests that tax authorities are expected to run were described in a CbCR Risk Assessment Handbook issued by the OECD in 2017.<sup>7</sup> It is expected that this will lead to a significant rise of the number of questions asked by tax administrations and, with that, a rise in tax disputes. The minimum standard on MAP will then have to show it is effective by providing a process

<sup>7</sup> "OECD publishes two handbooks on Country-by-Country reporting." ey.com, 3 October 2017. <http://www.ey.com/gl/en/services/tax/international-tax/alert--oecd-publishes-two-handbooks-on-country-by-country-reporting>.



The OECD has recognized that such uncertainty potentially may create hurdles to investment and thus trade and economic growth and for those reasons working with the International Monetary Fund, it launched a tax certainty project.

that provides relief from the double taxation that results from such disputes.

Beside the broad introduction of the minimum standards by the Inclusive Framework on BEPS members, a decision was taken by the EU Member States to collectively adopt the voluntary BEPS coherence measures. These are measures create linking rules between, or common approaches in relation to, domestic tax systems, with the aim of preventing gaps and mismatches between such tax systems, which the EC says could be used for tax avoidance.

The adoption of the EU Anti-Tax- Avoidance-Directive (ATAD) has set the stage for the collective introduction of such coherence rules by all EU member states in 2019 and 2020, in the form of rules on limitation of interest deductibility, CFC rules, a GAAR (2019) and anti-hybrid mismatch legislation (2020)<sup>8</sup>. Except for some frontrunners, all EU member states will therefore be changing their legislation in 2018 to include the ATAD measures which are required to enter into effect on 1 January 2019. Moreover, the EU Member States are also expected to decide in the first half of 2018 on the introduction of mandatory disclosure rules for cross border transactions. Non-EU countries may not be taking steps in a coordinated fashion like the EU, but these countries will individually be taking actions to introduce measures that are drawn from the OECD BEPS outcomes. Worldwide, countries will continue to introduce BEPS measures which they perceive are needed to counter tax evasion. An example of this can be found in the US introducing EBITDA (later EBIT) interest limitation rules as of 2018.

## Searching for certainty

With BEPS measures being introduced by such a large number of countries, the OECD contends that the world is moving in a direction where coherence and links between domestic tax systems promote fair taxation and trade. As Pascal Saint-Amans put it: "These achievements have built on the historical focus of our work on tax to remove undue tax barriers to cross-border trade and investment." So can it indeed be expected that once implemented, these measures will prevent double non-taxation, but also double taxation and with that promote economic growth and trade? Three important developments seem to cast a shadow over this expectation.

The first lies in the great uncertainty that will be triggered by the BEPS measures, as many subjective new rules are introduced. The OECD has recognized that such uncertainty potentially may create hurdles to investment and thus trade and economic growth and for those reasons working with the International Monetary Fund, it launched a tax certainty project.

One of the concrete outcomes of this project has been the launch of a pilot of the International Compliance and Assurance Programme (ICAP) in January 2018. ICAP is a voluntary program that will use CbC reports, and other taxpayer-provided information, to allow MNE groups and tax administrations to engage in an open and transparent discussion on tax risks, if agreement can be reached that the issues are low risk, to provide outcome letters that state this.

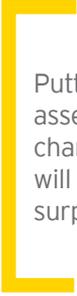
There are eight jurisdictions participating in the pilot: Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States.

The number and names of MNE groups participating in this exercise is not public, and each was invited to participate by the tax authority of the jurisdiction in which it is headquartered. The pilot is expected to take around 18 months. Even though this is a very positive development, the limited scope of this pilot project will mean that many companies will have to find their certainty through other processes, or live with the consequences of the uncertainty, which may be double taxation.

The second shadow is the forthcoming policy discussion on the fundamentals behind the division of taxing rights. These fundamentals have been the basis for the existing international tax system since it was developed. Commitment to fundamentals is crucially important in order to prevent double taxation, which has always been considered as a deterrent to trade and economic growth.

Some countries have expressed their frustration and opinion that, with the growth of the digital economy, the traditional rules on division of taxing rights do not today provide for a "fair" taxation model. Because the OECD earlier has concluded that there is no such thing as the digital economy, arguing that all of the economy is becoming digitalized, this policy discussion has the potential to trigger a broad discussion on the balance between source and residence taxation, or, as may be better described, "market" and "residence" taxation.

<sup>8</sup> "EU Council adopts Directive (ATAD 2) to address hybrid mismatches with third countries." [www.ey.com](http://www.ey.com), 30 May 2017. <http://www.ey.com/gl/en/services/tax/international-tax/alert--eu-council-adopts-directive-atad-2-to-address-hybrid-mismatches-with-third-countries>.



Putting in place proactive processes to monitor, assess, quantify and comply with the vast range of changes forecast to be made in 2018 and beyond will be critical if companies wish to avoid unpleasant surprises.

The OECD published their interim report on this issue on 16 March 2018. The Interim Report provides an in-depth analysis of the main features commonly found in certain highly-digitalized business models and value creation in the digitalized age, but does not make any specific recommendations to countries, noting that BEPS IF members agreed to undertake a coherent and concurrent review of the nexus and profit allocation rules and that “They will work towards a consensus-based solution, noting that at present, there are divergent views on how the issue should be approached.” Furthermore, the Interim Report notes that “there is no consensus on the need for, or merits of, interim measures, with a number of countries opposed to such measures.”

Given the activity on this issue within the European Commission (as described by my colleagues in a few pages time) this all sets the stage for a fascinating 2018.

The third and final shadow is the introduction of domestic anti-treaty abuse measures that are not in line with the BEPS recommendations, and which may be at odds with tax treaty obligations. The diverted profits tax (DPT), first introduced by the UK, has now also found its way into Australian and New Zealand legislation. In relation to the DPT, it is expressly stated that the UK and Australia consider that this tax is not covered by the bilateral treaties. Moreover, the US has introduced the Base Erosion Anti-Abuse Tax (BEAT) in the context of its recent tax reform. BEAT specifically targets cross border payments to associated enterprises, regardless of whether these payments are made at arm’s length or not.

It is very likely that a number of other countries will follow these examples, or react to them with other measures. With that, there seems to be a growing risk of double taxation for companies.

All in all, it is hard to conclude that the current developments are fostering trade and economic growth and preventing double taxation. On the contrary, double taxation and compliance costs for multinational enterprises look set to rise in the coming years.

In addition to the issues discussed above, the OECD is also working very actively in other areas, such as exchange of information, digitalization of tax administrations, tax and crime, VAT and tax policy. The latest developments in these areas are regularly covered in our *EY Global Tax Alerts*.

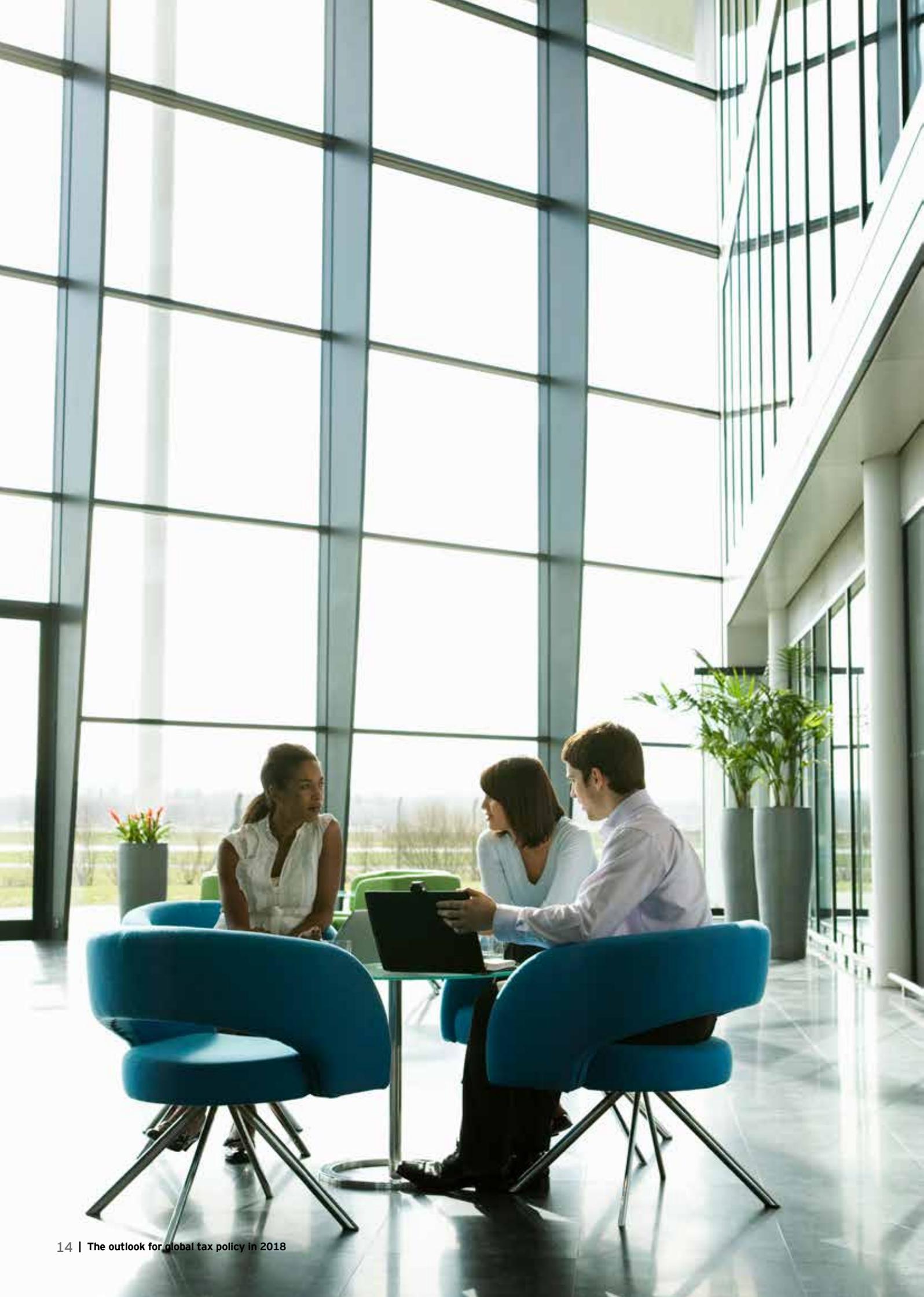
---

<sup>9</sup> [ey.com/taxalerts](http://ey.com/taxalerts)

## Conclusion

2018 is expected to be the year where BEPS implementation will reach its peak. A tsunami of changes to domestic legislation of many countries and to the international network of bilateral tax treaties will take place, spurred by peer reviewing of the BEPS minimum standards by the OECD. Putting in place proactive processes to monitor, assess, quantify and comply with the vast range of changes forecast to be made in 2018 and beyond will be critical if companies wish to avoid unpleasant surprises.





# European Union taxation in 2018



**Klaus von Brocke**  
International Tax Services  
+49 89 14331 12287  
klaus.von.brocke@de.ey.com



**Steve Bill**  
Tax Policy Services  
+44 7768 035826  
steve.bill@ey.com

The 2018 tax agenda for the European Union (EU) is likely to be dominated by what was seen in 2017. This includes: efforts to further reform the EU's corporate tax system; development of a common EU list of non-cooperative tax jurisdictions; discussion of measures to address the concerns on the basis for tax digital activity; successful negotiation of the modernization of the VAT rules for e-commerce, and the launch of the first stage proposals for reforming the EU VAT system. With so much activity in 2017, what should be expect in 2018? Is this a further year of delivery or a year of contemplation?

## Common Consolidated Corporate Tax Base

An apparently constant element in the agenda of the EC is the Common Consolidated Corporate Tax Base (CCCTB) project, with its sibling, the Common Corporate Tax Base (CCTB), which lays down common rules for computing the tax base of multinational companies within the EU. Last year saw some progress, with the Working Party on Tax Questions concluding the tax-technical article-by-article examination of chapters I to V of the CCTB proposal. This didn't run totally smoothly, with a number of Member States expressing concern about the lack of any assessment of the proposals at a national level. In parallel, the Presidency initiated a debate on the extent to which the CCTB proposal could provide an appropriate policy response to the direct taxation challenges posed by the digital economy, which led to the preparation of a new set of Council conclusions that are described in more detail below.

This year looks to deliver more of the same, with the Commission hoping that detailed discussions on the CCTB proposal will culminate in a relatively broad agreement on the shape a future CCTB could take. Only at that point would the Commission then collaborate with Member States in carrying out a detailed impact assessment. So the technical work continues, while the political discussion develops.

## Suggested further reading



[ey.com/tpchub](http://ey.com/tpchub)

The message from the Council appears to be that this measure is unstoppable and business should now focus on participating in constructive dialogue around how best to protect sensitive information such as trade secrets rather than on trying to stop the measure per se.

## Mandatory disclosure of tax planning schemes

An item of particular interest in 2017 was a proposal to ensure early information to tax authorities regarding cross-border arrangements designed by tax intermediaries or taxpayers. This came in the form of a directive amending the administrative cooperation directive (2011/16/EU) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It creates an obligation for intermediaries (or taxpayers, if the intermediary is not located in the EU) to report the disclosed arrangements to a central directory to which all Member States will have access. National tax authorities would have the possibility to exchange the information on the tax planning schemes with corresponding parties in other EU nations. A further aim is to develop common principles of tax evasion, to identify the promoters and users of such evasion schemes and to reduce or eradicate the use of such schemes.

On 13 March 2018, the Council of the European Union (the Council and the EU, respectively) reached a political agreement on the amendments<sup>10</sup>, imposing a new obligation on EU based tax consultants, banks, lawyers, and other intermediaries to disclose any cross-border arrangement that contains one or more features or “hallmarks”, if they are identified as intermediaries for the purposes of the Amendment. Geographical scope of the new reporting requirements comprise arrangements within the EU, as well as between Member States and third countries. Member States must adopt and publish national laws required to comply with the Amendment by 31 December 2019, at the latest. National laws will provide for penalties for non-compliance, which according to the Amendment should be scoped in a way that is effective, proportionate and dissuasive. Member States will apply the new reporting requirements from 1 July 2020.

<sup>10</sup> Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers, EY Global Tax Alert, 14 March 2018. [ey.com/gl/en/services/tax/international-tax/alert--council-of-the-eu-reaches-an-agreement-on-new-mandatory-transparency-rules-for-intermediaries-and-taxpayers](https://www.ey.com/gl/en/services/tax/international-tax/alert--council-of-the-eu-reaches-an-agreement-on-new-mandatory-transparency-rules-for-intermediaries-and-taxpayers)

## Public CbCR

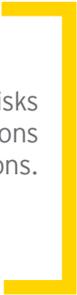
The proposal for a public CbCR for businesses with multinational reach and with a total consolidated group revenue of at least €750 million has also been around for a while, having been first presented on 12 April 2016. The examination of the proposal is still ongoing and there is no approval by the Council at this point, with triangular discussions between the Commission, Council and European Parliament.

The proposal is now with the Council and is being discussed under the above triangular setting due to the controversy on the correct legal base. It is understood that the proposal is considered a company law directive that can be implemented as a result of qualified majority voting (under Article 50 of the Treaty on the Functioning of the European Union). Currently, there is no blocking minority of Member States, with accompanying strong influence of the EP and overall strong political will. This means that arguments regarding legal base become less relevant in terms of being a blocker to gaining unanimity, but highly important in terms of whether the proposal can or will be implemented.

During the Bulgarian Presidency it is expected that the proposal will be further investigated, most likely in March/April 2018. Nevertheless, it is not believed to be a top priority for Bulgaria (unlike the mandatory disclosure of cross-border tax planning schemes). The message from the Council appears to be that this measure is unstoppable and business should now focus on participating in constructive dialogue around how best to protect sensitive information such as trade secrets rather than on trying to stop the measure per se.

## List of non-cooperative jurisdictions for tax purposes published

At the end of the year, on 5 December 2017, the Council of the European Union (ECOFIN, or the Council) published a listing of “Uncooperative jurisdictions for tax purposes,” comprising 17 jurisdictions. These 17 were reduced to 9 in late January 2018 (with Bahrain, the Marshall Islands and Saint Lucia coming off the list) but then expanded to 12 in March 2018, with the additions of Bahamas, Saint Kitts and Nevis and the US Virgin Islands.



At a broad level, there will be reputation risks to companies using structures or transactions involving the remaining listed jurisdictions.

By way of background, work on this specific listing began in July 2016 by the Council's working group responsible for implementing a European Union Code of Conduct on Business Taxation (the Code of Conduct Group). In October 2017, letters were sent to all jurisdictions potentially affected, informing them of the outcome of the work. Where necessary, the jurisdictions were requested to make a political commitment to address all deficiencies within a specified timeframe. Most jurisdictions engaged with the EU and took steps toward resolving the issues identified and submitted the political commitment as requested, and progress made on those commitments will be monitored. The 17 jurisdictions appearing on the list,<sup>11</sup> the conclusions say, failed to take meaningful action to address identified deficiencies and did not engage in a meaningful dialogue on the basis of the EU's criteria.

Following the Caribbean hurricanes earlier in 2017, the Code of Conduct Group put on hold its work in relation to eight jurisdictions, but this will begin again in February 2018 and they will be asked to address any concerns identified as soon as the situation improves, with a view to resolving them by the end of 2018.

The Council conclusions also referred to a total of 47 jurisdictions (referred to by some, but not the EU, as the "grey list") not included within the listing as they have made clear commitments in the areas of transparency, fair taxation and anti-BEPS measures.

The listing criteria are focused on three main categories: tax transparency, fair taxation and implementation of anti-BEPS measures. Further, specific information in regard to each criterion is set out in Annex V of the Council conclusions. Although the EC expects jurisdictions to make the changes requested of them, pending such changes Member States, say the conclusions, could consider applying one or more defensive measures. These include both taxation measures and measures outside the field of taxation, aimed at preventing the erosion of their tax bases. The conclusions do not suggest the imposition on EU Member States of a requirement to impose any of the suggested defensive measures, but many may choose to do so, especially those that already operate national-level blacklists.

We can expect (and have already seen) action on this in 2018. The Council conclusions note that the EU's Code of Conduct Group should continue dialogue and monitoring the implementation of commitments made by these jurisdictions and should recommend at any time to update the list of non-cooperative jurisdictions for tax purposes based on any new commitment taken and on the implementation of these commitments. Furthermore, the Council also asks the Code of Conduct Group to prepare a progress report on this matter before summer 2018.

Furthermore, a jurisdiction may be de-listed from the listing by carrying out the specific steps that were communicated to the jurisdiction ahead of the listing's publication. In fact, the Council removed eight jurisdictions from the list on 23 January 2018, and on 13 March 2018, delisted three more jurisdictions and also added three more jurisdictions. Currently, nine jurisdictions in total remain on the EU list, namely American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago and the US Virgin Islands.

Member States, the Commission says, could consider using the EU listing as a tool to facilitate the operation of relevant anti-abuse provisions, including as a basis for their own national blacklists. Many such "blacklists" are already in use in jurisdictions globally, including Belgium, Brazil, Italy, Mexico and Spain, among others. Publication of the EU listing therefore raises the likelihood of non-EU countries either also adopting the EU listing to supplement their own or moving forward with the creation of an entirely new list.

At a broad level, there will be reputation risks to companies using structures or transactions involving the remaining listed jurisdictions; indeed, analysis of large multinational businesses dealing with those on the listing may occur from some quarters. A further indirect impact will be the commitments from the jurisdictions on the grey list that they will take significant action in order to be delisted. These commitments include:

- ▶ Implementing the spontaneous and automatic exchange of taxpayer information
- ▶ Securing membership of the Global Forum on Transparency and Exchange of Information for Tax Purposes (and securing a "satisfactory" rating therein)
- ▶ Amending or abolishing harmful tax regimes identified by the Commission

<sup>11</sup> American Samoa, Bahrain, Barbados, Grenada, Guam, Korea (Republic of), Macao SAR, Marshall Islands, Mongolia, Namibia, Palau, Panama, Saint Lucia, Samoa, Trinidad and Tobago, Tunisia and the United Arab Emirates.

Clause 25 of the conclusions in particular provides insight into a potential future direction, noting that the Council “looks forward to appropriate Commission proposals by early 2018, taking into account relevant developments in ongoing OECD work and following an assessment of the legal and technical feasibility as well as economic impact of the possible responses to the challenges of taxation of profits of the digital economy.”

- ▶ Addressing EU concerns relating to the level of economic substance their tax benefits require in order to secure membership of the BEPS IF and, by consequence, implementing the BEPS minimum standards
- ▶ Agreeing to take up the minimum standards, but without taking up membership of the BEPS IF

As a result of this last commitment, the Inclusive Framework on BEPS, for example, can be expected to grow by at least 12 members, while at least six jurisdictions have agreed to implement the automatic exchange of information by 2018.

## Taxation of digitalized businesses

Taxation of digital activity is set to be a defining issue in 2018, with the European Commission and OECD as key players.

For the Commission, potential policy choices are being driven by a growing sentiment – to which not all EU Member States subscribe – that the consensus position developed within BEPS Action 1 that there is “no such a thing as a separate digital economy, but that companies are now participating in the digitalized economy” was not sustainable.

On 21 March 2018, the European Commission (the Commission) issued two proposals for new Directives that will deliver new ways to tax digitalized forms of business activity.

The Commission's proposals focus on a two-phased approach: an interim solution, referred to as the Digital Services Tax (DST) and a longer term *Council Directive laying down rules relating to the corporate taxation of a significant digital presence* (SDP).

The DST proposal is for a gross revenues (i.e., turnover) tax, set at a uniform rate of 3% across all European Union (EU) Member States, while the Significant Digital Presence proposal focuses on a new concept of digital permanent establishment (PE), along with revised profit attribution rules.

According to the Question and Answer (Q&A) document issued alongside the proposal, this DST will ensure that those activities which are currently not effectively taxed would begin to generate immediate revenues for Member States to the tune

of an estimated €5 billion a year. If the revenues were split by gross domestic product (GDP), this would imply revenues of approximately €3.4b to the five Member States that have been publically in favor of this tax, being France, Germany, Italy, Spain and the UK.

In a press release issued alongside the proposals, the Commission notes that the SDP measures could eventually be integrated into the scope of the Common Consolidated Corporate Tax Base (CCCTB), but sets out no distinct interdependency between these two activities.

Both solutions would be delivered by new Directives. The proposals will be submitted to the Council for adoption and to the European Parliament for consultation, and the Commission hopes that final adoption will occur by 31 December 2019, for 1 January 2020 transposition into national law.

The publication of these proposals by the Commission represents a potential landmark moment in the development of the international tax system. It does, however, also set up a challenging situation, with two multilateral organizations – the European Commission and OECD (with a majority of EU Member States being part of both organizations) both working on the challenges of taxing digitalized business.

While the Commission acknowledges that the ideal approach would be to find multilateral, international solutions to taxing the digital economy, given the global nature of this challenge, the OECD in their 16 March *Interim report on tax challenges arising from digitalization* note that “There is no [global] consensus on the need for, or merits of, interim measures, with a number of countries opposed to such measures on the basis that they will give rise to risks and adverse consequences.” The OECD further noted that *an update on this [OECD] work will be provided in 2019 and the BEPS IF is working towards a consensus-based solution by 2020.*

The Commission's legislative proposals will now be submitted to the EU Council for adoption and to the European Parliament for consultation. It should also be noted, however, that EU Member States (including the United Kingdom, at this point) may also potentially move forward unilaterally with their own national implementation of a DST or similar tax.

<sup>12</sup> See the publication *Digital tax policy disruption*, EY, March 2018. [ey.com/Publication/vwLUAssets/ey-digital-tax-policy-disruption-part-2-15-march/\\$File/ey-digital-tax-policy-disruption-part-2-15-march.pdf](https://www.ey.com/Publication/vwLUAssets/ey-digital-tax-policy-disruption-part-2-15-march/$File/ey-digital-tax-policy-disruption-part-2-15-march.pdf) for more information.

Past experience has shown that similar measures have not been fully exploited by Member States, because they are reluctant to invest the necessary financial and manpower resources to enable them to be properly implemented.

## VAT on e-commerce

At its meeting on 5 December 2017, despite clear reticence from one Member State (Germany), the ECOFIN adopted new rules for applying VAT to supplies made by businesses that sell goods and “non-electronic” services online. These new rules build on the system already in place for e-services and will ensure that VAT is paid to the State where the final consumer lives. There are four major elements:

1. From 2021, all companies that sell goods, and services not covered by the current “e-service” rules, to their customers online will be able to deal with their VAT obligations in the EU through one easy-to-use online portal in their own language (the “one-stop shop”). Currently, VAT registration is required in each EU Member State into which they want to sell. This system is already in place for sales of e-services.
2. At the same time, the current exemption from VAT for imports of small consignments worth not more than €22 from outside the EU will be abolished. According to the Commission, this leads both to fraud and to unfair competition and distortion for EU companies.
3. Online marketplaces will be made responsible for ensuring VAT is collected on sales on their platforms that are made by companies in non-EU countries to EU consumers. This includes sales of goods that are already being stored by non-EU companies in warehouses (so-called “fulfilment centers”) within the EU.
4. From 1 January 2019, the VAT rules for start-ups, micro-businesses and SMEs selling goods to consumers online in other EU Member States will be simplified by allowing VAT on cross-border sales under €10,000 a year to be handled according to the rules of the home country of such businesses.

The new rules are designed to serve the twin goals of simplifying tax obligations for online traders and ensuring that tax accrues to the Member State of consumption. The fact that they were adopted within a space of one year underlines the importance that Member States attach to the necessity of adapting tax rules to cater for the digital economy.

Although the main principles have been adopted by the Council, considerable work remains to be carried out in the Council to agree on implementing regulations, particularly with respect to the role and obligations of online marketplaces. This is unlikely to start in the first half of the year since the Commission will need to make appropriate proposals after consulting interested parties.

## Reform of the EU VAT system

On 4 October 2017, the Commission presented the first stage of its proposals for introducing a “Definitive” EU VAT system based on taxation in the country of destination. This proposal contained the following three elements:

- ▶ An amendment to the VAT Directive laying down three new major principles for the application of VAT to intra-Community trade, namely:
  1. Taxation in the Member State of destination;
  2. Liability for charging and collecting VAT placed upon the supplier (or on the acquirer if it has the status of “Certified Taxable Person”);
  3. The declaration, payment and deduction of tax to be carried out through the use of a “one-stop shop”.
- ▶ The introduction in the EU VAT system of the status of a “certified taxable person” - a concept similar to that of the authorized economic operator (AEO) which already exists in EU Customs Law.
- ▶ A number of short-term measures to improve the functioning of the VAT system until the definitive regime has been implemented. These “quick fixes” address issues requested by both businesses and Member States and cover:
  - ▶ Simplification of the VAT rules for companies in one Member State storing goods in another Member State to be sold directly to customers there - the so-called “call-off stock” system. This simplification would be limited to Certified Taxable Persons who will no longer need to register and pay VAT in another Member State when they store goods there.
  - ▶ Simplification for those elements of a chain transaction that do not involve the physical movement of goods; for example, when goods are sold via several traders but physically the goods move directly from the original seller to the final buyer. This simplification would again be limited to Certified Taxable Persons.
  - ▶ New harmonized and uniform rules so that traders can more easily provide proof that goods have been transported from one EU country to another. This simplification would also be limited to Certified Taxable Persons.

These proposals were only briefly discussed under the Estonian Presidency. Now that the VAT e-commerce proposals have been adopted, these proposals will undoubtedly get more attention in the Council. Early indications are that, while the Member States may well be relatively keen on adopting the “quick fixes,” they may well be reluctant to agree to the more fundamental elements relating to the “Definitive” system until the Commission puts forward its second-stage proposal, which will set out the detailed changes required to implement the proposed Definitive system.

## Administrative cooperation in the field of VAT

On 30 November 2017, the Commission proposed new rules on administrative cooperation between Member States’ administrations in order to fight VAT fraud more efficiently. These measures are intended to improve the exchange of information between Member States’ tax administrations and the coordination of their actions, including joint audit, and to initiate an operational cooperation between Member States’ tax administrations in EUROFISC and law enforcement authorities at the EU level.

The aim of these measures is to help Member States prepare for the implementation of the Definitive VAT system and, pending its implementation, to help limit cross-border fraud. Some of the key measures included in this proposal are:

- ▶ Strengthening cooperation between Member States by putting in place an online system for information sharing within EUROFISC, the EU’s existing network of anti-fraud experts. The system would enable Member States to process, analyze and audit data on cross-border activity to make sure that risk can be assessed as quickly and accurately as possible. In addition, joint audits would allow officials from two or more national tax authorities to form a single audit team to combat fraud, and it is also proposed that new powers should be given to EUROFISC to coordinate cross-border investigations.





- ▶ New measures are proposed which would open lines of communication and data exchange between tax authorities and European law enforcement bodies (OLAF, Europol and the newly created European Public Prosecutor Office (EPPO)) on cross-border activities suspected of leading to VAT fraud.
- ▶ It is also proposed that information sharing between tax and customs authorities should be further improved for certain customs procedures which are currently open to VAT fraud when goods transit between Member States VAT-free.

These proposals will be discussed in the Council in 2018. However, while their implementation is intended to reduce VAT fraud in intra-community trade and thus increase Member States' tax revenues, past experience has shown that similar measures have not been fully exploited by Member States, because they are reluctant to invest the necessary financial and manpower resources to enable them to be properly implemented.



## Country outlooks

Argentina	<b>24</b>	Luxembourg	<b>192</b>
Australia	<b>32</b>	Malaysia	<b>200</b>
Austria	<b>42</b>	Mexico	<b>208</b>
Brazil	<b>48</b>	New Zealand	<b>216</b>
Bulgaria	<b>58</b>	Panama	<b>226</b>
Canada	<b>66</b>	Peru	<b>232</b>
People's Republic of China	<b>74</b>	Poland	<b>238</b>
Colombia	<b>84</b>	Portugal	<b>246</b>
Costa Rica	<b>92</b>	Russia	<b>254</b>
Czech Republic	<b>98</b>	Singapore	<b>262</b>
Denmark	<b>106</b>	South Africa	<b>270</b>
Finland	<b>112</b>	Spain	<b>280</b>
France	<b>118</b>	Switzerland	<b>288</b>
Germany	<b>126</b>	Taiwan	<b>296</b>
Greece	<b>134</b>	Thailand	<b>302</b>
Guatemala	<b>142</b>	Turkey	<b>310</b>
Hong Kong	<b>150</b>	Ukraine	<b>318</b>
India	<b>158</b>	United Kingdom	<b>326</b>
Indonesia	<b>166</b>	United States	<b>336</b>
Italy	<b>174</b>	Vietnam	<b>346</b>
Japan	<b>184</b>		

# Argentina

## Tax policy

Ariel Becher

ariel.becher@ar.ey.com

+54 11 4318 1686

## Tax controversy

Felipe Carlos Stepanenko

felipe-carlos.stepanenko@ar.ey.com

+54 11 4510 2268

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	35%	30%	-14.3%
Top personal income tax (PIT) rate (national and local average if applicable)	35%	35%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	21%	21%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The government intends to make Argentina more competitive and attractive to investors and businesses. Among other measures, it is striving to have a reasonable tax system that is clearer, with updated rules as well as a harmonization with international standards and also among the different level of governments (federal, provincial, municipal).

The fact that inflation will be recognized (either partially or totally) as of 2018 and that a one-time regime was approved to update the value of assets also provides improved certainty to businesses.

The government still needs to reduce the fiscal deficit and therefore a significant reduction in taxes or reduced audit activity should not be expected, especially after the changes that took place in recent years e.g., voluntary disclosure regime, tax regularization, tax reform, exchange of information agreements.

## 2.2 Tax burdens in 2018

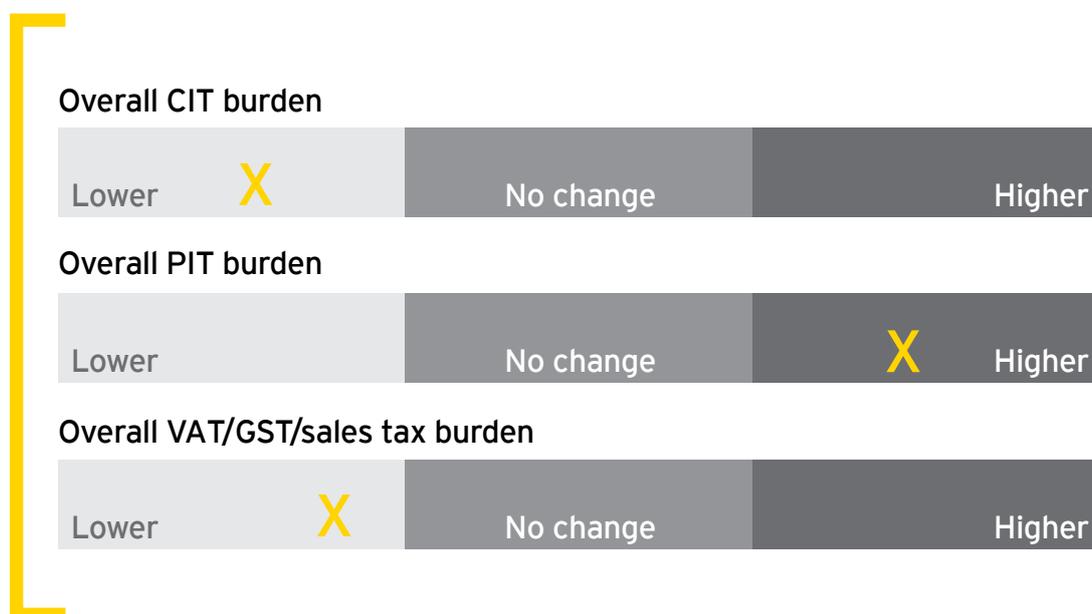
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

The corporate income tax rate was reduced from 35% to 30% (in 2018 and 2019) and 25% (from 2020 onwards). At the same time, dividend withholding taxes were imposed at a 7% rate on after-tax profits for income accrued in 2018 and 2019 and 13% on profits accrued as of 2020. The total effective rate on distributed income remains close to 35%, but the government has stimulated reinvestment of profits by reducing the rate on undistributed income.

Inflationary adjustment was allowed as of 2018 (integral only if inflation exceeds 100% in a three-year term but allowed in all cases for fixed assets and other assets for acquisitions as of 2018).

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

The recent reform did not introduce any change in relation to direct taxes on digital activity, although some changes were proposed but did not become enacted. PE definitions introduced in the law may impact direct taxation on digital activity.

#### Indirect taxes

Digital services were incorporated into the VAT law, with a broad and detailed definition and definitions of place of utilization. Services provided from abroad to Argentine customers are subject to VAT; in the case of end users, the intermediaries in the payment are responsible for paying the tax.

### Taxes on wages and employment

In relation to personal income tax, a plan for the unification of social security taxes was introduced starting in 2018 and progressively concluding by the beginning of 2022 and focuses on the unification of rates and elimination of credits for certain regions). A minimum non-taxable amount was introduced.

Automatic adjustment for inflation of personal deduction and scales as of 2018 guarantees reasonable tax burden.

### VAT/GST/sales taxes

The recent tax reform approved a mechanism through which VAT arising from investment in fixed assets can be refunded after 6 months, so long as the taxpayer can prove that it would have been absorbed against output VAT on local sales (or export refunds) in a 5-year term (otherwise, the refund must be reimbursed with interest). It has also provided a more reasonable definition of place of utilization for imports and exports of services.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The current government (led by President Mauricio Macri) took office in December 2015 and started a process of “normalization” of many economic variables that had been distorted by past governments.

The different measures and reforms were gradual. In the midterm elections held in October 2017, the ruling party was able to win the election, thus gaining more congressional representation and essentially more consensus among the population and political actors. This led to many new reforms that were proposed after the elections, such as reforms to tax laws, the pension system (both already approved), the labor regime (not yet approved), among others.

Although some expected results have not been fully achieved, inflation has been decreasing slightly, as well as the public deficit. According to the results of the midterm elections, the President may have a chance to be re-elected in 2019; however, it is still too early to anticipate such a result.



## 2.7 Current tax policy and tax administration leaders

President: Mauricio Macri

Chief of Cabinet: Marcos Peña

Minister of Treasury: Nicolas Dujovne

Federal Administrator of Public Revenues (head of Tax and Customs authorities): Alberto Abad

During 2017, Argentina signed the Multilateral Instrument and also the tax authorities regulated the filing of Country-by-Country reports. The Procedural Law also introduced rules on Mutual Agreement Procedures and Advance Pricing Agreements.

By the end of 2017 the Federal Government and the provinces signed a comprehensive “consensus” which aims to harmonize the tax rules among the different jurisdictions and achieve, over time, a more reasonable tax burden in terms of provincial taxes.

## 2.8 What key tax policy changes did you experience in your country in 2017?

An extensive and significant tax reform package was approved and published on 29 December 2017. The main changes were to the corporate income tax, but other taxes were also included in the reform.

The income tax law was amended to update many necessary provisions as well as incorporate some base erosion and profit shifting (BEPS) actions; for instance, PE definitions were expressly included in the law and, interest deduction limitations were changed and are now in line with BEPS Action 4. CFC rules were also amended. New treaties also incorporated BEPS-oriented treaty anti-abuse provisions.

## 2.9 Pending tax proposals

**Open:** The regulatory decree which would regulate the application of many aspects of the reform as well as several resolutions by the tax authorities are expected to be issued throughout 2018 and may clarify or complement the rules recently enacted.

**Closed:**

## 2.10 Consultations opened/closed

N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches**
- C. Will be neutral in approach – will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

The Argentinian tax authorities are increasing the different type of electronic filings, not only of tax returns but also of extensive tax information on a taxpayer’s purchases and sales, salaries, transfers of different types of assets, etc. They are also gathering extensive information from other governmental offices and banks. This generally triggers greater control tools for the administration as well as the possibility in some cases to have pre-populated tax information for tax return filing. Audits based on such extensive information have become more common in recent years.



## 3.2 Key risk factors and audit triggers in 2018

1	<b>Transfer pricing</b>	The recent obligation of filing the Country-by-Country report as well as recent transfer pricing changes on operations with intermediaries is bound to increase the transfer pricing scrutiny.
2	<b>CFC rules</b>	New CFC rules have a significant effect not only on companies but especially on individuals. The application of CFC rules in accordance with the new rules will probably become an issue of focus.
3	<b>Capital gains</b>	Sales of shares by non-residents became taxable in September 2013 but no definitive rule to collect the tax has been issued. Such a rule may be issued during 2018, which will lead the authorities to scrutinize all transactions since September 2013.
4	<b>Cross-border transactions</b>	The authorities are bound to review the substance of transactions with foreign parties; holding, IP and financing companies; the application of treaties based on new tendencies and especially clauses included in new treaties. As in recent years, deduction of intercompany charges, services and royalties would also keep being a focus of the authorities.
5	<b>Individual income tax</b>	Now that exemptions for several categories of financial and real estate income by individuals have been abrogated, it is probable that the authorities start auditing this type of transactions.



Iguazu Falls, Argentina

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

Yes

No

- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

Yes

No

#### ▶ Explanation

The sale of shares by non-residents has been taxable since September 2013 but no further regulation was issued on a definitive basis to enforce the payment of the tax. Considering that the law was in force and that the 2017 reform ratifies the application of tax on such transactions, it is expected that regulations to allow the payment of the tax are issued, with retroactive application as from September 2013 and onwards. This issue must be closely monitored on a case-by-case basis.

### 3.5 Tax enforcement developments in 2017

New tools and obligations were introduced in relation to electronic filings, informative regimes and online tax returns, among others. This will progressively give the authorities more tools to examine tax returns and audit taxpayers at a greater scale.

### 3.6 Potential tax enforcement developments in 2018

After the recent reforms, audit activity will probably be intensified. It is expected that cross-border transactions, capital gains, transfer pricing and CFC rules, among others, will become the focus of audit activity in coming months and years.

The obligation to file Country-by-Country reports starting in 2018 (for years 2017 and onwards) may lead to an increase in scrutiny in this area.

The recent introduction in the Tax Procedural Law of Advance Pricing Agreements and Mutual Agreement Procedures (not yet regulated) may also be a focus of enforcement for 2018.

# Australia

## Tax policy

### Alf Capito

alf.capito@au.ey.com

+61 2 8295 6473

### Tony Stolarek

tony.stolarek@au.ey.com

+61 3 8650 2246

## Tax controversy

### Martin Caplice

martin.caplice@au.ey.com

+61 8 9429 2246

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	30% <sup>1</sup> (27.5% for small business entities)	30% <sup>2</sup> (27.5% for small business entities; please refer to section 2.7)	0%
Top personal income tax (PIT) rate (national and local average if applicable)	47% <sup>3</sup>	45% <sup>4</sup>	-4.3%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	10% <sup>5</sup>	10% <sup>6</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The Government has a slim majority in the lower House and does not control the Senate; with the next federal election due to be held in 2019, discussions around tax reform have been very politicized and focused on populist issues.
- ▶ The Government has proposed a "glide path" to implementing a lower corporate tax rate that would gradually apply to all businesses, but the proposal is politically challenging and still has not been passed.

<sup>1</sup> Section 23 (2) of the Income Tax Rates Act 1986.

<sup>2</sup> Section 23 (2) of the Income Tax Rates Act 1986.

<sup>3</sup> Schedule 7 of the Income Tax Rates Act 1986.

<sup>4</sup> Schedule 7 of the Income Tax Rates Act 1986.

<sup>5</sup> Section 9-70 of a New Tax System (GST) Act 1999.

<sup>6</sup> Section 9-70 of a New Tax System (GST) Act 1999.

- ▶ There has been a strong focus on tax fairness and collecting fair tax from multinational enterprises (MNEs).
- ▶ Australia has locked in significant spending programs that are politically acceptable and difficult to reduce, which has caused budgetary planning changes; the political parties are therefore focused on increasing revenue to match the spending commitments as a way to restore balance over time.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <sup>7</sup>	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (CGT) (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no CGT	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

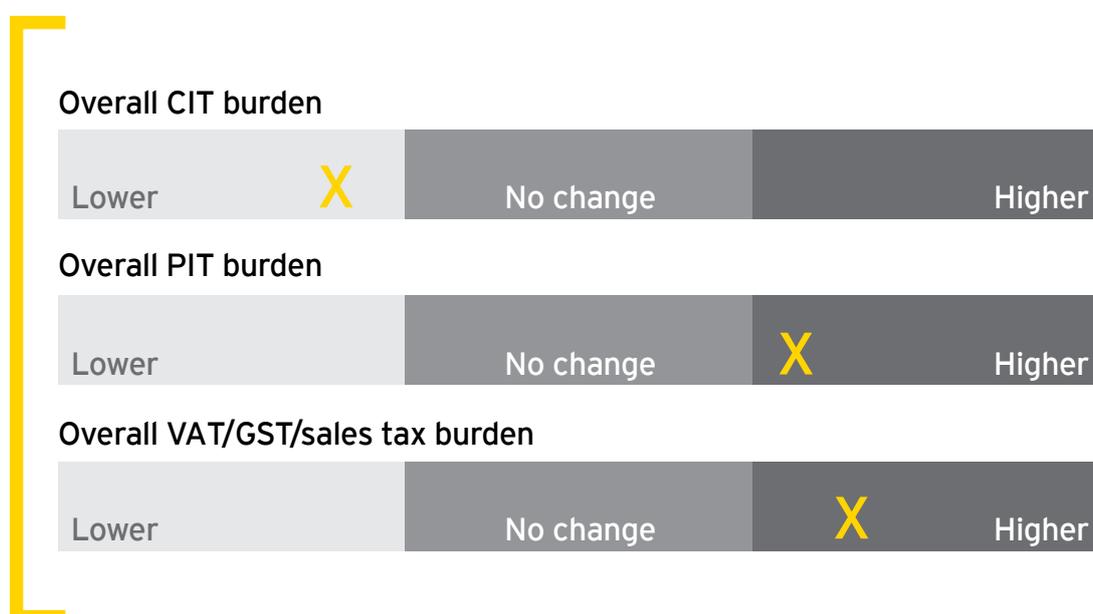
<sup>7</sup> Please note that the aggregated turnover threshold for the lower 27.5% CIT rate will be increased from A\$25 million to A\$50 million for the 2018-19 income year.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(13) Other business incentives – including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

#### Reduction of CIT rates

- ▶ The Government has proposed gradually reducing the CIT rate from 30% to 25% for all corporate entities by 2026-27.
- ▶ Under legislation enacted in 2017 (Enterprise Tax Plan 2016), the CIT rate for small business entities was cut to 27.5%; the reduced rate applies to entities with aggregated turnover of less than A\$25 million for the 2017-18 income year and less than \$A50 million for the 2018-19 income year.
- ▶ Under legislation currently before the Parliament (Enterprise Tax Plan No. 2 2017), the turnover threshold at which the reduced CIT rate applies would gradually increase to \$A1 billion in 2022-23 and be removed by 2023; beginning with the 2023-24 income year, the 27.5% CIT rate would apply to all corporate entities (regardless of turnover) and the CIT rate would be reduced to 27% in 2024-25, to 26% in 2025-26 and to 25% in 2026-27.
- ▶ The Government in October 2017 introduced an amendment that would limit, for the period between the 2017-18 and 2023-24 income years, the availability of the reduced CIT rate; during this period, only corporate entities with no more than 80% base rate entity passive income would be eligible for the lower rate.

#### Other measures

- ▶ The Government released draft legislation in November 2017 that would implement the hybrid mismatch rules contained in the final base erosion and profit shifting (BEPS) Action 2 report from the Organisation for Economic Co-operation and Development; the rules would apply to payments made on or after the day six months following Royal Assent of the bill (likely in the fourth quarter of 2018).
- ▶ In October 2017 the Government released draft legislation that would protect the identity of tax whistleblowers as well as protect them from victimization and civil and criminal action for disclosing information on tax avoidance or breaches of the tax law in relation to a company's tax affairs to the Australian Taxation Office (ATO); if approved, the tax whistleblower regime would apply from 1 July 2018.
- ▶ The Government has also proposed a range of measures to address the growing economic and social problem of the black economy, including by banning sales suppression technology and extending the Taxable Payment Reporting System to two high-risk industries – cleaning and couriers – to ensure payments made to contractors in these sectors are reported to the ATO.

- ▶ In September 2017, the Government proposed integrity measures that would improve the operation of the tax cost-setting rules by:
  - ▶ Preventing a double benefit from arising from deductible liabilities when an entity joins a consolidated group
  - ▶ Ensuring that deferred tax liabilities are disregarded
  - ▶ Removing anomalies when an entity holding securitized assets joins or leaves a consolidated group
  - ▶ Preventing unintended benefits from arising when a foreign resident ceases to hold membership interests in a joining entity (churning measure)
  - ▶ Clarifying the outcomes when an entity holding financial arrangements leaves a consolidated group (taxation of financial arrangements measure)
  - ▶ Clarifying the treatment of intragroup liabilities when an entity leaves a consolidated group (value-shifting measure).
- ▶ Intangible asset depreciation: In March 2017 the Government introduced a bill that would provide a new option to self-assess the effective life of acquired intangible assets (which is currently fixed by statute).
- ▶ Increasing access to company losses: In March 2017 the Government proposed legislation to reform inflexible rules that prevent companies from claiming past year losses when they seek to innovate and grow.
- ▶ Affordable housing concessions for Managed Investment Trusts (MITs): the Government in September 2017 released draft legislation that would enable MITs to acquire, construct or redevelop property to hold for affordable housing (however, the draft legislation also clarifies that from 14 September 2017, MITs cannot acquire residential property, other than affordable housing).

### Taxes on digital activity

#### Direct taxes

- ▶ Australia's diverted profits tax (DPT) regime continues to apply to significant global entities (SGEs - i.e., companies that are members of groups with global revenue of A\$1 billion or more); the law allows the ATO to impose a penalty tax rate of 40% on diverted profits.
- ▶ The ATO has confirmed that it is focusing on taxes paid by MNEs on the value created in Australia; there has been significant audit activity in the pharmaceutical, technology, resources and infrastructure sectors.

## Taxes on wages and employment

- ▶ The Single Touch Payroll reporting framework for substantial employers (i.e., with 20 or more employees) took effect on 1 July 2018; it enables employers to automatically provide payroll and superannuation information to the ATO at the time they pay their employees.
- ▶ Additional funding has been provided to establish an ATO taskforce to address Superannuation Guarantee (SG) noncompliance and safeguard employees' SG entitlements, encouraging employers to make on-time full payment of employee superannuation entitlements.
- ▶ Superannuation changes:
  - ▶ Contributing the proceeds of downsizing to superannuation - From 1 July 2018, individuals aged 65 years or older may make after-tax contributions into their superannuation account using proceeds from downsizing main residence (up to A\$300,000).

## VAT/GST/sales taxes

- ▶ In an effort to impose and collect GST on business-to-consumer (B2C) supplies below the A\$1000 low-value threshold (LVT) on imported goods, from 1 July 2018 nonresidents (overseas suppliers) with an Australian turnover of A\$75,000 or more will have to charge, collect and remit the GST for B2C supplies.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.5 Political landscape

The Government has a slim majority in the lower house, and its majority has been further endangered by disputes about the citizenship eligibility of various Government and opposition members of Parliament and senators, with High Court rulings issued in 2017 and more expected in 2018. Resulting elections in various seats in 2017 and 2018 add to the tension and could affect the majority.

The Government does not control the Senate, which has required significant negotiation on all major moves relating to tax and spending, as well as other initiatives.

The Australian Prime Minister is struggling to achieve public popularity dominance over the opposition leader, which also adds to the populist nature of the political debate.

## 2.6 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Malcolm Turnbull MP, Prime Minister
- ▶ Barnaby Joyce MP, Deputy Prime Minister
- ▶ Scott Morrison MP, Treasurer
- ▶ Kelly O'Dwyer MP, Minister for Revenue and Financial Services
- ▶ Senator Mathias Cormann, Minister for Finance
- ▶ Steve Ciobo MP, Minister for Trade, Tourism and Investment
- ▶ Michael McCormack MP, Minister for Small Business
- ▶ Senator Michaela Cash, Minister for Jobs and Innovation

### Tax administration leaders in Australian Taxation Office (ATO)

- ▶ Chris Jordan AO, Tax Commissioner and Registrar of the Australian Business Register
- ▶ Neil Olesen, Second Commissioner (Client Engagement)
- ▶ Andrew Mills, Second Commissioner (Law Design and Practice)
- ▶ Jeremy Hirschhorn, Deputy Commissioner, Public Groups and International
- ▶ Mark Konza, Deputy Commissioner, Public Groups and International

## 2.7 What key tax policy changes did you experience in your country in 2017?

### BEPS measures

- ▶ Action 1: GST to the B2C supply of digital products, services and other intangibles into Australia from 1 July 2017.
- ▶ Action 2: Australia's hybrid mismatch draft law released, applicable from 6 months following Royal Assent.
- ▶ Actions 8-10: Application of the transfer pricing rules consistent with the updated 2015 OECD Transfer Pricing Guidelines intended to ensure transfer pricing outcomes better reflect value creation in global supply chains from 1 July 2016.
- ▶ Action 13: Australian adoption of the country-by-country (CbC) reporting package from 1 July 2016 saw the first lodgments of the CbC Report, Master File and Local File with the ATO in 2017.

### Other changes

- ▶ SGEs may be affected by Australia's DPT, which allows the ATO to impose a penalty tax rate of 40% on diverted profits (the regime applies for income years commencing on or after 1 July 2017).
- ▶ SGEs that are Australian residents, or foreign residents with an Australian permanent establishment, are required to lodge general purpose financial statements with the ATO and Australian Securities and Investments Commission in respect of income years starting from 1 July 2016.
- ▶ SGEs are facing increased penalties for noncompliance with tax document requirements. "Failure to lodge" penalties for SGEs can be as high as A\$525,000. SGEs can include small Australian operations of global groups and companies with purely domestic Australian operations.
- ▶ The ATO continues to increasing its focus on addressing perceived MNE tax avoidance, with extra government funding provided to establish a Tax Avoidance Taskforce to crack down on MNE tax avoidance.
- ▶ Taxpayers are being encouraged to adopt the Board of Taxation Voluntary Tax Transparency code, which encourages company groups to make tax disclosures to show they are good corporate citizens.
- ▶ A new law has reduced the small business company tax rate to 27.5% for eligible businesses with a turnover of up to A\$25 million for the income year 2017-18. This is part of a larger package of the so-called "corporate tax cut glide path," which calls for a CIT rate of 25% by 2026-27 for all businesses. Proposed amendments are being debated before Parliament.

- ▶ The ATO's statutory remedial power, which enables it to provide taxpayers a more timely resolution of certain unforeseen or unintended outcomes in the taxation and superannuation law, applies from 28 February 2017.
- ▶ The foreign resident capital gains withholding tax of 12.5% applies to acquirers of Australian real estate and resource project interests (and shares in companies that own such assets) from nonresident vendors from 1 July 2017, unless exclusions apply (the current threshold is A\$750,000) or clearance certificates are obtained.
- ▶ Integrity measures focusing on residential rental properties and on travel expenses related to managing a residential rental property, as well as depreciation deductions on plant and equipment, apply from 1 July 2017.
- ▶ The following superannuation changes apply broadly from 1 July 2017:
  - ▶ Individuals may make voluntary superannuation contributions of up to A\$15,000 per year and A\$30,000 in total (within existing caps) toward their first home deposit
  - ▶ The rules on tax deductions for personal superannuation contributions have been broadened (the 10% rule has been removed).
  - ▶ Provisions regarding the superannuation balances of low-income spouses have been improved.
  - ▶ A Low-Income Superannuation Tax Offset has been introduced.
  - ▶ The contribution rules for those aged 65-74 have been harmonized.
- ▶ Working holidaymakers are now treated as nonresidents for tax purposes, but with a lower tax rate.
- ▶ A quarterly bank levy, at a rate of 0.015%, for authorized deposit-taking institutions with licensed entity liabilities of at least A\$100 billion, applies from 1 July 2017.
- ▶ Provisions in the double tax treaty between Australia and Germany commence from either 1 January, 1 April or 1 July 2017.

## 2.8 Pending tax proposals

- ▶ There are potential policy changes in relation to stapled structures (i.e., trusts associated with companies that have the effect of extracting taxable income from companies), and the re-characterization of trading income, after extensive analysis and consultation in 2017.

- ▶ Mandatory disclosure of aggressive tax positions (arising from BEPS Action 12): Following an initial consultation after the 2016 Federal Budget, the Government is considering introducing mandatory reporting.
- ▶ The Government is seeking to improve the transparency of information on beneficial ownership and control of companies available to relevant authorities.
- ▶ Changes are pending that would clarify certain elements of:
  - ▶ Investment manager regime foreign fund tax exemption
  - ▶ CGT cost base adjustment rules for MITs
  - ▶ Attribution MIT rules
- ▶ R&D tax incentives will be reviewed to identify opportunities to improve the effectiveness of the rules.
- ▶ The Black Economy Taskforce has been established to develop an innovative, forward-looking whole-of-government policy response to combat the black economy in Australia, recognizing that these issues require more than traditional tax law and enforcement. The taskforce has reported to the Government, but the report and Government response have not yet been released.

## 2.9 Consultations opened/closed

### Open

- ▶ Implementation of anti-hybrid rules in Australia

### Consultation closed, but further actions possible:

- ▶ Potential policy options in relation to stapled company-and-trust structures and countering re-characterization of trading income, while minimizing the disruption for real property investments and A-REITs.
- ▶ Reforms to counter illegal phoenix company activity (i.e., companies that fail with large tax and other debts but reappear in new entities).
- ▶ 974-80 Debt-Equity integrity rule for related schemes provisions and equity override.
- ▶ Fine-tuning of nonresident CGT rules: Disregard CGT for foreign trust distributions and adjust the rules for the valuation of mining rights as Taxable Australian Real Property.
- ▶ Proposed core legislative frameworks to give effect to the Asia Region Funds Passport and introduce the Corporate Collective Investment Vehicle regime.
- ▶ Proposed shift of GST on sales of residential property to consumers.

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches**
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

The ATO is very focused on risk assessment and calibration of taxpayers, and has been fine-tuning its compliance approaches. The ATO uses various risk filters to detect risks of noncompliant tax positions. Risk reviews may progress to a full ATO audit - particularly those with complex structures and international related-party dealings. The ATO Corporate Plan 2015-19 states that the ATO is reinventing how it interacts with taxpayers. For publicly listed (including multinational) entities, the tax authorities intend to:

- ▶ Help taxpayers self-evaluate their tax governance framework and tax risks
- ▶ Resolve issues and disputes more quickly and cooperatively
- ▶ Implement better systems for accessing information and services by taxpayers
- ▶ Offer guidance (through early engagement) before major transactions

The expansion of existing Reportable Tax Position Schedule disclosures (which call for certain supplementary reporting of arrangements and tax positions taken to be lodged with tax return for taxpayers) has been broadened from the year ending 30 June 2017 to require more disclosures, and the class of disclosing taxpayers is expanded to those with Australian turnover in excess of A\$250m from years ending on or after 30 June 2018.

### 3.2 Key risk factors and audit triggers in 2018

1	<b>International structures and profit shifting</b>	The Government and the ATO are committed to tackling BEPS. The DPT, which took effect for income years beginning on or after 1 July 2017, targets MNEs that artificially divert profits from Australia through related-party arrangements. An ATO practical compliance guide is planned for 2018.
2	<b>Transfer pricing</b>	<p>Public statements and actions by the ATO on its powers under the updated transfer pricing laws show:</p> <ul style="list-style-type: none"> <li>▶ There is a plan to ask more (and broader) questions of MNEs in Australia to understand the totality of their cross-border transactions.</li> <li>▶ The ATO is aiming to better understand the global profits of an MNE when determining the reasonableness of the returns achieved by the Australian taxpayer in return for its role in the global value chain.</li> <li>▶ The ATO is willing to use the new CbC reporting requirements to seek additional information that will assist in future risk profiling and compliance processes.</li> </ul>
3	<b>Cross-border related party financing arrangements and related transactions</b>	<p>A major ATO focus risk area is cross-border related party financing.</p> <p>An ATO practical compliance guide (PCG) released in December 2017 sets out a range of risk indicators and calibration to enable taxpayers to self-assess the likelihood of ATO compliance queries and attention flowing from a risk rating of cross-border intragroup financial arrangements. Proposed risk ratings range from “green” (i.e., low risk and limited compliance activity) to “red zone” (i.e., very high risk with high likelihood of priority tax authority reviews/audits). The PCG’s effective date (1 July 2017) will apply to related-party financing arrangements on issue from that date. This brings into question the treatment relating to the back years for financing entered pre-1 July 2017, all of which remain open.</p> <p>The result of the self-assessment is to be disclosed to the tax authorities as part of the annual tax disclosures and will drive ATO compliance actions.</p>
4	<b>Residency of foreign companies with Australian central management &amp; control</b>	The ATO released draft guidelines on the application of the central management control test of company residency for foreign incorporated companies, to signal the likely examination of factors in residency position and Australian tax exposures of foreign incorporated companies, including the high-level decision-making process of the boards, virtual decision-making and the required evidence of the decision-making. This is under review, with final guidance expected before the end of 2017.
5	<b>Employment tax compliance</b>	Pay as you go (PAYG) withholding amounts, superannuation guarantee (SG) contributions, Fringe Benefits Tax (FBT) and Payroll Tax (PRT) continue to be reviewed by the Australian tax authorities and state revenue authorities. Sophisticated data sharing is occurring between regulators to detect risks. There is a particular focus on the engagement of contractors.

### 3.3 Retroactive application of tax laws in 2018

- |   |  |
|---|--|
| <p>▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why)</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> | <p>▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> |
|---|--|

► Explanation

There have been concerns about the application of the DPT to transactions initiated before the DPT law was introduced. The ATO does not plan to reopen earlier years, but the law will not “grandfather” continuing structures that started in earlier years.

### 3.4 Tax enforcement developments in 2017

- Australia’s Tax Commissioner leads the Joint International Taskforce on Shared Information and Collaboration (JITSIC), an initiative of the OECD’s Forum for Tax Administration that is interested in information exchange issues, such as those relating to the Paradise Papers and Panama Papers.
- There has been additional funding and re-organization of the ATO, including the establishment of a new Tax Avoidance Taskforce, which will target avoidance by MNEs and higher wealth individuals and plans to raise A\$3.7 billion over four years.
- There has been a continuous focus on analyzing large or multinational businesses using various risk filters to detect risks of noncompliant tax positions (e.g., cross-border related party financing, offshore marketing/procurement hubs, etc.)
- E-Audits have been designed to provide contemporary service to taxpayers in a digital environment by assessing the integrity and governance controls of business and information technology systems. It involves obtaining electronic data to compile, verify and analyze electronic record keeping and accounting information provided by taxpayers. If a taxpayer maintains electronic records and is selected for a client engagement activity, an audit or a review, the tax authorities may consider the use of e-Audit to obtain and analyze the records.

### 3.5 Potential tax enforcement developments in 2018

- The ATO will continue to maintain a strong focus on analyzing large or multinational businesses using various risk filters to detect risks of noncompliant tax positions. The ATO brands this as a “justified trust” initiative (i.e., whether the tax outcomes from a larger taxpayer justify the ATO’s trust in them from a compliance perspective).
- The Australian tax authorities are participating in a multilateral pilot program developed with the OECD, the International Compliance Assurance Program (ICAP), which will commence in January 2018 and is based around a collaborative two-part risk assessment between MNEs and participating tax authorities, which - in case of a no- or low-risk assessment - will result in an assurance letter for the MNE group issued by the tax administration.
- There will be ongoing encouragement for companies with Australian turnover of A\$100 million or more to make voluntary tax disclosures to show they are good corporate citizens.
- With the Single Touch Payroll applying to employers with more than 20 employees from 1 July 2018, detailed employee payroll data will need to be submitted every time a payroll run is processed.
- Additional funding has been provided to establish an ATO taskforce to address Superannuation Guarantee (SG) noncompliance and safeguard employees’ SG entitlements.
- The expansion of the Reportable Tax Position Schedule disclosures of details regarding arrangements and tax positions taken to be lodged with tax return, with expanded range of questions and disclosures starting for years ending on or after 30 June 2017, and disclosure obligations expanded to taxpayers with Australian turnover in excess of A\$250 million from years ending on or after 30 June 2018.

# Austria

## Tax policy

Markus Schragl

markus.schragl@at.ey.com

+43 664 600031268

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018 <sup>1</sup>	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25%	25%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	55%	55%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	20%	20%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Subsequent to parliamentary elections in October 2017, reorganization of the Austrian government is still ongoing. Definitive forecasts in regard to tax policy implications cannot therefore be provided with high levels of certainty.
- ▶ What can be predicted, though, is that the new leading parties are supportive of plans to create new tax incentives that will support new business investments undertakings in Austria. It is therefore fair to say that the government strives to be more competitive from a tax standpoint.
- ▶ Under the future government, fiscal consolidation will certainly be a bigger driver than in previous years. Evidence suggests that the leading parties see it as crucial to reduce the public spending ratio so that the tax burden can decline to 40% of GDP.
- ▶ There is evidence to suggest that the government is planning to implement tax burden reductions for lower- and middle-income households.

<sup>1</sup> Please note that currently a new federal government is formed, which also entails unforeseeable changes in tax policy for later years. Therefore tax rates of 2018 might be subject to change.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

As noted, the Austrian government reorganization subsequent to the October 2017 parliamentary elections is still ongoing therefore, definite tax implications for the years to come can currently not be provided herein.

As far as CIT is concerned, there is currently a political discussion about whether a bill should be passed that would exempt from tax the retained profits of corporations until the event of their distribution.

Shortly prior to the elections, however, the Austrian National Council passed a number of bills concerning corporate tax law that will come into effect in early 2018:

- ▶ “MiFiGG 2017”: a bill that foresees tax benefits for venture capital providers to certain SMEs.
- ▶ “R&D Bonus”: a bill whereby companies investing in development and research are granted a tax credit of 14% of qualifying R&D expenditure

### Taxes on digital activity

Currently, in general a clear trend can be seen in favor of digital activity taxation, and all political parties in Austria appear to be strongly supportive of new taxes in this area. However, as mentioned above, coalition negotiations are still ongoing, and a definite outcome can only be communicated at a later date. According to several mainstream media sources, it is highly likely that in the years to come the legislature will enact laws concerning digital business establishment taxation.

### Taxes on wages and employment

Both future coalition parties are highly in favor of reducing the tax burden on individuals by means of lowering the PIT rate for wage brackets up to a personal annual income of EUR60,000. This would not include top marginal tax rate reductions for incomes greater than EUR60,000. Aside from this specific change, other more general changes in the personal income tax code are also likely.

### VAT/GST/sales taxes

Tax policy implications concerning VAT/GST/sales taxes cannot be predicted at this point in time.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratifyAustria was the first jurisdiction to already deposit its instrument of ratification for the MLI, on 22 September 2017.
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - NoAustria has made no reservation against adopting the PPT.

## 2.6 Political landscape

The Austrian elections of October 2017, by which a coalition of parties who are economic liberals was established, and which position will likely influence future tax policy. Evidence suggests that, in their opinion, for more undertakings to settle in Austria, tax incentives for businesses are an important incentive.

## 2.7 Current tax policy and tax administration leaders

A coalition government continues to be formed.

## 2.8 What key tax policy changes did you experience in your country in 2017?

Not applicable

## 2.9 Pending tax proposals

**Open:** None

**Closed:** None

## 2.10 Consultations opened/closed

Not applicable

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

Generally speaking, Austrian tax authorities were neutral in their approach to tax enforcement in 2017.

### 3.3 Key risk factors and audit triggers in 2018

1	Transfer pricing	Transfer pricing documentation, business restructurings, exit taxation
2	Deductibility of financing costs	Tax deductibility of financing costs, in particular with respect to inter-company financing and financing of share transactions.
3	Substance over form/business rationale	Review of (cross border) transactions from a substance-over-form perspective; business purpose review; treaty shopping, etc

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

There were no significant tax enforcement developments of note in 2017.

### 3.6 Potential tax enforcement developments in 2018

- ▶ It is expected that the number of bi- and multilateral tax audits will increase.
- ▶ Further digitalization of the tax authority, in particular in their use of technology and data analytics to support tax audits, is expected.
- ▶ Enhancement of the current "horizontal monitoring" pilot program is likely.

# Brazil

## Tax policy

### Washington Coelho

washington.coelho@br.ey.com

+ 55 11 2573 3446

### Ana Lucia Marra

analucia.marra@br.ey.com

+55 11 2573 4450

### Gustavo Carmona

gustavo.carmona@br.ey.com

+55 11 2573 5523

## Tax controversy

### Rodrigo Munhoz

rodrigo.munhoz@br.ey.com

+ 55 11 2573 3595

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	34%	34% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	27.5%	27.5% <sup>2</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	18%-19%	18%-19% <sup>3</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Intensification of tax collection procedures
- ▶ Intention to generate more tax revenue
- ▶ Increased integration and exchange of information between federal, state and municipal tax authorities
- ▶ Digital tax environment– tax authorities becoming more digitized and increasing control over taxpayer information by means of automated procedures
- ▶ Reduction/limitation of state VAT incentives due to new regulations issued to eliminate harmful tax competition between States
- ▶ Labor reform
- ▶ Social security reform (under discussion)
- ▶ Compliance with international tax practices (introduction of BEPS minimum standards, including Country-by-Country Reporting) and expected increase in the international exchange of information
- ▶ Request filed by Brazil to become an OECD member which may require changes in tax and transfer pricing rules

<sup>1</sup> Law 9,430/1996, Article 2 and Law 7,689/88, Article 3.

<sup>2</sup> Law 11,482/2011, Article 1.

<sup>3</sup> Rates vary per State and are based in different laws issued per State.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <sup>4</sup>	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 <sup>5</sup>

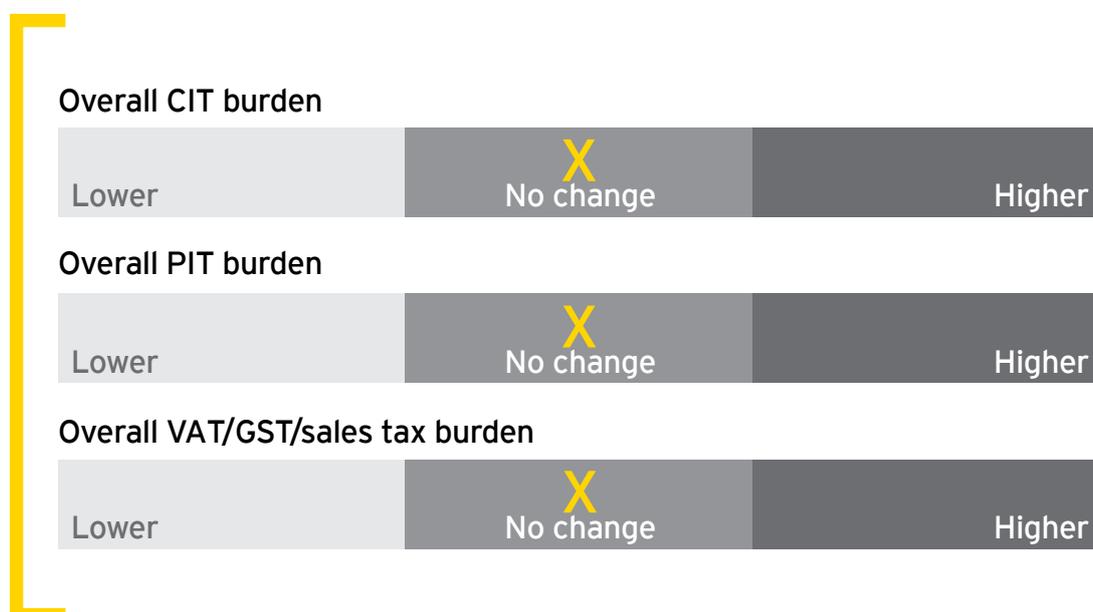
<sup>4</sup> Despite no changes in the rules concerning Withholding taxes are expected, there are discussions on the application of treaties that may evolve during 2018.

<sup>5</sup> In certain cities, such as São Paulo, the rules concerning the Municipal Tax on Services expressly included audio and video streaming in the list of taxable services.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ No relevant corporate income tax changes have been discussed in the Brazilian Congress and the efforts of the new president in 2017 have focused on labor and social security changes. Tax discussions of the Brazilian Congress also focused on a tax amnesty program, the so-called PERT, which was available to taxpayers until October, 2017. As benefits for taxpayers in PERT have been increased by the Brazilian Congress and not many measures to tackle the budget deficit with spending cuts have been implemented, there are some discussions on tax rises, but no details have been announced yet.
- ▶ Initiatives to challenge the taxation of investment funds in equity holdings (FIP) in certain cases have been taken. In the same sense, Provisional Measure 806, of 3111 October 31 2017 changes the tax treatment of FIPs, establishing that they should be taxed as legal entities if used for wealth management. This Provisional Measure is still under discussion in the Brazilian Congress.
- ▶ In line with the tax assessment plan for 2018 issued by tax authorities, Brazil's tax authorities are retaining their focus on increasing taxpayers' ancillary obligations through the digital environment (digital bookkeeping, digital tax returns, Country-by-Country Reporting, etc.).
- ▶ Additionally, also as per the tax assessment plan for 2018, assessment activities will continue to focus on certain transactions involving goodwill in corporate restructuring and the taxation of controlled foreign companies, as well as further analysis of compliance with the conditions required in order to benefit from tax incentives and transfer pricing rules, among others.
- ▶ From an international perspective, the first Country-by-Country Reporting (CbCR) and related notifications concerning the reporting period of 2016 have been filed in 2017. It is expected that, in 2018, Brazil will start exchanging CbCR information with other countries. The tax assessment plan for 2018 expressly refers to an increase in the access of information provided by foreign tax authorities.

### Taxes on digital activity

#### **Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)**

No new rules on direct taxes on digital activity have been issued. In 2017, the Brazilian tax authorities issued rulings that set out its understanding on the taxation of payments abroad for the right to sell license to use Software as a Service (SaaS) and the right to market or distribute software.

#### **Indirect taxes**

On 5 October 2017 Agreement #106/2017, which was approved by CONFAZ, was published. The agreement states that the ICMS (a tax on commerce and some services) can be applicable on the importation and internal sales transactions involving software, programs, electronic games, applications and electronic files. The Agreement #106/2017 entered into force as of 1 April 2018. Regarding the taxation on the transactions involving software, electronic files, electronic games and applications, the Brazilian legislation is currently making a series of changes. Additionally, the fact that transactions involving software are subject to State or Municipal Tax (ICMS or ISS, depending on the type of software), the States/Municipalities legislative autonomy in this area contributes towards a less favorable scenario in terms of certainty.

### Taxes on wages and employment

- ▶ Changes in Brazilian Labor Code: In November 2017, several changes were implemented in the Brazilian Labor Code, affecting more than 100 articles of the previous version. The previous labor code entered into force in 1943, and had never been substantially changed since. Changes were made in order to provide some additional flexibility on stringent rules regarding labor relations in Brazil, for example, establishing that collective agreements will prevail over the Labor Law. There is also a new type of workforce hiring that may be used by Brazilian employers, known as "intermittent work", meaning, in general terms, that the individual will not work for an undetermined period, but will be requested to work only when there is specific demand.

- ▶ From a tax reporting perspective, the enforcement of eSocial was confirmed for January 2018, and is dependent on the gross revenue of each company). This new Labor and Social Security obligation drastically changes several HR routines and requires relevant changes and updates in company payroll systems.
- ▶ In addition to eSocial, another new tax obligation named EFD-Reinf will start applying as of May 2018, and is focused on withholding social security and income tax, but is not related to direct workforce hiring.

### VAT/GST/sales taxes

- ▶ Index K (known as “Bloco K”): The ancillary obligation of production and inventory control will be mandatory for industrial sectors, their related establishments and wholesalers as from January 2018, for those companies whose revenues exceeds BRL 78 million (Registers K200 and K280).

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

President Michel Temer, who took office after the impeachment of former president Dilma Rousseff in August 2016, has faced in 2017 an unstable scenario, which jeopardized his intention of implementing social security reform. Although the president and the Finance Minister Henrique Meirelles continue to defend the need for this reform, it is still uncertain what, and if any, changes to the social security system will be approved.

In October 2018, there will be elections to decide on a new president, as well on governors of the states and representatives of the Brazilian Congress and State Legislative Chambers. The elections tend to influence tax policy in Brazil. The scenario on the possible future president is still uncertain.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leader

- ▶ Henrique Meirelles, Finance Minister

### Tax administration leader

- ▶ Jorge Rachid, Brazilian Federal Revenue Service Secretariat

## 2.8 What key tax policy changes did you experience in your country in 2017?

### Regulations on tax effects of new accounting rules

New regulations have been issued to comply with the provision of Law 12,973 of 13 May 2014 that states that accounting rules issued thereafter and not regulated by such law should have no impact on tax calculations. In this sense, Normative Instruction 1753, of 30 October 2017, amended by Normative Instruction 1771, of 20 December 2017, established procedures to be followed by taxpayers to eliminate the effect of new accounting rules in the calculation of taxes, including in connection with the accounting rules based on IFRS 15 concerning Revenues from Contracts with Customers.

### Country-by-Country report (BEPS Action 13)

The Brazilian Federal Revenue Service issued Normative Instructions 1709 and 1722 to amend the Country-by-Country (CbCR) regulations established by Normative Instruction 1681/2016, as well as additional guidance for the first CbCR filed by July 2017 (within the electronic tax return “ECF”). Amendments aimed at adjusting the regulations to the lack of competent authority agreement signed or in force prior to the deadline for filing CbCR in Brazil, among others. In 2007, Brazil and the United States signed a competent authority agreement.

## **Protocol to the Double Tax Treaty between Brazil and Argentina**

On July 21, 2017, Brazil and Argentina signed a protocol to amend the Double Tax Treaty, introducing relevant changes and aiming at alignment with BEPS guidance. Entry into force of the protocol depends on internal procedures by both countries and it is uncertain the date when they will be completed.

## **Increased capital gain tax rates for non-residents**

By means of Normative Instruction 1732 of 25 August 2017, the Brazilian tax authorities made clear their understanding that the increase in the capital gains tax rate applicable for Brazilian individuals since 2017 also applies to non-residents. The rate has been increased from a 15% flat rate to a progressive rate system ranging from 15% to 22.5%.

## **Common Reporting Standard (CRS) (BEPS Action 13)**

Normative Instruction 1764, of 22 November 2017 amended the rules concerning the provision of information on financial transactions to the Brazilian Federal Revenue Service, in line with the guidance of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes.

## **ICMS in the tax basis of PIS and COFINS**

For some time, the national courts have discussed the exclusion of ICMS from the PIS and COFINS calculation basis levied on local transactions. On 15 March 2017, the Brazilian Federal Supreme Court (STF) ruled that the inclusion of ICMS in the social contributions (PIS and COFINS) tax basis is unconstitutional. There is still no regulation regarding the effects of the decision.

## **2.9 Pending tax proposals**

### **Bill 1485 - Taxation of dividends**

Among possible sources of new revenue, the taxation of dividends is always in debate in the Brazilian Congress. On 12 May 2015, Congress undertook the consideration of Bill 1485, which proposes the revocation of all exemptions from taxation on dividend payments, to both individual and corporate taxpayers, and to impose a 15% withholding tax (WHT) on dividends received by nonresidents from Brazilian companies (25% WHT applies to residents of "favorable tax jurisdictions"). Other bills aiming at establishing taxation of dividends in different ways have been submitted to the Brazilian Congress and have been attached to Bill 1485. These bills have not yet been approved.

## **Project of Federal Senate Resolution #01/2013**

The project intends to reduce all ICMS interstate rates (7% and 12%) to 4% for all operations, excluding goods originating from the Manaus Free Trade Zone.

## **PIS and COFINS unification - CSS**

The Government intends to unify the PIS and COFINS (social contributions). According to the proposal, PIS and COFINS will be unified in a single contribution (CSS) under a new methodology of calculation in which all acquisitions that are subject to CSS would generate tax credits in the same amount as paid by the supplier. To avoid losses for the Government, CSS unified rates would be higher than the combined current PIS-COFINS rate (generally 9.25%). The intention is to implement the unification gradually.

## **2.10 Consultations opened/closed**

### **Open:**

None

### **Closed:**

A draft of Normative Instructions on the following subjects were released for public consultation:

- ▶ Temporary admission of goods and temporary export of goods covered by ATA Carnet
- ▶ Simplified customs clearance procedures of aircraft goods, equipment and components for repair and maintenance of aircraft and temporary admission or export of aircraft entering or leaving Brazil for repair and maintenance
- ▶ New customs clearance procedures for imports
- ▶ New customs clearance procedures for exports to include the web export declaration
- ▶ Customs transit rules including the use of electronic locks
- ▶ Electronic bill of lading for road freight transport
- ▶ Procedures to ensure tax neutrality of new accounting rules based on IFRS 15 concerning Revenues from Contracts with Customers
- ▶ Provision of information the Brazilian Federal Revenue Services on transactions totally or partially settled in cash
- ▶ Brazilian program of authorized economic operators
- ▶ Inspection for the identification and quantification of goods imported or to be exported
- ▶ Land border free shop

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches.
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches.
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions.

### 3.2 General approach to tax enforcement in 2017

The Brazilian Federal Revenue Service has a very well-developed, sophisticated electronic compliance and audit system. All tax returns are submitted electronically, and invoices are generally issued electronically. Therefore, the trend in federal tax administration is toward digital audits. This has triggered thousands of notifications of deficiencies, audits and numerous assessments each month. The most developed states and municipalities are following the federal lead on this "e-tax" trend. High-income corporate taxpayers are audited at the federal level by specialized tax offices in São Paulo and Rio de Janeiro. These offices target issues such as tax planning and corporate restructuring, transfer pricing, controlled foreign corporation (CFC) rules and international tax.

### 3.3 Key risk factors and audit triggers in 2018

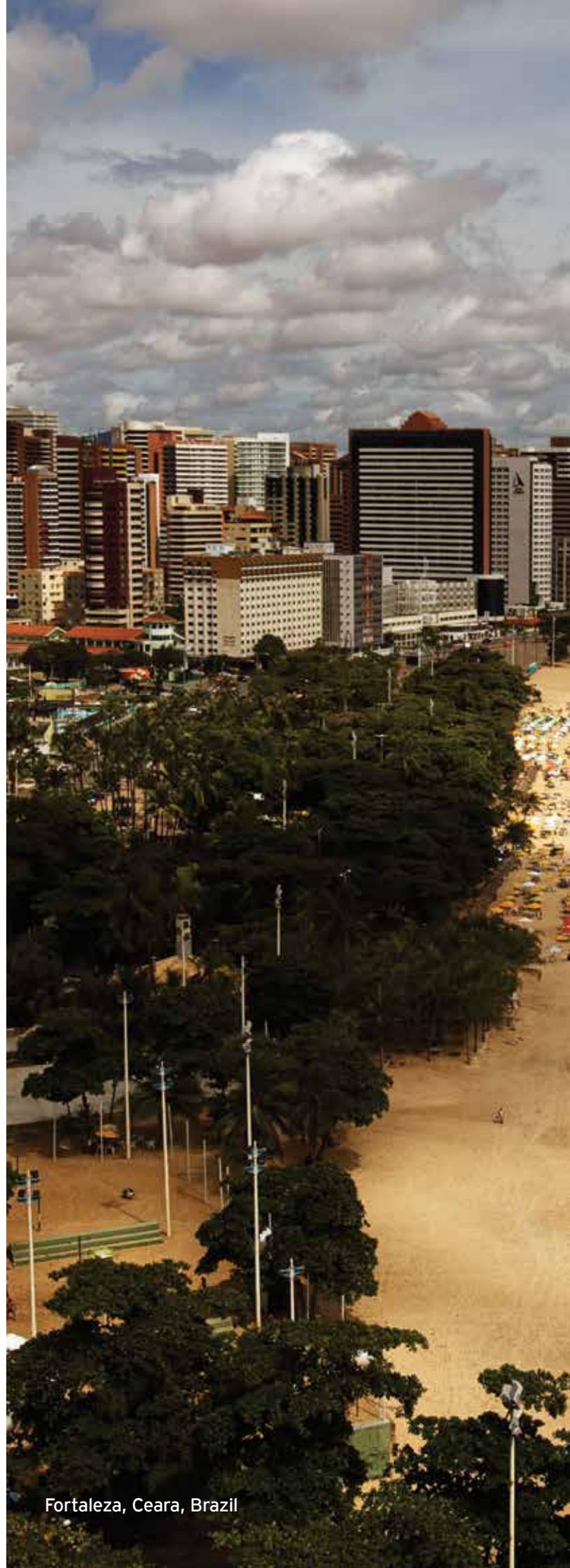
1	Tax planning related to corporate reorganization that results in amortizable goodwill	The focus of the Tax authorities in 2018 will continue to be on transactions (usually carried out by large taxpayers) that result in goodwill. Tax authorities may continue to audit corporate restructurings, and also mergers and acquisitions where there was no business purpose and which resulted in the amortization of goodwill generated by transactions between related parties and/or which have not involved any actual payment.
2	Tax planning involving investment fund in equity holdings (FIP)	An additional focus of the tax authorities in 2018 will be on the use of investment fund in equity holdings (FIP) for wealthy management planning, instead of as an investment entity.
3	Taxation of Controlled Foreign Corporation	The focus of the tax authorities in 2018 will be on the compliance with the new CFC rules that have been in force since 2015.
4	Tax incentives	The focus of the tax authorities in 2018 will be on compliance with the requirements that must be met in order for a company to benefit from tax incentives.
5	Transfer pricing rules compliance	The focus of the tax authorities in 2018 will be on compliance with transfer pricing rules, including transactions connected to high value intangibles.

## 3.4 Retroactive application of tax laws in 2018

- ▶ Does you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

## 3.5 Tax enforcement developments in 2017

The Brazilian Federal Revenue Service continues to improve and implement its electronic compliance and audit system, and has progressively increased the number of notifications of deficiencies, audits and numerous assessments by electronic means. In this context, and connected to the eSocial, a new tax obligation named EFD-Reinf has been introduced which focuses on withholding social security and income tax, and is not related to direct workforce hiring. Further, the first CbC reporting and notifications have been filed in 2017. New assessments may be driven by data provided by means of these additional reporting obligations.



## 3.6 Potential tax enforcement developments in 2018

The Brazilian Federal Revenue Service has issued its assessment plan for 2018, disclosing that tax assessments will focus on transactions that result in goodwill and compliance with new CFC rules, transfer pricing rules and tax incentive requirements.

It is also expected that data obtained by means of exchange of information mechanisms may result in additional tax assessments.

In 2018 it will continue the implementation of the final beneficiary disclosure obligation by entities subject to the enrolment with the Federal Tax ID (CNPJ), which may provide additional information that in turn drives further tax assessments.

A major court case in regard to which a development is expected in 2018 concerns whether or not the Brazilian Federal Supreme Court (STF) will issue an additional position on the application of its 2017 decision on the unconstitutionality of the inclusion of ICMS in the social contributions (PIS and COFINS) tax basis.

Brazil has issued regulations on the Mutual Agreement Procedure (MAP) in line with BEPS Action 14, but there have been no MAP cases initiated. It is still uncertain whether taxpayers will initiate procedures based on MAP in 2018. Brazil will be submitted for OECD Peer Review in relation to MAP in 2018.

# Bulgaria

## Tax policy and controversy

**Milen Raikov**

milen.raikov@bg.ey.com

+359 2 8177 100

**Iva Dimitrova**

iva.dimitrova@bg.ey.com

+359 2 8177 100

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	10%	10%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	10%	10%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	20%	20%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Compliance with international tax standards
- ▶ Bulgaria's candidacy for OECD membership
- ▶ Ongoing and further changes resulting from the BEPS project
- ▶ Mutual assistance and the exchange of tax information
- ▶ Increasing the effectiveness of tax collection and administration
- ▶ More intensive action against tax fraud and tax evasion, with a key focus on VAT fraud

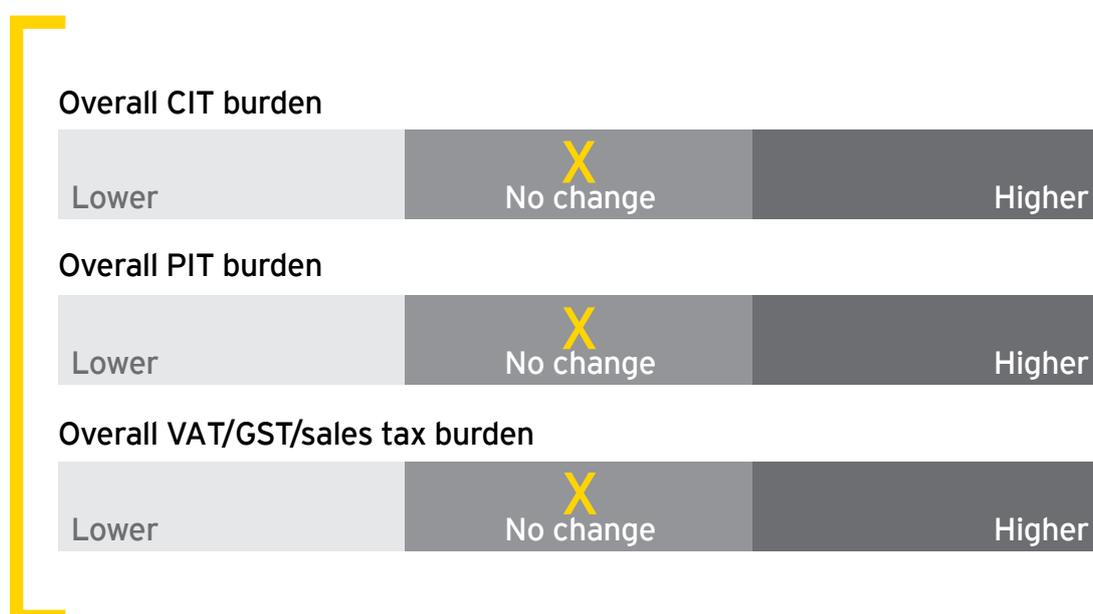
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 Bulgaria does not currently have a CFC regime. It is expected that such regime would be introduced with the implementation of the ATAD Directive in 2018.
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

#### New transfer pricing (TP) rules

The OECD has published an updated version of the transfer pricing guidelines as a result of the BEPS Action plan. Generally, BEPS Action item 13 requires that details of a business restructuring be provided in the transfer pricing master file and local file. Currently, Bulgarian transfer pricing legislation does not prescribe for mandatory Local and Master files preparation. However, the tax authorities may request such documentation to be provided as a general requirement for taxable entities to be able to demonstrate the arm's-length nature of the remuneration of their related party transactions in the course of a tax check or audit.

#### BEPS Action 15: Multilateral instrument (MLI)

It is expected the MLI will be ratified by Bulgaria in 2018.

#### Mandatory exchange of tax and social security information

For the purpose of providing a comprehensive administrative service, an obligation for the competent authorities to request and receive electronically ex officio from the National Revenue Agency (NRA) information regarding tax and social security liabilities of the taxable persons has been introduced. The obligation entered into force on 1 January 2018.

#### Electronic submission of withholding tax (WHT) returns

Electronic submission of WHT returns has been introduced when the simplified Double Tax Treaty relief procedure is applied to cases in which income below BGN 500,000 is accrued to more than five persons.

#### Automatic exchange of advance cross-border rulings and advance transfer pricing agreements

The adopted rules provide for a regime allowing the exchange of advance cross-border rulings and Advance Pricing Agreements with other EU Member States and the European Commission. It is expected that the Bulgarian tax authorities will exchange primarily issued statements relating to the application of Double Tax Treaties, as well as nonbinding rulings issued with regard to transactions containing international aspects. The Bulgarian tax authorities will only receive information for advance pricing agreements, as local legislation does not provide for a regime for concluding such agreements by the local administration.

### Third-party responsibilities for tax and social-security liabilities

New rules adopted in 2017 broaden the range of persons who can be held jointly liable for the tax and/or social security liabilities of legal entities. The latter include authorized persons acting as managers, commercial proxies acting as such against no remuneration, and persons having no representative authority if not explicitly disputed by the company. Shareholders may also be held liable for tax and social security liabilities in certain cases as voting in favor of corporate resolutions resulting in hidden profit distribution or disposal of company property in certain circumstances e.g., under certain circumstances, minority shareholders or partners can be also held responsible.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

Recently, a special department for electronic audit has been established at the National revenue agency. The main task of the department is to monitor the electronic trade in Bulgaria in order to prevent the evasion of taxes.

#### Indirect taxes

As above

### Taxes on wages and employment

No major changes have been proposed or are expected regarding taxes on wages and employment.

### VAT/GST/sales taxes

No major changes are anticipated with regard to VAT in Bulgaria in 2018.

## 2.5 OECD MLI

- In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
- 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

In the last few years, Bulgaria has enjoyed a period of sustained economic growth and political stability. No recent elections or changes in the leadership, which would typically have an impact on present tax policy, are expected.

## 2.7 Current tax policy and tax administration leaders

Tax policy leaders:

- ▶ Minister of finance – Vladislav Goranov
- ▶ Director of the Tax Policy Department at the Ministry of finance – Lyudmila Petkova

Tax administration leader:

- ▶ Head of the National Revenue Agency – Galya Dimitrova

## 2.8 What key tax policy changes did you experience in your country in 2017?

### BEPS Action 13: Country-by-country reporting

The Bulgarian Parliament adopted amendments to the Tax and Social Security Procedural Code (TSSPC), which implement the rules of Directive (EU) 2011/16/EU on mandatory automatic exchange of information in the field of taxation regarding country-by-country (CbC) reporting regime in line with BEPS Action 13.

As a result, Bulgarian multinational enterprises (MNEs) are obliged to file CbR reports in the country for the whole group if the annual consolidated group revenue is BGN 100m (approximately EUR 51m) or above. Also, the new rules apply with respect to MNE groups that operate in different EU Member States or other jurisdictions through subsidiaries or permanent establishments (PEs) and that have a consolidated revenue of over €750 million. Also, entities which are part of MNEs subject to CbC reporting are obliged to file notifications on annual basis indicating the entity and its country of tax residence where the CbC reporting will be made.

### BEPS Action 15: Multilateral instrument (MLI)

In 2017 Bulgaria was among the first countries which signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

Bulgaria has selected to apply the MLI to all its tax treaties apart from those with the Netherlands and Malta/Finland (because they are in process of renegotiation). It is expected that specific bilateral amendments and renegotiation will take place with these countries in the near future in the context of the provisions of the MLI.

Currently, Bulgaria has opted to apply the MLI provisions relating to the BEPS minimum standards, i.e., the standards designed to counter treaty abuse and to improve dispute resolution. In addition, Bulgaria has also selected to apply a simplified Limitation of Benefit rule. Aside from the mandatory minimum standards, Bulgaria has opted out of the clauses preventing artificial avoidance of permanent establishments and taxation of capital gains on shares in real estate companies. However, it is expected that Bulgaria will change its position and thus apply measures going beyond the minimum standard in time. The final position should be clear after the ratification process is completed, which is expected later in 2018.

### CRS and FATCA reporting obligations

Practical guidance was issued by the NRA in relation to the submission of the reports in relation to financial account information required under both FATCA and the common reporting standard (CRS)/the EU Council Directive 2014/107/EU (DAC2) regimes. The FATCA/CRS reporting deadline for Bulgaria was 30 June 2017.

## 2.9 Pending tax proposals

There are currently no pending tax proposals

## 2.10 Consultations opened/closed

There are currently no open public consultations.

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches**
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

The Bulgarian tax authorities pursue a two-dimensional approach. On the one hand they are encouraging proactive self-disclosing behavior of taxpayers by not penalizing them if they voluntarily correct any previous technical mistakes. On the other hand, if such noncompliance is not voluntarily corrected, even during a tax check or audit, the tax authorities apply high-level scrutiny in the process of reviewing the tax compliance status of the taxable person or entity.

Currently, the tax authorities are initiating a tax check prior to commencing a tax audit, during which there is an opportunity for the taxpayer to review the company's tax health check and to correct any gaps or omissions.

In 2017 the tax authorities' attention was focused on taxing e-commerce, reviewing the operations of foreign entities for fixed or permanent risks (especially in the pharmaceutical sector), compliance with transfer pricing rules, audits for joint liability of (i) individuals (representatives of companies and shareholders) and (ii) counterparties and generally focusing on combating VAT frauds.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Requests for large refunds</b>	Audit triggers include scrutiny related to recent legislative changes, requests for significant refunds, changes in supply chain model and incoming information from other tax administrations regarding the tax audits of companies from the same group in neighboring countries, and results from exchange of information (e.g., CbCR, FATCA).
2	<b>Restructuring</b>	Audit focus is directed mainly at the identification of the actual reasons for a restructuring. Downsizing of functions without a valid business reason, for example, and only for the purposes of tax planning, may be considered abusive.
3	<b>Greater complexity in supply chains</b>	The allocation of services to local entities (such as shared service centers, for example) which may consequently lead to the conclusion for attributing such local entities to the supply chains is viewed as a risk driver for the tax authority.
4	<b>Change in transfer pricing models</b>	When changing the applicable transfer pricing method for intercompany prices, the authorities seek compliance from the point of view of relevancy and timing points. Their main focus is to identify if such a model change has been made later than necessary and if it has been correctly determined.

5	<b>Request for information from foreign jurisdictions</b>	Bulgaria has joined the Convention on Mutual Administrative Assistance in Tax Matters. By virtue of this Convention, mandatory automatic exchange of financial information for tax purposes is in place. The main aim is to secure increase in the tax collection efficiency and effectiveness to governments as well as additional mechanisms to handle tax evasion and avoidance. With this regard, new obligations are imposed on local entities, including submitting country-by-country notifications and/or reports if the entity is part of a multinational enterprise (MNE). It is expected that the tax authorities will scrutinize the execution of this obligation and material liabilities may follow in case of inconsistencies. Joint audits by the tax authorities of different countries may also be held.
6	<b>Foreign companies performing economic activities in Bulgaria without being a permanent establishment</b>	Permanent establishment risk has been a focus of the Bulgarian tax authorities recently, including when local activities may be in excess of what has originally been assigned as a core function.
7	<b>Possible VAT implications of transfer pricing (TP) adjustments</b>	A TP adjustment could impact the VAT due on a transaction when it qualifies as a consideration to a particular supply. If seen as part of the consideration to a supply, this may create reasons for claims by the tax administration that not enough VAT was charged for the transaction, leading to VAT assessments, penalties and default interest being applied. On the other hand, TP adjustments could increase the size of VAT refund possibilities for companies. Considering the focus of the tax authorities on cross-border related-parties' transactions, it is advisable to consider the corresponding potential VAT implications that such transactions could have for the group of parties.
8	<b>E-commerce</b>	In 2017 the tax authorities established a department overlooking compliance of VAT and CIT rules by companies and individuals engaged in e-commerce. More efforts are being put on the collection of information from counter-parties of companies dealing with e-commerce (card operators, couriers, etc.) in order to established non-taxed profits/ transactions in Bulgaria. In early 2018, the tax authorities announced that they plan to implement an online system that allows the identification of online traders trading via e-commerce platforms. The purpose of the initiative is to take this sector out of grey economy where a significant amount of revenues do not attract tax.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/ retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

No significant tax enforcement developments were experienced in 2017.

### 3.6 Potential tax enforcement developments in 2018

In 2018 it is expected that the tax authorities will focus their attention on the fulfilment of CbCR related obligations of Bulgarian constituent entities as these are new mandatory disclosure requirements and the liabilities which may be imposed could be relatively material. Additionally, the tax authorities will be focusing on tax collection by means of different forms of joint liability.

# Canada

## Tax policy

**Fred O’Riordan**

fred.r.oriordan@ca.ey.com

+1 613 598 4808

**Angelo Nikolakakis**

angelo.nikolakakis@ca.ey.com

+1 416 943 3463

## Tax controversy

**Paul Mulvihill**

paul.f.mulvihill@ca.ey.com

+1 613 598 4301

**Daniel Sandler**

daniel.sandler@ca.ey.com

+1 416 943 4434

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	28.07%	27.87% <sup>1</sup> Simple average combined federal rate (15%) and provincial/territorial rate (varies) on general income. By province/territory, combined rates range from 26.5% to 31%.	-0.71% (Quebec is gradually lowering its CIT rate by 0.1% each year, from 11.8% in 2017 down to 11.5% by 2020. Saskatchewan lowered its rate from 12% to 11.5% and Yukon Territory lowered its rate from 15% to 12%, both on 1 July 2017. However, British Columbia (BC) increased its CIT from 11% to 12% effective 1 January 2018.)
Top personal income tax (PIT) rate (national and local average if applicable)	54%	54% <sup>2</sup> Top combined federal (33%) and Nova Scotia (21%) marginal rate. Other top combined provincial/territorial marginal rates range from 44.5% (Nunavut) to 53.5% (Ontario). Tax brackets and threshold income levels vary by province/territory.	

<sup>1</sup> Federal *Income Tax Act*, s. 123; various provincial/territorial tax statutes.

<sup>2</sup> Federal *Income Tax Act*, s. 117; various provincial/territorial tax statutes.

	2017	2018	Percentage change
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	5% to 15% (Varies by province)	5% to 15% <sup>3</sup> (Varies by province)  Five provinces have a VAT system (or "HST" that is harmonized with the federal GST) that is administered by the Canada Revenue Agency (CRA): New Brunswick, Nova Scotia, Newfoundland & Labrador, Ontario and Prince Edward Island. Three provinces have retail sales taxes: BC, Manitoba and Saskatchewan. Quebec administers both the federal GST and its own HST. Alberta has no provincial sales tax.	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Since its election in 2015, the Liberal federal government's main tax policy driver has been achieving what it calls "fairness for the middle class and those working hard to join it." It has not defined "middle class" in terms of annual taxable income, but after the election it reduced the second lowest federal personal marginal income tax rate slightly from 22% to 20.5% and created a new highest federal marginal rate of 33% (on income over \$200,000 indexed annually for inflation).
- ▶ It has also targeted "tax evasion and aggressive tax avoidance, both at home and around the world, by boosting funding to the CRA," specifically by allocating \$1 billion in incremental funding over the last two federal budgets with the stated goal of recovering over \$5 billion in additional federal revenues over six years.
- ▶ As a small, open economy closely integrated with that of the US, it should be expected that the main (or a major) tax policy driver in 2018 and beyond will be the newly implemented US tax reforms and the ongoing NAFTA renegotiations. Canada had a significant business tax competitive advantage over the US for over a decade that has now been reversed in the US's favor. For this and other reasons, the Senate Standing Committee on National Finance, the Chartered Professional Accountants of Canada (CPA) and others have recommended that the federal government undertake an independent, comprehensive review of the existing tax system.
- ▶ The federal Liberal government has also committed to fulfill an election promise to legalize recreational use of cannabis (medical use is already legal in Canada) effective 1 July 2018. It has announced a regulatory, taxation and revenue sharing framework in consultation with the provinces, although certain details remain to be worked out.

<sup>3</sup> Federal *Excise Tax Act*, s. 165; various provincial and territorial tax statutes.

► In accordance with Canada’s Paris Climate Accord commitments, the federal government has implemented a pan-Canadian approach to pricing carbon that requires provinces to meet certain minimum benchmark carbon price or cap and trade standards by 2018 with the backstop that the federal government will introduce an explicit carbon pricing system in jurisdictions that do not meet the benchmark. Alberta implemented a carbon tax of \$20 per

tonne on 1 January 2017 that increased to \$30 per tonne on 1 January 2018. British Columbia’s \$30 per tonne carbon tax will increase by \$5 per tonne effective 1 April 2018 and increase annually until it reaches \$50 per tonne on 1 April 2021. Ontario joined an existing cap and trade market with Quebec and California in 2017.

## 2.2 Tax burdens in 2018

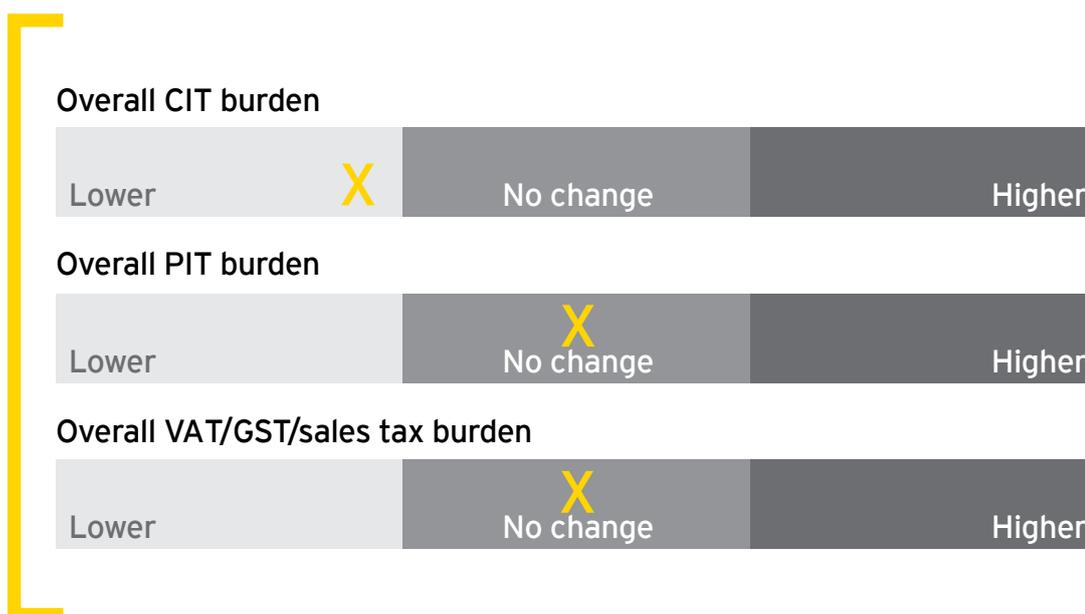
For each tax type, please indicate if a change has been proposed/known, and/or if additional change is possible/somewhat likely in 2018, or if no change is expected. Also mark what the expected tax burden is for 2018.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 The British Columbia September 2017 Provincial Budget announced the introduction of a new top personal tax rate of 16.8% for taxable income that exceeds \$150,000, effective January 1, 2018)
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary





## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

In its 2017 Fall Economic Statement, the federal government announced a reduction in the small business tax rate from 10.5% to 10% effective 1 January 2018 and to 9% effective 1 January 2019 (eligible on the first \$500,000 of active business income of a Canadian Controlled Private Corporation, or CCPC.)

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes expected.

#### Indirect taxes

No changes expected.

### Taxes on wages and employment

The new Employment Insurance (EI) contribution rate, set by the Canada Employment Insurance Commission, will be \$1.66 per \$100 of insurable earnings. This represents a 22 cent reduction from the 2016 rate.

The new rate for 2018 will be lower than the projected rate of \$1.68 per \$100 of insurable earnings included in Budget 2017. This reflects the fact that more Canadians are working and paying into the EI program, and fewer are unemployed and drawing EI benefits.

Budget 2017 announced an extension of the EI program parental benefit period up to 18 months.

### VAT/GST/sales taxes

No changes expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?

Yes

No

Canada generally prefers bi-lateral negotiation of treaty provisions, and may continue to rely on domestic anti-avoidance rules in treaties that do not contain purpose tests.

## 2.6 Political landscape

The majority Liberal federal government is at the mid-point of its normal four-year fixed term in office. Unless Parliament is dissolved before then for some reason, the next election will be held in October 2019.

The next general election in Canada's most populous province of Ontario is scheduled to be held on or before 7 June 2018. It is possible that the current Liberal majority government will either be reduced or replaced by a Conservative government, which could have tax and other public policy implications.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Justin Trudeau, Prime Minister
- ▶ Bill Morneau, Minister of Finance
- ▶ Paul Rochon, Deputy Minister, Department of Finance
- ▶ Andrew Marsland, Senior Assistant Deputy Minister, Tax Policy, Department of Finance
- ▶ Brian Ernewein, General Director, Tax Policy, Department of Finance
- ▶ Wayne Easter, Chair of the House of Commons Standing Committee on Finance
- ▶ Pierre Poilievre, Finance Critic, Conservative Party of Canada
- ▶ Guy Caron, Finance Critic, New Democratic Party of Canada

### Tax administration leaders

- ▶ Diane Lebouthillier, Minister of National Revenue
- ▶ Bob Hamilton, Commissioner of the CRA
- ▶ Ted Gallivan, Assistant Commissioner, International, Large Business and Investigation Branch, CRA

- ▶ Anne-Marie Lévesque, Assistant Commissioner, Domestic Compliance Program Branch
- ▶ Mireille Laroche, Assistant Commissioner, Appeals Branch
- ▶ Geoff Trueman, Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch, CRA

## 2.8 What key tax policy changes did you experience in your country in 2017?

In July 2017 the federal government released proposals to limit what it considered to be inappropriate tax planning strategies using private corporations resulting in high-income individuals gaining unfair tax advantages. These proposals had been promised in the March federal budget. Public response by affected parties was so strong and critical that the government made a number of accommodating modifications to the original proposals and also lowered the small business tax rate.

## 2.9 Pending tax proposals

**Open:** Fall Economic Statement 2017

**Closed:** Bill C-63, Budget Implementation Act, 2017, No.2 - Royal Assent 2017/12/14

## 2.10 Consultations opened/closed

**Open:**

Consultation on Proposed Excise Duty Framework for Cannabis Products 10 November 2017

**Closed:**

- ▶ Consultations on tax planning using private corporations opened 18 July 2017
- ▶ Consults on a New Oversight Framework for Retail Payments opened 7 July 2017
- ▶ Canada Revenue Agency consultations on proposed changes to the Voluntary Disclosures Program closed September 2017

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
  - Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
  - Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
  - Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

## 3.2 General approach to tax enforcement in 2017

The Canada Revenue Agency is well-resourced and it has a mix of sophisticated electronic and manual audit tools at its disposal. It has historically adopted a relatively aggressive audit posture, in particular with regards to transfer pricing audits and assessing positions for large corporations with significant cross-border transactions. In recent years it has received substantial additional funding from the government earmarked for enforcement activities.

A report from the Office of the Auditor General of Canada released in November 2017 found that the CRA's call centers did not provide taxpayers with timely access to agents and that agents gave taxpayers information that was not accurate almost 30% of the time. It also observed that although the CRA reported meeting its targets for both access and timeliness, its performance measures were incomplete and its call center results were overstated. In an unrelated November 2016 audit, the OAG also concluded that the CRA did not process



income tax objections in a timely manner. These external audits suggest that the CRA should consider a reallocation of at least some of its resources away from its enforcement activities toward its taxpayer services and dispute resolution services.

### 3.3 Key risk factors and audit triggers in 2018

**Guidance:** What do you think will be the key risk factors, issues and audit triggers under scrutiny for business taxpayers in your country in 2018?

1	Transfer pricing	Generally and in particular; significant intercompany transactions with low tax jurisdictions; country-by-country reporting misalignment; IP migration; intercompany financing transactions; reinsurance; royalty expenses
2	Employee withholding	Foreign employers' remittance obligations re employees travelling to Canada
3	High net worth and high income individuals	Any domestic or international tax planning strategies that reduce their personal income tax liabilities
4	Real Estate Transactions	Withholding obligations on sales of Canadian property by foreign owners; eligibility of Canadian owners for principal residence exemption

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Explanation
 

With respect to Actions 8-10 concerning transfer pricing, the Canada Revenue Agency generally considers that the additional OECD guidance is largely clarifying in nature with respect to the arm's length principle, and can be applied to transactions that took place prior to the release of the BEPS guidance.

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

Canadian legislation implementing Country-by-Country Reporting was enacted in December 2016 and became effective in 2017. The CRA has released related administrative guidance.

The CRA continued to focus heavily on international tax issues in 2017, including on transfer pricing, and international tax avoidance and evasion. It branded its campaign as "Cracking Down" on international tax avoidance. It also significantly increased its focus on real estate transaction reporting.

The CRA continued deployment of additional audit resources obtained in the 2015 and 2016 budgets. Audit coverage increased, including on challenging smaller transactions than previously reviewed. Particular initiatives were noted on addressing payroll withholding by foreign employers with employees making short-term visits to Canada. It also significantly increased its focus on real estate transaction reporting.

### 3.6 Potential tax enforcement developments in 2018

CRA is expected to continue its enforcement focus on international transactions.

Canada is participating in the International Compliance Assurance Programme pilot in a limited manner, with one MNE Canadian participant.

The CRA has publicly touted its continually developing data analytics capacity, which is expected to be deployed in international and domestic contexts.

Resources for dispute resolution, particularly in the Tax Court of Canada and CRA Appeals Branch are not keeping pace with the additional resources being allocated to enforcement.

The Canada Revenue Agency will move forward with changes to the Voluntary Disclosure Program which effectively preclude large corporations from accessing this program to obtain penalty relief.

# People's Republic of China<sup>1</sup>

## Tax policy

Becky Lai

becky.lai@hk.ey.com

+852 2629 3188

## Tax controversy

Michael Lin

michael-cs.lin@cn.ey.com

+86 755 2238 5780

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25% <sup>2</sup>	25%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Individual income tax (IIT) rates are based on categories of income. <sup>3</sup> Top rates for each type of income: 45% – employment 40% – independent service 35% – self-employment 20% – interest, dividend, capital gain, royalty and other income  No subnational rates	IIT rates are based on categories of income. Top rates for each type of income: 45% – employment 40% – independent service 35% – self-employment 20% – interest, dividend, capital gain, royalty and other income  No subnational rates	0%

<sup>1</sup> This submission does not cover related tax policy and controversy updates in Hong Kong Special Administrative Region (SAR), Macau SAR and Chinese Taipei.

<sup>2</sup> Order of the President [2007] No. 63 - Chapter 1, Article 4.

<sup>3</sup> Order of the President [2011] No. 48.

	2017	2018	Percentage change
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	6%, 11%, 13% (eliminated from 1 July 2017) <sup>4</sup> and 17% (depending on the industries) and 0% for certain eligible activities as well as export of goods or services <sup>5</sup>  Local surcharge of 12% on VAT rates	6%, 11% and 17% (depending on the industries) and 0% for certain eligible activities as well as export of goods and services  Local surcharge of 12% on VAT rates  Small and micro-sized enterprises with monthly sales of services and intangibles not exceeding RMB 30,000 are exempted from VAT from 1 January 2018 to 31 December 2020. <sup>6</sup>	The 13% rate has been eliminated from 1 July 2017.

<sup>4</sup> The 13% rate has been eliminated from 1 July 2017. (Source: Circular MOF/SAT Caishui [2017] 37).

<sup>5</sup> The Interim Regulations of the People's Republic of China on Value-added Tax (effective as of January 1, 1994) provides VAT rates of 17%, 13% and 0% (for specific exported goods).

The 17% rate applies to most VATable goods.

The 13% rate applies to taxpayers who sell or import the goods listed in the Interim Regulations.

The VAT Reform was rolled out gradually to nationwide on 1 August 2013. New rates of 11% and 6% were introduced for certain industries. (Source: Circular MOF/SAT Caishui [2013] 37) Railway transport (applicable tax rate of 11%) and postal industries (applicable tax rate of 11%) were included in the VAT Reform from 1 January 2014. (Source: Circular MOF/SAT Caishui [2013] 106). Telecommunications industry was included from June 1, 2014 with applicable rates of 11% and 6% for basic telecommunication services and value-added services respectively. (Source: Circular MOF/SAT Caishui [2014] 43. Caishui [2015] No 118 has set out the VAT zero rating treatment for selected VATable services).

The final stage of VAT Reform started on 1 May 2016 (Source: Circular MOF/SAT Caishui [2016] 36) and the scope of the VAT Reform was further expanded to cover the Construction Industry (applicable tax rate of 11%), Real Estate Industry (applicable tax rate of 11%), Finance Industry (applicable tax rate of 6%) and Life Style service Industry (applicable tax rate of 6%). Since then, the Business Tax was phased out in PRC.

The 13% rate has been eliminated from 1 July 2017. (Source: Circular MOF/SAT Caishui [2017] 37).

<sup>6</sup> SAT Notice [2017] 52 - <http://www.chinatax.gov.cn/n810341/n810755/c3001460/content.html>.

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

#### General direction

- ▶ The Government's goal is to transform the country from an efficiency-driven economy to a technology and innovation driven economy to achieve sustainability.
- ▶ The Government supports globalization and continues to encourage cross-border movement of goods, capital and services.
- ▶ As a G20 member, the Government continues to support international cooperation in tax matters.

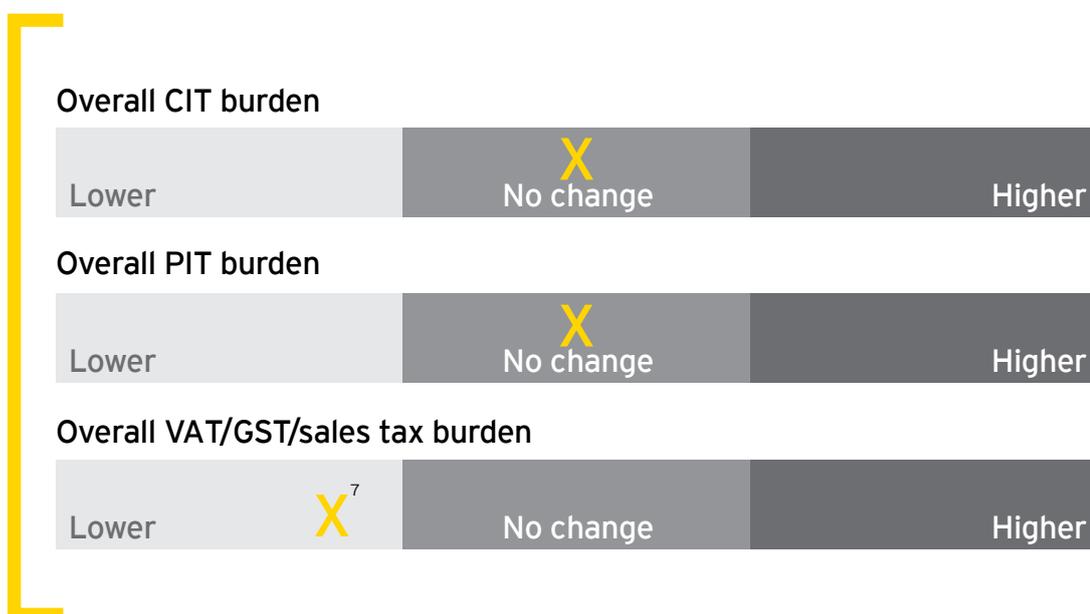
### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no separate CGT. Capital gains are taxed as ordinary income.	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 (outbound payments to related parties) <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



<sup>7</sup> <http://www.chinatax.gov.cn/n810341/n2340339/c2947191/content.html>

Effective from 1 July 2017, the applicable VAT rate for agricultural products and natural gas etc. has been reduced from 13% to 11%.



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes (CIT)

- ▶ No significant changes in the headline rate or tax base are expected.
- ▶ There could be more incentives for R&D and startups.

### Taxes on digital activity

- ▶ Policymakers are looking into the taxation of the digital economy.
- ▶ China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). However, China opted out of all provisions on permanent establishment (PE), i.e., commissionaire or similar arrangements, specific activity exemptions and splitting of contracts to avoid PE.<sup>8</sup>

### Taxes on wages and employment

- ▶ From 1 July 2017, qualified individual angel investors of start-ups are allowed to offset 70% of the investment cost against the taxable income of the enterprise; the unused balance can be carried forward against future taxable profits. This measure is also available to individual partners of limited partnerships investing in startups. [MOF/SAT Circular Caishui [2017] 38]
- ▶ From 1 July 2017, individuals are allowed to claim deductions for IIT purposes on qualified commercial health insurance expenses, with a deduction limit of RMB2,400 per year. [MOF/SAT Circular Caishui [2017] 39]

### VAT/GST/sales taxes

- ▶ The Government continues to reinforce the business tax to VAT (B2V) reform to ensure that the VAT burden will be reduced in all industries. (State Council Circular Guobanfa [2017] 57).
- ▶ In April 2017, the Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly released Caishui [2017] No. 37 to eliminate the 13% VAT rate from 1 July 2017; thereafter, the VAT rates are 17%, 11%, 6% and 0%.<sup>9</sup>

<sup>8</sup> [http://www.ey.com/Publication/vwLUAssets/Mainland\\_China\\_signs\\_Multilateral\\_Convention\\_to\\_Implement\\_Tax\\_Treaty\\_Related\\_Measures\\_to\\_Prevent\\_BEPS/\\$FILE/2017G\\_04865-171Gbl\\_Mainland%20CN%20signs%20MC%20to%20Implement%20Tax%20Treaty%20Related%20Measures%20to%20Prevent%20BEPS.pdf](http://www.ey.com/Publication/vwLUAssets/Mainland_China_signs_Multilateral_Convention_to_Implement_Tax_Treaty_Related_Measures_to_Prevent_BEPS/$FILE/2017G_04865-171Gbl_Mainland%20CN%20signs%20MC%20to%20Implement%20Tax%20Treaty%20Related%20Measures%20to%20Prevent%20BEPS.pdf).

<sup>9</sup> [http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201705/t20170502\\_2591609.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201705/t20170502_2591609.html).

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

- ▶ President Xi Jinping was re-elected as the General Secretary of the Central Committee of the Communist Party of China until 2022.<sup>10</sup>
- ▶ No changes to the political landscape are expected in 2018.

## 2.7 Current tax policy and tax administration leaders

- ▶ Minister Xiao Jie, the Minister of the MOF, and Director Wang Jian Fan, the Director General of the MOF, are in charge of the MOF tax policy division.<sup>11</sup>
- ▶ Minister Wang Jun is the Commissioner of the SAT.<sup>12</sup>

## 2.8 What key tax policy changes did you experience in your country in 2017?

### Domestic

- ▶ **Transfer pricing:** SAT Public Notice [2017] 6 was issued to provide guidance on the application of the arm's length principle for intangible property transactions and intercompany services transactions, location specific advantages, transfer pricing methodology and mutual agreement procedures (MAP).

<sup>10</sup> [http://www.gov.cn/zhuanti/2017-10/25/content\\_5234340.htm#1](http://www.gov.cn/zhuanti/2017-10/25/content_5234340.htm#1).

<sup>11</sup> [http://szs.mof.gov.cn/zhengwuxinxi/guanyuwomen/lingdaozhici/201409/t20140924\\_1143369.html](http://szs.mof.gov.cn/zhengwuxinxi/guanyuwomen/lingdaozhici/201409/t20140924_1143369.html).

<sup>12</sup> <http://www.chinatax.gov.cn/n810209/n810575/n811941/index.html>.

- ▶ **R&D incentives:** The R&D super deduction granted to qualifying technology-based small and medium-sized enterprises is increased from 50% to 75% on actual and eligible R&D expenses incurred. (MOF/SAT Circular Caishui [2017] 34)
- ▶ **Other business incentives:** CIT incentives (e.g., the reduced CIT rate of 15%) that were previously applicable to qualified Technologically Advanced Service Enterprises (TASEs) in prescribed pilot cities have been expanded nationwide from 1 January 2017. (MOF/SAT Circular Caishui [2017] 79)
- ▶ **Withholding taxes:**
  - ▶ Effective 1 December 2017, the withholding obligation on dividends is triggered on the actual payment date, instead of the date of resolution to distribute dividends. (SAT Public Notice [2017] 37)
  - ▶ Effective 1 January 2017, dividends derived by nonresidents directly from encouraged projects are not subject to withholding tax. (Caishui [2017] 88)<sup>13</sup>
- ▶ **Resources Tax (RT) on water resources:** The RT on water resources is expanded to nine provinces/municipalities from 1 December 2017.<sup>14</sup>

#### Base erosion and profit shifting (BEPS)

- ▶ **Action 13 (country-by-country reporting, CbCR):** China-based multinationals with revenues in excess of RMB5.5 billion (approximately US\$830 million) must file a CbCR with their annual tax return by the end of May, beginning with the 2016 tax year. (SAT Public Notice [2016] 42)
- ▶ **Action 15 (MLI):** China signed the MLI on 7 June 2017.

#### Tax treaties

- ▶ **Kenya:** On 21 September 2017, the governments of the PRC and Kenya signed an Agreement for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (China-Kenya DTA).<sup>15</sup> The treaty included language on the principal purpose test. The China-Kenya DTA is subject to ratification.
- ▶ **Romania:** The new China-Romania DTA signed on 4 July 2016 was ratified on 17 June 2017 and is effective for income derived on or after 1 January 2018.<sup>16</sup>
- ▶ **Zimbabwe:** The China-Zimbabwe DTA was ratified on 29 September 2016 and is effective for income derived on or after 1 January 2017.<sup>17</sup>

## 2.9 Pending tax proposals

### IIT reform

- ▶ IIT reform is under consideration.

### Tax Collection and Administration Law (TCAL)

- ▶ A TCAL discussion draft was released on 5 January 2015 for public comment. The consultation closed on 3 February 2015.<sup>18</sup> The new law is expected to set the framework for tax administration, outline the rights of taxpayers and tax authorities, set time limitations for tax confirmation and appeals, introduce an advance ruling system, and facilitate the collection of information for the exchange of information with other governments.

### Property tax/real estate tax reform

- ▶ The pilot program on property tax (called a real estate tax in China) has been introduced in selected cities, including Shanghai and Chongqing, since 2011. It is expected that this will be rolled out to other cities or nationwide.

## 2.10 Consultations opened/closed

**Open:** None

**Closed:**

- ▶ **Resources Tax Law:** Public consultation closed on 20 December 2017.<sup>19</sup>
- ▶ **Tonnage Tax Law (Discussion Draft):** This draft law has been reviewed by the National People's Congress and was released for further comments on 7 November 2017. Public consultation closed on 6 December 2017.<sup>20</sup>
- ▶ **Administrative Measures on Tax Reporting & Collection of Marine Engineering Environmental Protection Tax:** Public consultation closed on 30 November 2017.<sup>21</sup>
- ▶ **Administrative Measures on Responsibilities and Accountability related to Tax Law Enforcement (Discussion Draft):** Public consultation closed on 30 September 2017.<sup>22</sup>
- ▶ **Administrative Measures on the registration of General VAT payers:** Public consultation closed on 30 September 2017.<sup>23</sup>

<sup>13</sup> <http://www.chinatax.gov.cn/n810341/n810755/c2988726/content.html>.

<sup>14</sup> <http://www.chinatax.gov.cn/n810341/n810755/c2928033/content.html>.

<sup>15</sup> <http://www.chinatax.gov.cn/n810341/n810770/c2889829/content.html>.

<sup>16</sup> <http://www.chinatax.gov.cn/n810341/n810755/c2891922/content.html>.

<sup>17</sup> <http://www.chinatax.gov.cn/n810341/n810755/c2435574/content.html>.

<sup>18</sup> <http://www.chinatax.gov.cn/n810219/n810724/c1448892/content.html>.

<sup>19</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=1598035>.

<sup>20</sup> [http://www.npc.gov.cn/npc/flcazqyj/2017-11/06/content\\_2032083.htm](http://www.npc.gov.cn/npc/flcazqyj/2017-11/06/content_2032083.htm).

<sup>21</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=1598037>.

<sup>22</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=1513267>.

<sup>23</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=1513319>.

- ▶ **Vehicle Purchase Tax Law:** Public consultation closed on 6 September 2017.<sup>24</sup>
- ▶ **Farmland Occupation Tax Law:** Public consultation closed on 14 February 2017.<sup>25</sup>
- ▶ **Tobacco Tax Law:** Public consultation closed on 16 November 2016.<sup>26</sup>
- ▶ **Tax Collection and Administration Law (TCAL):** Public consultation closed on 3 February 2015.<sup>27</sup>

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2018 - description

China completed the upgrade of its electronic tax system via the Golden Tax Collection and Administration System Phase III (Golden Tax III) in October 2016.<sup>28</sup> By unifying the information systems of the central and local tax administrations, the Golden Tax III improved the efficiency of tax collection and administration, and enhanced tax governance capability.

China completed the upgrade of its electronic tax system to the Golden Tax Collection and Administration System Phase III in October 2016.<sup>28</sup> By unifying the information systems of the central and local tax administrations, the Golden Tax System Phase III improved the efficiency of tax collection and administration, and enhanced tax governance capability.

### 3.3 Key risk factors and audit triggers in 2018

The expected key audit risks for business taxpayers in the PRC in 2018 are:

- ▶ Large businesses with many related-party transactions
- ▶ The business obtained a significantly large export VAT or other tax refund
- ▶ The business enjoyed preferential tax rates (e.g., because it qualifies for high and new technology enterprise (HNTE) status, or it pays low withholding tax rates on cross-border payments to tax havens)
- ▶ The business made significant outbound payments
- ▶ The business had large and sudden fluctuations in related-party transaction prices and net profits
- ▶ The business carried out major internal company restructures and external mergers and acquisitions (M&As)
- ▶ The business recently migrated to the VAT regime and has been identified as issuing and receiving incorrect VAT invoices
- ▶ Businesses with significant losses
- ▶ Indirect transfers of taxable Chinese properties by nonresidents

<sup>24</sup> <http://www.chinatax.gov.cn/n810214/n810606/c2744536/content.html>.

<sup>25</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=1006520>.

<sup>26</sup> <http://hd.chinatax.gov.cn/hudong/noticedetail.do?noticeid=921023>.

<sup>27</sup> <http://www.chinatax.gov.cn/n810219/n810724/c1448892/content.html>.

<sup>28</sup> <http://www.chinatax.gov.cn/n810219/n810724/c1448892/content.html>.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017 and 2018

#### (a) Tax enforcement developments in 2017

- ▶ In February 2017, the SAT released the “Key Work Plan for Tax Audit in 2017”<sup>29</sup> setting out tax audit targets, including:
  - ▶ Special VAT invoice issuance without business substance
  - ▶ Export tax fraud related to the textile, garment, furniture, mobile phone and gold industries
  - ▶ Integrated foreign trade service enterprises
  - ▶ VAT invoices and import VAT payment demand notes related to gold, agricultural products and refined oil
  - ▶ Certain industries in designated regions, such as the medical care and pharmaceutical industries in Tibet and Anhui province, the agricultural industry in the southwest regions, and VAT invoices related to gold transactions in Guangxi, Guizhou, etc.
- ▶ In 2017, the Chinese tax and customs authorities, in a very systematic and progressive way, intensified audit activities against a variety of large companies that have different backgrounds from wholly foreign-invested enterprises, joint ventures to domestic companies and even Stated-owned enterprises. On the one hand, the tax authorities required companies to submit a large amount of financial data and related-party information, and on another, the government often assembled a well-trained, highly specialized team of very experienced tax officials to carry out transfer pricing (TP) investigations. It has become the norm that for most large TP audits, the tax authorities submit their case to an expert panel for technical reviews at multiple levels (i.e., municipal, provincial and sometimes even the SAT). These separate multi-level expert panel reviews provide the TP audit team with technical guidance and ultimately finalize the government audit conclusions.
- ▶ While TP was at the very top of the agenda for Chinese tax authorities in 2017, many companies have also been audited for their HNTE status (which entitles them to a preferential tax rate), export refund, and the business substance of their parent company based in tax havens. Chinese customs authorities audited many automotive makers for cross-border royalty payments and made several large audit assessments in 2017.
- ▶ It is no longer unusual for Chinese tax and customs authorities to issue audit assessments of significant amounts, say, over US\$10 million.

<sup>29</sup> <http://www.cnnsr.com.cn/cssw/swhtml/20170216092829193072.html>.



**(b) Potential tax enforcement developments in 2018**

- ▶ The tax authority of China is one of the participating jurisdictions in the OECD's Forum on Tax Administration (FTA). While China will not be one of the seven active FTA member tax administrations participating in the OECD's International Compliance Assurance Program (ICAP), which is scheduled to launch in January 2018, it will act as an observer to the pilot, participating in discussions on the design and operation of the ICAP process. However, China will not be involved in the risk assessments of MNE groups and will not receive information on the groups involved.<sup>30</sup>
- ▶ In 2018, we expect that China's tax authorities will carry out more transfer pricing investigations with even larger audit assessments, continue to audit export VAT refunds, and challenge the tax positions of some companies' restructures and M&As, the HNTE status of some companies, and low withholding tax rates on dividends paid out to tax havens.
- ▶ On the customs front, the three Traffic Administration Centers (Beijing, Shanghai and Guangzhou) established in July 2017 will carry out valuation inquiries and import price consultations/negotiations with many companies in the pharmaceutical, automotive and chemical industries. The Customs Audit department will also carry out their final nationwide royalty audit campaign against the automotive and electric industries. With the appointment of new leadership in Chinese Customs in March 2018, we expect Customs will conclude and close some major royalty audits.
- ▶ On 1 April 2017, the SAT issued SAT Notice [2017] No. 6 (Bulletin 6) detailing provisions governing the MAP process for transfer pricing cases in areas such as intangible property transactions, intercompany services transactions and local specific advantages.
- ▶ China is included in the seventh batch<sup>31</sup> (due to be launched by December 2018) of the MAP peer review and monitoring process under BEPS Action 14. The purpose of the peer review is to improve the MAP and evaluate how countries are implementing new minimum standards to ensure that tax treaty related disputes are resolved in a timely, effective and efficient matter.<sup>32</sup>

<sup>30</sup> <http://www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm>.

<sup>31</sup> <http://www.oecd.org/tax/beps/beps-action-14-peer-review-assessment-schedule.pdf>.

<sup>32</sup> <http://www.ey.com/gl/en/services/tax/international-tax/alert--china-issues-updated-transfer-pricing-and-mutual-agreement-procedure-rules>.

<http://www.oecd.org/tax/beps/oecd-releases-first-peer-reviews-on-implementation-of-beps-minimum-standards-on-improving-tax-dispute-resolution-mechanisms.htm>.

# Colombia

## Tax policy and controversy

**Margarita Salas**  
margarita.salas@co.ey.com  
+57 1 484 7110

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	40%	37%	-7.5%
Top personal income tax (PIT) rate (national and local average if applicable)	19%-33%	19%-33%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	19%	19%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The 2016 peace agreement between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC), which ended 50 years of armed civil conflict, will influence many of the tax policy decisions in the coming years.

The inequality gap has been reduced from 0.56 to 0.52 points, according to the National Planning Department. To further reduce the inequality gap, the Government will continue using the tax system to attract investment in post-conflict areas. For example, incentives will be given to companies that decide to carry out business activities in areas affected by the conflict.

The Government is also striving to be more competitive, and has therefore reduced the CIT rate from 40% to 37%.

The Government is modernizing its tax function in order to audit taxpayers in a more efficient way.

It is also increasing information exchange with other countries, including the obligation to report information about the "ultimate beneficial owner" of accounts and assets.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/ amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

The CIT rate decreases from 40% in 2017 to 37% in 2018.

### Taxes on digital activity

All technological platforms will be taxed with a 19% VAT, a measure that was first introduced in 2017 and enters its first full year of force in 2018. Cellphone data plans are also taxed with a 4% consumption tax.

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The current Government (led by Juan Manuel Santos) was elected in 2010 and re-elected in 2014. A presidential election will be held in May 2018.

The Government's main objective has been to resolve the civil conflict; following the 2016 peace deal reached with FARC, the Government is now focusing its efforts on nation-building.

While a favorite has not yet emerged among the presidential candidates, most of them have made post-conflict issues a priority.

Regarding tax policy matters, the candidates have focused mainly on three aspects: 1) Reducing taxes in order to attract more investment in post-conflict areas; 2) Combatting tax evasion by doing more aggressive audits; and 3) Reducing corruption.

## 2.7 Current tax policy and tax administration leaders

Juan Manuel Santos, President

Mauricio Cardenas, Minister of Finance

Santiago Rojas, Head of Tax and Customs Office (DIAN)

## 2.8 What key tax policy changes did you experience in your country in 2017?

In December 2016, the Government enacted a structural tax reform plan, which included the following:

- ▶ Measures to address tax evasion
- ▶ Tax relief to corporations and simplification of the corporate tax regime
- ▶ Simplification and increased progressivity of the tax regime for individuals
- ▶ Simplification of the tax regime for small enterprises
- ▶ Increased indirect taxation
- ▶ Imposition of "green" taxes on fuels
- ▶ Increased taxation on cigarettes (to reduce consumption)
- ▶ Strengthening of municipal taxation



- ▶ New dividend tax (dividends paid out from profits obtained in 2017 were subject to the dividend tax)
- ▶ The introduction of the International Financial Reporting Standards as a base for determining taxable basis for income tax purposes (with some tax adjustments)
- ▶ Several modifications to the withholding tax on payments abroad (most of the changes resulted in a significant reduction of the rate)
- ▶ Limits to the deduction of expenses related to intangible property (royalty payments made in relation to finished goods are no longer deductible)
- ▶ Limits to loss carryforwards (taxpayers are entitled to carry forward tax losses for a term of 12 years, and not indefinitely as under the previous regime)
- ▶ New CFC regime.
- ▶ Increase of the VAT rate (from 16% to 19%)

## 2.9 Consultations opened/closed

**Open:** N/A

**Closed:** N/A

## 2.10 Consultations opened/closed

N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

## E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

The modernization of the tax function continues. The electronic invoice system is currently being implemented for major taxpayers, and by 2019 all VAT and withholding taxpayers shall also implement the electronic invoice system.

Audit processes have significantly increased and become more aggressive; even criminal prosecution has been carried out. The omission of assets and the inclusion of nonexistent liabilities were criminalized, giving the tax administration more tools to fight tax fraud.

### 3.2 Key risk factors and audit triggers in 2018

1	Registration of technology import contracts	The tax authorities will verify the date that the contracts were registered in order for the deduction to be taken.
2	Turnover tax	The tax authorities will focus on the taxable base and the territoriality of the turnover tax.
3	Royalties	Because royalty payments for finished goods are no longer deductible as a result of the 2016 tax reform, the tax authorities will review records to ensure that taxpayers don't take this deduction.
4	Criminal offenses	The tax authorities will target criminal prosecutions related to the omission of assets or the inclusion of false liabilities in income tax returns.
5	Transfer pricing	The tax authorities will verify compliance with transfer pricing obligations.

Medellin between mountains





### 3.3 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.4 Tax enforcement developments in 2017

In 2017, the tax authorities' enforcement efforts were focused on:

- ▶ VAT: Mobile devices
- ▶ VAT: Exemptions

- ▶ Mutual agreement procedure and administrative conciliation
- ▶ Green taxes on fuels
- ▶ Mono-tax (a new, simplified tax scheme for micro-scaled businesses introduced under the 2016 tax reform)
- ▶ Withholding taxes on payments abroad

### 3.5 Potential tax enforcement developments in 2018

In 2018, the tax authorities' enforcement efforts will focus on:

- ▶ Ensuring taxes are paid for work performed
- ▶ Reconciliation of book income and tax income
- ▶ Limits to the deduction of expenses related to intangible property



# Costa Rica

## Tax policy

**Luis Eduardo Ocando B.**  
luis.ocando@pa.ey.com  
+507 208 0144

**Isabel Chiri**  
isabel.chiri@pa.ey.com  
+507 208 0112

## Tax controversy

**Rafael Sayagués**  
rafael.sayagues@ey.com  
+506 220 9880

**Randall F. Oquendo**  
randall.oquendo@cr.ey.com  
+506 2208 9874

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	30% <sup>1</sup>	30%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	25% <sup>2</sup>	25%	9.8%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	13% <sup>3</sup>	13%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ As in 2017, the government's clear intention to become an OECD member continues to drive tax policy. In this regard, some compromises have been taken.
- ▶ The government continues to try and raise tax collections by reforming Costa Rica's main tax legislation, specifically by sending bills to the Congress intending to replace the Income Tax Law and substitute the Sales Tax Law with a Value Added Tax Law.
- ▶ Tax policymakers and the tax authorities remain aggressive in their approaches and positions as the fiscal deficit continues to grow.

<sup>1</sup> Section 15.A of the Income Tax Law

<sup>2</sup> Section 15.C.V of the Income Tax Law

<sup>3</sup> Section 10 of the Sales Tax Law

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary

### Overall CIT burden



### Overall PIT burden



### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ Several bills to amend or replace Costa Rica's Income Tax Law have been sent to the Congress. Currently the Income Tax Law Bill and the Improvement of Public Finance Bill are under discussion at the Congress.
- ▶ The key changes proposed by the Income Tax Reform include changes in the capital income and capital gains tax, corporate income tax, withholding tax on remittances abroad, and extended territoriality, among others.
- ▶ The Income Tax Reform will increase taxes for many taxpayers (e.g., by taxing capital gains or foregoing passive income repatriated to Costa Rica).
- ▶ The Income Tax Reform would maintain the territoriality of the Costa Rican tax system but with two significant exceptions: i) services rendered abroad but used in Costa Rica; ii) taxation of passive income repatriated to Costa Rica.
- ▶ The withholding tax rates applicable to payments abroad of Costa Rica-source income generally would be subject to a standard rate of 15%, instead of rates currently ranging from 5.5% to 50%.
- ▶ Thin capitalization rules with a debt-to-equity ratio of 2:1 would be introduced. Transactions that would not be subject to these rules include: (i) loans with financial entities supervised by SUGEF (its acronym in Spanish), the

local regulator of financial entities and (ii) vendor financing between nonrelated parties.

- ▶ Expenses paid to entities which are residents of designated tax havens or non-cooperating jurisdictions would not be deductible. The scope of the transactions subject to this rule, however, is unclear.
- ▶ The Income Tax Reform would include an express reference to the arm's-length principle for transfer pricing purposes, as well as a definition of "related parties."
- ▶ Some BEPS actions have been included (i.e., limits on interest deductibility and measures to address hybrid mismatches).

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes are expected in this area

#### Indirect taxes

The Improvement of Public Finance Bill states that telecommunications, radio and television services are taxable when provided in Costa Rican territory, regardless of the medium or technological platform by which the services are provided. Also, this Bill includes a disposition regarding that entities that issue credit or debit cards for international use must act as VAT collector, when its clients purchase goods or services through the internet or any other telecommunications platform.

## Taxes on wages and employment

- ▶ Both Income Tax Law Bill and Improvement of Public Finance Bill that were sent to the Congress include changes to employment income taxation. Employment income taxation according to those bills would be subject to two additional tax brackets, with rates of 20% and 25%. The highest rate is currently 15%.

## VAT, GST or sales tax base

- ▶ The Government has sent several bills to the Congress in order to replace the existing Sales Tax Law with a Value Added Tax Law (VAT Law). Currently this bill is under discussion at the Congress. This bill has also been included in the Improvement of Public Finance Bill that is also under discussion at the Congress.
- ▶ The Bill intends to tax the most dynamic sector of the Costa Rican Economy (services), which is, for the most part, not affected by the current sales tax.
- ▶ VAT would generally apply to the sale of goods and the supply of all types of services within Costa Rica, as opposed to a very limited number of services under the current sales tax system.
- ▶ Under the proposed VAT Law, services would generally be taxable, and only a certain number of goods and services would be exempt.
- ▶ The headline VAT rate would be 13%.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

Presidential elections will take place in February, 2018.

## 2.7 Current tax policy and tax administration leaders

### Current Tax Policy leaders

- ▶ Luis Guillermo Solís, President of the Republic of Costa Rica

- ▶ Helio Fallas, Minister of Finance
- ▶ Leonardo Salas, Vice-minister of Finance
- ▶ Priscila Piedra, Director-General of Finance
- ▶ Sussy Calvo, Tax Fraud Deputy Director

### Current Tax administration leaders

- ▶ Carlos Vargas, Director-General of Taxation
- ▶ Wilson Céspedes, Director-General of Customs

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Annual Tax on Legal Entities Law
- ▶ Modifications to the Free Trade Zone Regime Regulations
- ▶ Common Reporting Standard due diligence procedure administrative resolution
- ▶ Electronic Voucher administrative resolutions
- ▶ Transfer Pricing documentation administrative resolution
- ▶ Annual Tax on Legal Entities Regulations
- ▶ Signing of the Multilateral Instrument
- ▶ Mutual Agreement Procedure Resolution

## 2.9 Pending tax proposals

### Open:

- ▶ Value Added Tax Law Bill
- ▶ Income Tax Law Bill
- ▶ Improvement of Public Finance Bill
- ▶ Anti-Elusive General Clause Bill
- ▶ Amendment to article 92 of the Tax Code (Tax Fraud crime)
- ▶ Tax Contingency Bill

### Closed:

- ▶ Annual Tax on Legal Entities Law

## 2.10 Consultations opened/closed

### Closed:

- ▶ Transparency and Ultimate Beneficial Owner Registry Executive Decree draft
- ▶ Transfer pricing documentation resolution draft
- ▶ Country by Country Report resolution draft
- ▶ Modification to the Tax Code Regulations Executive Decree draft
- ▶ Amendment to the Multifunctional, Scheduled and Objective Analysis Resolution ("*Herramienta AMPO*") resolution draft

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

**E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2017

The Costa Rican tax authorities continue to demonstrate aggressiveness during tax audits and in the interpretation of the law and their positions, even when at judicial level such positions may have already been reversed. Tax fraud criminal accusations have also been used as a mechanism of pressure against taxpayers. It is expected that this landscape will remain or even increase during this government. Information requested and received from exchange of information agreements is having a significant impact in tax audits.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>International transactions</b>	The Costa Rican tax authorities are currently focusing on international transactions made by taxpayers, including transfer pricing issues.
2	<b>VAT and Income Tax Law</b>	It is more likely that taxpayers will experience extensive examination by the tax authorities regarding the VAT and Income Tax Laws, with special focus on deductible cost and expenses, withholding taxes and tax credits, among other issues.
3	<b>Transparency and Substance</b>	The tax authorities are carrying out greater scrutiny of transparency and business substance in order to determine the economic reality of the taxpayers regarding their income, activities and transactions. Some other obligations will be examined by the tax authorities regarding international transparency and documentation (i.e., CRS, transfer pricing documentation, CbCR).

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

As mentioned above, during 2017 several tax enforcement developments were legislated for or implemented.

### 3.6 Potential tax enforcement developments in 2018

The Costa Rican Government's intention to be part of the OECD will continue driving tax policy and tax enforcement developments in 2018, along with their broader intention to comply with international standards regarding BEPS and transparency.

# Czech Republic

## Tax policy and controversy

Lucie Rihova

lucie.rihova@cz.ey.com

+420 225 335 504

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	19%	19% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Basic tax rate of 15% applied on "super-gross salary" (i.e., including social security and health insurance paid by the employer), leading to an effective tax rate of approximately 20%  Solidarity surcharge of 7% levied on employment and business income exceeding approximately €50,000 per year <sup>2</sup>	Basic tax rate of 15% applied on "super-gross salary" (i.e., including social security and health insurance paid by the employer), leading to an effective tax rate of approximately 20%  Solidarity surcharge of 7% levied on employment and business income exceeding approximately €56,000 per year <sup>1</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	21% <sup>3</sup>	21% <sup>4</sup>	0%

<sup>1</sup> Czech Income Tax Act, effective as of 1 January 2018.

<sup>2</sup> Czech Income Tax Act, effective as of 1 January 2017.

<sup>3</sup> Czech VAT Act effective as of 1 January 2017.

<sup>4</sup> Czech VAT Act effective as of 1 January 2018.



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Generally, the main drivers of tax policy change are resourcing tax collection and providing guidance and clarification in areas where the interpretation has not been clear until now.
- ▶ The ongoing and further anticipated changes in tax policy lend support to and are in line with the base erosion and profit shifting (BEPS) initiative.
- ▶ Other drivers include:
  - ▶ More intensive action against tax fraud and tax evasion, with a key focus on VAT fraud
  - ▶ Implementation of the EU Anti-Tax Avoidance Directive
- ▶ Enhancements to mutual assistance and exchange of tax information procedures (e.g., Country-by-Country reporting, or CbCR)
- ▶ Efforts to increase the effectiveness of tax collection and administration
- ▶ Efforts to improve attractiveness for foreign investment
- ▶ Efforts to decrease the repatriation of profits of foreign investors
- ▶ Efforts to increase taxation of the sharing economy (e.g., Airbnb and Uber)

### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital gains tax (CGT) (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ Effective 1 January 2018, it will be possible to file a request for an official ruling on the determination of the tax base of permanent establishments (PEs) of Czech tax nonresidents. As the previous procedure for determining the tax base of a PE was complex, the possibility of having a ruling on the respective determination should provide a necessary clarification within this area.
- ▶ It is expected that a proposal for an amendment to the current Income Tax Act (ITA) implementing selected EU Anti-Tax Avoidance Directive provisions will be introduced in 2018.
- ▶ There is also an intention to continue working on an entirely new ITA, to be introduced in the near future (potentially effective as of 2020). The Ministry of Finance prepared a detailed memorandum of general areas and principles on which the new ITA should be based. The memorandum was published for professional public discussion in 2017. The document includes mainly general ideas at this stage, with an indication of some respective changes (e.g., reduction of individual limitations on tax deductible expenses, with a greater focus on general principles, tax consolidation, pool depreciation, etc.).
- ▶ The Ministry of Finance will probably restart discussions on amending the ITA in a way that will enable taxpayers to perform self-assessment of all their taxes. Currently, official tax assessments are performed by the tax authorities after taxpayers submit their tax returns. The purpose of this amendment is to reduce the administrative burden and target resources toward tax audits instead. The potential amendment, however, is not expected to be effective earlier than 2020.

### Taxes on digital activity

- ▶ Although we do not expect that a standalone tax on digital activities will be proposed in the near future, the direct and indirect taxation of new types of services, e.g., within the sharing economy provided via e-platforms (as was the case of Uber and Airbnb in 2017), will probably be subject to further clarifications and more consistent enforcement.

### Taxes on wages and employment

- ▶ Individuals having self-employment and business income can generally deduct a percentage of their gross revenues as lump-sum costs instead of actual expenses from their

income. The absolute ceilings for the lump-sum costs will be decreased by 50% as of 1 January 2018.

- ▶ In addition, individuals applying the lump-sum costs for more than 50% of their total tax base will not be further prevented from 1 January 2018 from the application of certain tax reliefs.

### VAT/GST/sales taxes

- ▶ The scope of supplies that are subject to the electronic evidence of revenue (EER), an online sales reporting system covering payments in cash, by cards or vouchers by retailers, has been gradually extended.
- ▶ Under the EER, bank transfers or receivable setoffs (with certain exceptions) do not have to be registered. The revenue subject to EET is generally based on the concept of income for income tax purposes. EET applies, for example, to income of VAT non-payers and to income of Czech tax residents that is generated abroad. The amount of recorded revenues does not need to correspond to the amount of taxable income.

It was expected that additional types of supplies would be subject to the EER (all services with the exception of selected craft and manufacturing services) within the third phase as of March 2018, and the remaining supplies within the fourth phase as of June 2018. However, the Czech Constitutional Court found several provisions of the EER Act unconstitutional and cancelled the third and fourth phase of implementation, ruling that a more proper definition for the individual phases should be put in place. Further, payments by cards will likely be excluded from the EER, based on the Constitutional Court's decision. Related amendments to the EER Act are thus likely expected in 2018.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No



## 2.6 Political landscape

In the Czech Republic, tax policy is governed centrally by the Cabinet, with the Ministry of Finance having the key role and responsibilities in this area. The ministry drafts the majority of tax laws and initiates the legislative process.

The ANO movement, a centrist party led by Andres Babis (former minister of finance), won the Chamber of Deputies elections in October 2017. ANO does not have a majority in the Chamber, and if the coalition negotiations are unsuccessful and results in a minority government, the legislative process might be more complex and longer.

## 2.7 Current tax policy and tax administration leaders

- ▶ Andrej Babis, Prime Minister
- ▶ Alena Schillerova, Minister of Finance
- ▶ Martin Janecek, General Director of the General Financial Directorate

## 2.8 What key tax policy changes did you experience in your country in 2017?

### Exchange of tax information

In September 2017, an amendment to the Act on International Tax Administration Cooperation implementing CbCR in the Czech Republic became effective.

### Real estate transfer tax

In November 2017, the tax administration confirmed that the real estate transfer tax base does not include the VAT paid from the consideration for the transfer.

### CIT and PIT

An amendment to the ITA effective from 1 July 2017 introduced a number of minor changes relating to both personal and corporate income tax.

### EER

The second phase of the EER was launched on 1 March 2017. The second phase extended the scope of EER to retail and wholesale business (accommodation and restaurant services were already included in 2016). The receipt lottery was

also introduced in 2017 as an additional support of EER's effectiveness. Individuals register their receipts to qualify for a lottery.

### Cancellation of specific VAT treatment for associations

The specific VAT treatment for associations, which considers activities performed by individual members of the association on its behalf as an activity performed by the association itself (i.e., as a single VAT payer), was cancelled by the amendment to the VAT Act as of 1 July 2017. After the amendment, such activities are viewed as supplies rendered by individual members, disregarding the fact that they were provided on behalf of the association.

In relation to this amendment, an individual member is not further obliged to register for VAT because of its membership in an association with other member(s) being VAT payers.

## 2.9 Pending tax proposals

Because of the October 2017 Chamber of Deputies elections, any proposed tax law amendments that existed at the level of the Chamber of Deputies before the elections were automatically cancelled.

Minor amendments to the VAT Act, ITA and Tax Code are commonly made. At the present time, an amendment to the ITA tightening the conditions for investment funds to qualify for the lower CIT rate of 5% is to be proposed by the Senate to the newly established Chamber of Deputies.

## 2.10 Consultations opened/closed

An entirely new (i.e., meaning not an amendment to the ITA, which has been in place since 1993) and significantly simplified ITA is currently subject to negotiations, with a potential effective date of 2020 (for more details, please see section 2.4).

In February 2017, the Ministry of Finance published a discussion draft for public consultation regarding implementation of the EU Anti-Tax Avoidance Directive (ATAD), including the initial views of the Ministry of Finance on individual ATAD provisions. Although proposed amendments to the ITA implementing individual ATAD provisions are not yet available, we expect they will be published soon, as the implementation period elapses on 31 December 2018.

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2018 - description

The Czech tax administration recently obtained and has been using several instruments that have significantly improved their

tax enforcement efforts. The instruments include an annex to the CIT return that contains information on transactions with related parties, a VAT ledger and gradually implemented EER. These instruments provide various data that are subsequently analyzed by the tax administration, which have resulted in tax audits becoming more targeted. Consequently, the number of tax audits is decreasing while audit efficiency is increasing.

The major focus of tax audits performed in 2017 were transfer prices used for transactions with related parties. The tax authorities may initiate a tax audit based on (among other sources) data received from the aforementioned transfer pricing annex to the CIT return (CbCR will serve as an additional source of information in this area from 2018). Problematic issues identified within tax audits included mainly loss-making entities with a limited risk profile and the substance of management fees charged from the group.

The tax administration further continued its efforts against carousel operations and other VAT-related fraud.

A positive development has been the increased cooperation between the Chamber of Tax Advisers of the Czech Republic (an independent professional organization of tax advisers) and the tax administration. The latter is more willing to discuss technical issues and uncertainties and frequently publishes (nonbinding) information and guidelines.

## 3.3 Key risk factors and audit triggers in 2018

1	<b>Intercompany transactions (substance and transfer pricing)</b>	<p>As stated above in relation to tax audits in 2017, intercompany transactions will likely continue to be the triggering element for tax audits in 2018 (mainly management fees charged from abroad, loss-making companies with a limited risk profile and allocation of profit).</p> <p>The tax administration will have more data available concerning related party transactions (from exchange of CbCR reports) in 2018. It will therefore likely investigate more closely whether the services received and their benefit are substantially documented at the local level, and whether the prices used for intercompany transactions correspond with an arm's-length principle and the substance of functions allocated to local taxpayers.</p>
2	<b>R&amp;D deduction</b>	<p>The tax administration started to focus more heavily on R&amp;D deductions in 2017, and it is expected that it will continue to increase its scrutiny in 2018. Qualifying for the R&amp;D deduction entails detailed formal and substance requirements; the tax administration has published some related guidelines.</p>

3	<b>Business combinations and transfer of tax losses</b>	Based on some indications and our experience, eligibility for the transfer of tax losses within intragroup business combinations will probably be an additional audit focus; the economic substance of the combination might be subject to challenge.
4	<b>VAT fraud</b>	The tax administration is expected to continue its audit focus on VAT fraud in 2018.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Explanation
 

We do not expect that BEPS recommendations will be implemented in 2018. Moreover, retroactive tax legislation would likely be found to be unacceptable from a constitutional perspective.

However, tax benefits resulting from, e.g., past restructurings, that could be successfully challenged by the tax authorities based on certain anti-avoidance BEPS principles would likely be denied for all open periods, i.e., also prior to 2018.
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No
- ▶ Explanation
 

Although the Act on Proving the Origin of Asset (effective from December 2016) could be viewed as retroactive legislation, a genuine retroactive legislation should not be applied based on constitutional principles.

### 3.5 Tax enforcement developments in 2017 and 2018

#### (a) Tax enforcement developments in 2017

As stated in section 3.2 above, instruments such as the VAT ledger and EER have been recently implemented and enabled the tax administration to target tax audits more effectively in 2017.

The main focus of CIT audits was on transactions with related parties (e.g., transfer pricing, allocation of profit and substance of management fees).

The formal and substance requirements for the application of the R&D deduction were also subject to increased focus in 2017 after the tax administration published additional (nonbinding) guidance providing taxpayers with more clarification in this area.

#### (b) Potential tax enforcement developments in 2018

As indicated above, we expect that the tax administration will focus on the same audit areas in 2018 that it focused on in 2017. However, it is also likely that the tax administration will use additional data provided by tax information exchange instruments (e.g., CbCR) and will be able to target its tax audits on nonstandard transactions within multinational groups.

Regarding the improvement of dispute resolution mechanisms, the Czech Republic intends to implement only the minimum standard contained in Article 16 of the MLI; it did not opt in for mandatory binding arbitration during the MLI signing ceremony.

# Denmark

## Tax policy

**Jens Wittendorff**

jens.wittendorff@dk.ey.com

+45 51582820

## Tax controversy

**Bjarne Gimsing**

bjarne.gimsing@dk.ey.com

+45 25293699

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	22%	22%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	51.95%	52.02%	0.13%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	25%	25%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The Government's 2018 tax agenda will focus on:

- ▶ Combatting cross-border tax avoidance
- ▶ Increasing legal certainty for taxpayers
- ▶ Boosting economic growth via tax incentives

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ R&D tax credits are expected to be introduced.
- ▶ The tax deductibility of salary expenses will be increased.
- ▶ The deduction for investments in small- and medium-sized enterprises

### Taxes on digital activity

- ▶ In the area of direct taxes, it is expected that the taxation of the renting out of private homes through digital platforms will be reduced, provided that income is automatically reported to the tax authorities.
- ▶ No changes are expected regarding indirect taxes on digital activity.

### Taxes on wages and employment

- ▶ There will be more favorable tax rules for stock option plans.

### VAT/GST/sales taxes

- ▶ Several duties on ordinary consumer products will be abolished.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

No relevant elections are expected to occur.

## 2.7 Current tax policy and tax administration leaders

Minister of Taxation: Karsten Lauritzen

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Increased certainty for taxpayers
- ▶ Fight against tax avoidance

## 2.9 Pending tax proposals

**Open:** N/A

**Closed:** N/A

## 2.10 Consultations opened/closed

N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

**A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches**

B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers

- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2018 - description

Taxable revenues and deductible expenses of individuals are normally always reported automatically to the tax authorities. The income statement of each individual taxpayer is provided electronically at the homepage of the tax authorities. Therefore, individuals are usually not required to file a tax return, but they must report changes to the information reported automatically to the tax authorities, if any. Companies must now also report their tax return electronically.

### 3.3 Key risk factors and audit triggers in 2018

1	Transfer pricing	Compliance with the arm's length principle.
2	Withholding taxes	Compliance with withholding tax on dividends, interests and royalties, including a review of beneficial owner and the general anti-avoidance rule (PPT).
3	Organized tax fraud	Close review of organized fraud in the context of direct and indirect taxation.
4	International tax avoidance	Compliance with general and specific anti-avoidance rules dealing with hybrid mismatch, limitation on interest deductibility, etc.

### 3.4 Retroactive application of tax laws in 2018

- Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
- Yes
- No
- Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018?
- Yes
- No

### 3.5 Tax enforcement developments in 2017 and 2018

#### Tax enforcement developments in 2017

None.

#### Potential tax enforcement developments in 2018

No new developments are expected.

# Finland

## Tax policy and controversy

Jukka Lyijynen

jukka.lyijynen@fi.ey.com

+358 40 844 7522

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	20%	20%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Top rate 56% highest state-, municipal- and church tax combined.	55.75%, based on an assumption the highest municipal tax rate stays at 2017 level.	-0.44%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	24%	24%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Ensuring tax income and tax base in the future
- ▶ Minimization of inequality, tightening the income taxation of the well-paid individual taxpayers continues
- ▶ Increasing economic growth

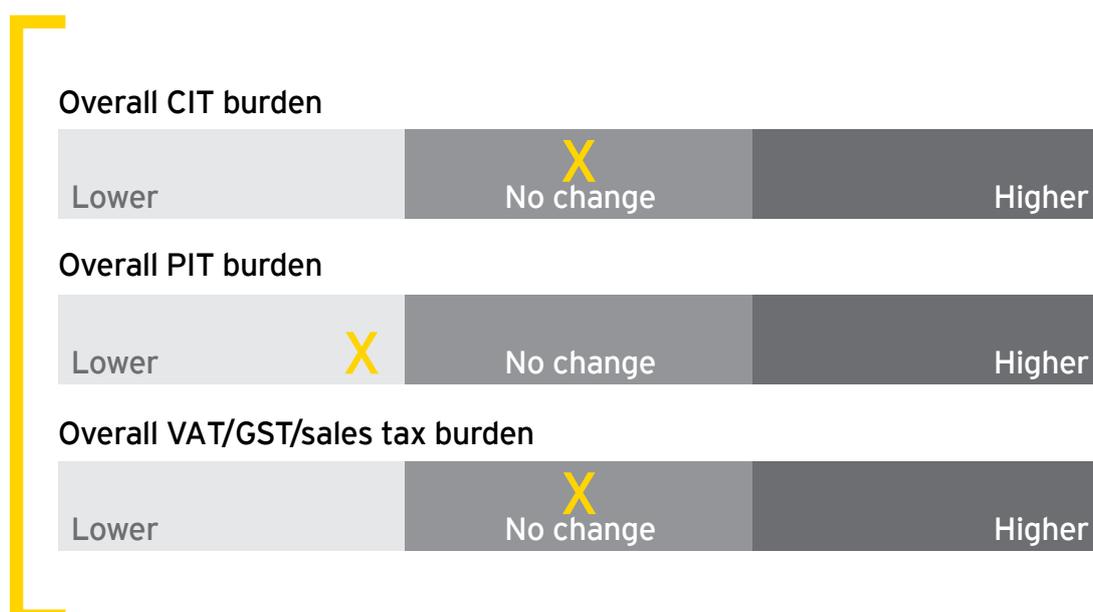
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives – including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



### 2.4 Tax policy outlook for 2018 – detail

#### Corporate income taxes

The Finnish government continues to monitor the cross-border tax competitiveness of the country.

#### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

- ▶ No changes proposed or expected for 2018

#### Indirect taxes

- ▶ No changes proposed or expected for 2018

#### Taxes on wages and employment

A preliminary decision has been made to implement a 270 million euro net tax relief to income taxation. The government is proposing a 1.5% increase in the lower limit of all income tax brackets in the income tax scale. The income tax scales on all income tax brackets will also be lowered by 0.25%. These changes do not, however, have very significant effects on an individual taxpayer.

## VAT/GST/sales taxes

As a part of larger reform process of reorganizing taxation functions in Finland, the taxation duties of import VAT will be partially transferred from the Finnish Customs to the Finnish Tax Administration starting from 1 January 2018. Following this, there will be changes to the tax procedural legislation regarding import VAT. New provisions will be applicable to all importations of goods that are cleared in customs on 1 January 2018 or later.

With effect from 1 January 2018, VAT on importation by businesses registered for VAT in Finland will become subject to the general taxation procedure for value added taxes. This means that, starting from 1 January 2018, VAT on importation by VAT registered businesses will be levied and reported by the same procedure as other value added taxable transactions in Finland and will be subject to general procedural provisions for self-assessed taxes.

As a consequence, the legislative changes also trigger new system and reporting requirements for VAT bookkeeping and reporting.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.5 Political landscape

- ▶ Ensuring the tax base
- ▶ Keeping up with the tax competition between countries
- ▶ Equality among tax payers (tightening the taxation of the well-paid individual taxpayers)

## 2.6 Current tax policy and tax administration leaders

## 2.7 What key tax policy changes did you experience in your country in 2017?

Tax reliefs on earned income were implemented, lowering the total pool by EUR515 million. The lowest income bracket (less than EUR14,000 per year) were exempted from health insurance per diems, relieving the tax burden by EUR63 million in total.

Implementation of Act on taxation procedure (i.e., transfer from so called Tax Account procedure to My Tax procedure) for indirect and other self assessed taxes.

## 2.8 Pending tax proposals

**Open:** None, except for the changes made effecting tax year 2018

- ▶ The OECD BEPS Action 6 report containing a principal purpose test rule (PPT rule) has been signed but not ratified or implemented
- ▶ Limitation to the deductibility of interests
- ▶ Elimination of the division of the source of income

**Closed:** N/A

## 2.9 Consultations opened/closed

**Open:** N/A

**Closed:** N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers



E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

The Finnish Tax Authority has made major investments towards real time and self-initiative taxation and collaborations with both corporations and individual taxpayers.

The investments are shown as digital services and giving more responsibility to the tax payer itself. Also the legislation has been updated regarding the tax procedure. Updates relate to more real time processes and eliminating the excess bureaucracy within the processes.

As an example, starting in November 2017, corporations and joint administrations are required to file their income tax returns online. Also the prepayments, changes to prepayments and any additional prepayments should be applied online. An application can be submitted via MyTax, Ilmoitin.fi, or Tyvi reporting services. When a corporation or joint administration applies for prepayments via MyTax, the prepayment decision and payment details will be provided immediately. Applications for a change to prepayments may only be submitted on paper for a special reason, such as a technical failure. However, no special permission is needed in these cases, and the Tax Administration does not need to be notified in advance of the reason for filing on paper. The Tax Administration may ask for the reason in connection with tax control. Paper applications concerning prepayments will take longer to process.

### 3.2 Key risk factors and audit triggers in 2018

1	<b>Financial structures, interests</b>	Financial structures and intra group interest payments may trigger tax audits in 2018. This usually concerns the global and/or larger domestic companies.
2	<b>Transfer pricing</b>	Transfer pricing may trigger tax audits in 2018. Although transfer pricing has already been a topic in the audits which could reduce the risk of audits.

### 3.3 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.4 Tax enforcement developments in 2017

The new Act on Tax Collection contains revised provisions governing the payment, collection and recovery of all types of taxes and tax-like charges.

The new act came into force on 1 January 2017. The previous Act on Tax Collection and Tax Account Act were repealed and changes were made to the legislation governing punitive tax increases and late-payment charges. Some of the provisions of the Tax Account Act were revised and incorporated into the new legislation.

Finland has extended the mandatory electronic filing of taxpayer data. Some filings, e.g., FATCA/CRS reporting and CbCR are already subject to the electronic procedure, and as of 1 November 2017, all annual tax returns by corporate taxpayers in Finland must be filed electronically.

Tax returns may only be filed on paper in special circumstances, such as if a technical fault makes filing online impossible. No special permission is needed in such cases, and the reason for filing on paper does not need to be notified in advance.

Corporations that file their tax returns on paper may be asked for the reason in connection with subsequent tax controls.

### 3.5 Potential tax enforcement developments in 2018

The last phase of the reform of the tax procedure in Finland will become effective on 1 May 2018. The aim is to promote real time taxation in the future. Also the tax increase section in the tax procedure Act will change from a previous maximum of 30% to a maximum of 10%.

As from 1 January 2018, those registered as VAT liable must pay and report VAT on imported goods to the Tax Administration. After the transfer, businesses liable to VAT will deal with the Tax Administration in VAT matters. Which authority is to be contacted depends on whether the importing entity is entered in the VAT register. In the future, businesses will file import VAT reports on their own initiative.

# France

## Tax policy

Jean-Pierre Lieb

jean.pierre.lieb@ey-avocats.com

+33 1 55 61 16 10

## Tax controversy

Charles Ménard

charles.menard@ey-avocats.com

+33 1 55 61 15 57

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	33.33% <p>An additional 3.3% social tax (a surtax) is owed on the amount of CIT exceeding €763,000, bringing the top marginal rate to <b>34.43%</b>.</p> <p>Two additional 15% contributions (surtaxes) to the French CIT were created<sup>1</sup> in order to finance part of the future refunds related to claims filed on the 3% distribution tax.</p> <ul style="list-style-type: none"><li>▶ Entities subject to CIT with revenue exceeding €1 billion will be subject to a 15% "exceptional contribution" on their CIT (bringing the top marginal CIT rate to <b>39.43%</b>).</li><li>▶ Entities subject to CIT with revenue exceeding €3 billion will be subject to a 15% "additional contribution" on their CIT (bringing the top marginal CIT rate for those entities to <b>44.43%</b>).</li></ul>	33.33% <sup>2</sup> <p>The CIT nominal rate will be decreased as follows:</p> <ul style="list-style-type: none"><li>▶ 2018: 33.33% (28% on first €500,000)</li><li>▶ 2019: 31% (28% on first €500,000)</li><li>▶ 2020: 28%</li><li>▶ 2021: 26.5%</li><li>▶ 2022: 25%</li></ul> <p>The additional 3.3% social tax will still be owed on the amount of CIT exceeding €763,000.</p>	0%

<sup>1</sup> Article 1 of the 2017 Amending Finance Law.

<sup>2</sup> Article 41 of the French Finance Bill for 2018.



	2017	2018	Percentage change
Top personal income tax (PIT) rate (national and local average if applicable)	45%	45% <sup>3</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	20%	20% <sup>4</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

French President Emmanuel Macron was elected on a platform that aims to:

- ▶ Make France more competitive (France is currently one of just a few countries with a deficit higher than the EU-mandated rate)
- ▶ Boost jobs in an increasingly globalized world
- ▶ Attract business angels and investors

As such, Macron began his mandate by passing labor reforms in an attempt to enhance growth and job hiring.

From a tax standpoint, the Government program can be described as business-friendly:

- ▶ The 2018 finance bill slashes the wealth tax
- ▶ The 2018 finance bill reduces the CIT rate to 25% by 2022, from the current 33.33%
- ▶ The 2018 finance bill creates a 30% flat tax on capital gains in order to simplify the taxation of investments

The Government also wants to minimize inequality, and as such the 2018 finance bill creates a mechanism that will result in a residential tax exemption for about 80% of French taxpayers.

<sup>3</sup> Article 197 of the French Tax Code.

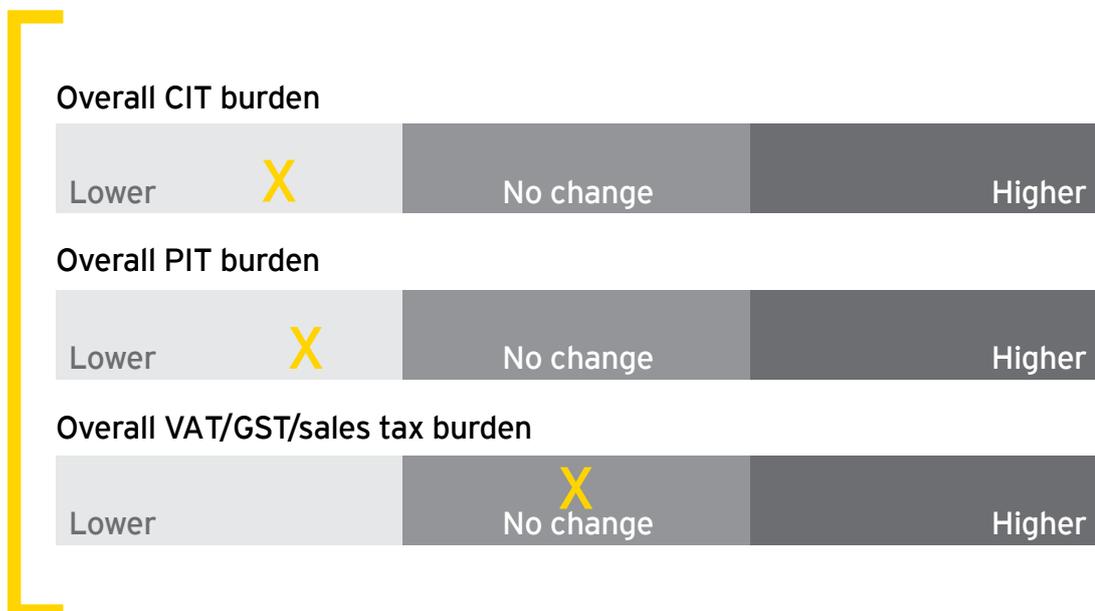
<sup>4</sup> Article 278 of the French Tax Code.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ As mentioned above, the CIT nominal rate will be reduced as follows:
  - ▶ 2018: 33.33% (28% on the first €500,000)
  - ▶ 2019: 31% (28% on the first €500,000)
  - ▶ 2020: 28%
  - ▶ 2021: 26.5%
  - ▶ 2022: 25%
- ▶ The 3% distribution tax will be repealed for distributions paid by French companies as from January 2018. Instead, two extraordinary additional contributions to the French CIT were created for companies ending their FY from December 31st 2017 to December 30th 2018 (see above).

### CFC and interest limitation:

- ▶ The so-called Carrez amendment (article 209 IX of the French Tax Code, [FTC]), a mechanism adopted in 2011 that disallows certain deductions for qualifying participations acquired by French companies, will be modified in order to comply with European Union (EU) law.
- ▶ BEPS and transfer pricing: Section L13 AA of the French Procedural Tax Code, which sets out transfer pricing requirements for large companies, will be amended in order to comply with action 13 of the base erosion and profit shifting (BEPS) initiative.
- ▶ CFCs: The risk of an increased tax burden in 2018 comes from the possible incorporation into French tax law of the new EU list of non-cooperative tax jurisdictions.

## Taxes on digital activity

### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

### Indirect taxes

## Taxes on wages and employment

To finance the removal of two employees' social contributions (contributions for sickness and unemployment insurance), the French general supplementary social contribution (CSG) will increase by 1.7 percentage points.

## VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The Government wants to establish a simpler and “healthier” relationship between the taxpayers and the French tax authority (FTA). As such, the French Minister of Public Accounts and Action presented legislation (named the “trust-based society bill”) on 27 November 2017 that establishes the right to make mistakes in tax law and pledges to build a relationship based on trust.

The bill also provides for the possibility for companies to ask to be audited by the FTA. In application of this draft provision, the FTA could examine whether a taxpayer's operations conform to French tax laws and formally take a binding position.

The next elections (for the European Parliament) will take place in 2019.

## 2.7 Current tax policy and tax administration leaders

- ▶ Laurent Martel, tax advisor to Emmanuel Macron (French President) and Edouard Philippe (Prime Minister)
- ▶ Bruno Lemaire, Finance Minister
- ▶ Gérald Darmanin, Public Accounts Minister
- ▶ Christophe Pourreau, Director of Tax Legislation at the Ministry of Finance
- ▶ Bruno Parent, Director of the General Directorate for Public Finances

## 2.8 What key tax policy changes did you experience in your country in 2017?

The Government is currently considering introducing provisions (to be included into a bill aimed at combatting tax fraud) that deal with:

- ▶ Mandatory communication to the FTA of tax schemes put in place or proposed by intermediaries
- ▶ Tax fines for intermediaries who colluded in tax fraud or abuse of law

The previous Government tried to implement such provisions, but the Constitutional Court ruled that they did not comply with the French Constitution. The situation may change if these provisions are transposed measures of an EU directive.

## 2.9 Pending tax proposals

See previous sections describing the main provisions of the 2018 finance bill.

## 2.10 Consultations opened/closed

N/A

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2018 - description

Based on tax reassessment notices received by clients of EY France, it seems that the FTA focused on the following in the 2017 financial year (FY):

- ▶ Intragroup financing terms, especially when the money lender is non-French
- ▶ Provisions for depreciation of intragroup loans
- ▶ Restructurings and reorganizations (using the abuse of law theory)
- ▶ Sales of participations at a discounted or increased price
- ▶ Management fees and the reality of the services provided
- ▶ Withholding taxes and their tax deductibility in France

Moreover, from 1 January 2014, French taxpayers must be in a position to provide the FTA, at the beginning of a tax audit, with an accounting entry file (AEF) containing specific accounting data (article L 47 A I of the French Tax Procedure Code [LFP]) and a reliable audit trail (invoice requirements).

The FTA almost systematically asks for that data at the beginning of a tax audit. However, the FTA still has difficulties using large AEFs and has not yet levied any penalties on the grounds of an incomplete/missing reliable audit trail (to our knowledge).

### 3.3 Key risk factors and audit triggers in 2018

1	Restructurings and reorganizations	As it did in 2017, the FTA will focus its audit efforts in 2018 on restructurings and reorganizations, in particular by using the abuse of law theory.
2	Transfer pricing and intra-group transactions	
3	Intra-group financing	

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?

Yes

No

- ▶ Explanation

The audit department within the FTA tries to base its tax reassessments on the new BEPS standards, even when those standards were not part of the French law corpus during the audited FY.

However, the courts and lawmakers do not support such an approach, and they have denounced any retroactive application of standards that were not incorporated into French law over the period targeted by tax audits.

- Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
- Yes
- No

### 3.5 Tax enforcement developments in 2017 and 2018

#### (a) Tax enforcement developments in 2017

The main tax enforcement provisions entered into force on 31 December 2016:

##### The accounting review (*Examen de comptabilité*)

The Amended Finance Bill for 2016 introduced a new tax audit procedure, with the AEF file serving as underlying data. It is called an accounting review (*Examen de comptabilité*) (article L47 AA of the LPPF). This procedure can be imposed on taxpayers liable to providing an AEF at the beginning of a tax audit (article L47 A of the LPPF).

The accounting review starts with a formal notice issued by mail. The taxpayer must provide the AEF file (for each accounting period under scrutiny) to the FTA within 15 days of receipt of the notice. If the taxpayer fails to provide the FTA with required AEFs, he might be liable to a fine of €5,000 per audited year or, if higher, to a fine amounting to 10% of the reassessed taxes if a standard tax audit is launched by the FTA and triggers a tax adjustment.

If an AEF has been transmitted, for each accounting period in the scope of the accounting review, the FTA has a six-month time limit to perform an analysis and, if applicable, to send proposed tax adjustments to the taxpayer.

At the expiry of the six-month period, and if no proposed tax adjustment has been made, the FTA must inform the taxpayer

that no tax adjustment will be proposed. An accounting period already audited by the FTA under the accounting review procedure is protected against a later standard tax audit procedure as long as the FTA has been provided with a compliant AEF within the required time period.

#### Taxpayers' hearing by the FTA: the tax witness

Article L10-0 AB of the FTC states that in order to investigate breaches of some tax rules (enumerated in the article), FTA agents may interview any person, with the exception of the taxpayer concerned, who may provide them with useful information.

#### (b) Potential tax enforcement developments in 2018

See above for the "trust-based society bill."

It has been several years now since the FTA launched a program that aims to use all the information it has access to through multiple databases.

The program detects potential flaws and unlawful behavior after gathering all information available from those databases.

This should be the first year in which tax audits will be launched by using a more systematic and automatic approach than in previous years.

# Germany

## Tax policy

**Hermann Gauss**

hermann.gauss@de.ey.com

+49 30 25471 16242

## Tax controversy

**Juergen Schimmele**

juergen.schimmele@de.ey.com

+49 211 9352 21937

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	Top federal (national) CIT rate: 15% CIT rate: 15% (plus solidarity surcharge of 5.5%) Trade tax (local): 7%-19.25% Total average: ~30%	Top federal (national) CIT rate: <sup>1</sup> 15% (plus solidarity surcharge of 5.5% <sup>2</sup> ) Trade tax (local): 7%-19.25% <sup>3</sup> Total average: ~30%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	45% (plus solidarity surcharge of 5.5% for a total 47.48%)	45% <sup>4</sup> (plus solidarity surcharge of 5.5% <sup>5</sup> for a total 47.48%)	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	19% (reduced rate of 7% applies in many areas)	19% (reduced rate of 7% applies in many areas) <sup>6</sup>	0%

<sup>1</sup> Sec. 23, para. 1, KStG (Corporation Tax Act).

<sup>2</sup> Sec. 4, SolzG (Solidarity Surcharge Act).

<sup>3</sup> Sec. 11 and Sec. 16 GewStG (Trade Tax Act); two negligible municipalities with less than 100 inhabitants have higher trade tax rates.

<sup>4</sup> Sec. 32a, para. 1, EStG (Personal Income Tax Act).

<sup>5</sup> Sec. 4, SolzG (Solidarity Surcharge Act).

<sup>6</sup> Sec. 12, para 1, UStG (VAT Act).

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Following the federal election held in September 2017, the formation of a new government is taking more time than expected.
- ▶ In the international tax policy area, Germany supports the extension of anti-avoidance rules (that is, the implementation of the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) and EU Anti-Tax Avoidance Directive measures into national law) and the OECD as a standard-setter in taxation; there has been an increased focus on tax evasion and tax transparency as a result of the Panama and Paradise Papers.
- ▶ Germany is introducing digital technologies into the taxation process and adapting its tax rules to address digitized business activity.
- ▶ Germany is open to EU-wide tax harmonization, and there is ongoing willingness to transfer additional legislation competencies to the EU level (for example, the common corporate tax base).
- ▶ The preservation of the Euro as currency and the strengthening of European institutions are top priorities for the German Government, especially after the Brexit referendum.
- ▶ Both the federal budget and most state budgets are balanced, thanks to a strong economy, historically high employment levels and low interest rates; this opens up some room for tax policy adjustments.
- ▶ The majority of key political figures considers German business taxation to be internationally competitive following the last reform carried out in 2008; the short-term focus will therefore be on relief for individual taxpayers, while the US tax reform will possibly give new momentum to discuss the further reform of corporate taxation.

### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A Corporate Tax Base: § 7 Abs. 1 KStG	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ It is unclear whether the expected reduction of the solidarity surcharge between 2018 and 2021 will also affect corporate entities.
- ▶ Implementation of the EU Anti-Tax Avoidance Directive is scheduled to take place in 2018, with major Transformation Tax Acts to be expected for CFC rules and hybrid mismatches. A first-draft bill was expected in the summer of 2017, but is delayed due to elections.
- ▶ R&D activities will likely be incentivized through either a tax credit or a super deduction; details need to be worked out by the new coalition and are not yet decided (there may be limitations to small and medium-sized enterprises).
- ▶ France and Germany may push forward on the topic of a common corporate tax base.
- ▶ There will be adjustments to the rules regarding loss use and withholding taxes due to a verdict by the German Constitutional Court (a partial repeal of the current loss forfeiture rule); additionally, the Court of Justice of the European Union found that the old version of Germany's anti-treaty shopping rule infringed both the European Union (EU) Parent-Subsidiary Directive and the right of freedom of establishment.
- ▶ Germany is discussing the introduction of new domestic CFC rules for low value-adding group services as well as hard-to-value intangibles (HTVI)
- ▶ Special tax incentives for the construction of residential buildings as well as for energy-saving building refurbishments may be introduced.

### Taxes on digital activity

- ▶ Germany highly encourages European efforts to introduce taxes on digital activity. No national laws are planned at this time.

### Taxes on wages and employment

- ▶ The basic income-tax-free allowance was increased by EUR180 to EUR8,820 in 2017 and grows by a further EUR180 to EUR9,000 in 2018. In addition, the tax brackets shifted downward by 0.73% in 2017 and will shift by a further 1.65% in 2018, resulting in lower taxes on the same income.

- ▶ The next coalition indicated that the tax burden will not increase. Furthermore, the solidarity surcharge on PIT will phase out for 90% of the former payers during this legislative term.
- ▶ The 25% flat income tax on all capital income has come under criticism. There are plans to abolish the 25% flat rate for interest income, leading to a taxation with the normal personal rate.

### VAT/GST/sales taxes

- ▶ No significant changes are expected in 2018.
- ▶ There will be further EU harmonization initiatives, with changes due from 2019 (extension of the Mini One-Stop Shop to online goods trade, followed by the introduction of One Stop Shop/certified taxpayer/liability of online platforms for trader VAT).
- ▶ There is support for a financial transaction tax among the CDU/CSU and SPD.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Germany will implement the MLI in two stages. Stage 1: The MLI Transformation Act is expected in 2018. Stage 2: Individual domestic double tax agreement (DTA) implementation bills will then be adapted on an individual basis. The earliest possible application date for the MLI provisions on a first set of the 35 German covered tax agreements is 1 January 2019.
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

As a result of the 2017 federal election, there were heavy losses for the governing parties (the CDU and the SPD). The Alternative for Germany (AFD), a far-right party, won a seat in the Bundestag (the parliament) for the first time, while the Free Democratic Party (FDP) returned to the Bundestag.

Discussions among the CDU/CSU, the FDP and the Greens to form a “Jamaica coalition” government (so nicknamed because the parties’ traditional colors mirror those of the Jamaican flag) failed.

Following the collapse of the Jamaican coalition talks, the formation of a new government takes more time than previously expected but it is expected that there will be another grand coalition of the conservatives and the SPD.

Some of the tax and fiscal policy goals presented by the Jamaican coalition parties will retain their relevance, e.g., a balanced budget and the agreement to refrain from introducing capital-based taxes, such as a personal wealth tax.

With federal policy on hold, state finance ministers have begun to announce some of their own tax projects, including a reform of the land tax (required because of fears that the current system of valuation violates the constitutional right to equitable taxation), the closure of alleged real estate transfer tax loopholes (share deals), measures to fight VAT fraud with respect to sales of online platforms and possibly a national version of the EU disclosure rules currently drafted to detect undesired tax schemes.

Whatever the outcome of the coalition negotiations, the process will certainly take some time to complete. New elections also remain a possibility. With Wolfgang Schäuble no longer head of the Ministry of Finance, a new finance minister might bring fresh perspectives to fiscal as well as tax policy. An SPD member at the head of the ministry seems increasingly likely.

After an appalling result in the Bundestag elections, the SPD managed to reclaim some ground in the Niedersachsen elections. In 2018, state elections will be held in the important regions of Hesse and Bavaria.

## 2.7 Current tax policy and tax administration leaders

- ▶ Dr. Angela Merkel (CDU), Chancellor
- ▶ Peter Altmaier, acting Finance Minister
- ▶ Dr. Michael Meister, Parliamentary State Secretary, Federal Ministry of Finance
- ▶ Jens Spahn, Parliamentary State Secretary, Federal Ministry of Finance

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ On 25 January 2017, the German Federal Government released a bill to combat “harmful tax practices” with regard to the licensing of rights. The legislation (section 4j of the Income Tax Act [ITA]) targets the tax deduction of royalties and similar payments made to related parties if such payments are subject to a non-OECD compliant preferential tax regime (IP Box) in the jurisdiction of the recipient, and are effectively taxed at a rate below 25%. The law is applicable as of 2018.
- ▶ In the same bill, the tax relief for gains from business restructurings replaced the former administrative rules.
- ▶ The Company Pension Strengthening Act reformed company pension schemes by making them more attractive by way of more generous tax deductibility for companies and a partial shift from a defined benefit to a defined contribution system. Additionally, the incentives for workers to provide for their own needs in old age have been improved; for company-wide plans an opt-out scheme replaces opt-in schemes.
- ▶ A new rule to prevent specific double-dip structures with respect to partnerships exploiting hybrid mismatches (section 4i of the ITA) was implemented on 23 December 2016 and is applicable as of 2017.
- ▶ New country-by-country reporting standards came into force for fiscal years starting 1 January 2017 and after (including a local and master file).
- ▶ “Cum/cum” deals were a well-established practice whereby a bank would borrow shares from a foreign shareholder shortly before the dividend due date and thus save him the withholding tax on such proceeds (which can be reclaimed by banks for their own assets, but not by conventional shareholders). Section 36a of the ITA was introduced in 2017 to prevent the circumventing of CGT by prescribing a minimum holding period of 45 days during which the bank needs to bear at least 70% of the risk brought about by falling share prices.

## 2.8 Pending tax proposals

### Open:

- ▶ The 2017 federal election caused so-called legislative discontinuity, with the effect that there are no pending tax proposals.

▶ Land Tax Reform: Due to decades of legislative inaction, the current appraisal system used for determining the tax base is under pressure and deemed to be unconstitutional. To gain a head start over the Constitutional Court, the states initiated a new bill but it did not pass parliament before the federal election. On 16 January 2018, the Constitutional Court conducted a public hearing and a decision might follow in 2018. The public hearing did not lead to final conclusions, but the general feeling indicates that the Constitutional Court will deem the present land tax as unconstitutional. The tax authorities desire a 10-year period to fix the law. This is seen as unrealistically long.

**Closed:**

▶ *Kassensicherungsverordnung* (improved documentation of transactions in cash and protection against data manipulation)

- ▶ Second Law for Amendment of the Energy Tax and Electricity Tax Law (some subsidies are extended, while others are adapted to harsher EU standards)
- ▶ Second Law to Decrease the Burden of Bureaucracy (increased thresholds for certain simplification measures, e.g., group amortization)
- ▶ Implementation of the Fourth EU Money Laundering Directive (*Neue Meldepflichten - Transparenzregister*) (creation of a registry of economic beneficiaries)
- ▶ Law to Counter Tax Avoidance (*Steuerumgehungsbekämpfungsgesetz*) (new reporting obligations for banks and taxpayers on certain economic ties related to foreign jurisdictions)

## 2.10 Consultations opened/closed

Please see section 2.9

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening / using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

In Germany, most large companies are audited by the tax authorities on a regular basis. Therefore, the general approach to tax enforcement in 2018 will not deviate significantly from prior years.

When group companies are audited, more and more specialized federal tax auditors are called upon to examine tax structures of multinational groups from a German tax perspective. The audit focuses in particular on issues such as corporate structures, transfer prices and international taxation. Particularly in order to handle complex issues of international tax law with care and to be able to guarantee the audits as effectively as possible, so-called joint audits are increasingly being used. A joint audit covers two or more countries at the same time in coordination and/or exchange with foreign tax authorities.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Transfer pricing adjustments</b>	Tax authorities are scrutinizing whether transfer prices are at arm's length and tend to allocate additional income to Germany. Against this background, we observe that the number of coordinated audits between Germany and foreign jurisdictions is increasing, with a focus on auditing international groups
2	<b>Add-back of non-deductible expenses</b>	Add-backs are interpreted aggressively by the tax authorities in order to classify parts of these expenses as non-deductibility for trade tax purposes. In particular, rental expenses have to be added back partially for the determination of the taxable trade income. Against this background, the fiscal authorities tend to interpret service cost as rental expenses (e.g., marketing costs, logistic services, etc.)
3	<b>Extended use of electronic data</b>	The German tax authorities consistently improve the use of digital solutions (e.g., "IDEA") for the automated audit of taxpayers' bookkeeping data, in order to detect inconsistencies in the accounting. As a trend, we are also seeing tax auditors being trained to apply the use of risk-management solutions within field audits

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

#### License Barrier:

The new bill lays down that license fees or royalty payments made by German taxpayers to related parties are not (or only partially) tax deductible if the payments are subject to low taxation (i.e., less than 25%) at the level of the recipient of the payments and if the low taxation is based upon a preferential tax regime in the country of the recipient.

#### Prevention of double deduction of operational expenses

Pursuant to § 4i sentence 1 EStG expenses of a co-entrepreneur cannot be deducted as special operational expenses to the extent that these expenses lower the tax base in another country. The prohibition on deduction does not apply according to § 4i sentence 2 EStG if the non-deductible expenses pursuant to sentence 1 lower the revenues of the taxpayer which are subject to taxation both in his country of

residence and abroad. The regulation includes partnerships under civil law and company-like legal groups (community of property/of joint heirs) as well as foreign companies if they can be classified as partnerships according to the so-called legal type comparison.

#### Loss carryforward

A new Sec. 8d German Corporate Income Tax Act (Körperschaftsteuergesetz- "KStG") is being introduced with the Law on the further development of the offsetting of tax losses of corporations. The purpose of the new provision is to enable corporations to continue utilizing so-called unused losses existing at the time of a harmful acquisition of a participation within the meaning of Sec. 8c KStG (schädlicher Beteiligungserwerb - "Harmful Share Acquisition") - provided certain requirements are met. The new provision applies in addition to the already existing exemptions. The new Sec. 8d KStG excludes at the taxpayer's request the application of Sec. 8c KStG and permits the preservation of unused losses if the corporation meets certain requirements at the time of the Harmful Share Acquisition, the business operations of the corporation are sustained after this date and any other use of the so-called continuation-bound loss carryforward is excluded.

### 3.6 Potential tax enforcement developments in 2018

The upcoming grand coalition will likely strengthen enforcement efforts. At the same time, overall solid levels of tax revenue will mean that political pressure on this issue may be moderated.

# Greece

## Tax policy

### Stephanos Mitsios

stefanos.mitsios@gr.ey.com

+30 210 2886 363

### Konstantina Galli

konstantina.galli@gr.ey.com

+30 210 2886 355

## Tax controversy

### Tassos Anastassiadis

tassos.anastassiadis@gr.ey.com

+30 210 2886 592

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	29%	29% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	45% (increased by a special solidarity tax, for which the top individual rate is set at 10%; please note that different income bands apply for each tax)	45% (increased by a special solidarity tax, for which the top individual rate is set at 10%; please note that different income bands apply for each tax) <sup>2</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	24%	24% <sup>3</sup>	0%

<sup>1</sup> Per the provisions of par. 1, Article 58 of the Greek Income Tax Code (Law 4172/2013), the business profits of corporations and/or legal entities are taxed at 29%.

<sup>2</sup> Per the provisions of par. 1, Article 15 of the Greek Income Tax Code (Law 4172/2014), as amended by par. 1, Article 112, Law 4387/2016, a progressive tax scale for individuals with salary and pension income has been introduced. Freelancer income is also taxed according to the abovementioned progressive tax scale after being accumulated with any salary or pension income of the individual. In addition, per the solidarity tax provisions (introduced in the Greek Income Tax Code by Article 43A), solidarity tax rates are applied progressively per income band.

<sup>3</sup> Per the provisions of par. 1, Article 21 of the Greek VAT Code (Law 2859/2000), as amended by par. 1, Article 52, Law 4389/2016, the standard VAT rate is increased from 23% to 24% as of 1 June 2016.

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Fiscal consolidation remains a main tax policy driver in light of the Greek sovereign debt crisis
- ▶ Restoration of fiscal sustainability
- ▶ Satisfaction of requirements and financial goals of Greece, per the bailout packages aimed at financial recovery and structural reforms
- ▶ Rationalization of the tax audit and tax penalty regime, with the goal of creating a more efficient and effective mechanism that also raises more revenue

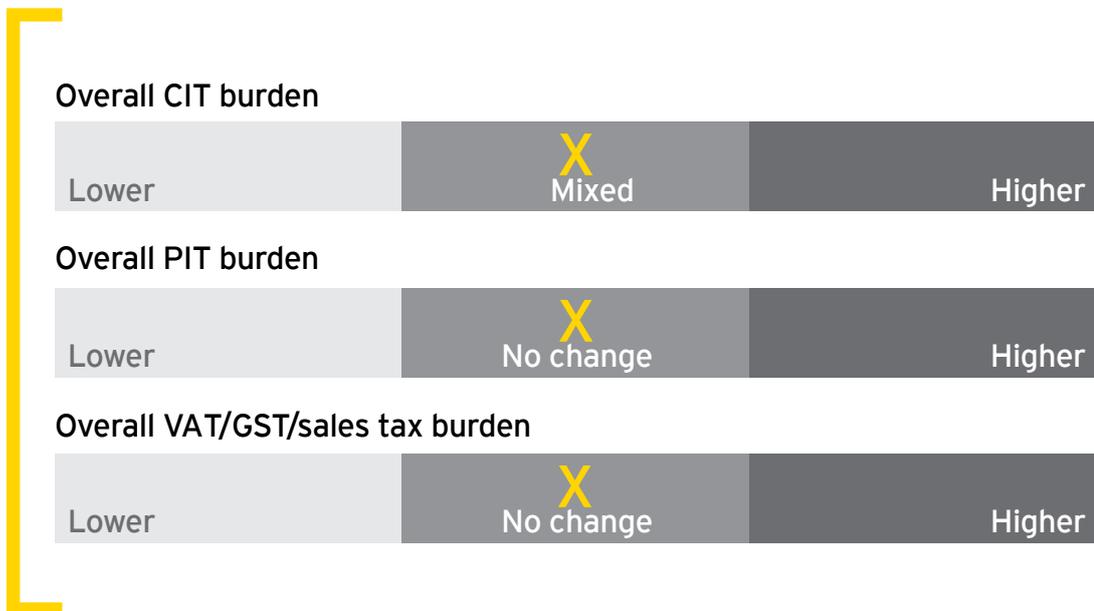
### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of <b>corporate</b> tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

It is anticipated that tax audits will increase and that tax auditors will keep a rather aggressive approach in this respect, given the need for increased tax revenues. Nevertheless, it should be noted that from a tax enforcement policy perspective, some significant changes have occurred that lead to a diverging trend:

- ▶ In light of recent case law from the Greek Supreme Court, limits to the continuous suspension of the time period of the State's right to impose taxes and fines have been set.
- ▶ A law was recently enacted that provides for more favorable penalties for tax assessments and late submissions of debit tax returns for years prior to the 2014 financial year, i.e., until 31 December 2013.

On another note, there is currently an informal discussion on abolishing the existing CGT exemption for legal entities that dispose of securities and do not have their tax residence in Greece; to this end, a potential legislative amendment would lead to an increased tax burden for nonresident corporations.

### Taxes on digital activity

#### Direct taxes

At the present time, there has been no focus on digital activity from a tax assessment perspective, but there has been an increased focus on sectors of the digital economy and sharing economy from a regulatory and procedural perspective.

#### Indirect taxes/charges

A special charge of 2% on advertising or promotion fees, or in general the promotion of product sales or the provision of services exclusively or predominantly via the internet, was recently introduced and will be due, if the recipient of such services is domiciled or located in Greece (regardless of the place of residence or place of business of the service provider).

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

Greece intends to adopt the PPT, as set out in Article 7(1) of the MLI, but

Greece has explicitly opted out of the simplified limitation on benefits clause.

## 2.6 Political landscape

The political landscape in Greece is shifting, as the Government still faces serious pressure due to debilitated public finances. Elections in 2018 are a possibility.

## 2.7 Current tax policy and tax administration leaders

As of 1 January 2017, an independent administrative authority without legal personality has been constituted under the name "Independent Authority for Public Revenues" (A.A.Δ.E.) as the successor to the abolished General Secretariat for Public Revenues. The said authority is autonomous with independent operations and free of state monitoring, and is responsible for the determination, assessment and collection of tax, customs and other public revenues.

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

Which of the following statements most closely matches your expectations in regard to your national tax authority's approach to tax enforcement in 2018?

## 2.8 What key tax policy changes did you experience in your country in 2017?

A significant development is the recent case law from the Greek Supreme Court that put limits on the continuous suspension of the time period of the State's right to impose taxes and penalties.

Moreover, recent guidelines have been issued regarding criminal sanctions and prosecution for tax evasion. The guidelines clarify that the competent officers cannot submit a crime notification report with the appropriate public prosecutor in cases of common tax adjustments, i.e., cases that don't involve the concealment of taxable income or cases in which adjustments derive from profit adjustments under transfer pricing rules.

## 2.9 Pending tax proposals

There is currently an open discussion with the competent tax authorities, and certain proposals have been submitted that would amend the income tax code by providing clarifications of existing provisions and revising current inconsistencies.

## 2.10 Consultations opened/closed

N/A

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2018 - description

While the Greek tax authorities have made efforts to increase electronic compliance and enhance their audit systems, we cannot identify a consistent trend within 2017 in terms of tax enforcement.

### 3.3 Key risk factors and audit triggers in 2018

1	Stamp duty	The Greek tax authorities' attention is frequently triggered in cases involving loans for which a stamp duty exemption is claimed on the basis of the "territoriality" principle (whereby loans signed and executed outside of Greece do not fall within the scope of the Greek Stamp Duty Code). There have already been tax audits refuting the above exemption by claiming the application of the general anti-abuse rule (GAAR).
2	Transfer pricing disputes	The Greek tax authorities intend to audit intra-group transactions and compliance with local transfer pricing rules.
3	PE assessments	Increased assessment as to whether a business has a PE in Greece

Athens



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Explanation
 

Retroactive application of tax laws is, in principle, forbidden from a Greek constitutional perspective. Under the Constitution of Greece, retroactivity is permitted only if it does not extend beyond the fiscal year prior to the year of the law's publication.
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017 and 2018

#### (a) Tax enforcement developments in 2017

Please refer to our comments under sections 2.4 (corporate income taxes) and 2.7.

#### (b) Potential tax enforcement developments in 2018

It is anticipated that the tax authorities' audit focus will shift to recent fiscal years, i.e., from FY 2012 onward, while GAAR case law is also expected to be published in 2018.



# Guatemala

## Tax policy

**Luis Eduardo Ocando B.**  
luis.ocando@pa.ey.com  
+50 7 208 0144

**Isabel Chiri**  
isabel.chiri@pa.ey.com  
+50 7 208 0112

## Tax controversy

**Rafael Sayagués**  
rafael.sayagues@ey.com  
+50 6 220 9880

**Randall F. Oquendo**  
randall.oquendo@cr.ey.com  
+50 6 2208 9874

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25% or 5% or 7%	25% <sup>1</sup> or 5% or 7% <sup>2</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	25% or 5% or 7%	25% <sup>3</sup> or 5% or 7% <sup>4</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	12%	12% <sup>5</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The Guatemalan Tax Authorities are reported to have taken aggressive measures in collecting taxes, such as the filing of criminal charges against taxpayers for tax offenses, encourage taxpayers to comply with tax payments and to avoid unintended tax charges.

Decree 18-2017 of the Guatemalan Congress entered into force, simplifying procedures to constitute new entities, increasing competitiveness and facilitating online applications for such activity.

<sup>1</sup> Taxpayers registered under the Regime on Profits from Business Activities are subject to a 25% rate (Section 36 of the Tax Legislation Update, Decree 10-2012 of Guatemalan Congress-TLU).

<sup>2</sup> Taxpayers under the Simplified Optional Regime on revenue from business activities are subject to 5% over the first GTQ30,000 (approximately US\$4,080), and the exceeding amount will be subject to a 7% rate (Section 44 of the TLU).

<sup>3</sup> Pursuant to Section 36 of the Tax Law Update.

<sup>4</sup> Compensation paid to employees is taxed at a 5% rate over the first GTQ300,000 (approximately US\$40,800) of the taxable annual income and a 7% over the exceeding amount (Section 44 of the TLU).

<sup>5</sup> Section 10 of the Value Added Tax Law, Decree 27-92 of Guatemalan Congress.

Decree 37-2016 of the Guatemalan Congress entered into force as of 22 February 2017. The Decree refers, among other things, to the lifting of bank secrecy for administrative audit procedures carried out by the Tax Authorities. Several banking institutions have already adopted measures since November 2017 to comply with the eventual information requirements. The tax authorities have made it public that this will be one of the most important tools for audit processes to be carried out during FY18.

In this regard, it should be considered that on 18 December 2017 the Guatemalan government ratified the Convention on Mutual Administrative Assistance in Tax Matters (MAC) and expects to exchange information with other cooperating jurisdictions. Guatemala has not implemented information mechanisms such as Country-by-Country Reporting CbCR and Common Reporting Standard (CRS); however, the MAC provides the appropriate platform for Guatemala to execute bilateral information exchange treaties.

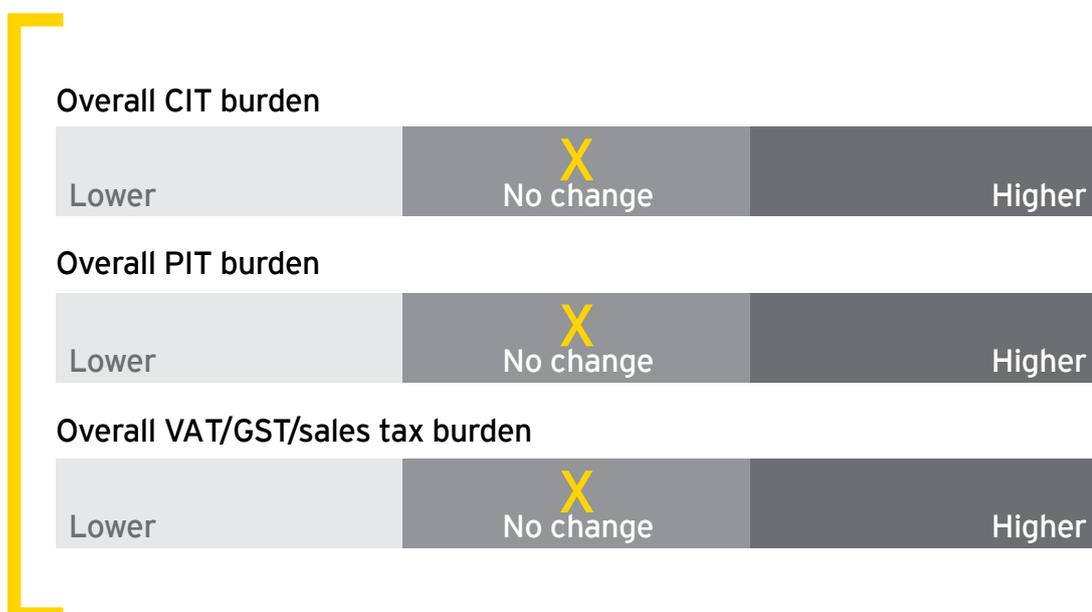
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No significant changes are expected to the corporate income tax regime in 2018. However, the Executive Body has been working on potential tax reforms to increase tax revenue; notwithstanding, such changes are uncertain and could only come into effect if approved before the beginning of 2018, which has not so far occurred.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

See above

#### Indirect taxes

See above

### Taxes on wages and employment

See above

### VAT/GST/sales taxes

See above

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

It is important to indicate that Guatemala is not a member of the OECD.  
Notwithstanding, it should be considered that in 2017, the Convention on Mutual Administrative Assistance in Tax Matters was ratified through the publication of the Decree No. 9-2017 of the Guatemalan Congress. However, as of today it is not clear when the OECD Multilateral Instrument will be ratified.
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No



## 2.6 Political landscape

- ▶ The current Guatemalan Government took office on 14 January 2016. Consequently, several changes in the leadership of the tax authorities occurred during 2016. Driven by the shortage of tax collection and the aggressive measures taken to collect, changes of the personnel of the tax administration may also be expected in 2018.
- ▶ Currently the Tax Authorities are taking very aggressive positions in their audit procedures and interpretations due to several tax fraud scandals in which government officers were prosecuted.

## 2.7 Current tax policy and tax administration leaders

- ▶ Juan Francisco Solórzano Foppa, Superintendent of the Superintendence of Tax Administration (SAT)
- ▶ Abel Francisco Cruz Calderón, Intendent of Collection
- ▶ Werner Florencio Ovalle Ramírez, Intendent of Customs
- ▶ Leonel Augusto Villamar Quiroa, Intendent of Auditing
- ▶ Guisela María Viana Vidal, Intendent of Legal Affairs
- ▶ Jorge Alejandro López Ovando, Intendent of Attention to the Taxpayer
- ▶ Additionally the Board of Directors of the Tax Authorities Directorate is integrated by the following:

- ▶ Julio Héctor Estrada Domínguez
- ▶ Juan Francisco Solórzano Foppa
- ▶ Adriana Estévez Clavería
- ▶ Lionel López
- ▶ Silvia Liliana Castillo Martínez

## 2.8 What key tax policy changes did you experience in your country in 2017?

No key tax policy changes occurred during 2017. As noted, the Executive Body has been working on potential tax reforms to increase tax revenue; notwithstanding, such changes are yet uncertain.

Notwithstanding, it should be considered that in 2017 the Convention on Mutual Administrative Assistance in Tax Matters was ratified through the publication of the Decree No. 9-2017 of the Congress of the Republic.

## 2.9 Pending tax proposals

There are no pending tax proposals in process.

## 2.10 Consultations opened/closed

There are no current open public consultations.

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

- Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2017

The Guatemalan tax administration has taken aggressive measures during the collection of taxes, including the filing of criminal charges against taxpayers for tax offenses, to encourage taxpayers to comply with tax payments and to avoid unintended tax charges.

Regarding VAT refund processes, as the result of a significantly delay to refund processes, the tax authorities developed an alternative approach in 2017. The outcome of this approach was the rejection of many of taxpayer requests for refunds, as government tax auditors took an inflexible position with the documentation of support they required, on occasions requiring information that may not be entirely required by law.

### 3.3 Key risk factors and audit triggers in 2018

1	M&A	Guatemalan entities that conduct merger and acquisition activity will gain visibility with the tax authorities, as certain corporate changes are reported to the Mercantile Registry and then to the tax authority. Additionally, the tax authority may also be informed of changes in the shareholding structure via the transfer pricing annex that is filed with a company's annual income tax return.
2	Tax credit	Refund requests are subject to review and audits performed by tax authorities to determine the source of the tax credit.
3	Recurrent losses	Entities posting losses through continued fiscal years may gain visibility before the tax administration and become subject to potential audits to determine if there was any omitted income.
4	Real property transactions	Real property transactions are reported to different governmental entities, which in turn provide the tax authority with visibility that may trigger audit processes to confirm that the tax obligations have been met and that no simulative and tax free transactions have been implemented to disguise the true nature of real property transactions.
5	Benefits and compensation to employees	Payroll is reported to Guatemala's Social Security organization, which is legally authorized to exchange information with the tax authority to compare and determine the adequate tax and contribution payments.
6	Remittances abroad	Remittances abroad may gain tax authority attention since review of the correct application of the withholding tax rate and the nature of the transaction is a standard procedure, as well as to study the relationship with the deductibility of the expense as a general rule for such purposes.
7	Goodwill amortization	Entities that deduct goodwill amortization are being subject to inquiries regarding the valuation of goodwill registered. The tax authority is requesting documentation to support such valuations, often then proposing adjustments.
8	Acquisition of real property through the purchase of shares	The acquisition of real property through the purchase of shares has become a focus of the tax authority. This has given rise to inquiries on the adequate valuation basis of such shares. The tax authority is expected to review whether adequate tax payments are being made in regard to such transactions.
9	Transactions with related parties abroad - transfer pricing studies and documentation	Guatemalan entities that perform transactions with related parties abroad are required to file an annual transfer pricing informative return, and to prepare transfer pricing studies to support such transactions. The tax authority performs very aggressive audit processes focusing on intercompany transactions, resulting in adjustments that question the correct application of the arm's-length principle based on the comparability analysis performed.  Transfer pricing audits and adjustments are expected to occur during fiscal year 2018.



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

We consider it noteworthy to indicate that the tax authority has been reviewing bank statements from periods that have not reached the statute of limitation, which is four years. On the basis of the Decree 37-2016 of the Guatemalan Congress that entered in force in 2017 and that addresses the next tax issues:

- ▶ Bank secrecy is lifted for administrative audit procedures carried out by the tax authority.
- ▶ Taxpayers are obligated to register in their accounting records all bank accounts and investments, whether made in local or foreign banks.

### 3.5 Tax enforcement developments in 2017

The Guatemalan tax authority is reported to have taken aggressive positions in its audit procedures, law interpretation and in the collection of taxes. They have taken postures such as the filing of criminal charges against taxpayers, to encourage taxpayers to comply with tax payments and to avoid unintended tax charges.

### 3.6 Potential tax enforcement developments in 2018

- ▶ The tax authority is in the process of reviewing and adopting the basic OECD requirements. At present time, no significant changes are expected for 2018.
- ▶ There may be increased focus in 2018 on the audit of taxpayers who perform transactions with entities abroad, sales of properties, and taxpayers subject to perform transfer pricing studies, but there is no confirmation of any specific tax authority programs.
- ▶ There are no new mandatory transparency or disclosure requirements that companies will need to follow in 2018; however, certain changes may be expected upon the implementation of the Convention on Mutual Administrative Assistance in Tax Matters.
- ▶ There is uncertainty on the date that Guatemalan government will be discussing and ratifying any of the BEPS actions.

# Hong Kong

## Tax policy

Becky Lai

beck.la@hk.ey.com

+852 2629 3188

## Tax controversy

Wilson Cheng

wilson.cheng@hk.ey.com

+852 2846 9066

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	16.5%	16.5%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	15% <i>Note: The PIT charge is the lower of: (a) the standard rate of 15% applying to net chargeable income before personal allowances and (b) the progressive rates from 2% to 17% applying to net chargeable income.</i>	15% <i>Note: The PIT charge is the lower of: (a) the standard rate of 15% applying to net chargeable income before personal allowances and (b) the progressive rates from 2% to 17% applying to net chargeable income.</i>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	0%	0%	N/A



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The Chief Executive of HKSAR Government, Carrie Lam, indicated in her recently announced Policy Address that the HKSAR Government will maintain a simple and low tax regime, which is one of the important competitive advantages of Hong Kong.
- ▶ Under the new governance style and the new philosophy in public finance of the current-term administration, two new tax relief measures were proposed, which aim at assisting Hong Kong companies to better capture new business opportunities (please refer to section 2.4 for details).

### 2.2 Tax burdens in 2018

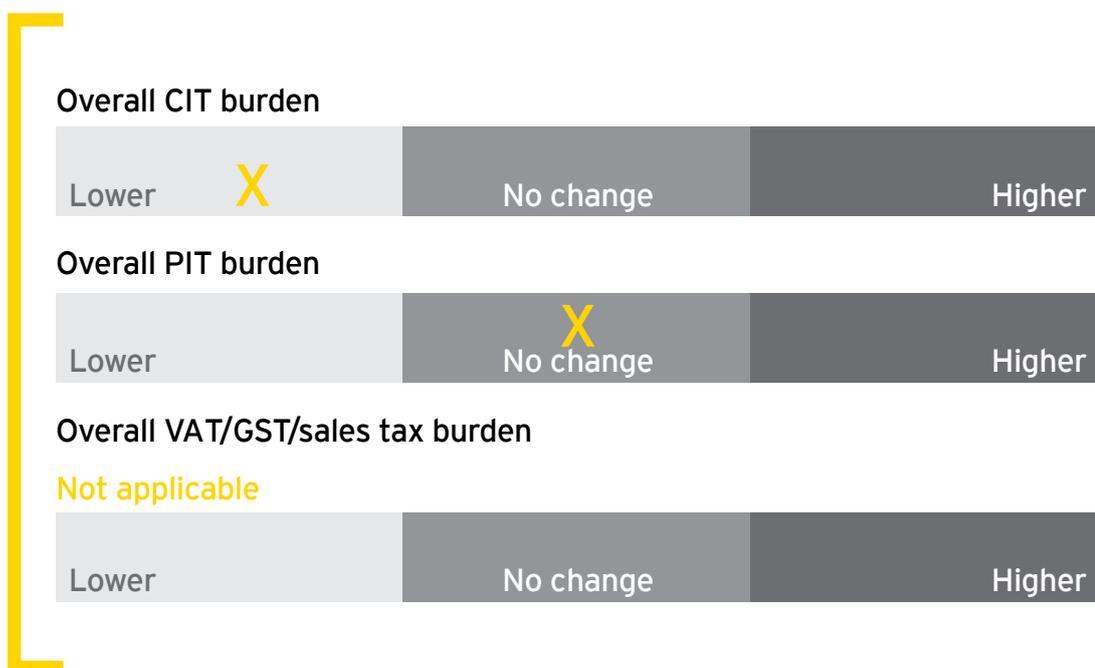
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives – including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ **Two-tier profits tax system:** it is proposed the profits tax rate for the first HK\$2 million (about US \$256,000) of profits of enterprises will be lowered to 8.25%, or half of the standard profits tax rate.
- ▶ Profits above that amount will continue to be subject to the standard tax rate of 16.5%.
- ▶ However, each group of enterprises may only nominate one enterprise to benefit from the lower tax rate.
- ▶ **Super-deductions of qualifying research and development (R&D) expenditures:** it is proposed that the first HK\$2 million eligible R&D expenditure will enjoy a 300% tax deduction, with the remainder at 200%.
- ▶ **Profits tax exemption for resident open-ended fund companies (OFCs):** under a legislative bill being scrutinized by the Legislative Council of Hong Kong, subject to certain safe-harbor rules and anti-avoidance provisions, where an OFC is (i) a resident person with its central management

and control exercised in Hong Kong; (ii) non-closely held as defined; and (iii) only carries out transactions in permissible asset classes through or arranged by specified person, such an OFC would be exempt from tax in Hong Kong in respect of its assessable profits derived from qualifying transactions and transactions incidental thereto.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

- ▶ No changes are expected.

#### Indirect taxes

- ▶ N/A

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

N/A



## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.5 Political landscape

Carrie Lam was elected as Hong Kong's Chief Executive in March 2017 and began her five-year term on 1 July 2017. She promised to set a new, proactive style of governance, as well as a new fiscal philosophy to manage Hong Kong's public finances wisely. As such, it is expected that more tax incentives will be introduced to further enhance the tax competitiveness of Hong Kong.

## 2.6 Current tax policy and tax administration leaders

Tax policy leader: Financial Secretary, Paul Chan Mo-po;

Tax administration leader: Commissioner of Inland Revenue, Wong Kuen-fai

## 2.7 What key tax policy changes did you experience in your country in 2017?

- ▶ Enacted the Inland Revenue (Amendment) (No. 2) Ordinance 2017 to expand the list of reportable jurisdictions under Common Reporting Standard (CRS) from 2 to 75 jurisdictions. The newly added CRS reportable jurisdictions include all EU member states, all of Hong Kong's tax treaty partners which have committed to CRS, and other jurisdictions which have expressed an interest to the OECD in exchanging CRS information with Hong Kong.

- ▶ The aforesaid Ordinance further requires financial institutions in Hong Kong to collate information about relevant account holders from these jurisdictions as from 1 July 2017.

## 2.8 Pending tax proposals

### Open:

- ▶ The Inland Revenue (Amendment) (No. 5) Bill 2017 was introduced on 6 October 2017. The Bill will amend the Inland Revenue Ordinance (IRO) to empower the Chief Executive in Council to give effect to any tax arrangement made by Hong Kong with more than one government of any territory outside Hong Kong, or made by Mainland China and applied to Hong Kong.
- ▶ On 31 July 2017, the Government released its consultation report (Consultation Report) on the measures to implement the base erosion and profit shifting (BEPS) minimum standards into the IRO following its consultation exercise in October to December 2016.
- ▶ The following key changes are expected in 2018:
  - ▶ Codification of transfer pricing rules that cover domestic and cross-border transactions.
  - ▶ Mandatory three-tiered transfer pricing documentation requirements, with some exemptions, and a general approach of following general OECD guidelines.
  - ▶ An advance pricing arrangement regime to include unilateral, bilateral and multilateral APAs.

## 2.9 Consultations opened/closed

N/A



Hong Kong at night

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

The tax authority of Hong Kong has built up a comprehensive and integrated IT infrastructure with different types of computer application systems and platforms.

Assessment process is automated by the "Assess-First-Audit-Later" (AFAL) system. Data in the returns submitted by taxpayers are first input into the AFAL system. The AFAL

system screens out the returns which meet the pre-set criteria for automated assessment. A certain percentage of these automated assessments are then selected based on additional criteria for audit and investigation by assessing officers.

Returns not meeting the pre-set criteria for automated assessment are screened manually by assessing officers to determine whether they should be subject to in-depth examination prior to assessment.

Under the AFAL system, a customized computer-assisted case selection program has been devised. Depending on the facts of each case, cases selected will be allotted to the assessing officers to conduct "desk audit," to the field auditors to conduct "field audit" or to the investigators to conduct an in-depth "investigation." The audit trilogy has enhanced the effectiveness in identifying high-risk cases for audit and investigation.

The AFAL system has been built on an analytical solution adopted by the tax authority of Hong Kong to select cases for post assessment audits and investigations. After providing parameters to chosen criteria via the application interface, the required numbers of cases can be selected online. Additional selection criteria can be added to the case selection functions via the application interface, in response to compliance trends and emerging business practices.



## 3.2 Key risk factors and audit triggers in 2018

### 1 Related party transactions

It is expected that the focus of the tax authority of Hong Kong in 2018 will be related party transactions. As mentioned above, the Government will codify the transfer pricing rules and OECD's three-tiered documentation into the IRO.

The TP documentation requirements will provide the tax authority with more information and facilitate its assessment of whether Hong Kong taxpayers are transacting with their associated entities at arm's length.

## 3.3 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

## 3.4 Tax enforcement developments in 2017

No new changes as regards tax enforcement were implemented in 2017.

## 3.5 Potential tax enforcement developments in 2018

- ▶ As mentioned in section 3.2 above, it is expected that the focus of the tax authority of Hong Kong in 2018 will be related party transactions following the codification of the TP rules in Hong Kong.
- ▶ In addition, where relevant exemption conditions are not satisfied, a taxpayer would have to prepare Master File, a Local File and a Country-by-Country report for related party transactions and the global tax footprint of the group.
- ▶ The codification of TP rules and implementation of TP documentation requirements may increase scrutiny of related party transactions.
- ▶ Furthermore, as a member of the inclusive framework, Hong Kong is committed to implementing the BEPS package, including the four minimum standards (where Action 14 is one of the minimum standards).
- ▶ The Consultation Report indicates that Hong Kong will implement a full-fledged statutory dispute resolution mechanism. However, to keep the legislation simple, only general provisions on the dispute resolution mechanism will be provided in the legislation, with details to be specified in a practice notes.

# India

## Tax policy

**Ganesh Raj**  
ganesh.raj@in.ey.com  
+91 120 6717110

## Tax controversy

**Rajan Vora**  
rajan.vora@in.ey.com  
+91 226 192 0440

EY key contacts

# 1 | Tax rates (2017-18)

## 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	<ul style="list-style-type: none"> <li>▶ Domestic Company               <ul style="list-style-type: none"> <li>▶ Where Total turnover or gross receipts in FY 2015-16 ≤ 500 million                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million - <b>27.55%</b></li> <li>▶ Income &gt; 100 million- <b>28.84%</b></li> </ul> </li> <li>▶ Optional tax rate for new manufacturing companies set up/ registered on or after 1 March 2016 (s.115BA)                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million - <b>27.55%</b></li> <li>▶ Income &gt; 100 million- <b>28.84%</b></li> </ul> </li> <li>▶ Other companies                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million - <b>33.06%</b></li> <li>▶ Income &gt; 100 million- <b>34.61%</b></li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ Domestic Company               <ul style="list-style-type: none"> <li>▶ Where Total turnover or gross receipts in FY 2016-17 ≤ 2500 million                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million- <b>27.82%</b></li> <li>▶ Income &gt; 100 million- <b>29.12%</b></li> </ul> </li> <li>▶ Optional tax rate for new manufacturing companies set up/ registered on or after 1 March 2016 (s.115BA)                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million - <b>27.82%</b></li> <li>▶ Income &gt; 100 million- <b>29.12%</b></li> </ul> </li> <li>▶ Other companies                   <ul style="list-style-type: none"> <li>▶ Income &gt; 10 million, but &lt;100 million - <b>33.38%</b></li> <li>▶ Income &gt; 100 million- <b>34.94%</b><sup>1</sup></li> </ul> </li> </ul> </li> </ul>	1.0%

<sup>1</sup> Education cess/ Secondary Education Cess of 3% replaced by Health and Education cess to be levied at the rate of 4%



	2017	2018	Percentage change
Top personal income tax (PIT) rate (national and local average if applicable)	<ul style="list-style-type: none"> <li>▶ Upto INR. 250000- Nil</li> <li>▶ INR 250,001- 500,000- <b>5%</b></li> <li>▶ INR. 500,001- 1,000,000- <b>20%</b></li> <li>▶ Above 1,000,000- <b>30%</b></li> </ul>	<ul style="list-style-type: none"> <li>▶ Upto INR. 250000- Nil</li> <li>▶ INR 250,001- 500,000- <b>5%</b></li> <li>▶ INR. 500,001- 1,000,000- <b>20%</b></li> <li>▶ Above 1,000,000- <b>30%</b></li> </ul>	No change in tax rate. However, Education cess/ Secondary Education Cess of 3% replaced by Health and Education cess to be levied at the rate of <b>4%</b>
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	<p>GST Rates of 5, 12, 18 &amp; 28% are applicable to bulk of Goods and Services</p> <p>Exports are zero rated</p> <p>A special rate for 3% for Gold, gold jewellery, precious stones and precious metals</p>	<p>GST Rates of 5, 12, 18 &amp; 28% are applicable to bulk of Goods and Services</p> <p>Exports are zero rated</p> <p>A special rate for 3% for Gold, gold jewellery, precious stones and precious metals</p>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The key drivers of tax policy are:

- ▶ Stimulating of economic growth
- ▶ Incentivizing micro, small and medium entrepreneurs
- ▶ Promoting post-harvest activities of agriculture
- ▶ Encouraging creation of new employment
- ▶ Making India's taxation rates more reasonable, particularly for SMEs
- ▶ Making tax administration simpler and fairer
- ▶ Expansion of the tax base
- ▶ Providing relief to middle- and low-income taxpayers
- ▶ Focusing on affordable housing
- ▶ Strengthening infrastructure
- ▶ Curbing "black money"
- ▶ Promoting the digital economy

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 <sup>2</sup>
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <sup>3</sup> <input type="checkbox"/> Increased burden in 2018

<sup>2</sup> The Headline CIT remains unchanged at 30%. However, there is an increased burden due to replacement of Education Cess/Secondary Education Cess at 3% by Health and Education Cess ("HEC") which is to be levied at 4%.

<sup>3</sup> Finance Bill 2018 has introduced provisions for inclusion of Significant Economic Presence ("SEP") within the scope of "Business Connection" under the Income Tax Act ("ITA") with the aim of bringing income arising from purposeful and sustained interaction of an enterprise with the economy of a country via technology and other automated tools under the tax net. The amendment will take effect from 1 April 2019 and shall apply in relation to assessment year 2019-2020 and subsequent assessment years.



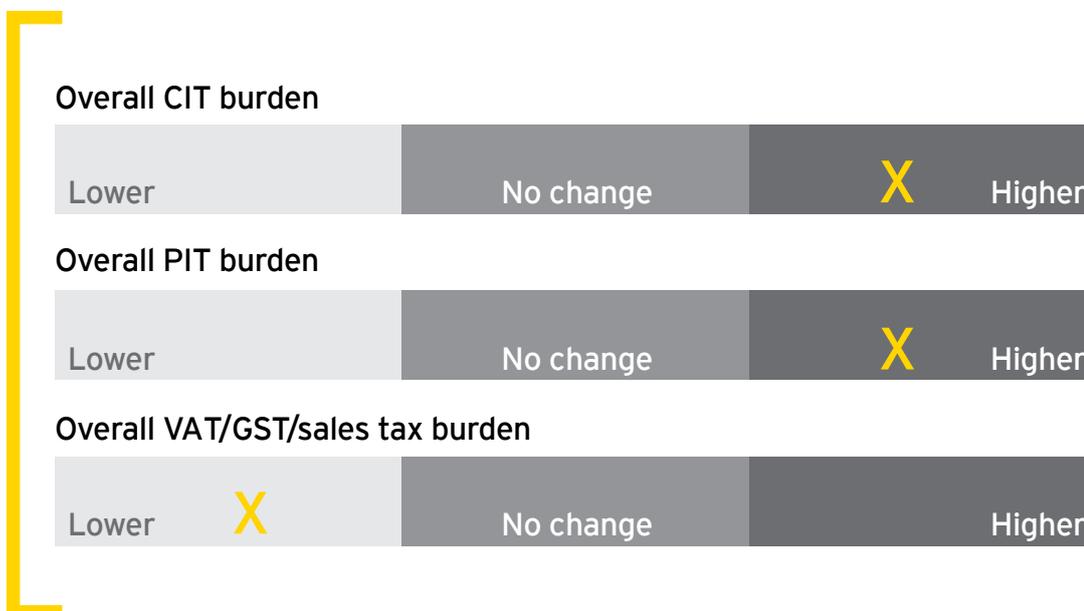
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <sup>4</sup> <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

<sup>4</sup> Relating to expenditure on scientific research u/s 35(2AA), 35(2AB) and 35(1)(ii) of ITA, the weighted deduction of expenditure is reduced from 200% to 150% effective from 1 April 2017 and will remain unchanged until 31 March 2020. However, the deduction shall be restricted to 100% from 1 April 2020 onwards.

Under section 35(1)(iia) and 35(1)(iii), the deduction is reduced from 125% to 100% effective from 1 April 2017 and onwards.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 <sup>5</sup>
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



<sup>5</sup> The Headline PIT remains unchanged. However, there is a marginal increase in the tax burden of the taxpayer in 2018 due to replacement of Education Cess/ Secondary Education Cess of 3% by Health and Education Cess (“HEC”) which is to be levied at the rate of 4%.



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

The Government has been following a policy of lowering the overall corporate tax burden along with phasing out incentives. In Budget 2018 the headline CIT has been reduced to 25% from 30% for select companies. In the case of domestic companies, the CIT rate shall be 25% of the total income if the turnover or gross receipts of the previous year 2016-17 does not exceed 2500 million. In all other cases, the rate of income tax remains at 30% of the total Income.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

India introduced an equalization levy in 2016 - A levy of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment (PE) in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

India may not look at immediate expansion of this levy.

#### “Business Connection” to include “ Significant Economic Presence”

Finance Bill 2018 introduces provisions for inclusion of Significant Economic Presence within the scope of “Business Connection” under the Income Tax Act. The objective is to address the direct tax challenges arising in digital businesses and to provide purposeful and sustained interaction of an enterprise with the economy of a country via technology and other automated tools to create taxable presence. The amendment will take effect from 1 April 2019 and shall apply in relation to assessment year 2019-2020 and subsequent assessment years.

For this purpose, Significant Economic Presence shall mean:

- ▶ Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transactions or transactions during the previous year exceeds the amount as may be prescribed

- ▶ Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means

### Indirect taxes

India is one of the most comprehensively taxed jurisdictions so far as indirect taxes on digital activities is concerned. All digital activities are subject to 18% GST. It is anticipated that there may be more rules in the future that will cover newer types of digital transactions.

### Taxes on wages and employment

The Government has been following a policy of imposing a higher tax burden on high-net-worth individuals, while providing a respite to middle- and lower-income taxpayers.

In Budget 2018, a marginal incentive has been provided to small and middle class wage earners by way of standard deduction of INR40,000 in lieu of existing deduction of INR15,000 for medical reimbursement and INR19,200 for transportation costs.

### VAT/GST/sales taxes

The center and state Governments have collectively decided the GST base and rates. It is expected that in 2018, the GST base will be further broadened to include some petroleum products and possibly real estate. Rates may see a further rationalization in terms of fewer number of rates. The current focus of the Government is to stabilize the implementation and procedural aspects of the GST.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

- ▶ Bhartiya Janta Party (BJP), the ruling party Government was re-elected in Gujarat.
- ▶ BJP won the elections in Himachal Pradesh and Assam and ousted the opposition.
- ▶ General elections are due to be held in 2019.
- ▶ Upcoming elections in northeastern States of Meghalaya and Nagaland in February-March 2018.
- ▶ The overall perception is that with the upcoming elections, the Government may adopt a softer tax policy approach.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Arun Jaitley, Finance Minister
- ▶ Santosh Kumar Gangwar, Minister of State for Finance
- ▶ Arjun Ram Meghwal, Minister of State for Finance
- ▶ Hasmukh Adhia, Finance and Revenue Secretary
- ▶ Arvind Subramanian, Chief Economic Adviser

### Tax administration leaders

- ▶ Sushil Chandra, Chairman, Central Board of Direct Taxes (CBDT)
- ▶ Vanaja N. Sarna, Chairperson, Central Board of Excise and Customs (CBEC)
- ▶ Arbind Modi, Member (Legislation), Central Board of Direct Taxes (CBDT)

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ GST was implemented from July 2017.
- ▶ Personal income tax was reduced by 5% for the lowest slab.
- ▶ International Tax perspective: The following changes were announced for 2017 in the budget presented in February 2017.
  - ▶ Indirect transfer provisions would not apply on transfer of investment by a non-resident in a Foreign Institutional Investor upon satisfaction of specified conditions.

- ▶ Restriction on interest expense claimed by an Indian entity of 30% of its EBITDA on related party borrowings, subject to a minimum threshold of INR10m interest expense.
- ▶ Concessional withholding tax rates for interest on RDB and ECB to be available for borrowings till 30 June 2020.
- ▶ Terms not defined under domestic laws or in a tax treaty to be clarified by the Government.
- ▶ Foreign tax credit in relation to disputed amounts to be available on settlement of dispute.
- ▶ Transfer pricing perspective
  - ▶ Applicability of domestic TP will now be restricted only to related party transactions where one of the entities involved enjoys tax holiday whereas under the existing law, payment made to related parties is also subject to this compliance requirement.
  - ▶ Secondary adjustments in certain cases shall now be applicable.
    - ▶ A primary TP adjustment to a taxpayer's income in certain situations would trigger a secondary adjustment (i.e., an adjustment in the books of accounts to reflect the actual allocation of profits in line with the primary TP adjustment.
    - ▶ The primary adjustment if not repatriated to India within the time as may be prescribed, shall now be deemed to be an advance made by the taxpayer to such affiliate and the interest on such advance shall be computed as the income of the taxpayer in a manner that would be prescribed.
  - ▶ Limiting base erosion involving interest deductions
    - ▶ Interest expenses claimed by an Indian entity from the related party borrowings or borrowings guaranteed by a related party shall now be restricted to the lower of the following: (a) total interest of 30% of the EBITDA and (b) interest paid/payable to the related party.

## 2.9 Pending tax proposals

None

## 2.10 Consultations opened/closed

**Task force on direct taxes law:** The Government has constituted a task force with the objective of drafting a new direct taxes law to replace the existing income tax act. The Government intends to focus on a simple and clean legislative package that will keep in mind international leading practices as well as the economic needs of the country.



## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches**
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening / using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

- ▶ The Government is encouraging electronic compliance, return filing and most returns are now filed electronically. The audit system is also migrating from manual to electronic and the Indian system is also moving towards virtual audits of returns.
- ▶ The Government is making significant efforts in the directions of reducing litigation.
- ▶ Significant efforts are being made for simplification of the tax laws and ensuring non-adversarial taxation regime for the assessees.
- ▶ Various circulars/clarifications are being issued to the assessee to provide more clarity to the taxpayer.
- ▶ New laws/rules are enacted with prior consultation with the stakeholders
- ▶ The Government is also exploring the possibility of implementing faceless and nameless electronic audit.

### 3.3 Key risk factors and audit triggers in 2018

1	High refund cases	In 2018, the Government is likely to focus on cases where the refund claimed is very high as compared to the total tax payable by the assessee.
2	Issue of shares at a premium	Issuance of shares at a premium.
3	Steps against "black money"	The Government will also focus on shell companies in order to identify "black money" flows.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

Please see section 3.2

### 3.6 Potential tax enforcement developments in 2018

The Government has set up a new task force to re-draft the tax law. The new legislation will be drafted keeping in mind the direct tax system in other countries, international leading practices and the economic needs of the country.

# Indonesia

## Tax policy and controversy

Yudie Paimanta

yudie.paimanta@id.ey.com

+62 21 5289 5585

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25% <sup>1</sup>	25% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	30% <sup>2</sup>	30% <sup>2</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	10% for domestic deliveries and 0% for export of goods and for export of certain services <sup>3</sup>	10% for domestic deliveries and 0% for export of goods and for export of certain services <sup>3</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The following issues are currently viewed as key drivers in relation to tax policy in Indonesia:

- ▶ Increment of Tax Revenue Budget in 2018 compare to 2017
- ▶ Improvement of tax ratio by expanding tax base
- ▶ Being more competitive in terms of attracting foreign investment

<sup>1</sup> Article 17 (2a) of Indonesian Income Tax Law Number 36 Year 2008.

<sup>2</sup> Article 17 (1a) of Indonesian Income Tax Law Number 36 Year 2008.

<sup>3</sup> Article 7 of Indonesian Value Added Taxes Law Number 42 Year 2009.



- ▶ Demand for a new taxation system that can provide justice and legal certainty to support development
- ▶ Transparency in the global financial system and intensified exchange of information that has made it difficult for taxpayers to hide their assets overseas
- ▶ The development of business sector and economy, for example digital economy

## 2.2 Tax burdens in 2018

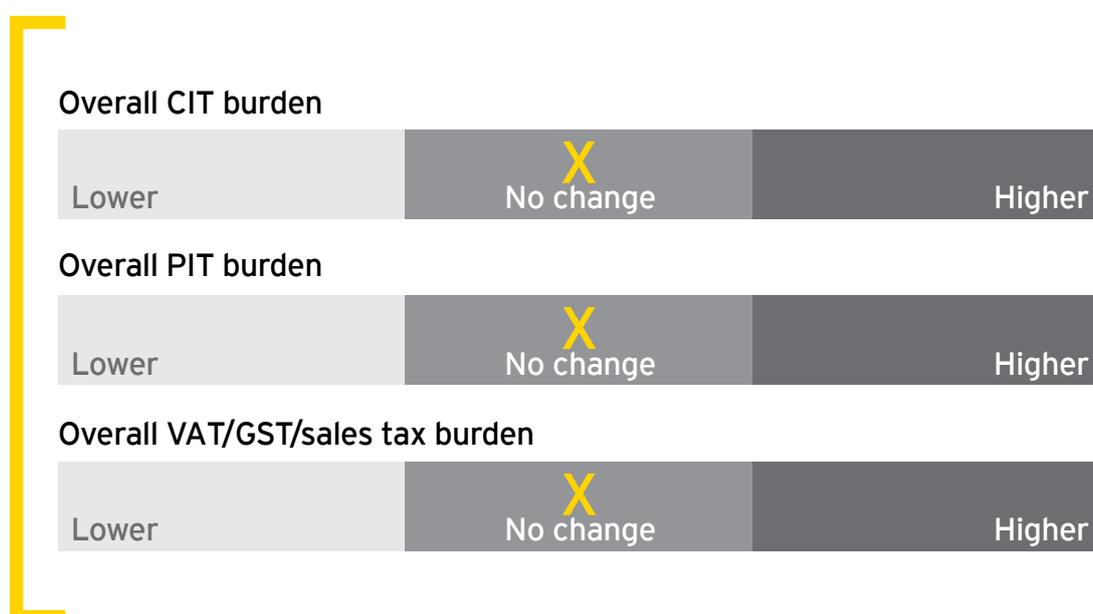
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No significant changes are forecast for 2018.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

On 21 July 2017, the president of Indonesia issued Presidential Regulation Number 74 Year 2017 regarding a Road Map for E-Commerce in Years 2017-2019. This presidential regulation was issued with the consideration that the digital economy has high economic potential for Indonesia and is one of the backbones of the national economy. Effective taxation of digital is one of the key strategic issues to support the development of e-commerce in Indonesia. Road Map 2017-2019 as intended includes the following programs:

- ▶ Funding
- ▶ Taxation
- ▶ Consumer protection
- ▶ Education and human resources
- ▶ Communications infrastructure
- ▶ Logistics
- ▶ Cyber security
- ▶ Establishment of Implementing Management of Road Map 2017-2019

The taxation regulation regarding e-commerce has not yet been issued.

#### Indirect taxes

See above

### Taxes on wages and employment

No significant changes are forecast for 2018.

### VAT/GST/sales taxes

No significant changes are forecast for 2018.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

In 2018, Indonesia will have to prepare for the next Presidential election in 2019. Politically, it may have impacts on Indonesian tax policy.

On 30 November 2017 the New Director General of Taxes (DGT) was inaugurated, replacing the previous DGT, who retired. This personnel replacement may also influence tax policy in Indonesia.

## 2.7 Current tax policy and tax administration leaders

Director General of Taxes: Robert Pakpahan

## 2.8 What key tax policy changes did you experience in your country in 2017?

### Financial Information Access for Tax Purposes

The Indonesian Government has issued PERPU-1/2017, which allows the DGT to access information from financial institutions as well as to fulfill Indonesia's commitment to the automatic exchange of information.

### The new Indonesian CFC rule

New regulations were issued, repealing the previous rules. The approach differs from the BEPS Action 3 recommendations, deeming dividends received by an Indonesian taxpayer with direct or indirect shareholdings overseas. The rules are broadly drafted and will present a challenge for Indonesian outbound groups.

**New Indonesia Anti-Treaty Abuse Rules**

On 19 June 2017, the DGT issued regulation No. PER-10/PJ/2017 ("PER-10") revising the anti-tax treaty abuse rules. The regulation became effective on 1 August 2017. This regulation revokes the regulations first issued in 2009, and is of importance to any non-Indonesian resident entities receiving income from Indonesia. The new regulation sets out tests and administrative criteria to be fulfilled by nonresidents. Failure to comply with the conditions means that an Indonesian withholding tax of 20% will apply.

**Implementation Regulation on DER**

Recently the DGT also issued the implementation regulation on DER. The regulation includes:

- ▶ A foreign loan reporting form
- ▶ A template for calculation of the allowable interest expense, which should be attached in the CIT return

This regulation also regulates that the nondeductible interest on loans from related parties is treated as a disguised dividend, with WHT applied.

**MLI signed - BEPS Action 15**

Indonesia has indicated relatively few reservations but opted out of the prescriptive MAP commitments in Article 16 of MLI and chooses not to submit to binding arbitration procedures.

**Transfer pricing and CbCR - BEPS Action 13**

A three-tier approach is now in effect (master file, local file and CbCR as of FY16). Significant uncertainties remain with respect to precise CbCR requirements, and there are substantial differences from the OECD standard approach.

**Broadening of tax subject definition (proposed)**

This measure, while still under consideration, would create a domestic PE definition to capture offshore entities with significant sales and activity in Indonesia. This is likely aimed at direct online sales from offshore into Indonesia. Interaction with treaty provisions is unclear.

**2.9 Pending tax proposals****Open:**

There is a draft of New Law on General Rules and Provisions of Taxation (known as the KUP Law). The objectives of this new draft are as follows:

- ▶ To strengthen the self-assessment system
- ▶ To organize tax administration in simple, easy and efficient manner
- ▶ To adapt to the development of information technology, and communications
- ▶ To create fairer penalties
- ▶ To provide for a supervisory system based on third party data
- ▶ To strengthen supervisory and law enforcement functions
- ▶ To realize justice, benefit and legal certainty
- ▶ To increase taxpayer compliance

Based on this new draft, the implementation of the self-assessment system will be carried out via electronic means - e-registration, e-tax payment, e-filing, e-tax invoice, e-audit.

This law is expected to be passed in 2018.

**Closed:**

None

**2.10 Consultations opened/closed**

Not applicable

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2017

The Indonesian Government has issued Government Regulation Number 36 Year 2017 (GR-36) as a further implementation of the Tax Amnesty Law. This regulation provides a rule on the tax imposition on certain “additional” net assets which are deemed to have not been properly disclosed/managed pursuant to the Tax Amnesty program, and which therefore will be treated as income subject to final tax.

The issuance of this GR became the reference of how tax law enforcement should be enforced for those who participated or did not join the tax amnesty program which ended on 31 March 2017.

### 3.3 Key risk factors and audit triggers in 2018

1	Taxpayer applies for a refund of tax overpayment.	Upon the application for a refund of tax overpayment, an automatic tax audit is triggered. The focus of the tax authorities is to determine whether the refund claim is valid or not, in accordance with the prevailing tax regulation. For corporate income tax refunds, the tax authorities intend to focus more closely on transfer pricing issues. For 2018 and onward, it may also focus on the DER.
2	Taxpayer was given an preliminary refund of tax advantages.	A tax audit may be conducted subsequent to the preliminary tax refund. The tax authorities wish to be certain that the preliminary refund which has been given is valid in accordance with the prevailing tax regulations. If an underpayment tax assessment is issued, a 100% penalty applies.
3	Loss carryforward offset against taxable income of subsequent year	The focus of the tax authorities is to determine whether the loss claimed by a company is valid or not in accordance with the prevailing tax regulations. The tax authorities intend to understand the cause of a loss by a company, and will also focus on transfer pricing issues and the DER.
4	Merger, consolidation, division, liquidation, dissolution or leaving Indonesia for indefinite time	The tax authorities intend to audit corporate restructurings, and also mergers and acquisitions, especially where there was no tax imposed on capital gains.
5	Taxpayer changes its financial year.	Tax authorities will check the tax compliance of the taxpayer before its financial year is permitted to be changed.



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

See Section 3.2.

### 3.6 Potential tax enforcement developments in 2018

#### **Enforcement on the tax payment obligation on the objection and appeal processes**

Currently, a taxpayer is only obliged to pay a minimal amount of tax that has been accepted during the closing conference in the tax audit process and the full amount that has not yet been accepted by taxpayer does not become outstanding immediately. In accordance to the draft of the new KUP Law, the objection and appeal processes will not delay the tax payment obligation and the outstanding tax arises at the issuance of the tax assessment and the collection process is started immediately.

# Italy

## Tax policy and controversy

Maria Antonietta Biscozzi

maria-antonietta.biscozzi@it.ey.com

+39 02 851 4312

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	24% (except for banks and other financial entities)	24% (except for banks and other financial entities subject to higher tax rates). According to 2018 Budget Law, as from 2018, the investment companies (SIM) are no longer subject to higher 3.5% tax rate.	0%
Top personal income tax (PIT) rate (national and local average if applicable)	43%, depending on the amount of income declared  At the local level, a surcharge is levied; the rate ranges between 0.7% and 3.33% depending on (i) the municipality where the taxpayer is resident and (ii) the amounting of income declared.	43%, depending on the amount of income declared  At the local level, a surcharge is levied; the rate ranges between 0.7% and 3.33% depending on (i) the municipality where the taxpayer is resident and (ii) the amounting of income declared.	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	22%	22%	0%



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The government's tax policy agenda is being driven by the following issues:

- ▶ Providing incentives for cooperation between Italy and other countries, via the signing of several tax treaties in the last two years (i.e., L. 4 May 2016, n.69 to ratify the agreement with Switzerland; L. 16 May 2017, n.78 to ratify the agreement with Romania, and L. 3 November 2016, n. 212 to ratify the agreement with Chile).
- ▶ Building a cooperative relationship with taxpayers by introducing the following regimes:
  - ▶ A cooperative compliance regime based on the tax control framework guidelines set by the Organisation for Economic Co-operation and Development. Italy's regime aims to provide large business taxpayers with (i) less invasive tax assessments, (ii) a more favorable tax penalty treatment, (iii) a quicker reply to a ruling request, and (iv) an exemption from the filing of guarantees for tax refund purposes. The regime gives the tax authority the opportunity to gain further insight into a taxpayer's core business, which in turn enables the tax authority to better focus its audit and assessment activities. Taxpayers that want to participate in the cooperative compliance regime must fulfill the following obligations:
    - ▶ Implement an effective tax control framework for detecting, measuring, managing and controlling tax risk
    - ▶ Maintain a cooperative and transparent approach with the tax administration by keeping the latter informed on tax risks and any operations that might amount to aggressive tax planning
  - ▶ Advance tax agreements for companies with international operations, under which the Italian tax authority and taxpayer agree on (i) the arm's-length value for transfer pricing purposes, exit and entry tax issues and costs incurred with black-list suppliers; (ii) the losses and profit to be attributed to an Italian/foreign permanent establishment (PE); (iii) the existence of an Italian PE; and (iv) the applicability of tax treaties in relation to the treatment of dividends, interest and royalties.
- ▶ Providing incentives to invest in Italy through the introduction of the branch exemption regime (BEX) and advance tax rulings on new investments. BEX, which took effect 1 January 2016, allows Italian taxpayers to elect an exemption of the profits and losses pertaining to their foreign PEs (it serves as an alternative mechanism to the foreign tax credit method). The option is irrevocable and applies to all existing and newly constituted foreign PEs of the Italian head office ("all-in, all-out").
- ▶ The advance tax rulings enable individuals, companies and entities, both resident and nonresident (regardless of whether they have an Italian PE), to obtain a preventive opinion from the Italian Revenue Agency regarding the tax treatment applicable to their proposed business plans and related extraordinary operations. The main objective is to give more certainty on determining tax burdens connected to relevant investments in Italy.
- ▶ Qualifying investments must: (i) be carried out in Italy; (ii) have a significant and long-lasting impact on employment levels; and (iii) be worth at least €30 million.
- ▶ Addressing the taxation of e-commerce activities, through the introduction of a web tax and a review of the definition of a PE. Both measures are part of the 2018 Budget Law.

## 2.2 Tax burdens in 2018

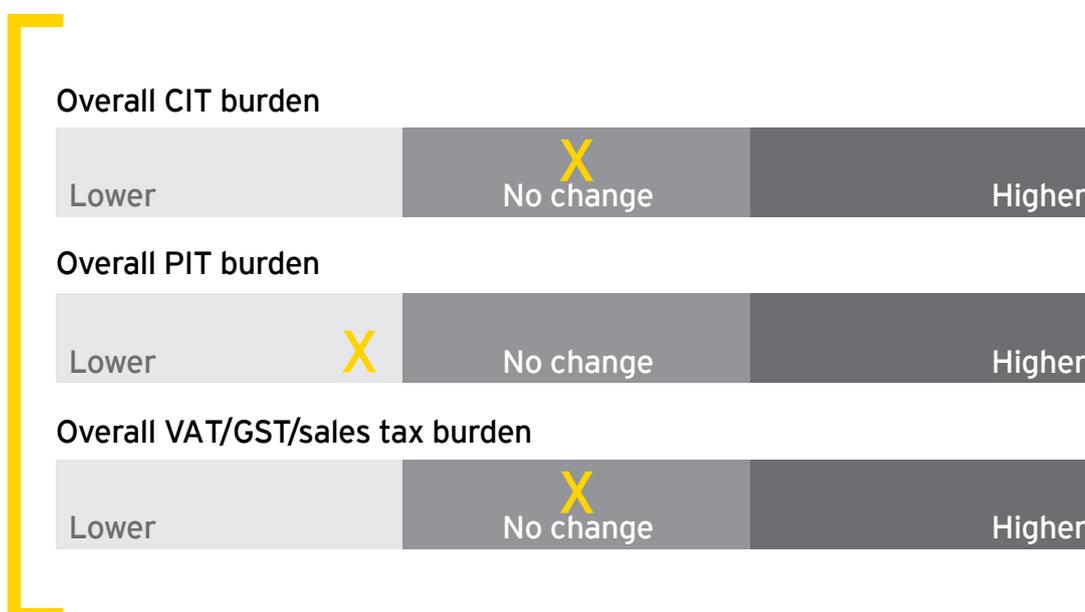
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary





## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No substantial changes in the computation of the CIT (known in Italy as imposta sul reddito sulle società, or IRES) were introduced in 2017 for the 2018 financial year (FY).

However, the following measures were adopted or extended for the 2018 FY:

- ▶ As part of Italy's national plan for industry (Industria 4.0), the Government has introduced a number of incentives to boost investments in the innovative technology field, including:
  - ▶ Hyper depreciation: this measure provides a 250% amortization rate on the purchase or leasing of new tangible assets, devices and technologies that promote "progress 4.0."
  - ▶ Super depreciation: this measure provides a 140% amortization rate on the purchase and leasing of new instrumental assets (thus, it may apply outside the Industria 4.0 framework). According to Budget Law 2018, which was passed on 23 December 2017, for 2018 the measure will provide a 130% rate.
  - ▶ R&D tax credit: under Budget Law 2017, this measure was extended up to FY 2020, allowing Italian taxpayers investing in R&D activities to benefit from a tax credit to offset tax liabilities and amounting to 50% of the annual increase of the average R&D expenses.
  - ▶ The 2018 Budget Law introduces a tax credit of 40% for Industria 4.0 training expenses (for big data application, data analysis, cyber security, etc.).
- ▶ Reduction of the notional interest deduction (NID): the NID rate was reduced to 1.6% for FY 2017 and to 1.5% for FY 2018.
- ▶ Tax credit for investment in publicity: effective 1 January 2018, companies that advertise their own business in newspapers, periodicals, radio and television may obtain a tax credit for some advertisement expenses, if their advertising budget for 2018 is increased by a minimum of 1% over the previous year. The credit is equal to 75% of the increased value.

### Taxes on digital activity

The Italian 2018 Budget Law introduces a new "Tax on digital transactions" ("Web Tax" or "Tax"), which should enter into force 1 January 2019. The current version of Web Tax has been significantly amended compared to the initial draft law (the Draft), and a new definition of PE partially in line with

BEPS Action 7. According to the final version of the Law, the Web Tax is:

- ▶ Levied at a 3% rate on the value of each digital transaction, net of VAT, and regardless of where the transaction is concluded
- ▶ Due by residents and nonresidents entities rendering more than 3,000 digital business to Italian withholding tax agent or to Italian PE in a calendar year. B2C transactions, transactions rendered towards foreign clients and certain transactions rendered to small entrepreneurs are not interested by the new tax;
- ▶ Not creditable from the Italian income tax
- ▶ Settled by the buyers of the services

The Web Tax is applied in relation to the "Services carried out through electronic means". They should be those supplied through the internet or an electronic network, the nature of which makes the performance completely automatic, with minimum human intervention and for which the information technology component is essential. The aforementioned services are to be identified by a specific Decree to be issued by the Minister of the Economy and Finance at a later date (the Law refers to 30 April 2018).

The PE investigation for significant nonresident digital suppliers included in the Draft has been removed from the final version of the Law. The Tax would apply at a 3% rate on the amount of the consideration paid in exchange for the performance of the above services, net of value-added tax, and regardless of where the transaction is concluded. The Web Tax should be applicable starting from 1 January 2019.

#### *The amended domestic definition of PE*

The Law also replaces the domestic definition of PE with the one provided by BEPS Action 7 adding of a new example in the defined list of paragraph 2. Under the new provision, a significant and continuous economic presence in the territory of the State set up in a way that it does not result in a substantial physical presence in the same territory may constitute a PE. This implies the possibility of a PE presence even in the case where a company does not have a physical presence in the Italian territory to the extent other factors may indicate a significant presence.

Also the "negative list," concerning the cases where a fixed place does not constitute a PE, has been amended to reflect the OECD language, setting forth that the exceptions to PE status will apply only provided that the activities carried out by the foreign company are preparatory or auxiliary in relation to the business as a whole (i.e., where more auxiliary activities are carried out, their combination has to continue to be qualified as auxiliary).

Anti-fragmentation rules have been included to prevent the foreign company from splitting up the business into smaller units or using other subsidiary/related companies to benefit from the preparatory or auxiliary exception. All of the activities of the related parties are aggregated in determining whether they are preparatory or auxiliary.

Lastly, the “dependent agent” and “independent agent” concepts have been amended. The first one has been broadened to provide that a PE will be deemed to exist if the agent (i) habitually concludes or is involved in the conclusion of contracts on behalf of the foreign company that are routinely approved by the foreign company without material changes; and (ii) the contracts are in the name of the foreign company or involve the sale or the transfer of the right to use goods owned by the foreign company or the provision of services by the foreign company. The existence of a PE is excluded where the activities carried out by the dependent agent may be deemed as auxiliary.

The “independent agent” (i.e., the case where a PE does not occur) may be not deemed as existent where, notwithstanding the agents act within its ordinary business, he operates exclusively or almost exclusively for one or more related parties. A foreign company and the independent agent are considered related parties for these purposes, if one controls the other of if they are under the common (direct or indirect) control of a third entity based on the specific facts and circumstances. Control is deemed to exist where one party owns more than 50% of the voting or economic rights in the other.

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

- ▶ The Financial Law extended the application of the split payment mechanism to all companies controlled by public bodies, effective from 1 January 2018 with reference to transactions for which an invoice is issued from that date.
- ▶ The 2018 Budget Law eliminated the increase of the standard VAT rate (currently 22%) and the reduced rate (currently 10%) setting forth possible increase in the FYs following 2018.

- ▶ VAT Group: to simplify the application of VAT rules for company groups and to reduce fiscal burdens, special VAT grouping rules have been introduced, with effect from FY 2018.

Under the application of this regime, the group itself will be considered to be a single VAT taxable person, so that (i) transactions carried out between the companies of the group will not be subject to VAT; and (ii) transactions carried out between a group member and a third party will be treated as being made by the group as an entity.

The option is available to companies subject to a common control, through a direct or indirect participation granting 50% or more of voting rights. The companies must also perform the same core business and economic activities, and there must be coordination between the decision-making bodies of the entities involved.

Once the election for this regime has been made, all entities that meet the requirements must adhere to the group (i.e., all-in/all-out).

- ▶ Under the 2018 Budget Law:
  - ▶ From 1 July 2018, e-invoicing will become mandatory for business-to-business (B2B) supplies of gasoline or diesel fuel intended for use as motor fuel, and for services rendered by subcontractors under a contract with public bodies.
  - ▶ From 2019, e-invoicing will be mandatory for all B2B transactions among VAT subjects established in Italy.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The general election is due to be held on 4 March 2018.

As noted above, Italy has launched a cooperative compliance regime that seeks to enhance the relationship between the tax authority and large taxpayers through dialogue and cooperation, with the goal of reducing tax uncertainty when planning investments in Italy. The introduction of this regime and other measures, such as BEX and advance tax rulings on new investments, will enable foreign and Italian investors that want to promote new economic activities within the Italian territory to benefit from higher levels of legal certainty and lower levels of taxation.

## 2.7 Current tax policy and tax administration leaders

### Tax policy

- ▶ Paolo Gentiloni, Prime Minister
- ▶ Pier Carlo Padoan, Minister of Economy and Finance

### Tax administration

- ▶ Ernesto Maria Ruffini, Head of the Italian Revenue Agency

In light of the next general election, which is due to be held as early as 4 March 2018, it is likely that the current tax administration leaders will be replaced.

## 2.8 What key tax policy changes did you experience in your country in 2017?

**Action 15:** on 7 June 2017, Italy signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI). At the time of signature, Italy submitted a list of 84 bilateral tax treaties potentially affected by the MLI, as well as a provisional list of MLI positions. The content of Italy's definitive MLI positions will be provided upon the deposit of the instrument of ratification, acceptance or approval of the MLI.

**Action 8, 9 and 10:** in April 2017, several amendments were made to Italy's transfer pricing law. Those measures:

- ▶ Provided for corresponding adjustments. Subject to the adoption of an execution decree, from 1 January 2017 Italian taxpayers may obtain a corresponding downward in the following cases:
  - (i) A mutual agreement procedure (MAP) is concluded under the EU Arbitration Convention or an applicable double tax treaty
  - (ii) Upon the conclusion of a joint and agreed audit conducted by the tax authorities of the relevant countries; or
  - (iii) At the request of a taxpayer filed with the Italian tax authorities, as long as the corresponding adjustment carried out by an Italian company is related to a transfer pricing upward adjustment that occurred in a foreign country which has in force a double tax treaty with Italy and allows an adequate exchange of information
- ▶ Replaced the concept of "normal value" with specific reference to the arm's-length principle
- ▶ Excluded trademarks from the scope of the patent box regime

### Action 13:

- ▶ On 28 August 2017, the Italian tax authorities published a regulation containing measures to implement the BEX regime.
- ▶ On 8 March 2017, the Italian Ministry of Finance issued a decree providing detailed information regarding the application of country-by-country reporting rules.

## 2.9 Pending tax proposals

The 2018 Budget Law attributes to Italian tax authorities the power to adopt all the measures to speed up and conclude within next 2022 all pending MAP cases, discuss all advance tax agreements for companies with international activity and all patent box requests.

## 2.10 Consultations opened/closed

N/A

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

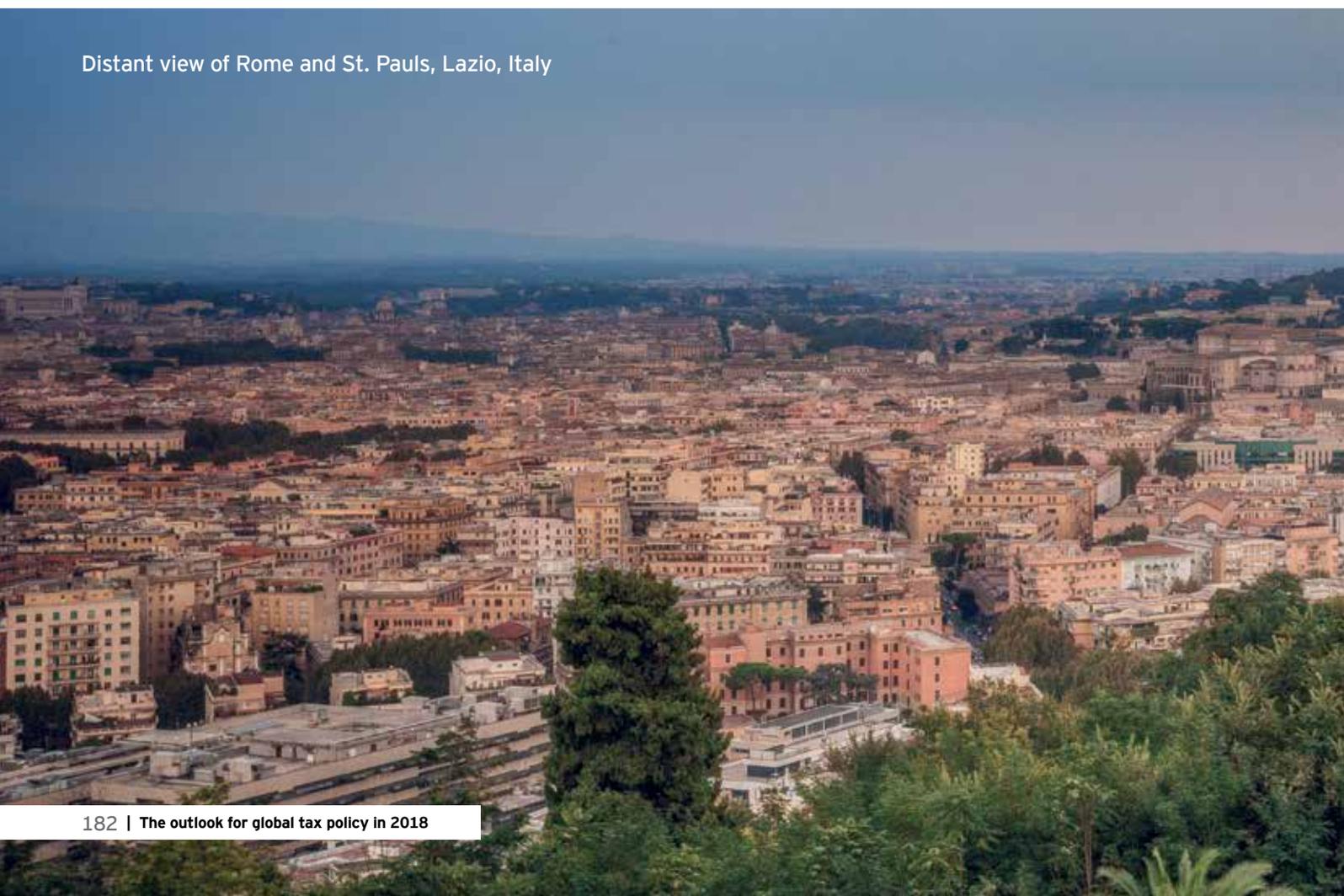
- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches**
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions.

### 3.2 General approach to tax enforcement in 2017

The Italian tax authority is developing a sophisticated digital audit system. It is also carrying out administrative investigations on the basis of information provided into an electronic tax register (i.e., Anagrafe Tributaria) and is encouraging recourse to other measures to avoid tax litigation and long and costly proceedings.

The tax authority has also introduced a tax collection settlement regime (“Rottamazione”) allowing taxpayers to pay, voluntarily and with a discount, any taxes that were accrued between 2000 and 2017.

Distant view of Rome and St. Pauls, Lazio, Italy





### 3.3 Key risk factors and audit triggers in 2018

1	Transfer pricing	The tax authorities will focus heavily on transfer pricing in 2018.
2	Tax abuse	The tax authorities will focus specifically on the potential abuse of the NID, share deals vs. asset deals, treaty shopping and limitation on benefit transactions.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

As of 1 July 2017, Italian Revenue Agency has incorporated the functions performed by the Italian tax collector (“Equitalia”) to guarantee a higher level of efficiency.

### 3.6 Potential tax enforcement developments in 2018

According to Fabrizia Lapecorella (General Director of Italian Ministry of Economy), Italy’s political priority for 2018 from a tax perspective is to address inefficiencies in its MAP process.

We also expect the tax authorities to focus their enforcement efforts on PE, e-commerce taxation and transfer pricing issues.

In the transparency area, given the tax authority’s approach to gathering any kind of tax information, we expect that further reporting obligations will be introduced.



# Japan

## Tax policy and controversy

Koichi Sekiya

Koichi.sekiya@jp.ey.com

+81 3 3506 2447

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	29.97% (Regular effective CIT rate, including local corporate taxes)	29.74% <sup>1</sup> (Regular effective CIT rate, including local corporate taxes)	-0.77%
Top personal income tax (PIT) rate (national and local average if applicable)	45% (In addition, a local individual tax of 10% is levied)	45% <sup>2</sup> (In addition, a local individual tax of 10% is levied)	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	8% (Comprises the national rate of 6.3% and the local rate of 1.7%)	8% <sup>3</sup> (Comprises the national rate of 6.3% and the local rate of 1.7%)	0%

<sup>1</sup> The top national marginal tax rate is 23.2%. This rate is applicable for the fiscal year starting on or after 1 April 2018.

<sup>2</sup> This is the top national marginal tax rate.

<sup>3</sup> The tax rate increase (from 8% to 10%) is scheduled to take effect on 1 October 2019.

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Since he returned to power in 2012, Prime Minister Shinzo Abe has adopted a series of monetary easing measures, a progressive fiscal policy and an economic growth strategy in order to reverse deflationary trends within the Japanese economy and to achieve adequate economic growth for the future.
- ▶ On 22 October 2017, the Liberal Democratic Party (LDP) won a resounding victory in the House of Representatives (lower house) election. Abe, the LDP leader, was re-confirmed as Japan's prime minister and formed his fourth Cabinet.
- ▶ A key policy goal affecting Japanese tax policy is the reduction of the national deficit as a way to achieve fiscal health and cope with an aging population and low future birthrate.
- ▶ Abe's current political priorities are "productivity revolution" and "Japanese work style reform." The 2018 tax reforms have been designed to support such priorities.

### 2.2 Tax burdens in 2018

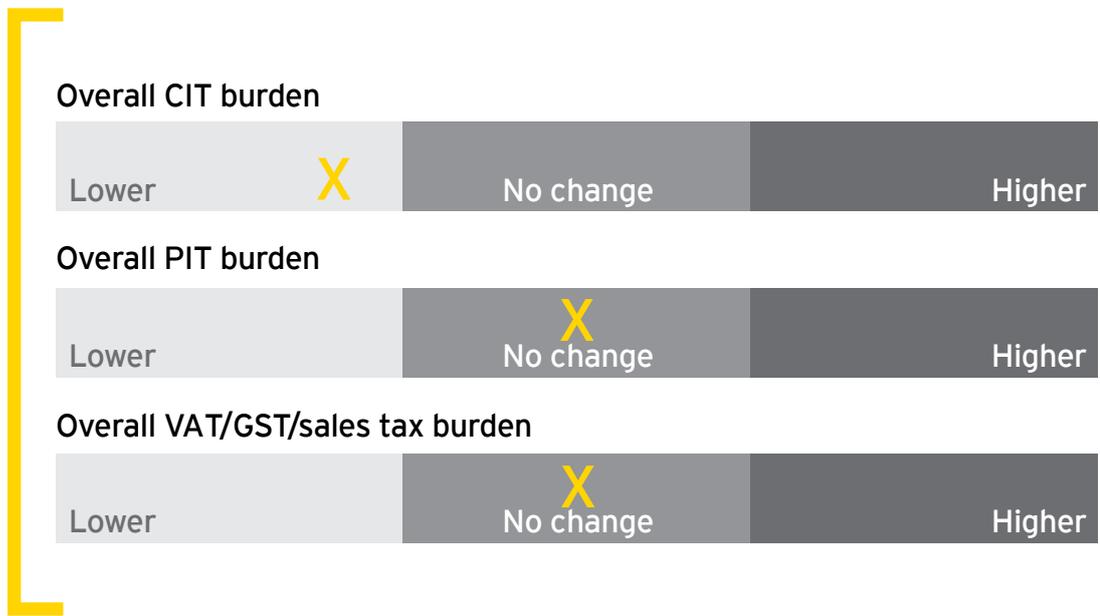
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (CGT) (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no CGT	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to the definition of permanent establishment, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



### 2.4 Tax policy outlook for 2018 – detail

#### Corporate income taxes

The notional CIT rate will be reduced from 23.4% to 23.2% for the fiscal year starting on or after 1 April 2018. Use of net operating loss carryforwards will be capped at 50% of current income starting 1 April 2018.

Under the 2018 tax reform, a tax package of incentivizing wage increases and productivity enhancements will be introduced. Also, business succession taxation rules will be expanded and relaxed. Japanese CFC rules regarding a certain capital gain derived from the transfer of a foreign related company will be relaxed.

The definition of PE in Japanese domestic law will be amended in 2019 to match international standards as set out in Action 7 of the base erosion and profit shifting (BEPS) initiative.

#### Taxes on digital activity

##### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

The definition of PE in Japanese domestic law will be amended so that the fixed place where activities that do not involve preparatory and auxiliary functions are performed is regarded as a PE.

##### Indirect taxes

No changes are expected.

##### Taxes on wages and employment

Some income deduction rules will be revised in 2020. The tax burden for persons with higher income will be increased.

##### VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

- ▶ On 22 October 2017, the LDP won a resounding victory in the lower house election. The LDP and its coalition partner, Komeito, secured 313 seats out of 465 (more than a two-thirds majority of all seats) in the lower house. Shinzo Abe, the LDP party leader, was confirmed as Japan's prime minister and formed his fourth Cabinet. Parties out of power (such as Kibō no Tō, etc.) suffered a crushing defeat.
- ▶ In 2018, no national level election is scheduled to take place.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leader

Shinzo Abe, Prime Minister

Taro Aso, Minister of Finance

### Tax administration leader

Nobuhisa Sagawa, Commissioner of National Tax Agency

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Japan's CFC rules were revised. "Paper" companies and "cash-box" companies that fulfill certain conditions are subject to income inclusion on an entity-wide basis, even if the effective tax rate of the company is 20% (the former trigger rate) or more. Also, the scope of passive income has been broadened. This revision will apply to fiscal years of foreign related companies beginning on 1 April 2018. This legislation is based on BEPS Action 3.
- ▶ The R&D tax credit regime was revised so that the tax credit increases in line with increases in R&D costs.

## 2.9 Pending tax proposals

The Ministry of Finance is considering implementing some BEPS Action items in the future, as follows:

- ▶ Preparation of transfer pricing rules regarding transactions of intangible assets (BEPS Action 8)
- ▶ Revision of interest deduction rules (BEPS Action 4)
- ▶ Implementation of mandatory disclosure rules (BEPS Action 12)

## 2.10 Consultations opened/closed

- ▶ In Japan, the use of public consultations regarding tax policies is not common.
- ▶ On 20 November 2017, the Government's tax advisory committee issued an interim report regarding the promotion of digital tax administration and a drastic reform of individual income taxation.



Aerial view of Minato-ku, Tokyo, Japan

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2018

For taxpayers who engage in malicious tax evasion, the National Tax Agency (NTA) conducts strict tax audits by making full use of its organizational strength. For other taxpayers, the NTA carries out its administration processes in an effective and efficient manner. Also, the NTA will establish trust-based relationships with large corporations under favorable corporate governance on tax matters, and will prolong intervals until the next tax audits for them.

### 3.3 Key risk factors and audit triggers in 2018

1	International transactions	The focus of the NTA in 2018 will be on international transactions carried out by multinational corporations and high-income individuals. As a result of progress made in the BEPS project, public interest has been significantly increasing in international tax avoidance cases.
2	Transfer pricing	Under the 2016 tax reform, the preparation and storage of local files are mandatory. This measure applied starting from the fiscal year beginning on or after 1 April 2017. It is expected that the NTA will be focusing heavily on transfer pricing.
3	Consumption tax	Consumption tax is one of the top sources for tax revenue, which is why it attracts so much public attention. The NTA will work to prevent the filing of fraudulent refunds by carrying out thorough tax audits.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

- ▶ Under the 2016 tax reform, multinational enterprises are required to provide (or create and store) a country-by-country report and a master file via e-filing based on the recommendation of BEPS Action 13. This applies from the fiscal year of the ultimate parent entity beginning on or after 1 April 2016. For most Japanese companies, their fiscal year-end is 31 March, so the first deadline of submission is 31 March 2018 (i.e., no later than 12 months after the last day of the fiscal year of the ultimate parent entity).
- ▶ Japan signed the MLI on 7 June 2017, during a signing ceremony hosted by the Organisation for Economic Co-operation and Development in Paris.

### 3.6 Potential tax enforcement developments in 2018

- ▶ Under the 2016 tax reform, certain large corporations became required to prepare or obtain and store local files by the deadline for the submission of final tax returns. This measure applies starting from the business year that begins on or after 1 April 2017. For most large Japanese companies, their fiscal year-end is 31 March, so the first deadline of preparation is 30 June 2018 (or 31 May 2018).
- ▶ It is expected that the MLI will be ratified in the 2018 session of the Diet. As a result, Japan will likely adopt a principal purpose test in 2018.

# Luxembourg

## Tax policy

**Marc Schmitz**

marc.schmitz@lu.ey.com

+352 42 124 7352

## Tax controversy

**John Hames**

john.hames@lu.ey.com

+352 42 124 7256

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	27.08%	26.01% <sup>1</sup>	-3.95%
Top personal income tax (PIT) rate (national and local average if applicable)	The maximum PIT rate is 44.94%, or 45.78% when including the contribution of 7% or 9% to the employment fund	The maximum PIT rate is 44.94%, or 45.78% <sup>2</sup> when including the contribution of 7% or 9% to the employment fund <sup>3</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	17%	17% <sup>4</sup>	0%

<sup>1</sup> Article 174 of the law of 4 December 1967 on income tax, as amended. The CIT rate has been reduced from 19% to 18% for the tax year 2018. The 2018 rate consists of the 18% CIT rate, with an additional 7% employment fund surcharge and 6.75% municipal business tax for companies located in Luxembourg City. Furthermore, CIT is levied at a reduced rate for taxable profits not exceeding €30,000.

<sup>2</sup> Article 118 of the law of 4 December 1967 on income tax.

<sup>3</sup> Article 6 of the law of 30 June 1976 on creation of an employment fund, as amended.

<sup>4</sup> Article 39 of the law of 12 February 1979 on value-added tax, as amended.



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The key themes of the 2018 budget law are quality of life, competitiveness and continuity.
- ▶ Regarding tax policy, the Government aims to:
  - ▶ Recruit additional staff for the various tax administrations
  - ▶ Increase fairness in taxation
  - ▶ Sustain digitalization of enterprises and facilitate transition to zero emission mobility through abatements and tax credits
- ▶ The Government and various administrations have played an active role in the digital transformation process to become a "Smart Nation."
- ▶ There has been a reinforcement and diversification of economic structures (e.g., single window for the logistics sector and support to the space sector).
- ▶ Financial support has increased in favor of innovation and research.

### 2.2 Tax burdens in 2018

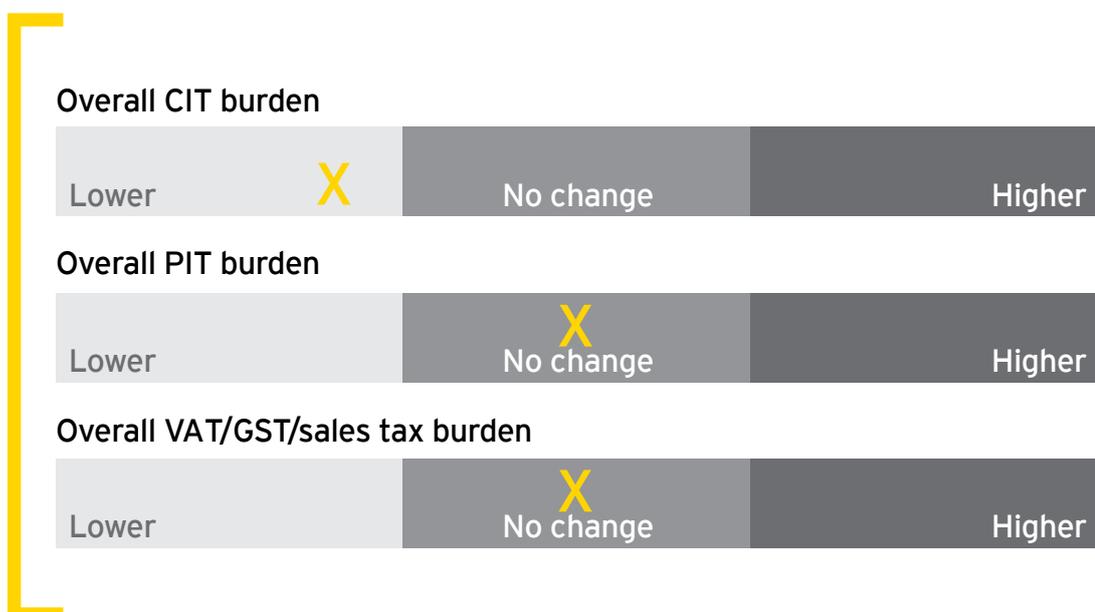
Tax types	Any changes proposed/known or possible for 2018 <sup>5</sup> ?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

<sup>5</sup> The responses provided are based on the assumption that the EU directive addressing tax avoidance practices (Anti-Tax Avoidance Directive, "ATAD" and "ATAD 2") will enter into force in 2019.

Tax types	Any changes proposed/known or possible for 2018 <sup>5</sup> ?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018 <sup>5</sup> ?	What is the expected tax burden in 2018, as compared to 2017?
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

In addition to the decrease of the CIT rate for the 2018 tax year, the benefit of the Investment Tax Credit is extended, as from 1 January 2018, to passenger cars with zero emissions and to acquired software (subject to limits and conditions). Furthermore, current tax legislation is likely to undergo the following changes:

- ▶ Alignment with EU legislation of the procedure for the exchange of information upon request
- ▶ Introduction of a new intellectual property regime that endorses the “nexus approach” agreed at both the international and EU levels

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

Luxembourg shares the view of most EU Member States that current rules are not always well-equipped for taxing digital activities and that collaboration is needed to find adequate solutions. However, Luxembourg does not agree with simplistic short-term solutions that would make Europe less competitive in an international environment. The Government therefore insists on ensuring a level playing field and is pushing for

discussions to be held at the OECD level, where many countries are involved, particularly the United States (which hosts the biggest number of internet companies).

#### Indirect taxes

No changes are expected in 2018.

#### Taxes on wages and employment

Following the 2017 tax reform, further adjustments have been enacted and are applicable as from 1 January 2018, including:

- ▶ Providing simplified conditions so that married nonresident taxpayers can be assimilated for tax purposes to resident taxpayers
- ▶ Extending the deadline for married resident taxpayers to communicate their choice regarding the type of taxation to which they want to be subject (i.e., joint taxation, pure separate taxation and separate free allocation taxation)
- ▶ Extending the tax allowance amounting to €2,500 for sustainable mobility<sup>6</sup> (*abattement pour mobilité durable*) to rechargeable hybrid electric cars for individual use with carbon dioxide (CO<sub>2</sub>) emission not exceeding 50g CO<sub>2</sub>/km

<sup>6</sup> The tax allowance for sustainable mobility entered into force on 1 January 2017 by the law of 23 December 2017 (the 2017 tax reform).



- ▶ Since 1 July 2016, long term capital gains derived from the sale of real estate are taxed at a quarter of the overall taxpayer's tax rate. This measure was planned to last until 31 December 2017, but has now been extended until 31 December 2018.
- ▶ Amending the tax regime applicable to stock option plans (the lump-sum valuation of freely transferable options, which are taxable when they are granted, increased from 17.5% to 30% of the value of the underlying assets from 1 January 2018).

### VAT/GST/sales taxes

The following changes have been enacted and are applicable as from 1 January 2018:

- ▶ Extension of the VAT exemption for management services provided to collective internal life insurance funds whose investment risks are borne by policyholders and are subject to the supervision of the Luxembourg Insurance Commission
- ▶ Increase of the VAT rate applicable to forestry products (from 4% to 12%)
- ▶ Taxation of goods retained by a taxpayer (or his legal successors) after the termination of his economic activity, when the VAT incurred on such goods has been partially or fully deducted
- ▶ Implementation of the EU Directive on the VAT treatment of vouchers
- ▶ Abolition of the regulation on services rendered by independent groups of persons to their members effective 1 January 2018 (to align with judgments of the Court of Justice of the EU)

The following changes are also expected in 2018:

- ▶ Taxation of goods retained by a taxpayer (or his legal successors) after the termination of his economic activity, when the VAT incurred on such goods has been partially or fully deducted
- ▶ Implementation of EU Directive on the VAT treatment of vouchers

### 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument (MLI) likely to be ratified in your country?
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

### 2.6 Political landscape

As a result of elections held in October 2013, the Government is composed of three parties (the Democratic Party, the Socialist Workers' Party and the Green Party). Legislative elections are scheduled for October 2018.

### 2.7 Current tax policy and tax administration leaders

#### Tax policy leaders:

- ▶ Xavier Bettel, Prime Minister
- ▶ Pierre Gramegna, Minister of Finance, Treasury and Budget

#### Tax administration leaders:

- ▶ Pascale Toussing, Director of the Direct Tax Administration
- ▶ Carlo Fassbinder, Director of Taxation at the Ministry of Finance
- ▶ Romain Heinen, Director of the Indirect Tax Administration (VAT and Customs)

### 2.8 What key tax policy changes did you experience in your country in 2017?

#### Corporate Income taxes

- ▶ Decrease of the CIT rate for the 2017 tax year
- ▶ Limitation of loss carryforwards (from 2017, the use of loss carryforwards are limited in time to 17 years for losses realized from financial years closing after 31 December 2016; however, there is no limitation in time for losses generated between 1 January 1991 and 31 December 2016)
- ▶ Increase of the rate of the investment tax credit
- ▶ Introduction of deferred depreciation
- ▶ Incentive for the transfer of businesses
- ▶ Increase in tax penalties and fines and extension of the definition of fraud
- ▶ Introduction of country-by-country reporting

- ▶ Clarification of the arm's-length principle, with a set of basic elements to be respected in the framework of a transfer pricing analysis based on the principles as revised in the context of the base erosion and profit shifting (BEPS) initiative
- ▶ New transfer pricing circular for companies carrying out intra-group financing activities (substantial guidance has been provided on the comparability analysis and functional profile)

## Taxes on wages and employment

- ▶ Abolition of the temporary budget balancing tax of 0.5% from 1 January 2017
- ▶ Reduction of income tax progressivity pace through lower rates in the first tranches and introduction of higher tax rates for top tranches
- ▶ Adaptation of employee and single families tax credit
- ▶ Increase in deductions for payments to building societies
- ▶ Increased deduction for mortgage interest
- ▶ Tax exemption of 50% for rental income from real estate rented to recognized organizations
- ▶ Company car flat taxation replaced by taxation based on CO2 emissions
- ▶ Taxation of capital gain at 1/4th of the average tax rate on sales of real estate between 1 July 2016 and 31 December 2017
- ▶ Increase in the flat tax on determined interest paid by paying agent (from 10% to 20%)

## VAT/GST/sales taxes

- ▶ Increase in the turnover threshold for the application of the small and medium-sized companies regime (from €25,000 to €30,000)
- ▶ Introduction of personal and several liability of (i) delegated administrators of public limited companies; (ii) managers of limited liability companies; and (iii) ipso jure or de facto managers in charge of the day-to-day management of the company's VAT obligations (including payment of VAT due by the company), in cases of blameworthy failure to fulfill their legal requirements
- ▶ General increase in penalties
- ▶ Introduction of other specific measures in the Luxembourg VAT law and criminal code aimed at fighting VAT fraud and VAT evasion
- ▶ Activities of directors submitted to VAT

## 2.9 Pending tax proposals

N/A

## 2.10 Consultations opened/closed

**Open:** N/A

**Closed:** N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

**C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**

D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions



### 3.2 General approach to tax enforcement in 2018

The Luxembourg Government has said that moving to a “Digital First” environment for improving tax enforcement is one of its top priorities. In that respect, a joint initiative was launched some years ago by the Luxembourg Inland Revenue and the State Information Technology Center (CTIE) as part of the program “*Digital Lëtzebuerg*.” This ongoing program aims to simplify the relationship between the tax authorities and the local communities as they move to an innovative digital society.

Electronic filing of the corporate income, municipal business and net wealth tax returns is mandatory from the 2017 tax year. For this purpose, specific software using secured access is available for the electronic submission of tax returns.

For VAT purposes, electronic filing of tax returns is already mandatory. The Luxembourg VAT authorities introduced a standard e-audit file called “*Fichier Audit Informatisé AED*” (FAIA). The FAIA file can be requested by the VAT authorities for the performance of a VAT audit for all companies subject to the standard chart of accounts (with some exceptions). Although it has to be requested by the VAT authorities, the possibility to provide this file is a mandatory requirement for the aforementioned companies. It has been announced by the VAT authorities that they will progressively increase requests for a FAIA file within the scope of VAT audits.

### 3.3 Key risk factors and audit triggers in 2018

1	Transfer pricing	The focus of the tax authorities in 2018 will most likely be on transfer pricing issues.
2	VAT deduction methods	It is expected that the tax authorities will pay more attention to VAT deduction methods (direct allocation v. prorated method).

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018?
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018?
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

- ▶ Significant increase in penalties, both for direct taxes and VAT
- ▶ Extension of the tax fraud definition and implementation of the tax aspects included in international requirements in the context of the fight against money laundering and the financing of terrorism
- ▶ Increased number of requests for FAIAs in order to audit taxpayers more efficiently in VAT matters

### 3.6 Potential tax enforcement developments in 2018

- ▶ It is expected that the tax authorities will continue in 2018 to combat aggressive tax planning and tax fraud in line with EU and international tax developments, both for direct taxes and VAT.
- ▶ Following legislative developments regarding transfer pricing, the tax authorities may also shift their audit focus on companies with intra-group services or activities, and more specifically regarding intra-group financing activities.

# Malaysia

## Tax policy and controversy

Amarjeet Singh  
amarjeet.singh@my.ey.com  
+603 7495 8383

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	24% Certain tax reductions on incremental income are available in respect of the years of assessment 2017 and 2018 only, subject to meeting certain conditions.	24% Certain tax reductions on incremental income are available in respect of the years of assessment 2017 and 2018 only, subject to meeting certain conditions.	0%
Top personal income tax (PIT) rate (national and local average if applicable)	28%	28%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	6%	6%	0%



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Tax policy is driven by the moderate growth outlook and a mildly expansionary budget, whilst maintaining inclusive and prudent spending. The Government's 2018 National Budget contained strategies to balance economic demands and people's welfare to improve public happiness through higher quality of life.
- ▶ The Government continues to diversify its sources of revenue following shrinking oil revenues, while also rationalizing subsidies. For this purpose, Malaysia had undertaken the following measures with a view to cover the shortfalls in revenue:
  - ▶ Increased in enforcement activities to improve revenue recovery by tax administrators, via conducting of tax audits and investigations.
  - ▶ Increased in enforcement activities to improve collections of tax arrears, via civil suits against individual taxpayers and corporate taxpayers as well as directors of the corporate taxpayers, instituting winding-up procedures on corporate taxpayers.

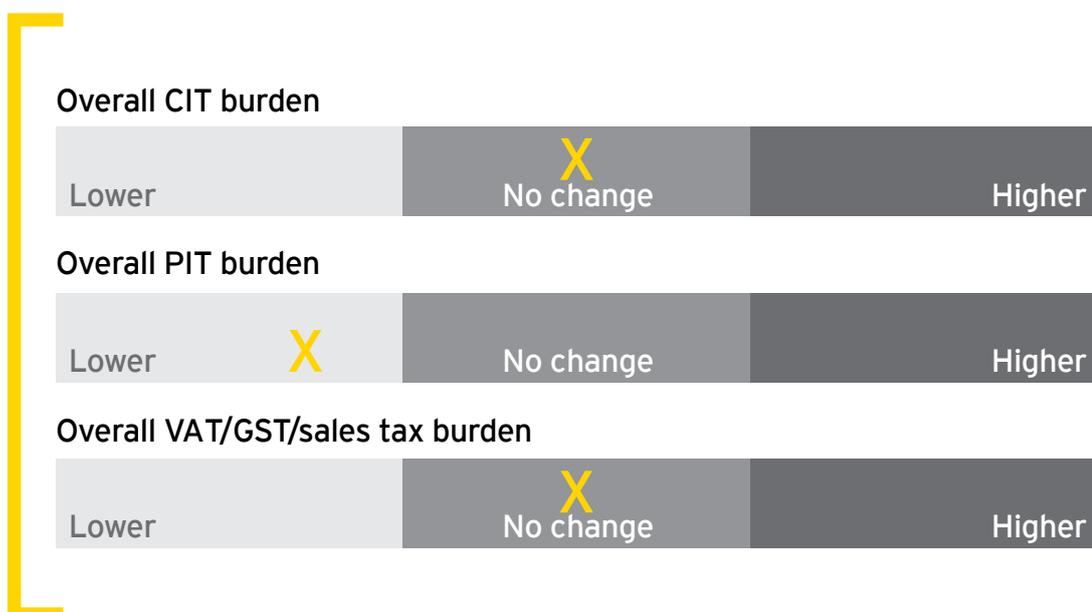
### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ Proposed penalty regime to ensure proper compliance with action plans for BEPS
- ▶ Tax administration will be undergoing a transformation and will begin to use advanced tools like big data analytics tools to analyze information for decision-making and taking the right action plans for tax administration by 2019. This would translate to increase in revenue collection, cost savings, improved compliance, minimize mistakes and errors, as the tool will provide the tax administrator with clear visibility of the financial activities conducted by corporate taxpayers. The information drawn can be used to support audit functions in understanding, profiling and predicting taxpayers' future behavior.

### Taxes on digital activity

Currently, the tax authorities are unable to collect any tax from digital business platforms hosted outside Malaysia and not physically present in Malaysia due to the absence of a tax structure for the digital economy.

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

The Malaysian Inland Revenue Board ("IRB"), who administer direct taxes in Malaysia, has formed a special task force to find

a mechanism to tax online businesses and companies in the digital economy.

### Indirect taxes

The Director General of the Royal Malaysian Customs Department ("RMCD") has highlighted in year 2017 that the amount of revenue that could be collected from the digital economy to be in billions of Ringgit.

It is likely that IRB and RMCD will tax companies in the digital economy who are currently operating in Malaysia tax-free to maintain a level playing field, in year 2018, in order to target the potential leakage of tax revenue.

### Taxes on wages and employment

- ▶ The PIT rates are reduced by 2% for chargeable income bands from RM20,001 to RM70,000.

### VAT/GST/sales taxes

The tax policy for year 2018 focuses more on improving administrative matters and extending RMCD power in assessing a nontaxable person. This places RMCD in a better position to assess a nontaxable person effectively as there may be potential under-declaration of tax which is may be material in value.

## 2.5 OECD MLI

- 2018
- 2019
- 2020 or later
- Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

While Malaysia is an associate member of the BEPS inclusive framework, Malaysia has to date not signed the MLI and there have been no public indications of Malaysia's intention to sign the MLI in 2018.

## 2.6 Political landscape

A general election will be held in 2018. Hence, major tax policy change may be expected in 2018.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Dato'Sri Mohd Najib bin Tun Abdul Razak, Prime Minister and Minister of Finance
- ▶ Ms Khodijah bt Abdullah, Under-Secretary, Tax Division, Ministry of Finance

### Tax administration leaders

- ▶ Dato' Sri Sabin Samitah, Chief Executive Officer, IRBM
- ▶ Dato' Sri Subromaniam Tholasy, Director General of the RMCD

## 2.8 What key tax policy changes did you experience in your country in 2017?

No key policy changes noted.

In respect to BEPS, the IRBM have commented that the BEPS Action Plan may not be applicable in all instances for Malaysia, given that our tax system and goals are different from any developed country.

## 2.9 Pending tax proposals

### Open:

- ▶ Revamp of the Stamp Act 1949 (still not legislated as law)
- ▶ Real Property Gains Tax (RPGT) on gains from the disposal of real properties and shares of real property companies is to be self-assessed in 2016 in tandem with the Government's goal to modernize the tax system. Changes to the Real Property Gains Tax Act 1976 are expected to help pave the way for the implementation of the self-assessment regime. (remains unchanged since last year's Outlook)

### Closed:

- ▶ On 27 October 2017, Malaysia announced in its 2018 National Budget, the country's commitment to implementing a number of BEPS proposals, and its commitment to the automatic exchange of information between jurisdictions. Noteworthy is the country's proposal to adopt BEPS inspired earnings stripping rules to replace thin capitalization rules which were introduced into the Malaysian Income Tax Act with effect from 1 January 2009 but which were not yet implemented. The proposed Malaysian earnings stripping rules are expected to focus on intercompany loans; interest deductions between related parties will be limited to a prescribed ratio, expected to be between 10% to 30% of EBIT or EBITDA. When implemented, the rules will be effective 1 January 2019. Additional changes to the income tax legislation, new guidelines and/or public rulings are expected in order to implement the rules.

## 2.10 Consultations opened/closed

- ▶ The 2018 National Budget consultative talks commenced in July 2017 and closed prior to the 2018 National Budget announcement on 27 October 2017.
- ▶ Dialogue between IRBM and Chartered Tax Institute of Malaysia (professional body) held on 24 January 2017 to discuss and close the issues arising from the 2017 Budget & Finance Bill 2016
- ▶ Submission of Joint Paper by Chartered Tax Institute of Malaysia with other professional bodies on GST issues arising from 2017 Budget and Finance Bill 2016 on 17 January 2017, closed by the RMCD's response through their letter dated 22 May 2017.
- ▶ Submission of Joint Memorandum by Chartered Tax Institute of Malaysia (professional body) to the IRBM on issues arising from 2018 Budget Speech and Finance (No.2) Bill 2017 on 14 December 2017

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

### Direct tax:

The IRB has a very well-developed, sophisticated electronic compliance and risk analysis system. All tax returns are submitted electronically. Detection of noncompliance is almost on a real-time basis, leading to timely issuance of best judgement assessments by the IRB. The IRB continued to embark on various measures and task forces to various categories of taxpayers to enhance tax recovery and collections.

- ▶ Formation of Collection Intelligence Arrangement (CIA) through sharing of information among various government agencies, as part of the Government’s initiatives to enhance long-term fiscal sustainability:
  - ▶ Inland Revenue Board of Malaysia (IRB) - direct tax
  - ▶ Royal Malaysian Customs Department (RMCD) - indirect tax
  - ▶ Companies Commission of Malaysia
- ▶ Increased collaborations amongst tax authorities (in the form of joint audits) and other government agencies to enhance tax compliance and enforcement activities:
  - ▶ Bank Negara Malaysia (Central Bank of Malaysia) (BNM)

- ▶ Immigration Department of Malaysia (IDM)
- ▶ Malaysian Anti-Corruption Commission (MACC)
- ▶ Companies Commission of Malaysia (CCM)

Following the above, it is expected that there will be a massive increase in tax enforcement activities.

### Indirect tax:

The RMCD focused on GST audits (including joint audits with IRB) with a view to educate taxpayers to encourage compliance. Since the introduction of GST in Malaysia, RMCD has launched various strategies to enhance compliance.

## 3.3 Key risk factors and audit triggers in 2018

1	<b>Large tax refund or a shift from large tax payable position to loss position</b>	Business taxpayers with large tax refund or a shift from large tax payable position to loss position are likely to be selected for tax audit by the tax authorities
2	<b>Significant related party transactions</b>	Business taxpayers with significant related party transactions are also likely to be selected for tax audit by the tax authorities.
3	<b>Operating at low profit or at a loss for an extended period of time</b>	The tax authorities also focus on business taxpayers which are operating at low profit or loss for an extended period as compared to other industry players or operating at low or irregular profit margins.
4	<b>Noncompliance in administrative matters (e.g. submission of returns, poor record keeping, non/late payment)</b>	The focus of tax audits conducted by RMCD in 2018 is to promote voluntary compliance (e.g. Customs Blue Ocean Strategy (CBOS) 5.0), to ensure that companies are in compliance in aspects relating to record-keeping, timely submission/ payment, and internal controls.



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

#### Direct tax:

The IRB has been embarking in various activities and initiatives throughout 2017:

- (a) IRB and BNM strategic alliance to combat financial crime using the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds from Unlawful Activities Act 2001.
- (b) Tripartite collaborations (IRB, BNM and MACC) on exchange of information.
- (c) IRB and IDM strategic alliance to detect noncompliance of individual taxpayers (expatriates) using an integrated system, MyExpat system.
- (d) Launching of various audits: Industry-focused audits, issues-focused audits, joint audits with RMCD, full-scoped audits.
- (e) Imposition of maximum penalty (100%) on the tax undercharged for incorrect returns submitted by taxpayers. Since the issuance of the first Tax Audit Framework by the IRB in 2007, the IRB has been imposing penalties at a concessionary rate of 45%. However, it was announced that the IRB will be imposing the maximum penalty for repeated offenses committed by taxpayers.
- (f) Issuance of new Tax Audit Framework in May 2017. Key amendments are summarized below:
  - ▶ IRB may conduct field visit without advance notice given to the taxpayer.
  - ▶ IRB may gain full access to the taxpayer's records and/or system.
  - ▶ IRB may extend the scope of the tax audit to other entities related to the taxpayer.

#### Indirect tax:

RMCD has implemented several enforcement measures, in order to enhance the GST compliance level of a taxable person, which includes:

- (a) Substantial increment in penalty for any late payment of GST by a taxable person through amendments in the GST law.

Period	Penalty on tax due and payable (previously)	Penalty on tax that remains unpaid (currently)
First 30 days	5%	10%
31 - 60 days	Additional 10%	Additional 15%
61 days and beyond	Additional 10%	Additional 15%

- (b) Mandatory requirement for companies in the selected industries (e.g., certain retailing industries) to install a device which transmits GST data to RMCD.
- (c) Large scale audit projects (e.g., Customs Blue Ocean Strategy (CBOS) 3.0) conducted by RMCD throughout the year with the target of auditing at least 200,000 out of 433,000 GST registrants.

### 3.6 Potential tax enforcement developments in 2018

#### Direct tax:

Based on the enforcement activities and initiatives undertaken by the IRB in 2017, it is expected that the IRB will continue to step up their activities to improve tax recovery and collection:

- (a) Target on new issues/ areas
- (b) Target on other industries and categories of taxpayers
- (c) Conduct tax audit on group of companies
- (d) Continuous focus on small and medium taxpayers, large corporate taxpayers, multinational companies, special industries such as oil and gas, financial and insurance, by the various tax audit divisions within the IRB
- (e) Continuous focus on Transfer Pricing, withholding tax and corporate tax issues
- (f) Increase in the use of digital tool to detect noncompliance

#### Indirect tax:

The developments in the area of GST enforcement which is expected in 2018 are as follows:

- (a) RMCD will continue auditing GST registrants which has yet to be selected in prior years.
- (b) RMCD to conduct joint audit with IRB, to identify more companies which might have potential tax compliance issue.
- (c) RMCD may also extend their scope of audit to nontaxable person as RMCD foresees there could be substantial amount of tax leakages due from nontaxable person, who are liable to declare and pay tax.

# Mexico

## Tax policy

**Jorge Liberos**

jorge.liberos@mx.ey.com

+52 55 5283 1439

## Tax controversy

**Enrique Ramírez**

enrique.ramirez@mx.ey.com

+52 55 5283 1367

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	30%	30% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	35%	35% <sup>2</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	16%	16% <sup>3</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ According to the Federal Government's position adopted after the 2014 tax reform program, in 2018 no additional tax burden will be imposed on taxpayers in comparison to previous years.
- ▶ On the other hand, Mexico as one of the early adopters of the BEPS initiative is currently challenging structures or positions taken by MNEs in instances where the tax authorities considered that the Mexican tax base could be eroded.
- ▶ Mexico's tax administration environment is almost completely digital, which, combined with automatic exchange of information mechanisms, allows the tax authorities to have all the information they need to make an effective enforcement campaign.

<sup>1</sup> Income Tax Law, article 9.

<sup>2</sup> Id, article 152.

<sup>3</sup> Value Added Tax Law, article 1.

## 2.2 Tax burdens in 2018

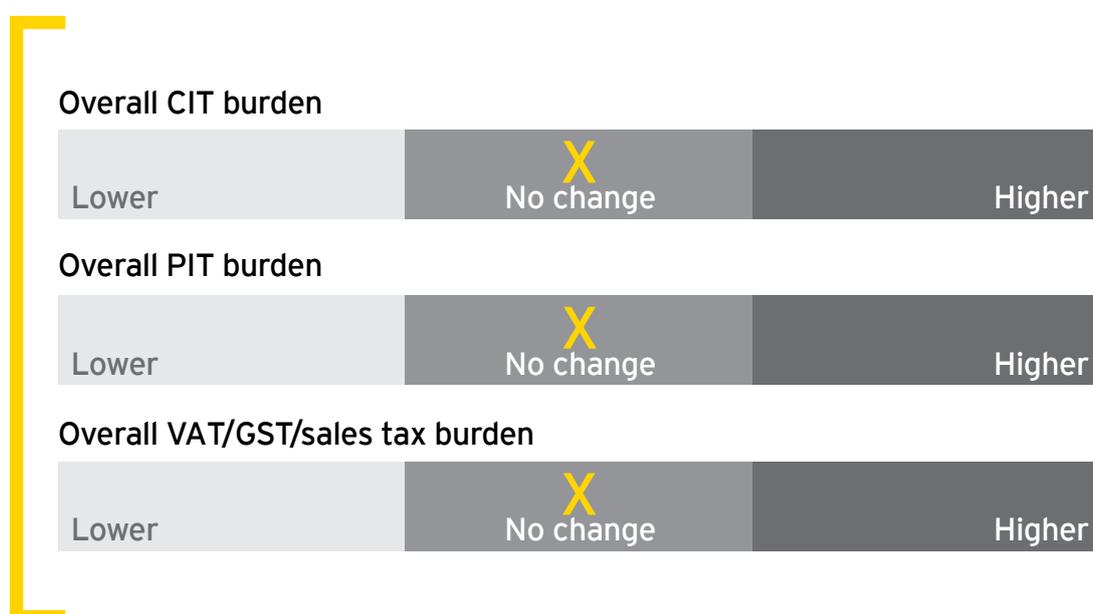
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives – including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

While there are no changes in the tax burden, given that there was a better economic performance than expected in 2017, the Mexican Government aims to broaden the number of register taxpayers and continue an enforcement campaign regarding income tax, which creates the major revenue for the Government (non-oil related).

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes are expected.

#### Indirect taxes

No changes are expected.

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

A new President, senators, and representatives will be elected in 2018. Currently, the governing party (PRI) holds the majority of Congress, but this might change since there is not a clear voting trend.

Local elections for new state governors will also be held on 2018 in 30 out of 32 States.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Enrique Peña Nieto, President
- ▶ José Antonio González Anaya, Secretary of Finance and Public Credit
- ▶ Miguel Messmacher Linartas, Undersecretary of Revenue
- ▶ Gina Andrea Cruz Blackledge, Chairman of the Finance and Public Credit Commission, Chamber of Deputies
- ▶ José Francisco Yunes Zorilla, Chairman of the Finance and Public Credit Commission, Senate

### Tax administration leaders

- ▶ Osvaldo Santín Quiroz, Head of the Tax Administration Service (SAT)
- ▶ Oscar Molina Chie, Head of the Major Taxpayers Division

## 2.8 What key tax policy changes did you experience in your country in 2017?

Mexico signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS on 7 June 2017. The Senate's ratification is still pending.

Also, as part of the implementation of BEPS Action 13, in 2016 Mexico incorporated into domestic law the obligation for Mexican taxpayers to submit three annual Transfer Pricing Returns before December 31 of the subsequent year: Master File Informative Return, Local Informative Return and Country-by-Country Informative Return.

The first filing of these returns should be no later than 31 December 2017, according to the guidelines and digital formats of the new transfer pricing regulations published during 2017.

During 2017, Special Economic Zones were created, under the supervision of the Ministry of Finance and Public Credit, as geographically delimited areas designed to attract foreign direct investment, by providing tax incentives, trade facilities, duty-free customs benefits, infrastructure development prerogatives, and easier regulatory processes.

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach – will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

Taxpayers in Mexico are experiencing more frequent and aggressive tax audits, focused on reviewing cross border

### 2.9 Pending tax proposals

**Open:** N/A

**Closed:** N/A

### 2.10 Consultations opened/closed

N/A

transactions and challenging existing multinational structures, considering BEPS principles.

Taxpayers are facing increased scrutiny in analyzing cross border transactions, in order to assess whether such transactions were implemented to shift profits to low tax jurisdictions and to define if MNEs are paying in Mexico what the tax authorities consider to be a fair amount of tax.

Additionally, the tax authorities have taken advantage of certain court precedents issued to rule clear cases of abuse by the taxpayers, and applying them as general rule.

On the other hand, it is important to notice that Mexico has an almost fully electronic tax administration environment. Tax compliance is digital, every single invoice is issued digitally through the tax authority's server, and accounting books and records must be submitted on a monthly basis. Since tax authorities have almost all of the relevant information of taxpayers, plus access to financial system information, it is possible for them to perform electronic audits, notifying taxpayers of their potential tax liability assessments via the taxpayer's electronic tax drop box.

Likewise, the tax authorities are now receiving information related to the foreign bank accounts of Mexican taxpayers, under CRS and FATCA.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Technical Assistance and management fees (services)</b>	<p>The Mexican Tax Authorities require detailed documentation that supports the deductibility of service fees, in order to establish that the services were actually received, and that specific and quantitative benefits were obtained.</p> <p>The requirements are greater when considering allocations made by headquarters or payments made under cost contribution agreements.</p>
2	<b>Substance-over-form</b>	<p>Tax authorities have determined that the reference that the Mexican income tax law makes to the OECD transfer pricing guidelines, along with some judicial precedents, allows them to characterize the taxpayers' transactions according to their actual economic substance.</p>
3	<b>Interest deduction</b>	<p>Taxpayers must have full support documentation, i.e., contractual agreements, invoices, and documentation that proves that the principal amount was indeed received.</p> <p>Also, the tax authorities are asking taxpayers to prove that the principle amount was invested in the company.</p> <p>Finally, in some cases the deduction of interest payments may be questioned if the taxpayer does not demonstrate the interests were effectively paid, even when the income tax is not determined in a cash flow basis.</p>
4	<b>Advertisement costs</b>	<p>The deduction of advertising and promotion expenses may be denied when the costs are incurred by a party other than the owner of the brand, disallowing the deduction if the taxpayer is using a licensed brand.</p> <p>Also, the deduction may be disallowed when a payment for advertising is made and at the same time the Mexican taxpayer is also paying royalties for the use of the brand.</p>
5	<b>Beneficial ownership</b>	<p>Regarding dividends, interest and royalties payments, the tax authorities are questioning the benefits of tax treaties if the Mexican payers are unable to demonstrate that the recipient of the payment was indeed the beneficial owner.</p> <p>Besides possessing a residence certificate, taxpayers must obtain sufficient evidence regarding the beneficial ownership of the recipient. In some cases, demonstrate substance in the other country, no obligation to re-pay for example the dividends received, or that the income was indeed accrued, among others.</p>

### 3.4 Retroactive application of tax laws in 2018

► Do you expect the tax authority to make use of a retroactive/ retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

Yes

No

► Explanation

Mexico was an early adopter of the BEPS initiative. Mexico began challenging structures or positions taken by the companies using BEPS principles even in advance of the

final BEPS recommendations were published, whenever they considered there was an erosion of the Mexican tax basis.

► Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

Yes

No



Los Cabos, Mexico

### 3.5 Tax enforcement developments in 2017

As part of the implementation of BEPS Action 13, in 2016 Mexico incorporated into domestic law the obligation for Mexican taxpayers to submit three annual Transfer Pricing Returns before December 31st of the subsequent year: Master File Informative Return, Local Informative Return and Country-by-Country Informative Return.

The first filing of these returns should have been no later than 31 December 2017, according to the guidelines and digital formats of the new transfer pricing regulations published during 2017.

### 3.6 Potential tax enforcement developments in 2018

In 2018 we expect that the tax authorities will continue to develop, optimize, and use technology to enforce the comprehensive Mexican tax framework.

# New Zealand

## Tax policy

**Aaron Quintal**

aaron.quintal@nz.ey.com

+64 274 899 029

## Tax controversy

**Kirsty Keating**

kirsty.keating@nz.ey.com

+64 274 899 090

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	28%	28%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	33%	33%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	15%	15%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The Government aims to enhance fairness and minimize inequality using the tax system, including ensuring the tax system:
  - ▶ Treats all income and assets in a fair, balanced and efficient manner, with special regard to housing affordability
  - ▶ Provides a progressive tax and transfer system for individuals and families
- ▶ Sustainability is another key focus, with the Government aiming for a tax system that promotes the long-term sustainability and productivity of the economy. The system is intended to support a sustainable revenue base to fund government operating expenditure around its historical level of 30% of GDP.
- ▶ Technology and information are likely to be key drivers of change, including technology-led modernization of tax administration, with major investment in upgraded systems for the Inland Revenue Department (the "Business Transformation" project) a key focus.
- ▶ International tax reform and addressing BEPS is another of the Government's priorities.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018 See comments at 2.8 below.

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



Slightly higher overall CIT burden expected in 2018 due to BEPS-related proposals contained in a current tax bill that are expected to be enacted for income years commencing on or after 1 July 2018 (See 2.4 *Corporate income taxes*).

#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No major change to corporate tax rate for large corporates anticipated. However, points to note:

- ▶ *Greater use of information and technology* - Stage 2 of the Business Transformation project begins in April 2018. PAYE information will be collected in Inland Revenue's new system to allow pre-population of income tax returns. Various other taxes, including fringe benefit tax and withholding tax, are also expected to move to Inland Revenue's new system.
- ▶ *International tax reform* - A number of BEPS-related proposals are contained in a current tax bill and are expected to be enacted for income years commencing on or after 1 July 2018. Public submissions on the bill were open until 8 February 2018. The main proposals include:
  - ▶ New rules taxing "hybrid mismatch arrangements," closely following OECD recommendations
  - ▶ A permanent establishment anti-avoidance rule for large multinationals, similar to Australia's multinational anti-avoidance law (MAAL)
  - ▶ A "restricted transfer pricing rule" for pricing inbound related party loans, being a novel rule that will in many circumstances cap the deductible interest rate in respect of related party borrowing
  - ▶ Other wide-reaching transfer pricing changes bringing New Zealand's regime in line with the OECD transfer pricing guidelines and Australian transfer pricing rules
- ▶ *Research & Development (R&D) tax credit* - The Government intends to reintroduce some form of tax credit for R&D expenditure, most likely 12.5% of qualifying expenditure, although the implementation date is not yet known.
- ▶ *Investment income information* - Proposed changes relating to investment income are expected to be enacted early 2018, with most coming into force on 1 April 2020. The changes include a requirement for payers of investment income to provide Inland Revenue with taxpayer specific information on a monthly basis through an electronic data transfer process or online form.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

- ▶ Extra investigation resources allocated to Inland Revenue will allow more audits and other forms of inquiry.

- ▶ Inland Revenue is expanding its analytics capabilities and use of data, which will allow a greater focus on digital activity. Inland Revenue already performs internal analytics and examples of an expanded range of tools are currently at the proof of concept stage, with Inland Revenue likely to contract externally for development of a full suite of tools during 2018.
- ▶ BEPS proposals include a permanent establishment ("PE") anti-avoidance rule for large multinationals, effectively replicating Australia's multinational anti-avoidance law (MAAL) and elements of the United Kingdom's Diverted Profits Tax.
- ▶ Wide-reaching transfer pricing changes included in the BEPS proposals will also impact the taxation of digital activity.

### Indirect taxes

- ▶ No points to note

### Taxes on wages and employment

Proposed changes affecting taxes on wages and employment contained in draft legislation expected to be enacted early next year include:

- ▶ *PAYE* - most employers will be required to provide Inland Revenue with payroll information in electronic form within two working days of payday. The proposals are expected to come into force on 1 April 2019, with early adoption available to employers from 1 April 2018.
- ▶ *Employee share schemes (ESS)* - includes deferral of the time at which an employee derives income from ESS in certain situations and the provision of a deduction to employers which matches the income to employees. The proposed rules will generally apply to benefits provided under ESS within 6 months of enactment of the legislation, with certain grand-parenting provisions available.

### VAT/GST/sales taxes

- ▶ No changes expected to GST rate.
- ▶ Major overhaul of Customs legislation to strengthen border management and simplify compliance is currently in progress, with enactment possible by the end of 2017.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019



2020 or later

Do not expect my country to participate/ratify

New Zealand signed the MLI in June 2017. Submissions are currently open on whether to ratify the MLI, with a closing date of 23 December 2017. It is expected that New Zealand will ratify the MLI, however modification of New Zealand's double tax treaties is unlikely to occur until 2019.

▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?

Yes

No

New Zealand signed the MLI in June 2017 and has adopted the Principal Purpose Test. See comments above around ratification.

## 2.6 Political landscape

New Zealand's government changed following the general election in September 2017. The new Government is led by the Labour Party in coalition with the New Zealand First Party and with confidence and supply support from the Green Party.

While the previous National-led government could be described as center-right, the new Government tends towards center-left and is more likely to use the tax system as a way of forwarding its policy agenda, for example, regarding perceived fairness/redistribution issues, to address concerns regarding an unbalanced housing market, to increase innovation or to deliver sustainable economic outcomes.

The policies of the three Government parties do not always align, meaning there could be potential difficulty in reaching agreement in certain cases.

The new Government has established a Tax Working Group ("Group") to consider improvements in the structure, fairness and balance of the tax system. It will be chaired by a former Finance Minister and have a diverse membership. The Group's terms of reference exclude increases to income tax rates, GST, inheritance tax, the taxation of the family home or the land under it. Despite these constraints, the Group retains a wide mandate. Among other things, the Group is explicitly tasked with looking out across the next decade, taking into account demographic change, technology, the future of work and environmental issues. The Group's final report is due in February 2019, although any significant changes resulting from the report will not come into force until the 2021 tax year (after the next election).

Other areas the new Government is likely to focus on include:

- ▶ Additional audit resources for Inland Revenue to facilitate a crackdown on multinational tax avoidance.
- ▶ Increased penalties for corporate fraud and tax evasion.
- ▶ Likely to see measures focused on environmental sustainability, with tax forming an integral part of a wider environmental, social or economic policy, with the tax itself not a revenue raiser.
- ▶ A focus on small businesses and investigating a possible lower corporate tax rate for small-to-medium-sized businesses.
- ▶ Likely to see a number of measures aimed at preventing housing speculation and increasing fairness for first home buyers.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Jacinda Ardern, Prime Minister
- ▶ Grant Robertson, Minister of Finance
- ▶ Stuart Nash, Minister of Revenue

### Tax administration leaders

- ▶ Naomi Ferguson, Commissioner of Inland Revenue
- ▶ Cath Atkins, Deputy Commissioner, Policy and Strategy
- ▶ Martin Smith, Chief Tax Counsel

## 2.8 What key tax policy changes did you experience in your country in 2017?

### BEPS

- ▶ See 2.4 *Corporate income taxes*. These proposals have been the subject of detailed consultation and policy development during 2017.
- ▶ New Zealand signed the MLI in June 2017. Modification of New Zealand's double tax treaties is unlikely to occur until 2019.

## Other reforms

- ▶ *Business Transformation* - Stage 1 of Inland Revenue's Business Transformation Project went live in February 2017 introducing new GST online services.
- ▶ *AEOL* - legislation enacted in February 2017 implements the G20/OECD Automatic Exchange of Information (AEOL) initiative and the Common Reporting Standard (CRS) for financial institutions. Due diligence requirements under the CRS began from 1 July 2017, with reporting financial institutions required to submit AEOL reporting to Inland Revenue for the tax year ending 31 March 2018, by 30 June 2018, and the first exchange of information to occur by 30 September 2018.
- ▶ *Foreign trusts* - additional compliance from February 2017, including a requirement for foreign trusts to register with Inland Revenue, file annual returns and pay registration and filing fees.
- ▶ *Debt remission* - from 1 April 2017 there will be no debt remission income for a debtor if certain criteria are met.
- ▶ *Withholding taxes* - from 1 April 2017 contractors can elect their own withholding rate without applying to Inland Revenue for a special tax code, withholding tax is extended to labour-hire firms, and voluntary withholding agreements are permitted.
- ▶ *Employee share schemes (ESS)* - PAYE option applies from 1 April 2017. Provides businesses the option of applying PAYE withholding tax rules to share benefits provided under ESS.
- ▶ *NRWT & AIL* - New Zealand has more closely aligned the payment of interest and nonresident withholding tax (NRWT) for related party lending. In addition, the requirements for deducting the approved issuer levy (AIL) have been tightened. The changes generally apply from 30 March 2017 or, for existing arrangements, from the beginning of the borrower's income year following 30 March 2017.
- ▶ *LTCs* - various changes have been made to the rules for look through companies (LTCs), with most applying from the 2017-18 income year.

## 2.9 Pending tax proposals

A tax bill currently before Parliament contains a number of proposed changes and is expected to be enacted by 31 March 2018. The bill contains reforms to:

- ▶ PAYE and Employee Share Schemes - see 2.4 Taxes on wages and employment;
- ▶ Investment income information - see 2.4 Corporate income taxes;

- ▶ IRD numbers for nonresidents - provides the Commissioner of Inland Revenue discretion to issue IRD numbers to offshore persons who do not have a functional New Zealand bank account.

Another tax bill currently before Parliament is focused on international tax reform and contains BEPS proposals. Public submissions on the bill are open until 8 February 2018 and the bill is expected to be enacted effective July 2018. See 2.4 *Corporate income taxes*.

The new Government has confirmed it will repeal the personal tax cuts proposed by the previous government. Instead, they have passed legislation containing their proposed Families Package. This package includes, among other things, an extension of Working for Families tax credits from 1 July 2018 and reinstatement of the Independent Earners' Tax Credit from 1 April 2018.

Other areas of reform which could potentially be legislated for in 2018 include:

- ▶ Proposed changes to the tax rules for feasibility and black hole expenditure following the landmark *Trustpower* judgment which aim to allow more feasibility and black hole costs to be deducted.
- ▶ Proposals for modernizing tax administration which support the Business Transformation project and are aimed at helping to get tax right from the start. The proposals center on the roles of the Commissioner of Inland Revenue, taxpayers and their agents, information collection, confidentiality and disclosure, and the design of a new Tax Administration Act.
- ▶ Reintroduction of some form of tax credit for research and development expenditure.

## 2.10 Consultations opened/closed

### Open:

- ▶ Public submissions on whether to ratify the MLI (submission period closes on 23 December 2017).
- ▶ Public submissions on the draft BEPS legislation (submission period closes on 8 February 2018).

### Closed

- ▶ Various consultations relating to the BEPS proposals. These consultations are now closed and draft legislation has been introduced which is expected to be enacted by July 2018.
- ▶ Consultation on improvements to social policy closed in September 2017. The proposals are part of the Business Transformation project and would build on legislation currently going through Parliament that would see Inland

Revenue receiving income information from employers and banks more quickly.

- ▶ Consultation on options for correcting PAYE errors and adjustments closed in September 2017.
- ▶ Consultation on making tax simpler for individuals closed in July 2017. The main proposal is that fewer individuals, who receive income only from salary, wages, interest or dividends, would have to provide year-end income information to Inland Revenue. Inland Revenue would automatically calculate and issue refunds or amounts of tax to pay using information received from employers and banks and other investment companies.
- ▶ Consultation on proposed deferral rules for taxing employee share schemes offered by start-up companies closed in July 2017.
- ▶ Consultation on proposals to improve the tax treatment of black hole and feasibility expenditure for businesses are now closed.

- ▶ In relation to automatic exchange of information (AEOI):
  - ▶ Feedback and queries on AEOI draft guidance was open until February 2017. From July 2017 financial institutions will need to begin meeting obligations under the OECD's Common Reporting Standard for the Automatic Exchange of Financial Account Information in Tax Matters. The draft guidance outlines how these various entities are affected and their responsibilities under the Common Reporting Standard.
  - ▶ Consultation around excluded entities and accounts closed in January 2017.
  - ▶ Consultation on proposals for modernizing tax administration closed in February 2017. See 2.8 *Pending tax proposals* for further details.

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

The New Zealand Inland Revenue has continued its proactive "intelligence" approach to tax enforcement building on the changes it made when it introduced the requirement for significant enterprises to submit annually a "basic compliance package" (BCP) comprising a group structure, financial statements and tax reconciliations.

Inland Revenue is now increasing its capacity to use technology in the collection of tax and audits through its Business Transformation Project which will facilitate a faster and greater collection of information by Inland Revenue. The use of technology will aid the automatic processing of the information and greatly improve Inland Revenue's ability to use data analytics in its enforcement approach.

Once a taxpayer is under audit, there is an increasing trend towards higher levels of evidence gathering, such as interviewing the staff of corporate taxpayers and reviewing staff emails, especially in transfer pricing. Inland Revenue has been pushing transfer pricing audits to litigation, with the intention of obtaining a favorable (to Inland Revenue) precedent in the courts.

### 3.3 Key risk factors and audit triggers in 2018

1	Hybrid mismatches	2018 will see an increased focus on multinationals and the introduction of a suite of BEPS measures aimed at reducing/eliminating opportunities for taxpayers with cross-border activities to escape taxation through the use of various instruments, including in respect of hybrid mismatching arrangements.
2	Dividend Avoidance	Inland Revenue has come across a number of cases of potential dividend stripping, which it presented in outline to the Law Society Tax Conference, and 2018 will see a continuing focus in this area. Transactions which are not supported by a clearly-evidenced commercial rationale will be at risk.
3	High interest and/or service payments	Inland Revenue has been auditing multinationals in respect of high interest and/or service payments for the last few years, and 2018 will see a continuation of this focus. In particular, Inland Revenue requires not just evidence that services were provided, but that they benefited the New Zealand business. Any high interest payments are likely to be at risk as Inland Revenue seeks to apply the logic of the decision in the Australian Chevron case to New Zealand.
4	Limited risk distributors	For subsidiaries with a limited risk profile Inland Revenue expects profit levels to be maintained, unless there are very good reasons for them not to be. Arrangements where the subsidiary is required to bear losses in respect of risks to which it has not been exposed, will not be considered arm's-length behaviour.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

In 2017, the Government amended the Income Tax Act 2007 to confirm that the general anti-avoidance rule overrides the provisions contained in New Zealand's double tax treaties.

Incremental late payment penalties will no longer be imposed on future GST, provisional tax, income tax and Working for Families tax credit overpayment debt. They will still be subject to the initial 1% and 4% penalties payable for these debts after one and seven days respectively.

### 3.6 Potential tax enforcement developments in 2018

The Government has stated it expects to enact draft BEPS legislation by June 2018 which has consequences for the enforcement of (especially) transfer pricing matters. These include:

- ▶ The onus of proof on transfer pricing matters will be shifted to the taxpayer.
- ▶ Transfer pricing will be subject to a seven-year statute bar period compared to the standard four-year period for other income tax.
- ▶ Increasing Inland Revenue's powers to access multinationals' information and documents held offshore, including information about other nonresident group companies.

The Government has stated it expects these changes to apply from approximately 1 July 2018.

In addition to the draft BEPS legislation, the Government is likely to allocate additional audit resources to Inland Revenue with a focus on cracking down on multinational tax avoidance. The Government has also indicated it will look to increase penalties for corporate fraud and tax evasion.



View of Albert Park and the Auckland Harbor

# Panama

## Tax policy

**Luis Eduardo Ocando B.**  
luis.ocando@pa.ey.com  
+50 7 208 0144

**Isabel Chiri**  
isabel.chiri@pa.ey.com  
+50 7 208 0112

## Tax controversy

**Rafael Sayagués**  
rafael.sayagues@ey.com  
+50 6 220 9880

**Randall F. Oquendo**  
randall.oquendo@cr.ey.com  
+50 6 2208 9874

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25%	25% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	25%	25% <sup>2</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	7%	7% <sup>3</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The Government will continue to comply with international standards regarding transparency and the exchange of information.
- ▶ The first automatic exchange of information under the CRS will be carried out by September with appropriate jurisdiction partner.
- ▶ The government will continue to implement minimum standards of the BEPS Action Plan.
- ▶ Certain preferential tax regimes may be amended in order to comply with Action 5 of BEPS.
- ▶ Panama may sign the MLI, which would align Panama's treaty network with the BEPS minimum standards, as it has made the commitment to do so.
- ▶ The Panamanian tax authority is reinforcing its audit department in relation to tax incentives and VAT.
- ▶ Panama's government is enforcing the need for companies to have more substance in Panama to qualify as tax resident.

<sup>1</sup> Article 699 of the Fiscal Code.

<sup>2</sup> Article 700 of the Fiscal Code.

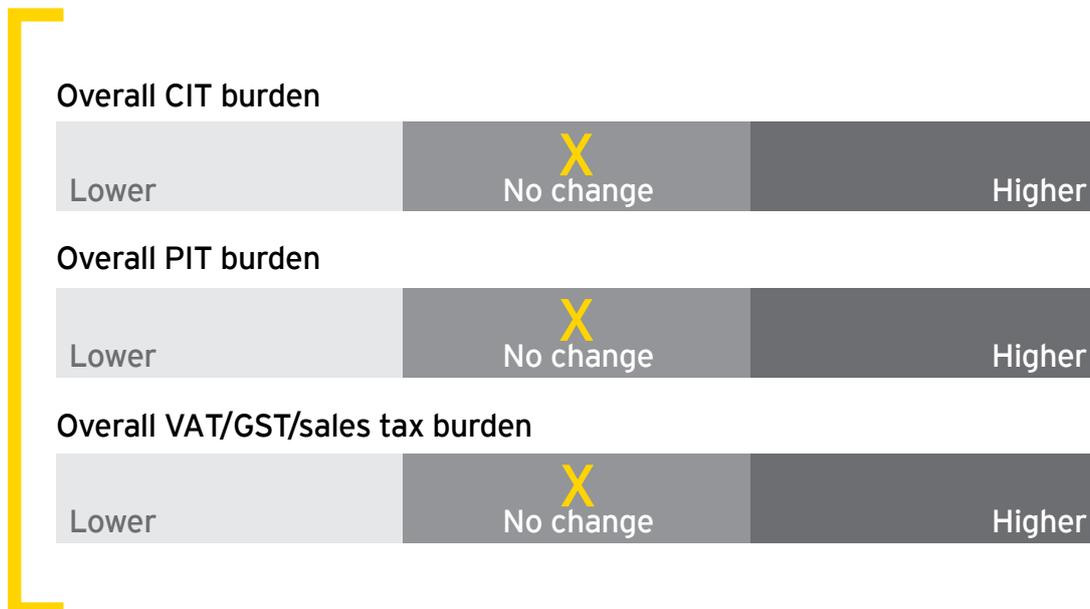
<sup>3</sup> Paragraph 6, article 1057-V of the Fiscal Code.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

There are no changes expected.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

There are no changes expected.

#### Indirect taxes

There are no changes expected.

### Taxes on wages and employment

There are no changes expected.

### VAT/GST/sales taxes

There are no changes expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)

- 2018
- 2019
- 2020 or later
- Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

There are no major changes expected in the political landscape.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Juan Carlos Varela - President of Panama
- ▶ Dulcideo de la Guardia - Minister of Economy and Finance

### Tax administration leaders

- ▶ Publico Cortes - Director of the General Directorate of Income

## 2.8 What key tax policy changes did you experience in your country in 2017?

### ▶ **FATCA and CRS:**

- ▶ Panama issued Policy Statement regarding its compliance with fiscal transparency (Executive Decree 10 de 1997).<sup>4</sup>
- ▶ Panama ratifies OECD's Convention on Mutual Administrative Assistance in Tax Matter.<sup>5</sup>
- ▶ Panama enacted Executive Decree 124 of 2017 which includes provisions on due diligence for CRS purposes and includes other provisions that apply for both CRS and FATCA.<sup>6</sup>
- ▶ Panama exchanged information automatically with the US for the first time (FATCA).
- ▶ Panama has initiated negotiation to sign bilateral CAA for CRS purposes, which consequently has led up to the signing with some of these jurisdictions.
- ▶ Panama has manifested its intention to now sign the MCAA.

### ▶ **BEPS:**

- ▶ Panama expressed its intention to sign the MLI.
- ▶ Potentially preferential tax regimes of Panama underwent review by the OECD Forum on Harmful Tax Practices, some of which were considered non-harmful regimes, such as the Colon Free Trade Zone and Shipping regime in Panama.

## 2.9 Pending tax proposals

### **Open:**

- ▶ According to the BEPS Inclusive Framework progress report of July 2017, amendments to Panama's Multinational Companies Headquarters special (SEM) regime, Panama Pacifico regime and City of Knowledge regime will be necessary in order to comply with the requirements of BEPS Action 5.
- ▶ Transfer pricing APA regime.
- ▶ Tax Fraud as Predicate Offense to Money Laundering in Panama

### **Closed:** None

## 2.10 Consultations opened/closed

**Open:** None

**Closed:** None

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

The General Revenue Directorate of Panama has a very well-developed, sophisticated electronic compliance system. It launched the "e-tax 2" software which is designed to enable improved taxpayer compliance matters by allowing tax returns to continue to be submitted electronically, but with certain tax forms being updated (e.g., capital gains tax returns now include option to determine if the WHT will be considered definitive).

<sup>4</sup> Tax Alert, 14 February 2017.

<sup>5</sup> Tax Alert, 6 March 2017.

<sup>6</sup> Tax Alert, 18 May 2017.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Tax planning related to corporate reorganization that results in amortizable assets</b>	The focus of the tax authorities in 2018 will be transactions (usually carried out by large taxpayers) which result in goodwill. Tax authorities intend to audit corporate restructurings, and also mergers and acquisitions where there was no capital gains tax paid.
2	<b>Compliance with FATCA and CRS obligations</b>	The focus of the tax authorities in 2018 will be compliance with CRS and FATCA obligations by Reporting Financial Institutions.
3	<b>Transfer pricing compliance</b>	The tax authorities will continue to focus on entities engaged in transaction with related parties, specifically regarding their compliance with transfer pricing rules and arm's length principle. Moreover, we believe that entities under preferential regimes could be under special scrutiny regarding adequate compliance with filing obligations and having their transfer pricing study available to the tax authority.
4	<b>Sales tax (ITBMS or VAT)</b>	The tax authorities will continue monitor the correct remittance of ITBMS (VAT) by taxpayers and withholding agents.  It is important to mention that the tax authority is working on a pilot project for 2018 which consist in all invoices being issued electronically and submitted online to the competent authority. Therefore, the trend in the tax administration is toward virtual monitoring. The expectation is that this would come into effect by 2019.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

No tax enforcement developments of note occurred in Panama in 2017.

### 3.6 Potential tax enforcement developments in 2018

We do not expect any significant change in focus from the tax authorities in 2018.

# Peru

## Tax policy

**David de la Torre**

david.de.la.torre@pe.ey.com

+51 1 411 4471

**Monica Byrne**

monica.byrne@pe.ey.com

+51 1 411 4444

## Tax controversy

**Maria Eugenia Caller**

maria-eugenia.caller@pe.ey.com

+51 1 411 4412

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	29.5%	29.5%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	30%	30%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	18%	18%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

Tax policy will be driven by three key issues:

- ▶ Since 1990 tax revenues as a share of GDP in Peru increased in more than 6.7% percentage points. However, the share of 14% in 2017 remain low compared to other Latin American Countries. Thus, increase of revenue is a priority driver.
- ▶ To expand the tax base in order to improve progressiveness.
- ▶ It is expected in 2018 Peruvian Government will continue to introduce tax reforms to reduce tax avoidance and evasion. This will depend on how political forces in Congress may interact in 2018.

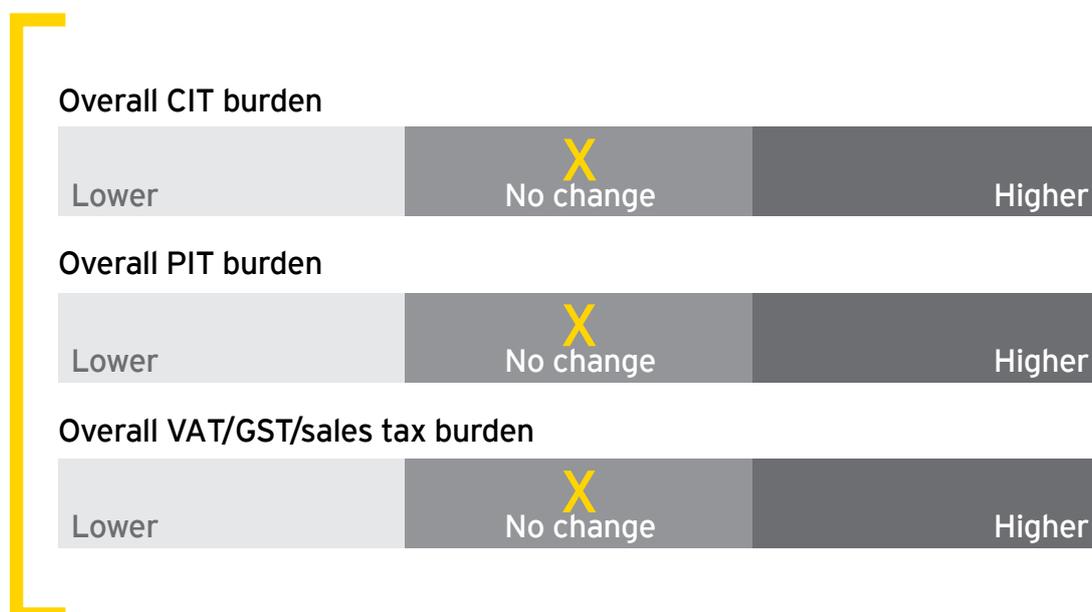
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No changes are expected.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes are expected.

#### Indirect taxes

No changes are expected.

### Taxes on wages and employment

No changes are expected.

### VAT/GST/sales taxes

No changes are expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

Not clear. Recent attempt to impeach the President was not successful. New environment on the interaction of political forces is expected.

## 2.7 Current tax policy and tax administration leaders

No recent changes in leadership

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Mandatory Country-by-Country reporting and related transfer pricing documentation requirements were introduced.
- ▶ Peru signed the Convention on mutual administrative assistance in tax matters. Tax examinations abroad, simultaneous tax examinations and assistance in tax collection will be possible as from the entry into force of the Convention.
- ▶ Last year, Peru amended the Tax Code in order to subscribe the Convention and to be able to exchange information on

request, spontaneous exchange and automatic exchange pursuant to the OECD/G20 Standard for Automatic Exchange of Financial Account Information in Tax Matters.

## 2.9 Pending tax proposals

**Open:** Recently Peruvian Government has requested to the Congress Executive Power to introduce BEPS measures in order to continue with the endorsement of the commitments to OECD policies toward Peru's full membership entrance to this organization in 2021.

**Closed:** None

## 2.10 Consultations opened/closed

None

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

Peruvian Tax Administration has a very well-developed, sophisticated electronic compliance and audit system. All tax returns are submitted electronically, and invoices also are issued electronically and submitted to online.

Therefore, the trend in the tax administration is toward virtual audits.

High-income corporate taxpayers are audited at the federal level by specialized tax offices. These offices target issues such as tax planning and corporate restructuring, transfer pricing, and international tax.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Application of transfer pricing rules</b>	Focus of the Tax authorities in 2018 will be transfer pricing transactions (usually carried out by large taxpayers) that result in adjustment of income tax base.
2	<b>Capital gains taxes - merger and acquisition of businesses</b>	Tax authorities also will audit corporate restructurings, and also mergers and acquisitions where there was no capital gains tax paid.
3	<b>Personal income tax</b>	After the conclusion of the "Tax Amnesty" for non-declared income of individuals, it is expected that individuals that did not enter in the amnesty may be audited.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

Retroactive application of Laws and regulations are forbidden by the Peruvian Constitution.

### 3.6 Potential tax enforcement developments in 2018

- ▶ Tax Authorities audits will focus in transfer pricing transactions and Merge and Acquisitions in 2018.
- ▶ Tax authority will continue to perform audit programs regarding large taxpayers.
- ▶ Country by country Transfer Pricing Reports will be required to large taxpayers.
- ▶ In Peru no tax resolution disputes (BEPS Action 14) are in place yet.
- ▶ Focus on individual's taxation after "tax amnesty" concluded in December 2017.

### 3.5 Tax enforcement developments in 2017

Please see section 2.7.

# Poland

## Tax policy

Zbigniew Liptak  
zbigniew.liptak@pl.ey.com  
+48 22 557 70 25

## Tax controversy

Agnieszka Tałasiewicz  
agnieszka.talasiewicz@pl.ey.com  
+48 22 557 72 80

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	19% (15% for small taxpayers <sup>1</sup> )	19% (15% for small taxpayers)	0%
Top personal income tax (PIT) rate (national and local average if applicable)	18%/32% <sup>2</sup>	18%/32%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	23% <sup>3</sup>	23%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Tightening the VAT rules in order to increase the collection of VAT, including the introduction of split payments
- ▶ Closing CIT loopholes to increase CIT collection, including implementation of the ATAD Directive
- ▶ Digitalization of information sent to tax authorities - Including the use of SAF-T for all VAT taxpayers
- ▶ Introduction of a commercial property tax under CIT regulations
- ▶ Increasing the effectiveness of tax audits. Additionally, the authorities will publish statements that indicate what business practices may be treated as tax abusive.
- ▶ Project of whole new Polish Tax Code has been prepared - already published but expected to enter into force as of 1 January 2019.

<sup>1</sup> Art. 19 par. 1 of CIT Act.

<sup>2</sup> Art. 27 par. 1 of PIT Act.

<sup>3</sup> Art. 41 par. 1 of VAT Act in relation with Art. 146a of VAT Act.

## 2.2 Tax burdens in 2018

For each tax type, please indicate if a change has been proposed/known, and/or if additional change is possible/somewhat likely in 2018, or if no change is expected. Also mark what the expected tax burden is for 2018.

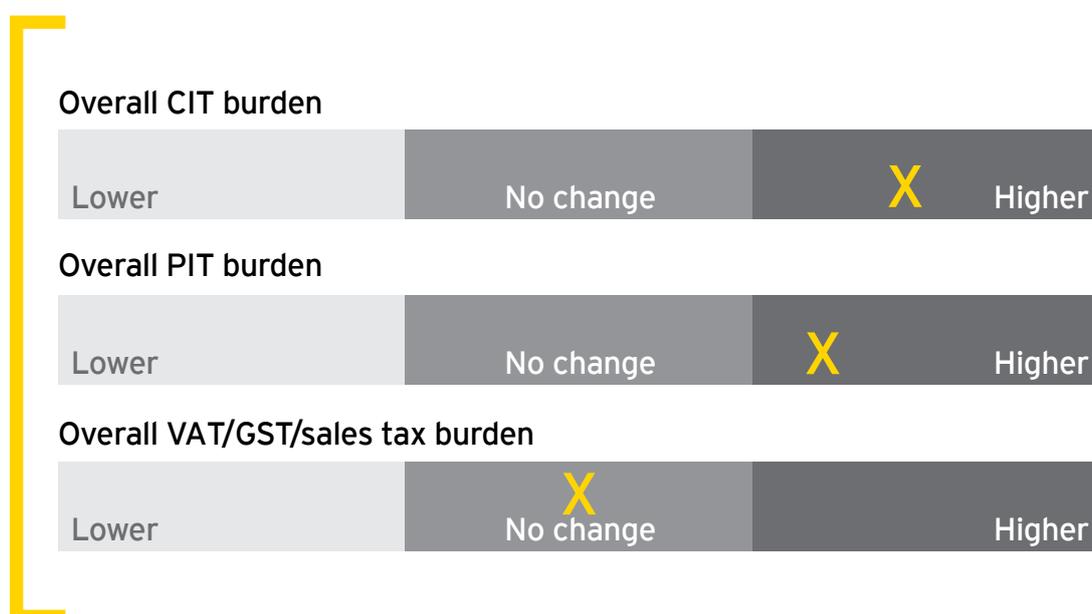
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

A number of significant 2018 corporate income tax reform items all became effective 1st January 2018. Key changes include the following:

- ▶ New thin capitalization rules, which also cover third-party financing
- ▶ Disallowance of interest on debt-push-down strategies (leveraged buy-outs followed by tax consolidation of the acquirer with the target)
- ▶ Majority of royalties and service fees will become nondeductible, with the restrictions going much further than the OECD BEPS Action 4 recommendations.
- ▶ Introduction of a separate income basket for capital gains, and the disallowance of the offsetting of capital gains or losses against other sources of income
- ▶ Changes to the controlled foreign company (CFC) legislation, which may broaden the number of foreign subsidiaries that meet the CFC criteria
- ▶ Changes to the functioning of Tax Capital Groups (TCG), in particular loosening the conditions required for their establishment as well as clarifications regarding the tax consequences related to their dissolution
- ▶ A minimum levy on certain commercial real estate
- ▶ The changes mentioned above may also result in an increase of WHT burdens.
- ▶ An increase of the one-time depreciation threshold from PLN3,500 to PLN10,000.
- ▶ State-owned companies will no longer be not treated as related entities for transfer pricing purposes, under particular circumstances.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes are expected for this type of activity.

#### Indirect taxes

No changes are expected for this type of activity.

### Taxes on wages and employment

- ▶ Increase of the tax-free threshold from PLN6,600 to PLN8,000
- ▶ Income limit increase, to which authors may apply 50% of tax deductible costs: up to PLN85,528 annually
- ▶ Reduction of the range of entitled persons who will be able to claim 50% of tax-deductible costs
- ▶ Share-based plans no longer to be taxed at the 19% flat rate, instead being taxed at progressive rates 18%/32% plus social burdens
- ▶ Abolition of earnings cap above which social security contributions are not paid, hence social security burdens will increase (entry into force 1 January 2019)
- ▶ Increase in the limits of certain tax exemptions

### VAT/GST/sales taxes

- ▶ Introduction of the split payment mechanism is expected to enter into force as of 1 July 2018.
- ▶ Introduction of electronic receipts (the exact date of entry into force is not known yet).
- ▶ Introduction of the obligation of submission of SAF-T to all VAT taxpayers from 1 January 2018.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

Poland ratified the MLI in November 2017.
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No



## 2.6 Political landscape

In December 2017, there was a change in the Prime Minister's position, justified by the need to place more emphasis on economic development. The Minister of Finance and Development, retaining his current position, became a Prime Minister.

The current government continues to focus on welfare spending, hence it focuses on increase of tax collection. As a consequence, the tax authorities are:

- ▶ Tightening the VAT rules
- ▶ Modernizing income taxes to close loopholes
- ▶ Introducing new burdens, e.g., levies on certain commercial real estates
- ▶ Strictly reviewing, during tax audits, whether companies comply with the relevant transfer pricing regulations

There are no elections planned for 2018.

## 2.7 Current tax policy and tax administration leaders

- ▶ Mateusz Morawiecki, Prime Minister, Minister of Development and Finance
- ▶ Wiesław Janczyk, Secretary of State
- ▶ Marian Banaś, Undersecretary of State, Head of the National Revenue Administration
- ▶ Piotr Walczak, Undersecretary of State, Deputy Head of the National Revenue Administration
- ▶ Paweł Cybulski, Undersecretary of State, Deputy Head of the National Revenue Administration
- ▶ Leszek Skiba, Undersecretary of State, Chief Spokesman for Public Finance Discipline
- ▶ Piotr Nowak, Undersecretary of State
- ▶ Paweł Gruza, Undersecretary of State
- ▶ Adam Niedzielski, Director General
- ▶ Teresa Czerwińska, Undersecretary of State

Leaders may be subject to change due to recent government reshuffle. At the present time, no information in this area has been published.

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Reorganization of tax authorities in Poland that came into force as of 1st March 2017: A National Revenue Administration has been established, under which tax audits have been enforced.
- ▶ New transfer pricing regulations entered into force from 1st January 2017, increasing requirements regarding transfer pricing documentation: e.g., obligatory benchmarking analysis, preparation of local and master files, more detailed data to be included in the documentation.

## 2.9 Pending tax proposals

### Open:

- ▶ A new Polish Tax Code. The project has been already published and awaits the legislative process. The new code is expected to enter into force as of 1st January 2019.
- ▶ VAT split payment mechanism, which is currently under legislative process. It is expected to enter into force from 1st July 2018.
- ▶ Electronic receipts - also under legislative process. The exact date of enter into force not yet known.

### Closed:

- ▶ None

## 2.10 Consultations opened/closed

None

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2017

Tax enforcement has become a key priority for the tax authority in recent years. In 2017, the reform of the tax authorities (March 2017) led to a temporary drop in the number of new audits opened and as well as the intensity of proceedings launched before the reform. However, a number of significant assessments were issued, particularly in the second half of 2017. For indirect taxes, the tax authorities continue to focus on combating VAT fraud, targeting both initiators of the fraud as well as the entities participating in the trading chain. We have also seen a high interest of the authorities in verifying and challenging positions that taxpayers take in relation to real estate transactions and fixed establishment reporting. A significant focus is also given to corporate income taxes, especially in relation to transfer pricing and tax planning. The general approach is to reduce the general number of inspections, while also significantly improve targeting and have a bigger focus on individual audits/disputes. A number of individual rulings were challenged during audits and, as a result, such rulings have ignored when issuing tax assessments (see also section 3.3).

### 3.3 Key risk factors and audit triggers in 2018

1	IP/other assets restructuring	The tax authorities have recently been involved in a number of tax audits regarding various types of business restructurings, which have resulted either in increasing (declaring) amortizable value of intellectual property (other assets) or license charges being imposed on businesses. Various approaches have been presented by the authorities and this trend is expected to be sustained in 2018.
2	Low profitability or declaring loss	The tax authorities are closely monitoring businesses' profitability. A drop in profitability or constantly low results may serve as a high probability factor for initiating a tax audit focused on transfer pricing review.
3	Tax Capital Groups	Tax Capital Groups are being reviewed to check whether they were not used with the main focus of reducing taxable base by means other than consolidation, especially regarding those transactions that result in loss on capital gains or high interest costs may trigger the interest of the authorities.
4	Toll manufacturing	Following CJEU rulings on definition of fixed establishment for VAT purposes, a number of instances of challenging VAT treatment have been noticed. Especially situations where services are being provided to entities who use toll manufacturing schemes may be at scrutiny.
5	Leveraged buy-outs	One of the factors that has been identified as possibly triggering tax audit are transactions where debt interest is reducing operating profits following acquisition transactions.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

Yes

No

- ▶ Explanation

While Polish regulations generally require that BEPS recommendations are introduced into local tax system, there have already been instances of the Polish tax authorities referring to BEPS as justification for assessment being issued. There is a risk that such practice would be continued.

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

Yes

No

- ▶ Explanation

The highest risk relates to GAAR. With its introduction the authorities have attempted to apply pre-GAAR instruments in a way very similar to GAAR itself. Even though it is unlikely that the tax authorities would openly refer to GAAR or new regulations with retroactive effect, similar effects may be suggested by aggressive interpretations of rules that existed in tax system previously.

### 3.5 Tax enforcement developments in 2017

The main development in 2017 was a large reform of tax authorities, which was aimed at higher consolidation of various elements of the authorities, namely customs authorities, tax inspection authorities and regular tax authorities.

The reform allows for easier cooperation between officers and clerks, but also introduced new procedures allowing for more in-depth and less taxpayer-friendly audits. Some of the examples being: no advance notification of the audit (allowing e.g., for unexpected raids), shorter deadlines for witness hearings, country-wide scope of operations of the authorities (instead of regional), ability to use digital resources, and no time limits on audits.

At the same time SAF-T reporting is now well developed and will include all taxpayers as of the beginning of 2018. 'Big data' analytics and individual cross-checks will result in the authorities being able to use new procedures more effectively.

### 3.6 Potential tax enforcement developments in 2018

One particular development may include launching a single, central tax office for largest taxpayers and Tax Capital Groups. Although tax enforcement would not be the core focus of such a tax office, it will also allow for better monitoring and more effective targeting of taxpayers.

Mandatory tax disclosure mechanisms are currently being discussed, with the aim of introducing them in 2018.

# Portugal

## Tax policy

**Carlos Lobo**

carlos.lobo@pt.ey.com

+351 937 912 146

## Tax controversy

**Luís Marques**

luis.marques@pt.ey.com

+351 937 912 214

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	<p>Maximum aggregate rate: 29.5%</p> <p>Standard CIT rate: 21%</p> <p>Municipal surcharge: 0% to 1.5%</p> <p>State surcharge: 3% to 7%</p>	<p>Maximum aggregate rate: 31.5%</p> <p>Standard CIT rate: 21%</p> <p>Municipal surcharge: 0% to 1.5%</p> <p>State surcharge: 3% to 9%</p>	2% (due to the increase of the maximum State Surcharge, applicable to the respective bracket of taxable income, i.e., €35 million)
Top personal income tax (PIT) rate (national and local average if applicable)	<p>Maximum aggregated PIT rate: 56.21%</p> <p>Portuguese tax resident individuals are liable to PIT on their worldwide income at a maximum aggregated PIT rate of 56.21% tax rate composed by: (i) progressive standard PIT rates up to 48% depending on the bracket of taxable income; (ii) an extraordinary progressive surtax up to 3.21% due on taxable income exceeding the annual amount of the minimum monthly salary, i.e., EUR7,798 (the extraordinary surtax was discontinued during 2017 fiscal year); and (iii) additional solidarity surcharge applicable at a 2.5% tax rate to taxable income exceeding EUR80,000 up to EUR250,000 and 5% levied on taxable income exceeding EUR250,000.</p>	<p>Maximum aggregated PIT rate: 53%</p> <p>The extraordinary surtax was discontinued during fiscal year 2017 and therefore should not be applicable to the taxable income obtained during 2018 fiscal year. However, the standard progressive PIT rates and the additional solidarity surcharge remain applicable.</p>	Reduction of PIT, in light of the full elimination of extraordinary surtax.

	2017	2018	Percentage change
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	23% (6% reduced tax rate and 13% intermediate tax rate applies under specific circumstances).	23% (6% reduced tax rate and 13% intermediate tax rate applies under specific circumstances).	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The drivers of the tax policy in Portugal are typically disclosed within the State Budget Law.
- ▶ The 2018 State Budget Law is indicated by the Portuguese Government as resulting in the reduction of the inequality, being implemented in such State Budget Law a decrease of the PIT (namely by increasing the number taxable income brackets from 5 to 7).
- ▶ Portuguese tax legislation is also progressively increasing the means provided to the Tax Authorities to more effectively control and monitor taxpayers, which is evidenced in the 2018 State Budget Law by the new Stamp Duty monthly disclosure procedures.
- ▶ Compliance obligations are currently being intensified, namely with the new Beneficial Owner Central Registry Regime, which established the obligation, *inter alia*, of Portuguese companies to disclose their beneficial owners on a periodical report to State Authorities, while also being required to maintain an updated internal record where that information is available. It should be noted that this regime awaits further regulation.
- ▶ We estimate that the tax policy will keep up with current trends in the international arena, namely in what concerns the full BEPS and ATAD implementation.

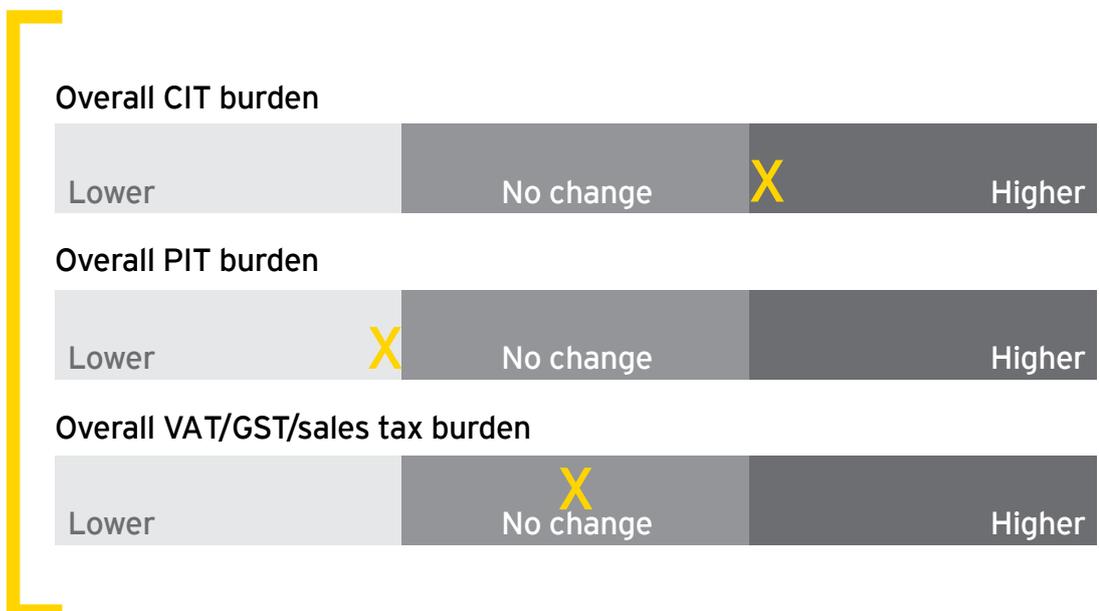
### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



### 2.4 Tax policy outlook for 2018 – detail

#### Corporate income taxes

The territorial scope of CIT was extended with the introduction of a new rule in the 2018 State Budget Law according to which capital gains realized by nonresident entities with the disposal of shares or similar rights (such as participation units) held on nonresident entities, will become subject to CIT in Portugal, when in any given time during the 365 days prior to the disposal, the value of those shares or rights derived in more than 50% directly or indirectly from immovable property or rights over immovable property located in Portugal. An exception to this new rule is provided when the immovable property located in Portugal is allocated to an agricultural, industrial or commercial activity which is not the sale and purchase of immovable properties.

It should also be noted that there are no additional significant changes in the rules of assessment of taxable profit - this will follow the same method as of 2017.

During 2017, a new condition was also introduced on the participation exemption regime on dividends distributed to qualified nonresident entities. Specifically, Portuguese distributing companies now have to fulfill the disclosing obligations inherent to the Beneficial Owner's Central Registry in order for the dividends distributed by them to nonresident entities to benefit from this exemption regime.

#### Taxes on digital activity

##### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

There are no specific rules in what concerns digital activity, with this activity currently taxed under the general tax regime.

However, the Portuguese Tax Authorities have issued an administrative ruling on which it is stated that gains realized by individuals on the disposal of cryptocurrency are not taxable, except when they are attributable to a business or professional activity.

##### Indirect taxes

As above

#### Taxes on wages and employment

A decrease of the taxpayer's PIT burden was introduced in the Portuguese tax legislation. Additionally, the PIT surcharge was revoked, which was previously levied on the vast majority of taxpayers at progressive rates.

#### VAT/GST/sales taxes

No relevant changes are expected in 2018.



## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

Elections are scheduled to take place in 2019, but are not expected to result in significant changes to tax policy.

## 2.7 Current tax policy and tax administration leaders

- ▶ Minister of Finance - Mário Centeno
- ▶ Secretary of State for Tax Affairs - António Mendonça Mendes

## 2.8 What key tax policy changes did you experience in your country in 2017?

In 2014, a reform of the Portuguese CIT legislation was implemented and in the 2015 a PIT reform took place.

In this regard, 2016 and 2017 were years of consolidation of the new tax rules.

Nevertheless, the following matters arose during 2017:

- ▶ The Beneficial Owner Central Registry regime (previously addressed).
- ▶ A controversial new decision by the tax authorities, later confirmed by the arbitration court, by which the general anti-abuse clause was applied, resulting in the disregard of an Irish trading company engaged in the distribution of

the goods produced by a related Portuguese entity (due to the lack of valid economic reasons) and, consequently, in the determination of adjustments to the taxable income of the Portuguese entity due to the imputation of the income artificially obtained by the Irish trading company (i.e., instead of a transfer pricing adjustment).

- ▶ So as to encourage the registration of ships/vessels in Portugal, the government requested an authorization from Parliament to create a "tonnage tax" regime for the registration of those ships/vessels, together with an encouraging tax regime for the respective crews.
- ▶ The Share Capital Notional Interest Deduction regime was subject to relevant changes, namely the possibility to deduct an amount limited to each fiscal year, corresponding to 7% (previously 5%) of the new capital increases," as defined in the relevant legislation, up to EUR2 million. In addition, the regime is now applicable regardless of the qualification of the beneficiary as a small or medium enterprise as well as allows the increase of shareholders loans into capital (previously, only cash contributions). Relevant changes have also been introduced in 2018 (possibility to use third party debt and profits to increase capital).
- ▶ A study was also released, revealing that 60% of the tax cases litigated in the arbitration courts were won by taxpayers.
- ▶ The Portuguese Government is developing Country-by-Country Reporting (CbCR) obligations in Portugal.

## 2.9 Pending tax proposals

### Open:

- ▶ Beneficial Owner Central Registry (currently awaiting a Ministerial Ordinance)
- ▶ Stamp Duty monthly return (currently awaiting a Ministerial Ordinance)
- ▶ Introduction of the "tonnage tax" regime

## 2.10 Consultations opened/closed

N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**

E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

The Portuguese Tax Authorities has a developed and sophisticated electronic compliance and audit system. All tax returns are submitted electronically in the Portuguese Tax Authorities website, and most invoices are issued electronically and made available on that same website. Therefore, the trend in the tax administration is toward digitalization of tax functions.

## 3.3 Key risk factors and audit triggers in 2018

Example	Tax planning related to corporate reorganization that results in amortizable assets	The focus of the Tax authorities in 2018 will be transactions (usually carried out by large taxpayers) that result in goodwill. Tax authorities intend to audit corporate restructurings, and also mergers and acquisitions where there was no capital gains tax paid.
1	Structures lacking substance and countering tax evasion	It is expected that the focus of the Portuguese Tax Authority (PTA) in 2018 will target corporate structures which lack substance or which are conceived exclusively or mainly for the purpose of benefitting from tax advantages.  Profit shifting practices will also be one of the main concerns of the authorities.
2	Transfer Pricing	The Portuguese Tax Authorities will also focus on transfer pricing, through transfer pricing adjustments when certain transactions are not carried out at arm's length.
3	CFC rules	It is expected that the Portuguese Tax Authorities will focus on the effective applicability of the CFC rules currently in force within Portuguese tax legislation.
4	Permanent Establishment	It is expected that the focus of the Portuguese Tax Authorities will also include the assessment of the existence of permanent establishments and the rules inherent to the determination of the respective taxable profit, namely in what concerns the criteria adopted for those purposes.



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

Please note that there are several tax rules in the 2018 Government Budget Law that were specifically given retroactive effects.

### 3.5 Tax enforcement developments in 2017

The creation of the Beneficial Owner Central Registry imposed the requirement that every entity who needs (for the purpose of their activity or an isolated act) to obtain a valid Portuguese Tax Number discloses their Beneficial Owner. In addition,

Portuguese companies will have to maintain an updated record disclosing that information to be presented within given conditions to Public Authorities.

Noncompliance with these obligations will lead to penalties and other sanctions, including not being permitted to proceed to dividend distributions, engaging in public tender proceedings or any other sort of contracts with public authorities, etc.

Please also refer to the previous comments.

### 3.6 Potential tax enforcement developments in 2018

We estimate that the Portuguese Tax Authorities will reinforce cooperation with foreign tax administrations so as to benefit from the accumulated experience and from the exchange of information.

The Portuguese Tax Authorities will also focus on structures with lack of economic substance, in order to prevent profit shifting, anti-abusive exemptions, etc. that could lead to the base erosion phenomena.

# Russia

## Tax policy

**Alexandra Lobova**  
alexandra.lobova@ru.ey.com  
+7 495 7559700

**Alexei Kuznetsov**  
alexei.kuznetsov@ru.ey.com  
+7 495 7559700

## Tax controversy

**Alexandra Lobova**  
alexandra.lobova@ru.ey.com  
+7 495 7559700

**Alexei Nesterenko**  
alexei.nesterenko@ru.ey.com  
+7 495 7559700

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	<b>Standard rate:</b> 20% (3% Federal Budget and 17% Local Budget for 2017-2020) <sup>1</sup>  <b>Low rates:</b> 0%, 10%, 13%, 15%, 15.5%	<b>Standard rate:</b> 20% (3% Federal Budget and 17% Local Budget for 2017-2020) <sup>1</sup>  <b>Low rates:</b> 0%, 10%, 13%, 15%, 15.5%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	<b>Standard rate:</b> 13%  <b>Low rate:</b> 9%  <b>Increased rates:</b> 35%, 30%, 15% <sup>3</sup>	<b>Standard rate:</b> 13%  <b>Low rate:</b> 9%  <b>Increased rates:</b> 35%, 30%, 15% <sup>4</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	<b>Standard rate:</b> 18%  <b>Low rates:</b> 0%, 10% <sup>4</sup>	<b>Standard rate:</b> 18%  <b>Low rates:</b> 0%, 10% <sup>6</sup>	0%

<sup>1</sup> Article 284 of the Tax Code of the Russian Federation as revised Federal Law 401-FZ.

<sup>2</sup> Article 284 of the Tax Code of the Russian Federation as revised Federal Law 401-FZ.

<sup>3</sup> Article 224 of the Tax Code of the Russian Federation, page 1,240 of the Worldwide Corporate Guide 2016.

<sup>4</sup> Article 224 of the Tax Code of the Russian Federation, page 1,240 of the Worldwide Corporate Guide 2016.

<sup>5</sup> Article 164 of the Tax Code of the Russian Federation, page 1,240 of the Worldwide Corporate Guide 2016.

<sup>6</sup> Article 164 of the Tax Code of the Russian Federation, page 1,240 of the Worldwide Corporate Guide 2016.

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Fiscal consolidation
- ▶ Fighting tax evasion and capital flight (BEPS initiatives)
- ▶ Anti-crisis measures and investment incentives

### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

In general, no material changes in Russia's CIT regime are expected in 2018.

However, the new law on CbCR/CRS was adopted at the end of 2017 and applies from 1 January 2018. It is yet to be seen how it will affect corporate taxation as a whole, but compliance costs for companies and banks will increase.

At the same time, another new law was adopted in December 2017 that amends Russia's CFC legislation - to the benefit of the taxpayers (more favorable rules of carryforward of losses, calculation of profits in a consolidated group of taxpayers, wider range of deductible expenses, etc.) The law applies retroactively, from 1 January 2017.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes expected.

#### Indirect taxes

No changes expected.

### Taxes on wages and employment

There are proposals to raise the current flat PIT rate from current 13% to 15% or even 17%, but no political decision has been made at the government level on this issue.

### VAT/GST/sales taxes

A so-called "22/22 (20/20) tax maneuver" is being discussed - lowering the rate of the social contributions (paid by companies) from current 30% to 22% or even 20%, along with the simultaneous raising of the VAT rate from current 18% to 20% or 22%, thus shifting the burden to individuals.

## 2.5 OECD MLI

- 2018
- 2019
- 2020 or later
- Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - NoThe MLI will only be ratified in 2018, so the PPT will come into effect in 2019.

## 2.6 Political landscape

- ▶ The election of the President of the Russian Federation
- ▶ The election of the new members of the State Duma of the Russian Federation

## 2.7 Current tax policy and tax administration leaders

### Tax policy

Anton Siluanov - Head of the Ministry of Finance

### Tax administration

Mikhail Mishustin - Commissioner of the Federal Tax Service

## 2.8 What key tax policy changes did you experience in your country in 2017?

The following changes were introduced:

- ▶ New rules in the Tax Code of the Russian Federation regarding tax evasion and abuse of rights (introduction of a GAAR)
- ▶ Changes in tax administration of the contributions to the social and pension funds (they are now administered by the Federal Tax Service but not by the funds)

## 2.9 Pending tax proposals

None

## 2.10 Consultations opened/closed

None

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

- 1. The further development of e-services and e-audit (for example, for VAT purposes)
- 2. The approach to tax administration: a reduction in the number of tax audits, with the aim of improving their quality. The identification of taxpayers who abuse tax preferences
- 3. Developed and implemented the new concept of abuse of rights (article 54.1 TC RF)
- 4. Developed and implemented the concept of the subsidiary responsibility of the debtor (Changes to the bankruptcy legislation of the Russian Federation)
- 5. Developed and implemented of the beneficial ownership concept (application of the reduced rates)

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Tax audits related to the beneficial owner concept (application of the DTT)</b>	The focus of the Tax authorities in 2018 will be transactions related to the payment of dividends and the possibility of using a reduced tax rate achieved through the use of Double Tax Treaty provisions.
2	<b>Tax audits related to the abuse of rights (tax scheme and mala fide taxpayers)</b>	Tax authorities in consideration of transactions will pay close attention to the good faith in the taxpayer's actions and prove the absence of the reality of the transactions or committing intentional actions aimed at tax evasion.
3	<b>The issues of business financing and hidden profit distribution</b>	The tax authorities will focus on the recharacterization of transactions: <ul style="list-style-type: none"> <li>1. Reclassification of royalty payments (interest) in the distribution of dividends</li> <li>2. Reclassification of lending in investments</li> </ul>
4	<b>Tax benefits</b>	The aim of the tax authorities is the identification of the illegal actions and refusal of the application of the tax benefits

## Russia (continued)

### Shoppers Inside GUM Department Store, Russia



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

- Yes
- No

- ▶ Explanation

The law enforcement authorities (Tax Service and courts) make use of BEPS concepts very extensively. In addition, they ignore the fact that BEPS concepts do not currently have a legal basis, applying them to previous period.

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

- Yes
- No

### 3.5 Tax enforcement developments in 2017

As mentioned above in section 2.7 a General Anti-Avoidance Rule was introduced into the Russian Tax Code. As a result, the tax administration will more thoroughly scrutinize the substance of transactions and arrangements to prevent the abuse of rights and to fight schemes aimed to evade tax.

### 3.6 Potential tax enforcement developments in 2018

- ▶ The tax authorities are unlikely to focus on new or different issues in 2018.
- ▶ The Russian Tax Service is not among eight members of the International Compliance Assurance Program (ICAP) pilot, though it is likely to follow the pilot's progress closely.



- ▶ There are no particular expectations for new audit programs by the tax authorities
- ▶ We expect the Russian tax authority to continue to pursue multilateral APAs with the participation of taxpayers and foreign competent authorities.
- ▶ Automatic exchange of information in the CbCR/CRS formats will start in 2018 and taxpayers will have to report more data to the tax authorities, which, together with the information received from foreign countries, may trigger new audits.
- ▶ No particular changes are expected in dispute resolution mechanisms.
- ▶ A major court case on the issue of the taxation of the corporate restructuring will likely conclude.
- ▶ No particular changes or positions are expected in regard to BEPS Action 14 on dispute resolution.

# Singapore

## Tax policy

Russell Aubrey

russell.aubrey@sg.ey.com

+65 6309 8690

## Tax controversy

Chung-Sim Siew Moon

siew-moon.sim@sg.ey.com

+65 6309 8807

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	17%	17%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	22%	22%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	7%	7%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ To support the transformation of the economy from one that is value-adding to one that is value-creating, by developing a conducive environment for businesses to restructure, innovate and internationalize
- ▶ To build deep connections to global innovation and technology networks
- ▶ To anchor Singapore as Global-Asia node of technology, innovation and enterprise, to welcome investments, talents and ideas to Singapore, and be bold in venturing out into new markets
- ▶ To sustain a fair and progressive fiscal system
- ▶ To continue the push to restructure Singapore's economy in an attempt to increase Singapore's productivity by 2% to 3% per year over the next decade
- ▶ To provide support to companies that innovate and expand through globalization, so that they can restructure to upgrade productivity and achieve quality growth. To help firms through a more targeted and sector-focused approach, with stronger emphasis on technology adoption and innovation, deeper partnership between the government and industry including industry players.



- ▶ To promote an inclusive society that improves all lives, by focusing especially on investment in Singaporeans by equipping them with deep skills and knowledge, keeping quality healthcare affordable, and supporting both middle and lower income Singaporeans.
- ▶ To improve our liveability as a city, enhance our urban sustainability and enable our economy to be more carbon-efficient
- ▶ To strengthen the employability of Singaporeans and help them upgrade and uplift themselves to get new and better jobs, and particularly the reskilling and upskilling of Singaporeans as part of the *Adapt and Grow* initiative.

## 2.2 Tax burdens in 2018

For each tax type, please indicate if a change has been proposed/known, and/or if additional change is possible/somewhat likely in 2018, or if no change is expected. Also mark what the expected tax burden is for 2018.

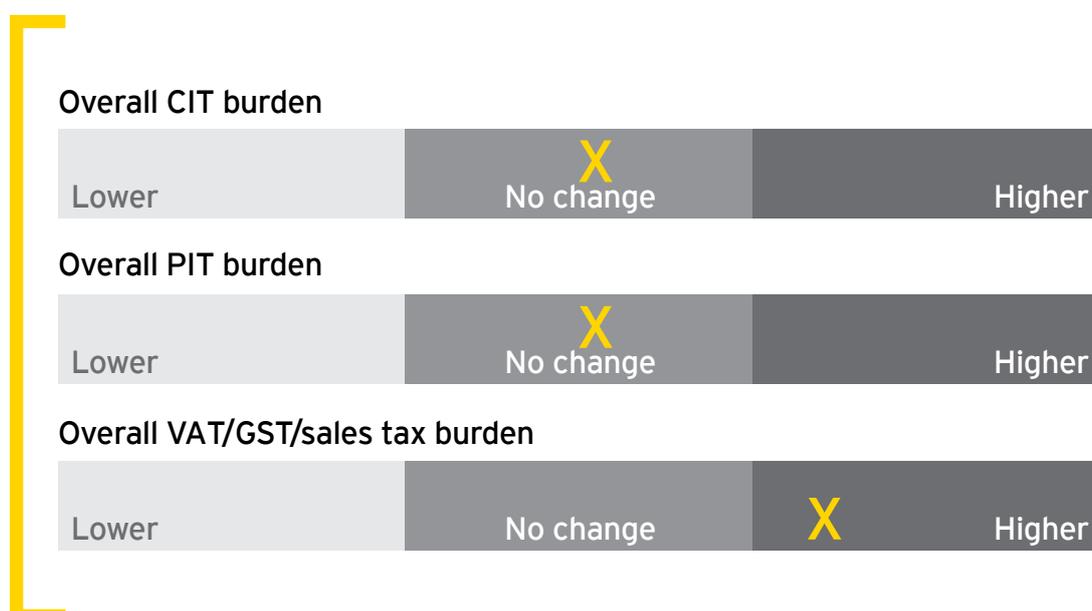
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

At the current time, there is no indication of any change in the corporate tax rate of 17% as this rate is generally perceived to be competitive.

Please also refer to section 2.7 below, where many measures introduced in 2017 will experience their first full year in action in 2018.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

Generally, Singapore adopts the “operations test” to determine whether income is generated in Singapore and shall therefore be liable to tax in Singapore. Our current tax rules do not specifically address the developments in technology and the digital economy.

#### Indirect taxes

The headline GST rate will be raised from 7% to 9% sometime in the period between 2021 and 2025. The exact timing will depend on the state of the economy, how much the expenditures grow, and how buoyant the existing taxes are.

GST on imported services consumed in Singapore will be implemented on 1 January 2020. Please refer to the segment on proposed increase in GST base for more details.

### Taxes on wages and employment

As of now, there is no indication of any change in the top marginal rate of 22% as the personal tax rates are generally perceived as being competitive.

### VAT/GST/sales taxes

#### *Proposed increase in GST rate*

To support the expected increase in healthcare, security and other social spending, the GST rate will be raised from 7% to 9% sometime in the period between 2021 and 2025. The exact timing will depend on the state of the economy, how much the expenditures grow, and how buoyant the existing taxes are.

#### *Proposed increase in GST base*

To ensure a fair and resilient tax system in a digital economy, GST on imported services consumed in Singapore will be implemented on 1 January 2020. Business to Business imported services will be taxed via a reverse charge mechanism. Only businesses that make exempt supplies or do

not make any taxable supplies need to apply reverse charge. The taxation of Business to Consumer imported services will take effect through an Overseas Vendor Registration (OVR) Regime, which requires overseas suppliers and electronic marketplace operators that make significant supplies of digital services to local consumers to register with the Inland Revenue Authority of Singapore (IRAS) for GST.

The proposed OVR does not affect e-commerce for low value goods. For imports of low-value goods (where the goods are imported by air or post and the value is below S\$400), it is still under review by the government.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratifyNo specific timeline has been provided for the deposit of its first instrument of ratification, acceptance or approval with the Secretary-General of the OECD.
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - NoSingapore has chosen the Principal Purpose Test in the MLI and the year it comes into effect will depend on when the MLI enters into force and comes into effect.

## 2.6 Political landscape

As PAP remains the single dominant party in Parliament, tax policy is likely to remain stable and consistent.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Lee Hsien Loong, Prime Minister
- ▶ Heng Swee Keat, Minister for Finance
- ▶ Ng Wai Choong, Permanent Secretary (Finance), Permanent Secretary (Special Duties) in the Prime Minister's Office and Chairman of the Board of Inland Revenue Authority of Singapore

Tax administration leaders

- ▶ Tan Tee How, Commissioner of Inland Revenue

## 2.8 What key tax policy changes did you experience in your country in 2017?

Some key measures which have already been legislated include:

### **Cost sharing agreements (CSAs) for R&D projects**

A full deduction will be allowed for CSA payments without the need to provide a breakdown of the expenditure covered by the CSA payments. This is applicable from the year of assessment (YA) 2018 and thereafter.

### **Tax treatment for foreign companies redomiciled in Singapore**

Provision of a tax framework for foreign companies which redomicile in Singapore, subject to conditions and the specified tax treatment

### **Multilateral Instrument**

Implementation of Singapore's obligations under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), also known as the Multilateral Instrument, which Singapore signed on 7 June 2017

### **Key transfer pricing (TP) tax changes:**

- ▶ A clarification has been provided on the definition of arm's length conditions, which is aligned with the definition provided in the OECD TP Guidelines
- ▶ Further details have been provided on the types of TP adjustments the Comptroller of Income Tax (CIT) may make to enforce the arm's-length principle.
- ▶ A surcharge of 5% on the TP adjustments made for noncompliance with the arm's-length principle has been introduced with effect from YA 2019.
- ▶ The mandatory requirement for a company, the person making the return for a firm (including a partnership) or the trustee of a trust to prepare contemporaneous TP documentation, with penalties to be imposed for noncompliance, has been introduced with effect from YA 2019.

### **Increasing and extending the corporate income tax (CIT) rebate**

The CIT rebate cap has been raised from S\$20,000 to S\$25,000 for the YA 2017 with the rebate rate remaining unchanged at 50% of tax payable. Further, the CIT rebate has been extended for another year to YA 2018 with a reduced rate of 20% of tax payable capped at S\$10,000.

It was proposed in Budget 2018 that for YA 2018, the CIT rebate will be increased from 20% of tax payable to 40% of tax payable and the cap will be raised from S\$10,000 to S\$15,000. Further, the CIT rebate will be extended for another year to YA 2019 with a reduced rate of 20% of tax payable, capped at S\$10,000.

### **Introduction of carbon tax**

The Singapore Government aims to implement carbon tax on the emission of greenhouse gases from 2019. The expected tax rate of between S\$10 and S\$20 per ton of greenhouse gas emissions will generally be applied upstream, for example, on power stations and other large direct emitters, rather than electricity users.

However, it was proposed in Budget 2018 that the carbon tax rate will be set at S\$5 per carbon dioxide-equivalent (tCO<sub>2</sub>e) of emissions from 2019 to 2023. The carbon tax rate will be reviewed by 2023 and it is intended that it be increased to between S\$10 and S\$15 per tCO<sub>2</sub>e of emissions by 2030. The carbon tax will apply uniformly across all sectors without exemption.

## 2.9 Pending tax proposals

**Open:** A new Intellectual Property (IP) regime named IP Development Incentive (IDI) was proposed during Budget 2017 in February 2017. This incentive incorporates the BEPS-compliant modified nexus approach. The date of introduction of IDI incentive has been delayed from 1 July 2017 to 1 July 2018 and further details expected to be released by 2nd quarter of 2018

Draft GST Guide on Taxing imported services by way of reverse charge

Draft GST Guide on Taxing imported services by way of an overseas vendor registration regime.

**Closed:** 2017 Budget and non-budget provisions have been legislated on 26 October 2017.

## 2.10 Consultations opened/closed

Public consultations conducted by the Ministry of Finance/IRAS and closed as of 28 February 2018:

- ▶ Draft Income Tax (Amendment) Bill 2017
- ▶ Public Consultation on Income Tax Implications arising from the Adoption of FRS 116 - Leases.
- ▶ Proposed Changes to The Property Tax Act (2017)
- ▶ Draft Goods And Services (GST) (Amendment) Bill 2017
- ▶ Common Reporting Standard e-Tax Guide
- ▶ Draft GST Guide on Customer Accounting for Prescribed Goods
- ▶ Proposed amendments to the Customs Act
- ▶ Draft IRAS CRS Return XML scheme user guide
- ▶ Draft Carbon Pricing Bill

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

### A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches

- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches.
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

- ▶ IRAS generally adopts a risk-based approach of identifying compliance risk and prioritizing and tailoring specific compliance programs. IRAS will take enforcement actions against noncompliant businesses and will not hesitate to penalize taxpayers for noncompliance as well as for incorrect tax filings.
- ▶ IRAS conducts relationship programs with large corporations to understand their businesses and developments and to

engage them to forge an open and transparent relationship and facilitate resolution of issues and voluntary compliance.

- ▶ IRAS organizes regular industry dialogue and feedback sessions to build a partnership with taxpayers, and public seminars to educate taxpayers and enhance voluntary compliance.
- ▶ There is a voluntary disclosure program where taxpayers can come forward voluntarily to disclose their errors (covering individual and corporate income tax, GST, withholding tax and stamp duties) in exchange for reduced penalties, subject to conditions.
- ▶ IRAS recognizes tax agents/advisors as its partners in the administration of the tax system and in facilitating tax compliance, and it rolls out programs to foster a closer working relationship with them.

## 3.3 Key risk factors and audit triggers in 2018

1	<b>Focus audit areas and industries</b>	Focus audit areas and industries included Productivity and Innovation  Credit claims, travel agencies and ticketing agents, medical practitioners, large businesses and checks on businesses' display of GST inclusive prices to the public.
---	---	--



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

Singapore has participated in the Forum on Harmful Tax Practices (FHTP) peer review of tax incentives to determine whether its preferential regimes are harmful as part of its commitment as a BEPS Associate. On 16 October 2017, the FHTP released its progress report on preferential regimes, which assessed Singapore's tax incentives as not harmful. In other words, it satisfies the "international standards on countering harmful tax practices under the OECD/G20 BEPS project."

### 3.6 Potential tax enforcement developments in 2018

It will be mandatory for the returns of companies with turnover of more than SGD10 million in YA 2017 to be e-filed in the following YA (YA 2018). Companies with turnover of SGD1 million in YA 2018 will need to e-file in YA 2019. All companies are required to e-file their returns from the YA 2020 onwards.

- ▶ The IRAS will continue to strengthen their compliance capabilities by applying advanced analytics techniques in their compliance work including audit selection and fraud detection. Periodically, the IRAS will publish areas of focus for purposes of their compliance and audit reviews (see 3.2 above).

- ▶ Effective from YA 2018, a company must complete a Form for reporting of related party transactions (RPT Form) and submit it together with the corporate income tax return (Form C) if the value of related party transactions exceeds S\$15m (US\$10.3m) for the relevant YA.
- ▶ Under the BEPS Action 14 assessment schedule of peer reviews published on 31 October 2016, Singapore is in the third batch for review and this review process has already commenced with the invitation for taxpayers input for Stage 1 peer review by 7 July 2017.
- ▶ On 21 June 2017, Singapore signed the Multilateral CAA for CRS (CRS MCAA). The signing of the CRS MCAA will enable Singapore to establish a wide network of exchange relationships for the automatic exchange of information based on the CRS. Singapore has committed to implement the first CRS, with the first bilateral exchange to take place by September 2018.
- ▶ On 21 June 2017, Singapore also signed the Multilateral Competent Authority Agreement on the exchange of CbC Reports (MCAA CbCR). The signing of the MCAA CbCR will enable Singapore to establish a wide network of exchange relationships for the automatic exchange of CbC Reports. The CbC reports submitted to IRAS will be provided to tax authorities of jurisdictions with which Singapore has established bilateral AEOI relationships under the MCAA. For Singapore-headquartered MNEs, they have the option to voluntarily file their CbC Reports for the FY beginning on or after 1 January 2016 (FY 2016) to the IRAS (although mandatory to file for FY beginning on or after 1 January 2017).

# South Africa

## Tax policy

Lucia Hlongwane

lucia.hlongwane@za.ey.com

+27 (0) 11 772 4905

+27 (0) 76 830 4144

## Tax controversy

Mmangaliso Nzimande

mmangaliso.nzimande@za.ey.com

+27 11 502 0900

+27 76 792 9297

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	28%	28%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	41%	45% <sup>1</sup>	9.8%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	14%	15%	7.1%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Debt levels in South Africa have increased as economic growth and revenue collection have weakened. Thus the government is concentrating on reducing the erosion of the fiscal position.
- ▶ The government aims to resolve the setback in fiscal consolidation by implementing confidence-boosting measures and implementing reforms.
- ▶ Efforts to improve supply chain management and achieve value for money in government spending.
- ▶ The tax authority applying its enforcement powers to combat the major problem of illicit financial flows.
- ▶ Focus to decrease the revenue shortfall that is currently expected to be approximately R50.8b (approximately USD3.5b) below target.
- ▶ Voluntary Disclosure Programme (VDP) still remains on the agenda to encourage defaulting taxpayers to become compliant without being subject to severe penalties which could be imposed by SARS.
- ▶ A greater focus is being placed on transparency and cooperation between government agencies in order to ensure that tax is collected efficiently and to prevent tax potential leakage.

<sup>1</sup> Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2017.



## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018 (Dividends)

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

#### Carbon taxes

The Minister of Finance in his Medium budget speech held on 25 October 2017, stated that the Cabinet has approved the release of the Carbon Tax Bill to Parliament for its consideration and adoption. Currently the proposed levy on greenhouse gas (GHG) emission is set at R120 per ton of carbon dioxide.

On 21 February 2018, the Minister of Finance announced that the Government proposes to implement the Carbon Tax in South Africa from 1 January 2019.

#### Sugar beverages

It is evident that Government remains committed to implementing tax on sugary beverages. The South African Revenue Service (SARS) has confirmed that they will be collecting Sugar Beverages Levy (SBL) as from 1 April 2018. The levy falls under the Rates and Monetary Amounts and Revenue Laws Amendment Bill, 2017 as passed in Parliament on 5 December 2017.

Licensing and registration of manufacturers of sugary beverages will take place from February 2018. Only commercial manufacturers that produce sugary beverages with a total annual sugar content in excess of 500kg per year are required to be licensed and pay SBL. SARS has stated that noncommercial producers below this threshold will be expected to register but will not be subject to the SBL.

The levy is fixed at 2.1 cents per gram of the sugar content that exceeds 4 grams per 100ml, which means the first 4 grams per 100ml are levy free. The levy is part of governmental programmes to prevent and control noncommunicable diseases and assist in the prevention and control of obesity.

SARS has advised that they will engage industry stakeholders during roadshows to guide them through the process.

#### 2018 budget signals tax administration changes

South Africa's 2018 Budget Speech held on 21 February 2018, the former Minister of Finance, Malusi Gigaba, announced that the Government will respond to the Davis Tax Commission's report on tax administration and introduce draft legislation to implement some of its recommendations, including those

on the accountability of the South African Revenue Service (SARS) to the Minister of Finance, and the establishment of a supervisory board, as well as measures to strengthen the Office of the Ombud.

In addition to the above, various changes to Tax Administration will be introduced with the 2018 Taxation amendments, some of which are noted below:

- ▶ SARS will release a discussion paper on the potential use of electronic fiscal devices such as cash registers, to help revenue administration by monitoring business transactions.
- ▶ The audit provisions will be amended to include a notification at the commencement of an audit process to keep all parties informed.
- ▶ Non-compliance provisions in respect of tax practitioners will be amended to include deregistration as a consequence for repetitive non-compliance.
- ▶ Adjustment to the official rate of interest to a level closer to the prime rate of interest.
- ▶ There will no longer be a requirement for persons paying exempt dividends to submit returns in order to ease the administrative burden.
- ▶ Correction of tax invoices to rectify incorrect information will no longer be considered an offence.
- ▶ Special returns for Value Added Tax (VAT) will not be required to be submitted only retained by the vendor.
- ▶ The income tax and VAT legislation to be amended to address administrative difficulties associated with the supply of cryptocurrencies.
- ▶ The provisions relating to the Research and Development incentive will be looked into to resolve legislative complexities and there will be a shift from manual to online applications.

#### Taxes on digital activity

The Reserve Bank is currently investigating the monitoring of crypto currencies and the Davis Tax Committee has recommended that a detailed investigation into the nature of transactions taking place within the digital economy and the options available to monitor them and ensure appropriate legislation and compliance also be undertaken by SARS and Treasury.

In South Africa's 2018 National Budget Speech, released on 21 February 2018,<sup>1</sup> the Minister of Finance announced that the regulation defining "electronic services" for Value Added

Tax (VAT) purposes would be updated. Foreign suppliers of “electronic services” into South Africa are required to register and account for VAT in South Africa as of 1 June 2014.

An amended draft regulation was published on 21 February. In the draft regulation, the Minister of Finance has proposed the deletion of the specific types of services currently regarded as electronic services and with effect 1 October 2018 include any type of service supplied electronically.

## Taxes on wages and employment

### **Amendments to the Foreign Income:**

On 14 September 2017, Treasury and SARS published their draft response document to the Draft Taxation Laws Amendment Bill, 2017, and the Draft Tax Administration Laws Amendment Bill, 2017, based on the report-back hearings to the Standing Committee of Finance.

In the document, Treasury and SARS responded to numerous comments received from the public and have proposed some concessions to provide relief to affected individuals.

In terms of the revised amendments, the legislation will allow the first R1 million of foreign earned remuneration to be exempt from income tax in South Africa, if the individual has met the requirements of the respective provisions. The remaining foreign earned remuneration will be subject to income tax and the taxpayer will claim foreign tax credits if they have paid taxes on the same income in the host country. Regard will also need to be given to the relevant DTA between the affected countries, if there in fact is one in place.

The proposed amendments have further been postponed and will come into effect on 1 March 2020 and apply to years of assessment commencing on or after this date.

### **Amendments to bursaries and scholarships**

Section 10 (1)(q) provides an exemption from income to any employer who grants a *bona fide* scholarship or bursary to enable or assist any person related to an employee to study at recognized educational or research institutions. The exemption is only applicable to the extent that the employee's yearly income does not exceed R 600,000 and where that the scholarship or bursary does not exceed R20,000 in respect of grade R to 12 or NQF level 1 to 4 and R60,000 in respect of a qualification from NQF level 5 to 10. This monetary threshold was increased from R400,000 to R600,000. This amendment is proposed to have retrospective effect and will apply to bursaries and scholarships granted on or after 1 March 2017.

Section 10(1)(qA) provides an exemption from income to any employer who grants a *bona fide* scholarship or bursary to enable or assist any disabled employee or disabled relative of an employee to study at recognized educational or research institutions. The exemption is only applicable to the extent that the employee's yearly income does not exceed R 600,000 and where that the scholarship or bursary does not exceed R30,000 in respect of grade R to 12 or NQF level 1 to 4 and R90,000 in respect of a qualification from NQF level 5 to 10. The amendment will take effect on or after 1 March 2018

## Transfer pricing

The 2018 Budget Speech is scheduled to take place towards the end of February 2018, in which tax amendments may be proposed.

SARS was recently successful in the Tax Court (X v CSARS case number: 13065/13) against a taxpayer who entered into a cross border transaction with a supplier through a connected party in order to avoid tax. SARS has indicated that it has detected a pattern from businesses, especially multinational enterprises, whereby they utilize domestic and international loopholes to evade or illegally avoid tax, taking advantage of cross border structuring and transfer pricing manipulations.

SARS has implemented a performance plan whereby it will address the skills gap of auditors dealing with large business taxpayers by ensuring that they are equipped to engage and deal with the complexities of this segment and facilitate quicker resolution of issues.

In addition, SARS will work with other government agencies to identify cross-border risks. Further, SARS will develop the skills of auditors in the transfer pricing unit to proactively deal with base Erosion and profit shifting and transfer pricing.

## PIT rate

Increase from 41% to 45% of the highest personal income tax rate.

## VAT rate

VAT will increase from 14% to 15%, effective 1 April 2018. The rate increase is expected to generate an additional ZAR22b (approx. US\$1.89b) for the Government. The increase was announced on 21 February 2018 in the Government's 2018 Budget review.

## Capital Gains

**Capital Gains Tax has increased as outlined below:**

Type	2018*	2017
Individuals and Special Trusts	18%	16.4%
Companies	22.4%	22.4%
Other Trusts	36%	32.8%

## VAT/GST/sales taxes

- ▶ Several duties on ordinary consumer products will be abolished.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The ANC elective conference was held in December 2017, which saw Cyril Ramaphosa triumphant in the race between himself and Nkosazana Dlamini Zuma, the then ANC president.

## experience in your country in 2017?

On 7 June 2017, South Africa signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (OECD MLI).

### **SARS is being held accountable: *Nondabula v CSARS***

On many occasions SARS acts in a procedurally unfair manner and continues to persist with a “bulldozer” approach to taxpayers, by ignoring the rules set out in the legislation it administers.

A stern message has been sent out by the High Court that SARS is an administrative body and cannot act contrary

Shortly before the announcement that Ramaphosa was to be victorious the Rand moved to its strongest level to the US dollar since March 2017. After Ramaphosa was confirmed as the new ANC president, the Rand has rallied more than 6%. Ramaphosa has vowed to fight rampant corruption and revitalize the economy, a message which pleased foreign investors. Ramaphosa’s election seemed to inject the necessary confidence with investors, leading to the economic growth (specifically with the increase of the Rand) that was witnessed during December 2017.

Economic growth is key, as one can see that in South Africa tax revenues are lagging as a result of weak economic growth. However subsequent to Ramaphosa’s victory, economic growth flowed into South African stocks and bonds soared. Foreigners bought a net R6.4b (USD516m) of debt and R13.4b of equities in the week ending December 22, according to Johannesburg Stock Exchange data, an indication of an increase in foreign investor confidence.

## 2.7 Current tax policy and tax administration leaders

### **Tax policy leaders**

- ▶ Ismail Momoniat - Head of Tax and Financial Sector Policy, National Treasury
- ▶ Monale Ratsoma - Head of Economic Tax Analysis, National Treasury

### **Tax administration leader**

- ▶ Tom Moyane- Commissioner, SARS

## 2.8 What key tax policy changes did you

to the rules set out in the legislation that it administers. In addition, an implicit message that comes across in this case is that we should also start holding SARS accountable to act in accordance with its own legislation.

Country-by-country reporting (CbCR): for multinational enterprises with fiscal years starting on or after 1 January 2016, the first CbCR was required to be filed with SARS by 31 of December 2017, but the date has been extended to 28 February 2018.



## 2.9 Pending tax proposals

The 2018 Budget Speech is scheduled to take place towards the end of February 2018 in which further tax amendments may be proposed.

The following amendments affected in 2017 will only be effective from 1 March 2018:

- ▶ Transfer of benefits to a Retirement Annuity fund, Pension/ Preservation Fund or Provident Preservation fund for later consumption without triggering the tax thereon; Foreign Income exemptions as stated in 2.4 above; and
- ▶ Bursaries and Scholarships as contained in 2.4 above

## 2.10 Consultations opened/closed

The Davis Tax Commission (DTC) was established in July 2013 by the Minister of Finance to review the South African tax system and make recommendations to parliament on changes to tax laws.

Calls for written submissions on income tax were closed by 31 March 2017.

On 25 April 2017 an invitation for submissions on possible wealth tax was published and closed on 31 May 2017.

The DTC announced that the Minister of Finance has granted approval for it to publish its reports that have been submitted to its office on 13 November 2017. The below consultations are therefore currently closed:

- ▶ Funding tertiary education in South Africa
- ▶ Financing a national health insurance in South Africa
- ▶ Base erosion and profit shifting
- ▶ Hard-rock mining
- ▶ Oil and gas (coupled with IMF report for DTC)
- ▶ Tax administration
- ▶ Corporate income tax
- ▶ Wealth taxes

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

## 3.2 General approach to tax enforcement in 2017

1. **Voluntary disclosure programmes:** it is common knowledge that South Africa is in a difficult financial situation as a result of the poor performance of the economy as is evidenced by the sovereign rating downgrades, recent low economic growth and high rate of unemployment. SARS have a target of R1.265t at risk. SARS' approach to tax enforcement was fairly tactful during the 2017 year of assessment. SARS promoted the Voluntary Disclosure Programmes quite vigorously, encouraging taxpayers to come forth and declare income which has not previously been declared. SARS further offered noncompliant taxpayers a one-off opportunity during a limited window period running from 1 October 2016 to 31 August 2017 to regularize their unauthorized foreign assets and income by voluntarily disclosing tax and exchange control defaults specifically in relation to offshore assets (this was known as the Special Voluntary Disclosure Programme). SARS collected under the Special Voluntary Disclosure Programme an amount of R1 182 734 842.

2. **Tax education:** in 2017, SARS further embarked on a project to serve and educate the deaf and blind communities on tax compliance in specified regions around South Africa. SARS has pledged to improve accessibility for the deaf and blind communities and to educate the general public about tax matters.
3. **Fraud:** SARS cracked down hard on tax fraud in 2017 towards, particularly in the area of VAT. A Capetonian man was sentenced to 12 years imprisonment for large-scale VAT fraud in the Wynberg Magistrate Court on 11 December 2017.
4. Further, the signing of the OECD MLI in 2017, in addition to the implementation of the OECD's Common Reporting Standard depicts SARS attitude to tax transparency and sharing of information in order to avoid tax evasion.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>CbCR/CRS/OECD MLI</b>	SARS is now actively involved in the international initiative to stop base erosion and profit shifting (BEPS) by multinational companies. These reports will enable revenue authorities (including SARS) to assess transfer pricing risks and other BEPS-related risks with respect to the multinational groups.  Company's part of a multinational group should therefore expect their transactions within the group to be scrutinized thoroughly by SARS.
2	<b>Funds in excess of Foreign Investment Allowance</b>	If a taxpayer takes more than the R10m Foreign Investment Allowance which allows them to invest abroad, this may trigger a SARS audit.
3	<b>Cross-border transactions between MNCs</b>	Any cross-border transaction entered into by MNCs will raise flags and may potentially result in more audits being conducted in this space to ensure that any potential tax leakage is avoided.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

Yes

No

- ▶ Explanation

We are not aware of any retroactive/retrospective application of the BEPS recommendations for the 2018 period.

In light of the fact that BEPS has different actions contained within, Government is at liberty to decide upon implementation of a specific BEPS action as to whether or not to make that action retrospective or not. We cannot find any conclusive evidence on SARS website as to how SARS has previously dealt with specific BEPS' actions in terms of timing of implementation.

Further, each country that is a signatory to the OECD is at liberty to implement BEPS how they see fit. For example, certain countries may implement BEPS retrospectively whilst certain countries may not.

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

Yes

No

### 3.5 Tax enforcement developments in 2017

1. **SVDP:** during 2017 SARS implemented the Special Voluntary Disclosure Programme. See 3.2 above for more information.
2. **Online Tax Compliance Status** - real time change in status to measure and enforce compliance electronically via the e-filing website.

### 3.6 Potential tax enforcement developments in 2018

1. **CbCR:** since SARS is involved in the country-by-country reporting SARS will be focusing on multinational companies and scrutinizing their transactions. CbCR will enable revenue authorities to assess transfer pricing risks and other BEPS-related risks with respect to the multinationals operating in South Africa.
2. **SMMEs:** the release of the Annual Performance Plan for the 2017/2018 developed by the Executive Committee of SARS points to the brutal reality that the highest rate of tax noncompliance falls within the Small, Medium and Micro Entities (SMMEs) and sole traders. Focus will also be shifted to SMMEs in this regard.

Changing huts, Muizenberg,  
Cape Town, South Africa



# Spain

## Tax policy

**Javier Seijo**

javier.seijoperez@es.ey.com

+34 915 727 414

## Tax controversy

**Maximino Linares**

maximino.linaresgil@es.ey.com

+34 609 150 902

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	25%	25%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	General base: 45% Saving base: 23%	General base: 45% Saving base: 23%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	21%	21%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ State's general budgets for FY18 have not yet been approved as a fragile political situation created by the formation of a coalition Government in October 2016 remains and there is not an overall majority to approve new legislation without a political covenant.
- ▶ Some of the measures included in the tax reform approved on December 2016 to increase taxable base and tax enforcement in the CIT entered into force in FY17.
- ▶ Additional measures to fight tax evasion are foreseen.

## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary

#### Overall CIT burden



#### Overall PIT burden



#### Overall VAT/GST/sales tax burden



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No changes are foreseen.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No changes are foreseen.

#### Indirect taxes

No changes are foreseen.

### Taxes on wages and employment

No changes are foreseen.

### VAT/GST/sales taxes

No changes are foreseen for FY18. However, for FY19 it is expected the biggest reform of EU VAT rules will enter into force. This reform would lead to improve and modernize the system for governments and businesses and would also make the system more robust and simpler to use for companies.

EU Commission proposes to fundamentally change the current VAT system by taxing sales of goods from one EU country to another in the same way as goods are sold within individual Member States.

This reform will create a new and definitive VAT system for the EU based on four fundamental principles of a new definitive single EU VAT area:

- ▶ Tackling fraud
- ▶ One-stop shop: it will be simpler for companies that sell cross-border to deal with their VAT obligations thanks to a one-stop shop. Traders will be able to make declarations and payments using a single online portal in their own language and according to the same rules and administrative templates as in their home country. Member States will then pay the VAT to each other directly, as is already the case for all sales of e-services.
- ▶ Greater consistency
- ▶ Less red tape

The proposal also introduces the notion of a Certified Taxable Person - a category of trusted business that will benefit from much simpler and time-saving rules.

Four 'quick fixes' have also been proposed, to come into force by 2019. These short-term measures were explicitly requested by Member States to improve the day-to-day functioning of the current VAT system until the definitive regime has been fully agreed and implemented.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

- ▶ Uncertain political situation in Catalonia - the political parties that defend the independence of Catalonia have obtained the majority of seats (no votes) in the Catalan Parliament in the elections that took place 21 December 2017.

## 2.7 Current tax policy and tax administration leaders

- ▶ Cristobal Montoro Romero, Ministry of Finance and of Public Administrations
- ▶ Santiago Menéndez, Central Tax Administration Director
- ▶ José Enrique Fernández de Moya, Secretary of State for Finance



## 2.8 What key tax policy changes did you experience in your country in 2017?

### Direct taxation

- ▶ Net operating losses (NOLs) compensation limit for taxpayers whose turnover is below 20 Million Euros increased to 70%.

### VAT/GST/sales taxes

- ▶ New real-time information system approved for the second half of 2017. This has been applicable to certain taxpayers and implies submitting the information of invoices issued and received within four days to the tax authorities.

## 2.9 Pending tax proposals

Open: None

Closed: None

## 2.10 Consultations opened/closed

N/A

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**
- Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

The Spanish Tax Authorities have a very well-developed, sophisticated electronic audit system.

Additionally, from the taxpayer point of view, all tax returns have to be submitted electronically as per Law 39/2015, dated 1st October, on the Administration Procedure (with a two-year-period of *vacatio legis*). In this sense, the Spanish Tax Authorities have approved proper legislation and incorporated accurate programs that allow the taxpayer fully electronic communication with the tax authority.

Therefore, the trend is toward virtual mismatching regarding tax audits procedures. This has triggered to an increase in the number of notifications of deficiencies, audits and assessments.

Economic-Administrative Courts, together with Autonomous Community and Municipal Tax Administrations trend also to the incorporation of electronic filing and registration, though this system has not been yet fully adopted.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Tackling the shadow economy</b>	This point focused on tax audits of taxpayers that develop their activity in sectors, which promote the unregistered economy; specifically regarding Value Added Tax.
2	<b>Tax planning around individuals assets</b>	The focus of the Spanish Tax Authorities has been on individuals' asset portfolio located in non-collaborative jurisdictions or with intermediary companies without real activity located also in these jurisdictions. For this purpose, the immediate exchange of information under OECD models (such as the Common Reporting Standard) is being implemented.
3	<b>Tax planning of cross-border companies</b>	The focus of the Spanish Tax Authorities continues to be on cross-border transactions (usually carried out by large taxpayers). Tax Authorities intended to audit corporate restructurings, and also mergers and acquisitions under the umbrella of different jurisdictions that lead to tax elusion/fraud.
4	<b>Tax planning regarding digital economy and new business models.</b>	Under their globalization scheme, the Spanish Tax Authorities tried to obtain information and to analyze new business models: for example, by using internet to obtain information of unregistered income, or on the commercialization of certain products, etc.
4	<b>Tax planning on Corporate Income Tax</b>	The Spanish Tax Authorities continue to focus on the review of tax losses pending to be carried forward, as well as the fulfillment of all legal requirements regarding the Spanish Special Regime on mergers and acquisitions.

### 3.4 Retroactive application of tax laws in 2018

- Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

Yes

No

- Explanation

Spain signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS under BEPS Action 15 ("the MLI") during the signing ceremony in Paris on June 7, 2017. The MLI has, however, not yet been ratified by the Spanish parliament and is therefore not yet in force. It is expected that the MLI will be ratified by Spanish parliament in the course of 2018.

Notwithstanding the above, the Spanish Tax Authorities have been applying, for example, a very extensive interpretation of the notion of permanent establishment (in line with BEPS) even before the BEPS initiative, what can be seen as a retroactive application de facto of the said recommendations.

- Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

- Explanation

Yes

No



### 3.5 Tax enforcement developments in 2017

Royal Decree 1070/2017, 29th December, on Tax Authorities procedures was enacted in 2017. The main measures on tax enforcement provided in the said Royal Decree were the following:

- ▶ New measures to speed-up seizures by the Spanish Tax Authorities, as well as, regarding public auctions, to incorporate an electronic procedure together with the adoption of the principles provided in the Memo on renovation of Spanish Authorities (i.e. "*Informe elaborado por la Comisión para la Reforma de las Administraciones Públicas or CORA*").
- ▶ Amendment of certain tax penalties
- ▶ Final points and deployment of the electronic communications, as from the above-mentioned Law 39/2015.
- ▶ Incorporation of the additional information that should be supplied under the mutual exchange of information, regulated in the EU Directive 2015/2376, dated 8 December 2015.

### 3.6 Potential tax enforcement developments in 2018

- ▶ It is difficult to predict potential tax enforcement measures for FY 2018, but we understand that Spanish Tax Authorities will follow their existing guidelines.
- ▶ We do not expect the Spanish Tax Authorities to shift their audit focus onto new or different issues in 2018.
- ▶ Spain a participating jurisdiction in the OECD ICAP pilot, and has incorporated the Country by Country Report (Royal Decree 634/2005, dated 10 July 2017).
- ▶ EU Directive 2017/1852, dated 10 October 2017, on controversy mechanisms, is pending to be transposed in Spain. This is a first step on BEPS Action 14.
- ▶ The Supreme Court has admitted the cassation appeal with number 3130/2017, in its Resolution dated 20 November 2017, and is now pending to issue the correspondent Judgment. The core issue raised by this appeal is to clarify the existing jurisprudential doctrine on the imposition or not of sanctions in the case of simulation.

# Switzerland

## Tax policy

**Roger Krapf**

roger.krapf@ch.ey.com

+41 58 286 21 25

## Tax controversy

**Martin Huber**

martin.huber@ch.ey.com

+41 58 286 61 20

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	Federal: 7.8% (on profit before tax)  Overall tax rate on profit before tax taking into account federal, cantonal and communal taxes varies between 12% and 24%.	Federal: 7.8% <sup>1</sup> (on profit before tax)  Overall tax rate on profit before tax taking into account federal, cantonal and communal taxes varies between approx. 12% and 24%.	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Federal: 11.5%  Overall tax rate taking into account federal, cantonal, communal and church tax varies between 23.5% and 41.5%.	Federal: 11.5% <sup>2</sup>  Overall tax rate taking into account federal, cantonal, communal and church tax varies between 23.5% and 41.5%.	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	8%	7.7% <sup>3</sup>	-3.75%

<sup>1</sup> Art. 68 in conjunction with Art. 59 para. 1 lit. a Federal Direct Tax Act.

<sup>2</sup> Art. 36 para. 1 and 2 Federal Direct Tax Act.

<sup>3</sup> Art. 25 para. 1 Federal VAT Act.



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Currently, Swiss tax policy is mainly driven by international developments relating to the BEPS Project of OECD.
- ▶ In the context of the above, international acceptance and transparency are important drivers for current Swiss tax policy.
- ▶ Nonetheless, Switzerland as a whole and also the Swiss cantons are striving to remain competitive from a tax point of view.
- ▶ There is also "tax competition" among the Swiss cantons themselves.

### 2.2 Tax burdens in 2018

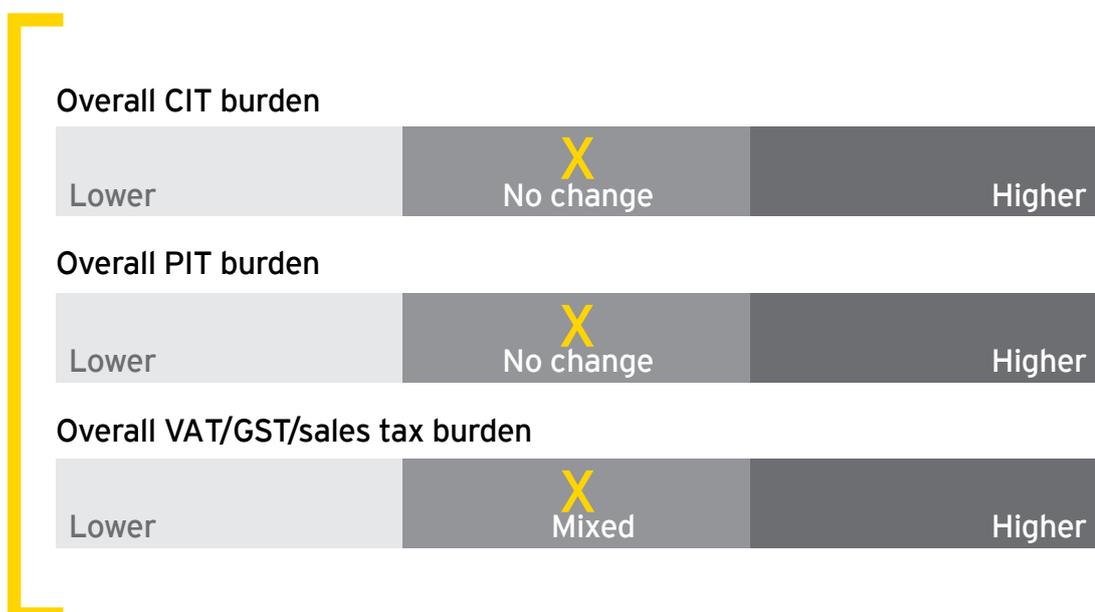
For each tax type, please indicate if a change has been proposed/known, and/or if additional change is possible/somewhat likely in 2018, or if no change is expected. Also mark what the expected tax burden is for 2018.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ **Spontaneous exchange of ruling information (BEPS Action 5):** The legislation regarding the exchange of ruling information entered into force on 1 January 2017. The first spontaneous exchange of information by Switzerland will take place from 1 January 2018 onward. In general, only information on certain tax rulings issued on or after 1 January 2010 and still applicable on 1 January 2018 may be exchanged. Ruling information will be exchanged with jurisdictions that participate in the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.
- ▶ **Automatic exchange of financial account information:** Switzerland has signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information on 19 November 2014. All relevant legislation entered into force on 1 January 2017. The first automatic exchange of information with Switzerland will take place from 1 January 2018 onward.
- ▶ **Automatic exchange of country-by-country reporting (CbCR):** Switzerland has signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (BEPS Action 13) on 27 January 2016. The local legislation has entered into force on 1 December

2017. Multinational corporations that are tax domiciled in Switzerland with a minimum consolidated turnover of CHF900 million are required to submit a CbCR for fiscal years starting on or after 1 January 2018. The fiscal year 2018 CbCR will be exchanged with partner countries beginning in 2020. Voluntary filing is possible for Swiss ultimate parent entities for fiscal years 2016 and 2017.

- ▶ **MLI:** On June 2017, Switzerland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). Since it has been announced that a public consultation in Switzerland will begin at the end of 2017, entry into force is not anticipated prior to 2019 or 2020.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

None

#### Indirect taxes

None

### Taxes on wages and employment

- ▶ No material changes



### VAT/GST/sales taxes

A revised Swiss VAT Law entered into force on 1 January 2018 with the following key changes:

- (1) Change of the Swiss VAT rates as per 1 January 2018 onwards: the standard VAT rate falls from 8% to 7.7% and the special VAT rate for accommodation services from 3.8% to 3.7%. The reduced rate of 2.5% remains unchanged.
- (2) Effective elimination of the turnover threshold for foreign entities doing business in Switzerland. While an annual turnover threshold of CHF100,000 will remain in force, it will cover companies' global turnover, effectively resulting in an obligation for any non-established business with a global annual turnover of more than CHF100,000 annually to register for Swiss VAT from the first taxable turnover generated in Switzerland. This change is expected to lead to an additional 30,000 foreign businesses having to register for Swiss VAT.
- (3) Exemption from Swiss VAT of additional services in the field of insurance, such as social security related services and job training services
- (4) Clearer regulation of supplies between different public service organizational entities
- (5) Introduction of the VAT margin scheme to supplies of work of art, antiquities and collectors' items
- (6) Application of the reduced VAT of 2.5% to supplies of electronic books and publications
- (7) Clarifications of the rules regarding reserve charge liability for taxable as well as nontaxable persons acquiring services from abroad

A further anticipated amendment which would impact foreign businesses, will however only be introduced in 2019. Non-established entities supplying low-value goods to Swiss customers are expected to have to register for Swiss VAT once they exceed a turnover threshold of CHF100,000.

### 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019

- 2020 or later
- Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No
 Not yet decided; PPT will apply as the minimum standard and default option

### 2.6 Political landscape

Tax Proposal 17 (see comments provided in section 2.8) is of high importance for future Swiss tax policy developments.

Next elections at the federal level are in 2019.

### 2.7 Current tax policy and tax administration leaders

#### Tax policy leader:

- ▶ Ueli Maurer, Head of Federal Department of Finance

#### Tax administration leaders:

- ▶ Adrian Hug, Head of Swiss Federal Tax Administration
- ▶ Jörg Gasser, Head of Swiss State Secretariat for International Finance Matters

### 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ There were no fundamental changes in terms of Swiss tax policy in 2017. In 2017, as in 2016, Switzerland's tax policy was mainly driven by international developments relating to the BEPS Project of the OECD. In this context, Switzerland strives to be compliant with international standards but at the same time aims to remain as competitive as possible from a tax point of view.
- ▶ Currently, Switzerland's tax policy has a large focus on the area of transparency and is in the process of introducing legislation regarding BEPS Action 5 and 13 (see comments above).

## 2.9 Pending tax proposals

### Open:

- ▶ In June 2017 the Swiss Federal Council approved the cornerstones on the Swiss tax reform (Tax Proposal 17). The reform foresees the replacement of certain preferential tax regimes with a new set of internationally accepted measures, including, among others, the following:
  - ▶ Introduction of a patent box (mandatory at cantonal level)
  - ▶ Introduction of a R&D super deduction (optional at cantonal level)
  - ▶ Introduction of transitional measures upon change of tax status
  - ▶ Introduction of a target relief of capital tax (optional at cantonal level)
- ▶ These legislative changes are expected to go hand in hand with a broad reduction of the headline corporate tax rate and aim to ensure that Switzerland remains attractive for multinational corporations in a post-BEPS environment.
- ▶ On 6 September 2017, the Swiss Federal Council initiated the consultation on Tax Proposal 17 (see comments provided in section 2.9). The consultation runs for 3 months. The Federal Council is planning to submit the dispatch for Parliament in spring 2018. Consequently, Tax Proposal 17 will basically enter into force no earlier than 2020.

### Closed:

- ▶ On 17 June 2016, the Swiss Parliament approved the final bill on Corporate Tax Reform III. The final bill was subject to a public vote and was rejected by voters on 12 February 2017.

## 2.10 Consultations opened/closed

### Open:

- ▶ The public consultation regarding the fully revised Withholding Tax Ordinance "QStV" opened 21 September 2017 and will be closed 21 December 2017

### Closed:

- ▶ The public consultation regarding Tax Proposal 17 opened on 6 September 2017 and closed on 6 December 2017 (see comments provided in section 2.8)
- ▶ The public consultation regarding the amendment of the Federal Direct Tax Act "DBG" (too-big-to-fail instruments) opened on 9 June 2017 and closed on 29 September 2017
- ▶ The public consultation regarding the amendment of the Withholding Tax Act "VStG" (relating to requirements for refund) opened on 28 June 2017 and closed on 19 October 2017

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

### A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches

- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers

- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions



### 3.2 General approach to tax enforcement in 2017

No general approach for all tax authorities may be identified, as in Switzerland direct taxes are assessed by the 26 cantonal tax authorities based on their cantonal law (which is only partially harmonized).

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Transfer Pricing</b>	Transfer pricing will remain a main topic of tax audits, especially with regards to interest payments.
---	-------------------------	--

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

A proposal in parliament to eliminate the banking secrecy for tax purposes also for Swiss taxpayers (as for foreign taxpayers with the AEI also no banking secrecy applies anymore) has been rejected.

In 2017 Switzerland encountered an increasing amount of requests to exchange information based on applicable double taxation treaties. It remains open as to whether this will also lead to changes in the enforcement of Swiss taxes in the future.

### 3.6 Potential tax enforcement developments in 2018

No material developments expected

# Taiwan

## Tax policy and controversy

Chien-Hua Yang

chienhua.yang@tw.ey.com

+886 2 2757 8888 ext. 88875

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	17%	20%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	45%	40%	-11.1%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	5%	5%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Improving the fairness of taxation and narrowing the poverty gap
- ▶ Making timely responses to BEPS and CRS developments

## 2.2 Tax burdens in 2018

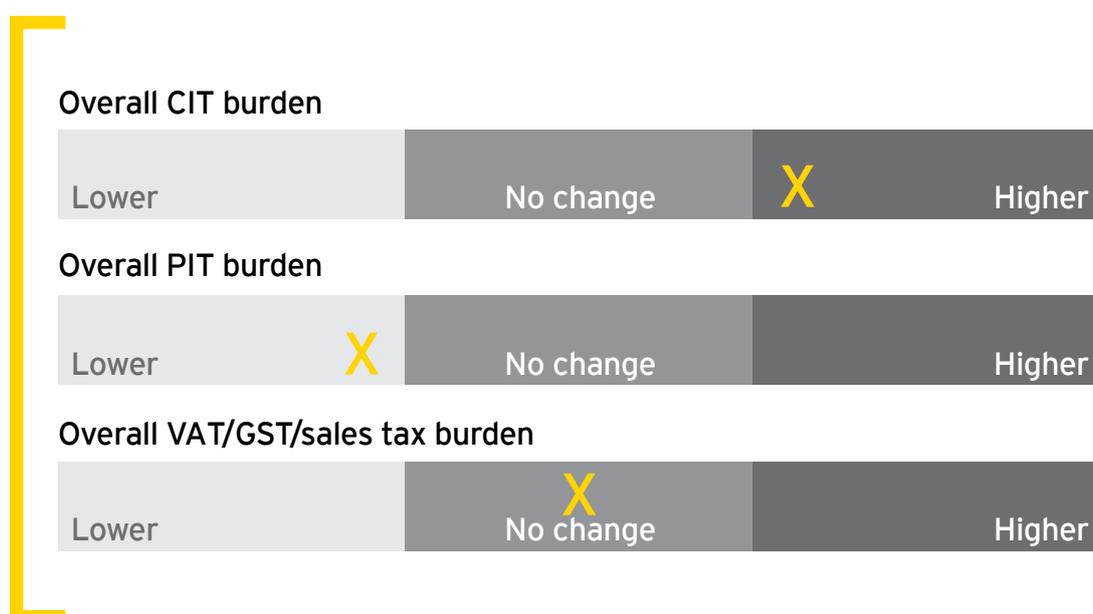
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ The Ministry of Finance (MOF) proposed a tax reform bill in October 2017 (which was subsequently enacted) which:
  - ▶ Increases the corporate income tax rate from 17% to 20%, which would come into force in and after 2018
  - ▶ Cuts the surtax on accumulated retained earnings, with the tax rate reduced from 10% to 5% for the fiscal year of 2018 undistributed earnings onward
  - ▶ Abolishes the tax system of dividend imputation credits against personal income tax
  - ▶ Raises the dividend withholding tax rate for nontax residents to 21% or above (the current rate is 20% for non-treaty countries) starting from 2018
  - ▶ Repeals the surtax credit against the dividend withholding tax for nontax residents, starting from 2019

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

The MOF has been working on new tax regulations, which should be published in 2018, for taxing the income, based on presumptive profit rates, from cross-border e-commerce business.

#### Indirect taxes

No significant developments expected.

### Taxes on wages and employment

No changes expected.

### VAT/GST/sales taxes

No changes expected.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify

- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

Taiwanese local elections are scheduled to be held on 24 November or 1 December 2018. National elections are held every four years, meaning that the next national level election will be in 2018.

## 2.7 Current tax policy and tax administration leaders

- ▶ Sheu, Yu-Jer, Minister of the Ministry of Finance

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ New legislation of Taxpayer Rights Protection Act
- ▶ New legislation of Article 5-1 under the Tax Collection Act (CRS regulations).
- ▶ Under this legislation, the MOF is authorized, based on the principle of reciprocity, to enter into a tax treaty or an agreement of information exchange for tax purposes with a foreign government (excluding mainland China) or an international organization.

## 2.9 Pending tax proposals

- ▶ Tax reform bill (October 2017)

## 2.10 Consultations opened/closed

### Open:

- ▶ None

### Closed:

- ▶ Article 5-1 of Tax Collection Act, CRS Regulation
- ▶ Article 43-3 of Income Tax Act (Controlled Foreign Company Rules for enterprise business taxpayers)
- ▶ Article 43-4 of Income Tax Act (Place of Effective Management Rules)
- ▶ Article 12-1 of Income Basic Tax Act (Controlled Foreign Company Rules for individual taxpayers)

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches**
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers

- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

- ▶ Tax authority collectors may conduct or perform data cross-checking across several tax filing matters
- ▶ Historical analyses of the growth rates and movements for relevant lines reported and declared in current and prior year tax returns
- ▶ Walk-through audits to test and verify transaction details

### 3.3 Key risk factors and audit triggers in 2018

1	<b>VAT declarations for cross-border e-commerce business</b>	Since May 2017, it has been mandatory for the business entities carrying out cross-border e-commerce activity and having annual sales amount greater than TWD480,000 to file for VAT registration, declare the sales amounts for every two months and pay the VAT owed. The tax authority will likely initiate tax audits in this area in 2018.
2	<b>Jointly taxing the gains from sales of buildings and taxable land</b>	Since 1 January 2016, the gains from sales of buildings that have been either newly possessed or from taxable land should be taxed jointly. The tax authority will likely initiate tax audits in this area in 2018.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

Key tax authority areas of scrutiny in 2017 included:

- ▶ The underpayment of surtaxes on the accumulated retained earnings by claiming the nondeductible items
- ▶ Underpayment of corporate income tax due to the corporate business taxpayers who failed to take the overseas income into consideration
- ▶ Underpayment of the alternative minimum tax on the gains from tax-exempted securities transactions

### 3.6 Potential tax enforcement developments in 2018

We expect a similar focus in 2018 as outlined above.

# Thailand

## Tax policy

**Yupa Wichitkraisorn**  
yupa.wichitkraisorn@th.ey.com  
+66 2264 9090 ext 55003

## Tax controversy

**Kamolrat Nuchitprasitchai**  
kamolrat.nuchitprasitchai@th.ey.com  
+66 2264 9090 ext 77062

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	20% <sup>1</sup>	20% <sup>1</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	35% <sup>1</sup>	35% <sup>1</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	7% <sup>1</sup>	7% <sup>1</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ It is unlikely that the military government will increase personal income tax rates, but it may consider expanding the tax base in other ways to meet budget revenue targets, as revenues continue to lag behind targets. Examples are the retrospective tax amnesty offered to SMEs who agreed to properly join the tax system, and the new e-commerce tax law (as detailed in Section 2.4 below).
- ▶ If the government pursues a heavily expansionary fiscal policy stance to bolster its legitimacy by boosting economic growth and general living standards, the fiscal deficit will be relatively high by the standards of recent years. The possible fiscal strains in 2018 may lead to higher tax rates in some areas, such as e-commerce, and further tightening of regulations and enforcement.

<sup>1</sup> Revenue Department website: [http://www.rd.go.th/publish/index\\_eng.html](http://www.rd.go.th/publish/index_eng.html).



- ▶ The need for greater tax revenue means that the focus of policy on tax incentives is likely to remain on a limited range of target sectors and industries seen as having strong potential for growth or as vital to the nation's economy, and to wind up incentives for more mature industries perceived as adding less potential value. This means that tax measures are more likely to be tightly focused.
- ▶ As the largest automotive production hub in Southeast Asia, Thailand is making efforts to add electric vehicles to its regional auto supply chain and domestic market. The Finance

Minister has recently offered excise tax incentives for electric vehicles that are assembled in Thailand and use batteries and components made locally. The policy aims to attract car manufacturers and core electric component makers to set up production lines in Thailand, which can help to drive supply and boost consumer demand. The new excise tax rates would also bring a closer alignment between the tax-incentive industrial promotion policy and the government's environment protection policy.

## 2.2 Tax burdens in 2018

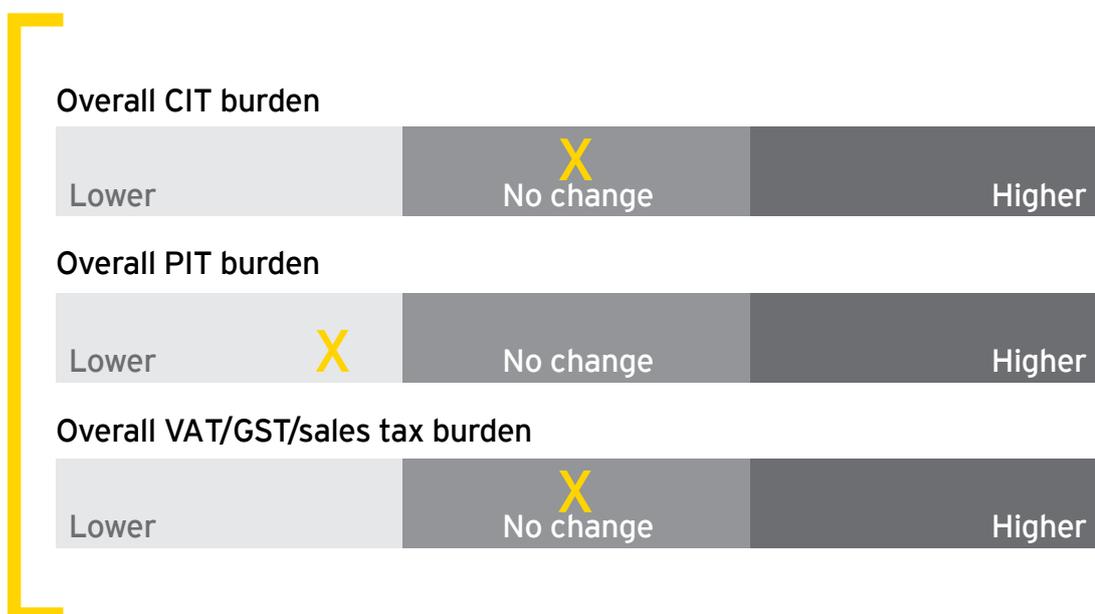
For each tax type, please indicate if a change has been proposed/known, and/or if additional change is possible/somewhat likely in 2018, or if no change is expected. Also mark what the expected tax burden is for 2018.

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input checked="" type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input checked="" type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ The rollout by the Board of Investment (BOI) of the Royal Thai government's Eastern Economic Corridor (EEC) plan which covers Rayong, Chonburi, and Chachoengsao provinces and would allow maximum incentives for qualified investment projects of which, among others, include the exemption of a corporate tax.
- ▶ For BOI-promoted projects, tax holiday period is extended from 8 years to 13-15 years in accordance with the Amendment of BOI Act and the Competitiveness Enhancement Act with certain conditions.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

The Thai Revenue Department has been developing and implementing tax laws and regulations governing e-commerce and e-payment transactions.

The Revenue Department is preparing to amend tax law to include e-commerce, with the stated intention of creating fair competition among foreign and local e-business operators, as well as generate billions of baht in currently underexploited potential tax revenue. A draft bill is now complete and is being

considered by the Council of State. However, international e-commerce transactions are unlikely to be taxed until agreements are reached with other countries, according to the Finance Ministry. This is likely to take some time.

### Indirect taxes

See above

### Taxes on wages and employment

- ▶ The changes in Thai personal income tax that entered into force from the 2017 tax year onward include an increase in deductible expenses in terms of personal, spousal and children allowances, changes to the thresholds for tax filing obligations and an increase of the highest personal income tax bracket.
- ▶ To support the development of Eastern Economic Corridor (EEC) and to attract high-caliber individuals, both Thai and foreigners, to work in companies or juristic partnerships that operate business in targeted industries that are exempt from corporate income tax under the laws governing enhancement of Thailand's competitiveness in targeted industries and the laws governing investment promotion for Chachoengsao, Chonburi, or Rayong provinces, the Revenue Department has announced the reduction of personal income tax to 17% on employment income for members of management, experts or researchers working for entities that conduct business in targeted industries.



## VAT/GST/sales taxes

According to the Royal Decree No.646, the reduced VAT rate of 7% has extended for another one year, to 30 September 2018. While a return to the 10% rate remains desirable from a tax collection standpoint, the economic outlook does not appear favorable to such a move in 2018.

### New excise tax laws in Thailand

With effect from 16 September 2017, the new Excise Act B.E. 2560 (2017) replaces the former Excise Act B.E. 2527 (1984). The new excise laws implement excise tax reforms aimed at improving the excise tax structure; harmonizing excise laws with the current economy and Thai society; enhancing the fairness, transparency and efficiency of excise tax collection; and consolidating various excise tax related laws under a single legislation.

Briefly, the key changes are (i) changes to the scope of goods subject to excise tax and the prescribed ceiling rates, (ii) a change in the excise tax calculation basis to Recommended Retail Selling Price (“RRSP”). Importers and local manufacturers of goods subject to excise tax will be required to notify the Excise Department of the RRSP for their goods and provide the RRSP cost structures; and (iii) imposition of 200% excise penalties and 1.5% monthly surcharges (capped at 100%) if excisable goods or key raw materials used in production of excisable goods are missing from the inventory control account. Waivers of penalties and surcharges will be limited to force majeure or errors in counting the quantity of goods that occurred without intent or negligence.

### New customs law

The new Customs Act B.E.2560 has entered into force on 13 November 2017. The main objective of the new Act is to reform customs administration and procedures to facilitate trade and enhance the efficiency, fairness and transparency of duty collection.

Some of the key provisions are (i) customs officers have the right to enter premises and audit documents and/or data relating to imports and exports for up to five years from the date of import or export, (ii) reforms to the reward and incentive sharing for Customs officials and informants, (iii) duty surcharge of 1% per month will be capped at the amount of the duty shortfall, (iv) the period for making duty refund claims is extended from two to three years from the date of import or export ; and (v) a 180-day period is introduced for the Customs Appeal Commission to complete its adjudication of appeal cases.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The Thai government has announced that the next general election will take place in November 2018, which would be more than four years after the military coup. However, it remains to be seen whether it will actually occur as elections have been promised and then delayed every year since 2015.

Moreover, even after an election, the current leadership seems likely to continue to dominate political policy, as the new constitution has significantly weakened the power of political parties and elected representatives relative to that of appointed officials, most of whom will initially be those put in place by the military government. As a result, significant continuity in tax policy is probable.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Apisak Tantivorawong, Minister of Finance
- ▶ Suwit Rojanavanich, Director General of Fiscal Policy Office

### Tax administration leaders

- ▶ Prasong Poontaneat, Director General of Revenue Department
- ▶ Apinya Chongwattanatham, Director of Bureau of Large Business Tax Administration
- ▶ Duangjai Asawachintachit, Secretary General of the Board of Investment
- ▶ Kulit Sombatsiri, Director General of Customs Department
- ▶ Krisada Chinavicharana , Director General of Excise Department

## 2.8 What key tax policy changes did you experience in your country in 2017?

Thailand has introduced serious adverse tax-related offences, which is one of the predicate offences under the domestic anti-money laundering law, in the Revenue Code. This provision came into force on 2 April 2017.

## 2.9 Pending tax proposals

Open:

As a result of the cabinet's approval in principle on the draft Transfer Pricing Act in May 2015, it is anticipated that there will be a release of such Act at a later date. Once the Act becomes effective, taxpayers will be required to prepare and file transfer pricing documentation within the same time frame with the corporate income tax return filing. The Public Consultation on the draft Transfer Pricing Act recently ended on 7 July 2017.

Closed:

## 2.10 Consultations opened/closed

None

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. **Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches**
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach – will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

- ▶ According to the Royal Decree No.641, business operators using fake tax invoices issued by these wrongdoers and unknowingly claiming the VAT as a credit against their tax obligations or a refund, may also be exposed to criminal charges if they are viewed as having colluded with the wrongdoers.
- ▶ Tax administration: electronic tax return filing, and e-tax invoicing becomes effective in 2018 for any taxpayer with annual revenue in excess of THB500 million.
- ▶ Increase in tax audit activities, especially on transfer pricing related matters even on domestic related party transactions and developing the application of Risk Based Audit System (RBA) System for identifying which taxpayers to audit.
- ▶ Adopt secondary adjustment (i.e., deemed dividend) on profit uplift resulting from transfer pricing audit.
- ▶ Transfer pricing audit focus includes negative margin, cost allocation, management fee and royalty payment.



### 3.3 Key risk factors and audit triggers in 2018

1	Tax planning related to corporate reorganization with a view to shifting profit without an appropriate ground	The focus of the tax authorities in 2018 will be transactions (usually carried out by large taxpayers) that result in profit shifting. The tax authorities intend to audit corporate restructurings, and also mergers and acquisitions conducted without business rationales and substance.
2	E-commerce business	Due to the rapid growth in e-commerce business, the tax authorities have been developing and implementing tax laws and regulations governing e-commerce and e-payment transactions. The focus of the tax authorities in 2018 will be internet/online transactions.
3	Transfer pricing	The focus of the tax authorities in 2018 will include negative margin, cost allocation, management fee and royalty payment.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.6 Potential tax enforcement developments in 2018

- ▶ The main focus of the tax authorities and the tax enforcement approaches implemented in 2017 will be more strictly applied to taxpayers in 2018.
- ▶ The developments in the area of tax enforcement in relation to e-commerce and transfer pricing regulations are also expected in 2018.

### 3.5 Tax enforcement developments in 2017

On 16 May 2017, the cabinet approved Thailand joining the Base Erosion and Profit Shifting (BEPS) project of the Organisation for Economic Co-operation and Development (OECD) as an associate country. Thailand is committing to comply with the BEPS minimum standards contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution), but the respective regulations have not yet been rolled out.

# Turkey

## Tax policy and controversy

Erdal Çalikoğlu

erdal.calikoglu@tr.ey.com

+90 212 408 53 75

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	20%	22% <sup>1</sup>	10%
Top personal income tax (PIT) rate (national and local average if applicable)	35%	35%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	18%	18%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The Government is striving to be more competitive from a tax standpoint, while also minimizing inequality via the tax system.

As per the Medium Term Fiscal Plan envisaged for the period from 2018 to 2020 and prepared by the Turkish Ministry of Development and High Planning Council, many tax policies, including the ones mentioned below, will be continued:

- ▶ Aiming to make tax legislation simpler and more feasible, grounded on stability and predictability in taxation
- ▶ Reorganizing the VAT system will be carried out to reduce the compliance burden on enterprises

<sup>1</sup> This rate will only be applicable to the incomes acquired by the corporate taxpayers through the taxation periods for the years 2018, 2019 and 2020 in accordance with the "The Law Amendments to Certain Tax Laws and Some Other Laws" no. 7061. Within scope of the same regulation, Ministry is granted to right to reduce the rate down to 20%.



- ▶ Increasing domestic savings, keeping them at a high level and including them in the economic system with amendments to the tax legislation.
- ▶ Conducting preparatory studies for the Informal Economy Action Plan, which aims to ensure the transition to the registered economy, including the measurement of the size of the informal economy and analysis of its impacts, increasing voluntary tax compliance, eliminating regulatory gaps, strengthening audit capacity, increasing awareness and improving data sharing and analysis capacity.
- ▶ Formulating tax regulations in order to enable enterprises to create additional employment in the labor market and to prevent informal employment.
- ▶ Improving the productivity and competitiveness of the manufacturing industry to hold a greater share of world trade

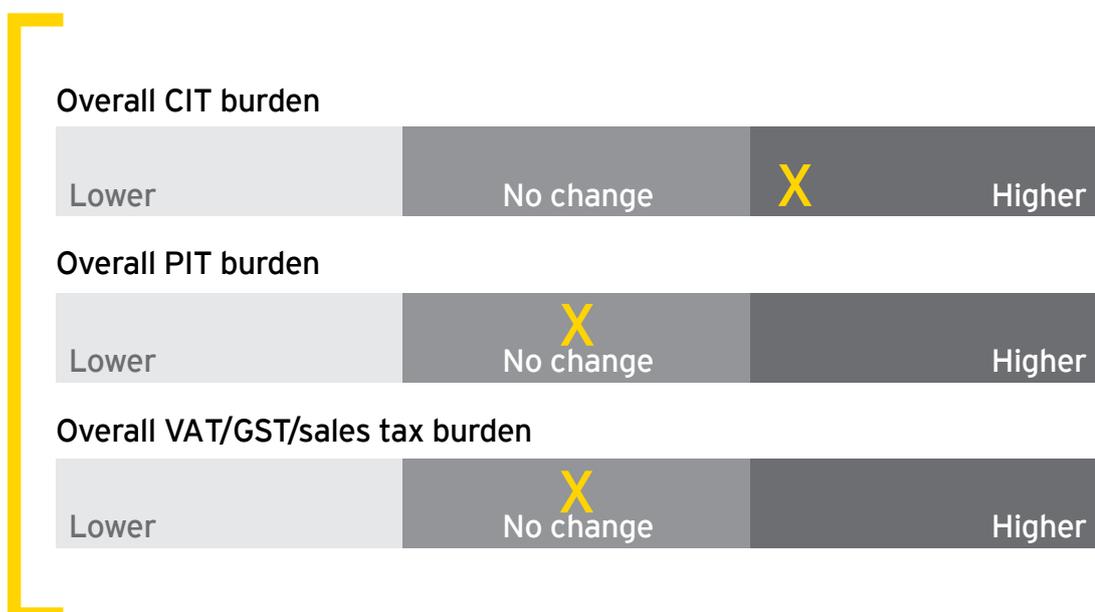
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

The corporate income tax rate has been increased from 20% to 22% for corporate incomes derived in 2018, 2019 and 2020 by the Law Amendments to Certain Tax Laws and Some Other Laws No. 7061.

In addition, the Law providing for a 5% reduction of income tax to be accrued through annual tax returns to be filed after 1 January 2018 came into force. The reduction is available only to taxpayers who have been fully compliant for the last three years, whereby all respective tax returns have been filed and taxes have been paid duly on time.

### Taxes on digital activity

#### Indirect taxes

Law no. 7061 includes a provision regarding the VAT liability and regulates that the VAT arising from services provided electronically to real persons who are not taxpayers of VAT by

whom not having any residence, workplace, legal center and business center in Turkey is proposed to be declared and paid.

#### Indirect taxes

No changes expected

### Taxes on wages and employment

The government expects to receive more revenue from wage, according to the Budget Law of the Central Budget for 2018. Therefore, taxation rates or base of the wages are not likely to decrease in 2018.

### VAT/GST/sales taxes

The government expects to receive more revenue from indirect taxes according to the Budget Law of the Central Budget for 2018. Therefore, indirect tax costs are not likely to decrease in 2018.



## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

- ▶ After the unsuccessful coup attempt in July 2017, a state of emergency was declared by the government. As the state of emergency is still in force, foreign and local incentives on investments decreased due to being considered as unstable.
- ▶ The economic agenda is dominated by the Government's efforts to revitalize economic growth through investment. Although the country lost its investment grade status recently, the Government is unveiling new incentive schemes to promote investment and growth.
- ▶ According to the official medium term plan, GDP growth is estimated at 5.0% in 2017 and 5.5% in 2018. However, the International Monetary Fund (IMF), however, is more cautious and expects 5.1% in 2017 and 3.5% in 2018.
- ▶ In 2018, a measured increase in the budget deficit is planned so as to support economic growth.

## 2.7 Current tax policy and tax administration leaders

- ▶ Burcu Aydın Ozudogru, General Director at the General Secretariat of Revenue Policies
- ▶ Adnan Erturk, General Director of the Revenue Administration
- ▶ Huseyin Karakum, General Director of Tax Inspection Board

## 2.8 What key tax policy changes did you experience in your country in 2017?

On 5 December 2017, Law No.7061 amending various tax laws with the objective of increasing tax revenues, stipulating procedural rules and eliminating some tax/fee applications was published. Key changes are summarized as follows:

- ▶ The corporate tax rate is increased to 22% from 20% for 2018, 2019 and 2020.
- ▶ The current 75% exemption rate applied to the capital gains derived by corporate taxpayers from the sale of immovable property held for at least two years is reduced to 50%.
- ▶ The discount rate for investments made under an Incentive Certificate will continue to also be valid in 2018.
- ▶ The taxation criteria and tax base have been amended and revised for motor vehicles.
- ▶ Certain reporting requirements for individuals and legal persons who are service providers and carry on e-commerce activities were introduced for the purpose of imposing taxation on e-commerce.
- ▶ VAT liability is introduced with respect to nonresident persons (real or legal) who engage in e-commerce activities. Such persons are required to declare and pay VAT in Turkey relating to services provided electronically to individuals who are not liable to VAT.
- ▶ The duty fee which is paid on application and renewal related to the determination of transfer pricing methods (i.e., APAs) is canceled.

## 2.9 Pending tax proposals

None

## 2.10 Consultations opened/closed

**Open:** N/A

**Closed:** N/A

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

### 3.2 General approach to tax enforcement in 2017

Digitalization of tax related operations have been on the agenda of the Turkish Tax Administration for a long time and, as a first step, an e-invoice system was introduced in 2010, followed by the introduction of e-book and e-archive systems respectively. From that time on, more tools have been developed by the Turkish Tax Administration.

During 2017, the Tax Administration proceeded to follow its digital application implementation road map. The scope of companies obliged to use e-invoice and e-book were extended, and the number of companies using the e-invoice and e-book systems reached approximately 70,000 each by the end of 2017. Another digital tool introduced by the Tax Administration, e-archive, has more than 11,500 users.

It is clear that Tax Administration is focused on digital transformation and desires to reach a system where all or most tax related operations can be performed electronically.

Under such an approach, the development and introduction of new tools is expected.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Tax-free partial spin-offs</b>	A Draft Communique was published regarding tax free partial spin-off transactions which narrows their application. Although the draft was withdrawn due to negative feedback, it can be said that tax authorities now tend to regulate tax-free partial spin offs in way that narrows their scope.
2	<b>Taxation of digital enterprises/ transactions</b>	Turkish policymakers believe that, in order to keep up with needs of the digitalizing world, new legislation in this area must be developed by the administrative and the legislative organs. Current laws have therefore been redrafted and new regulations adapted in order to cover digital transactions and enterprises. During this adaptation period, it is expected that the tax authorities will intensify their audits regarding digital transactions and enterprises.
3	<b>Other tax-free structuring transactions</b>	Tax-free M&A and full spin-offs have drawn the Turkish Tax Authority's attention for some time. It is furthermore expected that such transactions to be under the focus of tax authorities.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

- Yes  
 No

- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

- Yes  
 No

▶ Explanation

Law No.7061, which was published in the Official Gazette on 5 December 2017, has some provisions that enter into force immediately, while certain dates are set for other provisions. As an example, the rate of lump-sum expense applicable to rental income has been reduced from 25% to 15%, with that decreased percentage applied against the incomes gained from 1 January 2017.

### 3.5 Tax enforcement developments in 2017

- ▶ No major changes occurred regarding tax enforcement during 2017. However, explanatory and regulatory explanations have been made by the Turkish Tax Administration on some topics.

- ▶ Explanatory regulations were issued in 2017 via a communique within which detailed explanations on the scope and form of explication, nature of preliminary findings, units who are authorized to issue the notice and conduct the evaluation and information and documents that will be considered during the explication process were clarified.

### 3.6 Potential tax enforcement developments in 2018

The most notable revisions and alterations in the areas of tax policy and tax enforcement in Turkey are laws to address the digitization of business. The legislator's aim is to prevent any abuse arising from legal gaps in the area of digitalization, and the VAT obligation brought through Law No.7061 for non-residents who provide services electronically to real persons is one examples of the legislator' activity.

On the authority side, taxpayers should expect the Turkish Tax Authority to launch new e-audit programs.

# Ukraine

## Tax policy and controversy

Vladimir Kotenko  
vladimir.kotenko@ua.ey.com  
+380 44 490 3000

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	Standard rate: 18%  Low rates: 0% (for small businesses). Special/additional rates: 3%/0% of income (for insurance business), 10% of income (for gaming machines business), 18% of income (for betting and gambling businesses)	Standard rate: 18% <sup>1</sup>  Low rates: 0% (for small businesses). <sup>2</sup> Special/additional rates: 3%/0% of income (for insurance business), 10% of income (for gaming machines), 18% of income (for betting and gambling businesses), <sup>3</sup> 24% of income (for lottery operators) <sup>4</sup>	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Standard rate: 18% (plus the 1.5% military levy under the PIT rules)  Low rates: 0% (for some inherited assets) and 5% (for the dividends received from resident CIT payers and some inherited assets); 9% (for the dividends received from nonresidents, non-CIT payers and mutual investment institutions).	Standard rate: 18% <sup>5</sup> (plus the 1.5% military levy under the PIT rules <sup>6</sup> )  Low rates: 0% (for some inherited assets) <sup>7</sup> and 5% (for the dividends received from resident CIT payers and some inherited assets); 9% (for the dividends received from nonresidents, non-CIT payers and mutual investment institutions) <sup>8</sup>	0%

<sup>1</sup> Article 136 of the Tax code of Ukraine.

<sup>2</sup> Paragraph 44 of sub-section 4 of section XX of the Tax code of Ukraine.

<sup>3</sup> Article 136 of the Tax code of Ukraine.

<sup>4</sup> Paragraph 47 of sub-section 4 of section XX of the Tax code of Ukraine.

<sup>5</sup> Article 167 of the Tax code of Ukraine.

<sup>6</sup> Paragraph 161 of sub-section 10 of section XX of the Tax code of Ukraine.

<sup>7</sup> Paragraph 174.2 of the Tax code of Ukraine.

<sup>8</sup> Article 167 of the Tax code of Ukraine.



	2017	2018	Percentage change
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	Standard rate: 20% Low rates: 7% (on pharmaceuticals and medical products), 0% (on export and services of international transportation and related services)	Standard rate: 20% <sup>9</sup> Low rates: 7% (on pharmaceuticals and medical products), <sup>10</sup> 0% (on export of goods and services of international transportation and related services) <sup>11</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Fiscal consolidation remains the main driver for tax policy, resulting in an additional burden on taxpayers.
- ▶ As 2018 is a pre-election year, the government authorities will be tempted to promote fiscal initiatives attractive to business, but the whether or not such initiatives will be implemented is difficult to predict. For the same reason, the Government is demonstrating its willingness to provide tax concessions to domestic manufacturers.
- ▶ Because 2018 is a pre-election year, it is unlikely that tax anti-avoidance measures will be at the top of the government's agenda.
- ▶ Continuing work in order to ensure greater electronic coverage for interaction between tax authorities and the taxpayers
- ▶ The government is putting an emphasis on increasing excise taxes.
- ▶ Incentives for some priority activities and businesses (e.g., the green energy, electric car-related and small ones)

<sup>9</sup> Article 193 of the Tax code of Ukraine.

<sup>10</sup> Article 195 of the Tax code of Ukraine.

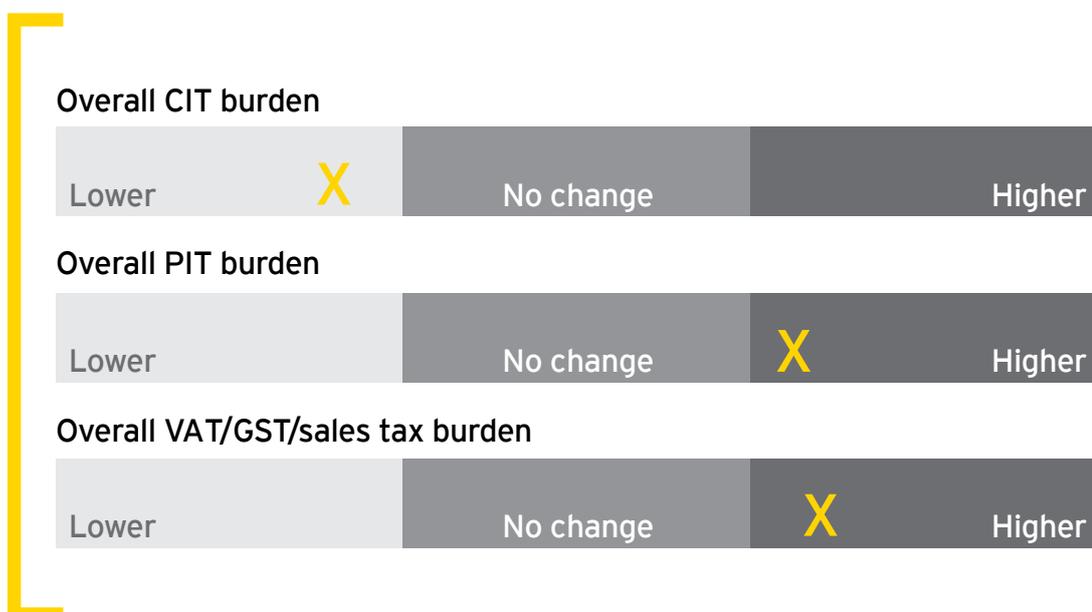
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input checked="" type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

No significant tax policy changes have been proposed or are expected for 2018.

An increase of the tax rate for some profitable businesses (namely, for lottery operators) is combined with new incentives for some priority activities and businesses (namely, CIT exemptions for some natural gas and coal extractive industry companies) and more liberal deductibility rules for banking institutions.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No significant tax policy changes have been proposed or are expected for 2018.

#### Indirect taxes

Some significant amendments in VAT taxation of transactions with software products may be introduced, including:

- ▶ Changes in definition of royalties in relation to software products

- ▶ Changes in the rules in relation to VAT-exempt supplies of software products (more precise definition of the scope of supplies to which exemption applies will be introduced)
- ▶ New rules aimed at tackling abuse in VAT-free importation of goods for personal use including via distant sales by e-stores

### Taxes on wages and employment

Increase of taxable base for social security contribution by linking it to minimum wages which are published by the Government. In 2018 the minimum wage is expected to grow steadily, significantly increasing the basis for mandatory social contribution and overall tax burdens for employers.

### VAT/GST/sales taxes

Tightening control measured, including through fine-tuning of already sophisticated VAT electronic system (e.g., blocking of suspicious VAT invoices) with objective to combat VAT fraud.

Some incentives are introduced for 2018, namely:

- ▶ The possibility to pay the import VAT within 24 months in equal installments is introduced for the import of industrial equipment.
- ▶ VAT exemption is envisaged for supply of the R&D services used within space activities.



- ▶ VAT exemption for development and delivery of software products - more detailed description of the scope of transactions to which the exemption applies
- ▶ VAT exemption for exports of certain agriproducts (soy beans, rape seeds) can be introduced in 2018, which would deprive the agriproducts exporters of the input VAT refund.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.5 Political landscape

- ▶ The next presidential and parliamentary elections in Ukraine are scheduled for 2019. The government may be torn between two objectives: to ensure fiscal consolidation (which is one of the standing requirements of the IMF to Ukraine) and to provide the generous financing of various social obligations, as well as to provide tax concessions to business.
- ▶ Campaigning to businesses and the electorate is therefore expected in 2018.
- ▶ This may lead to an increase in tax burden on some bona fide taxpayers, as well as further procrastination in the area of combating tax fraud.
- ▶ Exotic and/or populist tax initiatives could emerge in 2018.
- ▶ The Government might be inclined to fiscally support local manufacturers.

## 2.6 Current tax policy and tax administration leaders

Tax policy is formally defined by the Government (with the Ministry of Finance acting as the leading ministry) and approved/adjusted by the Parliament and President. At the

same time both the Parliament and President have wide legislative powers in the tax domain, which may not be necessarily reconciled with the tax policies of the Government.

## 2.7 What key tax policy changes did you experience in your country in 2017?

- ▶ Enhancement of VAT electronic system aimed at combating VAT fraud (through introduction of automatic blocking of fraudulent/suspicious VAT invoices)
- ▶ Another year of sharp increase of excise taxes for tobacco products
- ▶ Introduction of electronic excise tax management system for the sales of fuel
- ▶ Continued increase of taxable base for social security contributions for the employers
- ▶ Starting 2017 Ukraine joined the Inclusive Framework on BEPS and, thus, is committed to implement the four minimum standards of the BEPS Package. Ukraine participated in the negotiations on the text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS as a member of the ad hoc Group on the Convention, but has not signed or ratified the Convention yet.

## 2.8 Pending tax proposals

**Open:** The draft law on distributed profit tax to replace corporate profit tax may be considered in 2018.

Signing and ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS is still pending.

## 2.9 Consultations opened/closed

The draft law on a distributed profit tax to replace the existing corporate profit tax may be considered in 2018. Generally, all the tax regulation proposals are submitted for public consultations and discussions via the web site of the State Fiscal Service of Ukraine (<http://sfs.gov.ua/diyalnist-/regulyatorna-politika-/regulyatorna-politika/>).

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**

### 3.2 General approach to tax enforcement in 2017

An e-filing regime is in place in Ukraine mostly for corporate taxpayers, but overall digital tax administration of major taxes (except for VAT and customs) is quite limited. Filing of source accounting data is considered in the long term. Currently, hard copies may be required upon request or during the audits.

In general, the overall digitalization of taxation is in process of being implemented. Starting 2015, the electronic VAT administration system was introduced in Ukraine as a part of an ongoing reform of Ukraine's tax e-administration system. The following digitalization steps have also been made: (i) starting July 2017 the automatic real-time risks analysis of VAT e-invoices was introduced; (ii) introduction of the 'Taxpayer's electronic cabinet' service (to be completed by January 2018), which, inter alia, should allow e-filing directly through the tax authorities' website, electronic exchange of tax and other information, monitoring assessments and payments of taxes.

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Transaction actual performance test</b>	One of focuses of the tax authority in 2018 will be the transaction actual performance test, which is applied to determine whether there was actual movement of the taxpayer's assets and change in the taxpayer's asset status as a result of a transaction. Tax authorities tend to challenge the tax benefits related to transactions which exist on paper only.
2	<b>Business purpose test</b>	The tax authorities will also pay attention to the economic substance of transactions. Where it may not have been a taxpayer's intention to achieve a particular tax advantage, the tax authority will challenge the related tax benefits recognized by the taxpayer.
3	<b>Beneficial owner of income</b>	The tax authority intends to audit and challenge availability of the tax benefits (0% or reduced withholding tax rates) under Ukraine's effective double tax treaties based on absence of the income recipient's beneficiary status.
4	<b>Interpretation of financial accounting rules</b>	Given that CIT is calculated based on a taxpayer's financial result determined according to the financial accounting rules, the tax authority also intends to challenge CIT benefits and assess additional CIT liabilities based on their interpretations of financial accounting rules.



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

- ▶ A new tax ruling procedure was introduced in 2017. Individual tax rulings should be issued by the tax authority within 35 days and placed at the web site of the State Fiscal Service of Ukraine.
- ▶ Term of response to the tax authority's request for information and documents is shortened to 15 business days (one month previously).

- ▶ Annual schedules of the full-scope tax audits should be published at the web site of the State Fiscal Service of Ukraine.
- ▶ Limitation of the tax authorities' functions: the Ministry of Finance of Ukraine develops the secondary tax legislation, administers the tax databases and approves/publishes unified tax rulings (previously, these functions were in the State Fiscal Service's competence)

### 3.6 Potential tax enforcement developments in 2018

- ▶ The "Taxpayer's electronic cabinet" service is expected to be introduced in 2018.
- ▶ It is expected that starting 2018 officers of the tax offices can be held liable for losses incurred by the state budget due to the officers' illegal actions or inaction in relation to taxpayers.

# United Kingdom

## Tax policy

**Chris Sanger**

csanger@uk.ey.com

+44 20 7951 0150

## Tax controversy

**James Wilson**

jwilson8@uk.ey.com

+44 20 7951 5912

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	19%	19%	0%
Top personal income tax (PIT) rate (national and local average if applicable)	45%	45%	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	20%	20%	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ The Conservative government lost its ruling majority in Parliament in the General Election on 8 June 2017 and entered into an alliance with the Northern Ireland Democratic Unionist Party, which has weakened the Government's mandate for introducing significant changes in the UK tax system.
- ▶ The UK's decision to leave the European Union has created significant uncertainty in the UK economy. However, the Government has not adopted any radical changes to tax policy, with moderate measures to encourage consumption such as freezes in air passenger and fuel duty. It has sought to encourage investment in the UK by sustaining the lowest corporation tax rate in the G20 and creating incentives for first-time home buyers by abolishing stamp duty for first-time buyers for purchases under £300,000.
- ▶ The Office for Budget Responsibility (OBR) has reduced its forecast for the level of potential output that the UK economy can achieve by 2021-22 by 2.1 percentage points. This is mainly due to changes in the forecast for productivity growth. Slower GDP growth also implies that there will be slower growth in tax revenues putting further pressure on the UK budget deficit. Despite this, the OBR still estimates that the deficit will fall to 1.3% of GDP by 2020-21, below the 2% ceiling set in the Chancellor's fiscal mandate. Hence, there remains room for further fiscal stimulus.



► Wider global tax developments such as Action 1 of the Base Erosion and Profit Shifting Project (to ensure that profits are taxed in the countries in which a business has genuine economic activity) and the continued growth of the digital economy is driving reforms to digital taxation UK. The Government has published a position paper on corporate tax and the digital economy in the Autumn Budget, to address challenges posed by the digital economy on the corporate

tax system. The Government also announced that it will extend HMRC's powers to hold online marketplaces jointly and severally liable for the unpaid VAT of overseas traders on their platforms to include all (including UK) traders. The paper also announced plans to introduce legislation seeking to tax profits that multinational groups make by extending UK withholding tax to cover royalties paid, in connection with sales to UK customers, to no or low-tax jurisdictions.

## 2.2 Tax burdens in 2018

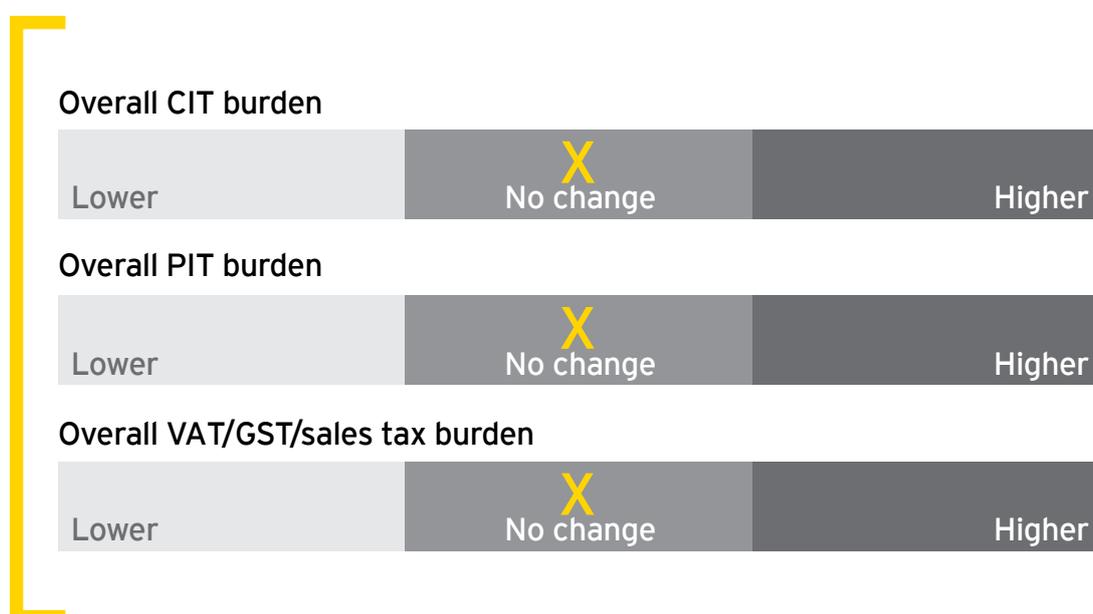
Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018



Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

### 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

After 1 January 2018 the corporate indexation allowance will be frozen. Accordingly, no relief will be available for inflation accruing after this date when calculating chargeable gains made by companies.

### Tax compliance

There were a number of provisions announced at the Autumn Budget on 22 November 2017 designed to crack down on tax avoidance and evasion.

### Research and development incentives

The rate of R&D expenditure credit increased from 11% to 12% in order to encourage business investment. Furthermore, incentives have been introduced for companies to invest in green technologies through capital allowances including:

- ▶ Extending for five years, the first-year tax credit for loss-making businesses purchasing designated energy-efficient or water-saving technologies
- ▶ Extending for three years, the 100% first-year allowance for companies investing in zero-emission goods vehicles and gas refueling equipment
- ▶ Updating the list of technologies and products covered by the Enhanced Capital Allowances scheme, which provides a 100% first-year allowance on qualifying expenditure

### Personal income tax

To reduce the tax difference between the self-employed and those working through a company, the tax-free allowance for dividend income will be reduced from £5,000 to £2,000.

### Taxes on digital activity

The Government has published a position paper on corporate tax and the digital economy in the Autumn Budget, which focuses on the challenges posed by the digital economy to corporate taxation. Additionally the Government will extend HMRC's powers to hold online marketplaces jointly and severally liable for the unpaid VAT of overseas traders on their platforms to include all (including UK) traders.

In December 2017 the Government published a response to the consultation for an Alternative Method of VAT Collection,

where it concluded that a split payment model that would allow VAT to be extracted from online payments in real time would be help to improve tax compliance and reduce the VAT gap. Options for the model will be developed further this year.

### VAT/GST/sales taxes

**Alcohol duty rates and bands** will be frozen other than for white cider that typically has a very high alcoholic content.

**Tobacco duty** rates will increase by two percentage points above RPI inflation until the end of the parliament, in 2022-23. Furthermore, the minimum excise tax for cigarettes will rise to be set at £280.15 per 1,000 cigarettes.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

The UK held a General Election on 8 June 2017 which saw the current ruling Conservative government lose its overall majority in Parliament. The Government has formed an alliance with the Northern Ireland Democratic Unionist Party who have put pressure on the government to maintain the "Triple Lock" policy to increase pensions in line with inflation. Jane Ellison, the former Financial Secretary to the Treasury, the Minister in Charge of tax policy within HM Treasury (HMT), lost her seat in Parliament and has been replaced by Mel Stride. A further reshuffle in January 2018 saw the appointment of a new Exchequer Secretary Robert Jenrick, who replaced Andrew Jones and will support the FST on indirect taxes. A new Economic Secretary to the Treasury, John Glen, has also been appointed and will be responsible for financial services taxation.



The loss of the Conservative Party's overall majority has reduced the ease with which the Government can introduce radical tax policy changes in Parliament and further complicated the Brexit negotiation process. In the absence of a firm agreement between the UK and the EU on Brexit, including on key issues such as trade, and migration, the UK's finance Ministry is unlikely to be able to produce an extensive set of fiscal policies before the exact risks are clear. The government has, however, maintained its goal of achieving a balanced budget position by the middle of the next decade.

There are no elections due to take place in 2018 and hence the leadership is not expected to change.

## 2.7 Current tax policy and tax administration leaders

- ▶ **Government officials:** Jon Thompson (Permanent Secretary of HMRC, and Chief Executive); Jim Harra (Second Permanent Secretary HMRC), Tom Scholar (Permanent Secretary HM Treasury).
- ▶ **Political leaders:** The Rt Hon Theresa May MP (Prime Minister), The Rt Hon Phillip Hammond (Chancellor of the Exchequer), The Rt Hon Elizabeth Truss MP (Chief Secretary to the Treasury), The Rt Hon Mel Stride MP (Financial Secretary to the Treasury).

## 2.8 What key tax policy changes did you experience in your country in 2017?

The 2017 Finance Bill received Royal Assent on 16 November 2017: following delay. The key reforms it brought in were:

- ▶ More flexibility in how losses can be relieved when they are carried forward; and limits the use of carried forward losses to 50% of profits
- ▶ Extending the Substantial Shareholding Exemption so that companies owned by institutional investors will be exempt from Corporation Tax on disposals of their subsidiary companies without regard to whether the subsidiary is trading or non-trading
- ▶ A restriction on the amount of tax-deductible interest and other financing amounts to 30% EBITDA
- ▶ The introduction of the deemed domicile rule for all tax purposes for those who have lived in the UK for 15 of the last 20 tax years

- ▶ Amendments to the Corporation tax relief rules for the exploitation of patents and similar intellectual property, where intellectual property is developed under an arrangement where two or more persons share the costs and income from their research and development (a cost sharing arrangement). The result is that the company's own contribution to the development work drives the amount of profit benefiting from the reduced rate.

## 2.9 Pending tax proposals

Following consultation in spring 2017, non-UK resident companies that carry on a UK property business or have other UK property income will be charged to corporation tax, rather than being charged to income tax as at present. A non-UK resident company that has chargeable gains on the disposal of UK residential property will also be charged to corporation tax instead of capital gains tax as at present.

The Government published a consultation in December 2017 on Royalties Withholding Tax. It intends to introduce legislation that broadens the circumstances in which certain payments made to non-UK residents have a liability to income tax. Specifically, the measure will ensure that payments made for the exploitation of Intellectual Property or certain other rights in the UK have a source in the UK for the purposes of withholding tax. The measure will only apply to payments between connected parties.

In April 2017 the government reformed the off-payroll working rules for engagements in the public sector. Early indications are that public sector compliance is increasing as a result, and therefore the government will carefully consult on how to tackle noncompliance in the private sector, drawing on the experience of the public sector reforms.

In 2018 the government is due to consult on the corporation tax treatment of intellectual property (the Intangible Fixed Asset regime). This will consider whether there is an economic case for targeted changes to this regime, so that it better supports UK companies investing in intellectual property.

The government will also launch a technical consultation on allowing a petroleum revenue tax deduction for decommissioning costs incurred by a previous license holder. This will support transfers of assets where the seller retains the decommissioning liability.

The government has delayed the abolition of Class 2 National Insurance Contributions, paid by self-employed individuals with low profits until April 2019.

The government is looking to simplify the VAT system and will consult on the design of the threshold that makes it easier for businesses to comply with the VAT system. Furthermore the government plans to legislate in Finance Bill 2018-19 to ensure that when customers pay with vouchers, businesses account for the same amount of VAT as when other means of payment are used, aligning the UK with similar changes being made across the rest of the EU.

In December 2017 the Government published a response to the consultation for an Alternative Method of VAT Collection, where it concluded that a split payment model that would allow VAT to be extracted from online payments in real time would be help to improve tax compliance and reduce the VAT gap. Options for the model will be developed further this year.

## 2.10 Consultations opened/closed

### Open:

- ▶ Corporate tax and the digital economy: position paper (31 January 2018)
- ▶ Taxing gains made by non-residents on UK immovable property (16 February 2018)
- ▶ Royalty withholding tax (23 February 2018)
- ▶ Corporate interest restriction - consultation on leases (28 February 2018)
- ▶ Plant and machinery lease accounting changes (28 February 2018)
- ▶ Making Tax Digital: interest harmonisation and sanctions for late payment (2 March 2018)
- ▶ VAT and Vouchers (23 February 2018)
- ▶ Rent a room relief (23 February 2018)
- ▶ The taxation of Securitisation Companies (amendment) Regulations 2018 (15 Jan 2018)
- ▶ Value Added Tax (amendment) regulations 2018 (9 February 2018)
- ▶ Business Rates in Multi-occupied properties (23 February 2018)
- ▶ Tackling the hidden economy: public sector licensing (2 March 2018)

### Closed:

- ▶ Making Tax Digital: bringing business tax in to the digital age (31 January 2017)
- ▶ Making Tax Digital: Transforming the tax system through the better use of information (31 January 2017)
- ▶ Making Tax Digital: Voluntary pay as you go (31 January 2017)
- ▶ Making Tax Digital: Tax administration (31 January 2017)
- ▶ Simplifying tax for unincorporated businesses (31 January 2017)
- ▶ Making Tax Digital for Business - An overview for small businesses, the self-employed and smaller landlords (31 January 2017)
- ▶ Business income tax: Simplified cash basis for unincorporated property businesses (31 January 2017)
- ▶ Tax-advantaged venture capital schemes - streamlining the advance assurance service (1 February 2017)
- ▶ Simplifying the Gift Aid donor benefits rules: further consultation (3 February 2017)
- ▶ Sanctions to tackle tobacco duty evasion and other excise duty evasion (17 February 2017)
- ▶ Tackling offshore tax evasion: A requirement to notify HMRC of offshore structures (27 February 2017)
- ▶ Scope of VAT Grouping (27 February 2017)
- ▶ Withdrawal of extra statutory concessions (7 March 2017)
- ▶ Hybrid and other mismatches - draft guidance (10 March 2017)
- ▶ Tackling the hidden economy: conditionality (20 March 2017)
- ▶ Tackling the hidden economy: sanctions (20 March 2017)
- ▶ Reducing the money purchase allowance (20 March 2017)
- ▶ Partnership taxation: proposals to clarify tax treatment (20 March 2017)
- ▶ Stamp Duty Land tax: changes to the filing and payment process (20 March 2017)
- ▶ VAT fraud in labour provision in the construction sector (20 March 2017)
- ▶ Non-resident companies chargeable to income tax and non-residential capital gains tax (20 March 2017)



- ▶ Making tax digital: Sanctions for late submission and late payment (20 March 2017)
- ▶ Draft legislation: the Value Added Tax (Refund of Tax to Museums and Galleries) (Amendment) Order 2017 (21 April 2017)
- ▶ Simplifying the administration of Alcohol Duty (26 April 2017)
- ▶ Taxation of employee expenses call for evidence (5 May 2017)
- ▶ Landfill Tax: extending the scope to illegal disposals (5 May 2017)
- ▶ Draft legislation: the Corporate Interest Restriction (Financial Statements: Group Mismatches) Regulations 2017 (26 May 2017)
- ▶ Non-resident companies chargeable to income tax and non-resident capital gains tax (9 June 2017)
- ▶ Alcohol structures (12 June 2017)
- ▶ Tax treatment of heated tobacco products (12 June 2017)
- ▶ Withholding tax exemption for debt traded on a Multilateral Trading Facility (12 June 2017)
- ▶ VAT: Tackling fraud on goods sold online - update on split payment (30 June 2017)
- ▶ Taxation of employee expenses call for evidence (10 July 2017)
- ▶ Aggregates Levy - whether to exempt aggregate extracted when laying underground utility pipes (18 October 2017)
- ▶ Draft legislation: Help-to-Save accounts (27 October 2017)
- ▶ Extra-statutory concessions (ESCs) - technical consultation on draft legislation (9 November 2017)
- ▶ Making Tax Digital reforms affecting businesses (10 November 2017)
- ▶ Draft legislation: The Corporation Tax (Simplified Arrangements for Group Relief) (Amendment) Regulations 2017 (13 November 2017)
- ▶ Draft legislation: The Income Tax (Pay As You Earn) Regulations 2017 (28 November 2017)
- ▶ Draft legislation: The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2017 (1 December 2017)
- ▶ Draft legislation: The Tobacco Products Manufacturing Machinery (Licensing Scheme) Regulations 2017 (5 December 2017)
- ▶ Consultation on the Business Risk Review (6 December 2017)
- ▶ Draft legislation: Soft Drinks Industry Levy (8 December 2017)
- ▶ Draft legislation: the Fulfilment Businesses (Approval Scheme) Regulations 2018 (15 December 2017)
- ▶ Draft legislation: the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018 (15 December 2017)
- ▶ The Registered Pension Schemes (Relief at Source) (Amendment) Regulations 2018 (31 December 2017)

## 3 | Tax enforcement in 2018

### 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. **Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers**
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

HMRC applies a risk-based approach to enforcement and compliance. It has a “promote, prevent, respond” strategy to tackle noncompliance which aims to:

- ▶ Promote compliance by designing it into systems and processes
- ▶ Prevent noncompliance at or near the time of filing
- ▶ Respond effectively to noncompliance

It focuses on:

- ▶ Maximizing collection of revenues

- ▶ Bolstering resources to tackle evasion and noncompliance in the tax system
- ▶ Using data more efficiently, to identify the root causes of noncompliance among different taxpayer groups and deliver digital services to make things easier for them and for HMRC
- ▶ Stopping noncompliance before it happens through:
  - ▶ More frequent reporting, intended to lead to fewer errors and less opportunity to evade tax obligations
  - ▶ New powers to acquire information from online intermediaries and increased sanctions for offshore evasion to allow HMRC to address tax risks more effectively

## 3.3 Key risk factors and audit triggers in 2018

<b>1</b>	<b>General</b>	<p>HMRC generally applies a risk-based approach to the audit of business taxpayers, with its framework for risk assessing large business based on a combination of inherent and behavioral risk factors. Low-risk businesses benefit from fewer interactions with HMRC and greater certainty that their tax returns will not be challenged.</p> <p>Inherent risk factors include complexity (including size and scope of the business and its tax interests), boundary (i.e., international structures, financing and connected party issues) and the degree and pace of change affecting the business and its tax obligations.</p> <p>Behavioral risk factors include governance (management of risk and openness and cooperation with HMRC), ability to deliver the “right tax at the right time” through processes, systems and skills, and tax strategy (including use of tax planning that does not support genuine commercial activity).</p> <p>HMRC is currently consulting on its Business Risk Review framework and while it is expected to maintain a similar risk-based approach to audit in future, there may be changes to the detailed risk factors used for this purpose.</p> <p>Alongside its general approach tailored to taxpayer-specific risk, as above, HMRC takes a cross-cutting approach to investigating and challenging avoidance schemes, with an anti-avoidance strategy relying on enhanced disclosure requirements, enhanced penalties for users and enablers of avoidance schemes, and a strategic approach to litigation where the taxpayer has not conceded 100% of the liability HMRC regards as due.</p>
----------	----------------	---



### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).

- Yes
- No

▶ Explanation

HMRC regards the 2015 amendments to the OECD's Transfer Pricing Guidelines as purely clarificatory, in response to BEPS Actions 8-10. So while these were enacted in the UK in Finance Act 2016 with effect only from April 2016, HMRC regards the new legislation as making no substantive changes to what it regards as always having been the position.

Other BEPS actions have either led to no new UK legislation or (in the case of Action 2 (hybrids) and Action 4 (corporate interest) to legislation which applies only from January 2017 and April 2017, respectively.

- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)

- Yes
- No

### 3.5 Tax enforcement developments in 2017

With 2016-17 the first full year of implementation of the Diverted Profits Tax (DPT), HMRC announced DPT yield in 2016-17 totaling £281m, in addition to increased yield from Transfer Pricing adjustments (£1618m compared with £853m in 2015-16).

New tax enforcement measures in 2017 included:

- ▶ The "Requirement to Correct" regime introduced in advance of HMRC receiving information under the Common Reporting Standard in September 2018. It applies to individuals (whether or not UK resident), partnerships and trustees, and potentially affects undisclosed liabilities from the tax year 1997/98 onwards. Failure to correct by 30 September 2018 "relevant offshore tax noncompliance" committed on or before 5 April 2017 will result in severe penalties.

- ▶ The "Partial Closure Notice" regime under which HMRC can with effect from 16 November 2017 close its enquiries (and therefore potentially trigger litigation) on certain matters under enquiry for a year, while continuing its enquiries on others.

### 3.6 Potential tax enforcement developments in 2018

With a doubling in 2017 of HMRC DPT dedicated resource, DPT will continue to be a focus of HMRC scrutiny for business taxpayers in 2018.

The Autumn Budget 2017 announced £155m in additional resources and new technology for HMRC to help bring in an additional £2.3b of tax revenues over the next six years.

Priorities for this investment were announced as follows:

- ▶ To allow HMRC to tackle the hidden economy using new technology
- ▶ To further challenge those who are engaging in marketed tax avoidance schemes
- ▶ To use the new corporate criminal offense for failure to prevent facilitation of tax evasion to address enablers of tax fraud
- ▶ To increase HMRC's ability to address noncompliance by mid-size businesses and high net worth individuals
- ▶ To recover increased amounts of tax debt through the creation of a new taskforce to collect debts over nine months old

# United States

## Tax policy

**Michael Mundaca**

michael.mundaca@ey.com

+1 202 327 6503

**Eric Solomon**

eric.solomon@ey.com

+1 202 327 8790

**Cathy Koch**

cathy.koch@ey.com

+1 202 327 7483

**Nick Giordano**

nick.giordano@wc.ey.com

+1 202 467 4316

**Michael Dell**

michael.dell@ey.com

+1 202 327 8788

**Arlene Fitzpatrick**

arlene.fitzpatrick@ey.com

+1 202 327 7284

**Steve Wlodychak**

steven.wlodychak@ey.com

+1 202 327 6988

## Tax controversy

**Heather Maloy**

heather.maloy@ey.com

+1 202 327 7758

**Frank Ng**

frank.ng@ey.com

+1 202 327 7887

EY key contacts

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	39% <sup>1</sup>	26% <sup>2</sup>	-33.3%
Top personal income tax (PIT) rate (national and local average if applicable)	39.6% <sup>3</sup>	37% <sup>4</sup> Additionally, a new 20% deduction for individuals for domestic "qualified business income" from a partnership, S corporation, or a sole proprietorship creates an effective 29.6% tax rate for certain pass-through income	-6.57%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	0% <sup>6</sup>	0%	N/A

<sup>1</sup> The top federal marginal rate is 35%, but many US states and municipalities also levy their own corporate income taxes, with rates ranging from 0% to 12%, as well as other types of business taxes determined on other bases, such as net worth or gross receipts. EY, "2017 Worldwide Corporate Tax Guide," p. 1679, January 1, 2017.

<sup>2</sup> This top federal marginal rate enacted as part of the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97), which was signed into law December 22, 2017, is 21%, but many states and US municipalities also levy their own corporate income taxes, as well as other types of business taxes determined on other bases, such as net worth or gross receipts. Among other changes, the law repealed the US federal corporate alternative minimum tax.

<sup>3</sup> In addition to the federal rate, US state and municipal individual income tax rates apply, ranging from 0% to 13.3%. These state and local personal income taxes formerly were completely deductible under the federal income tax (the "SALT deduction") prior to the TCJA (but subject to addback in the alternative minimum tax). The TCJA now imposes an annual \$10,000 limitation on the deductibility of most state and local taxes (\$5,000 for married filing separately) and any such taxes deducted remain taxable under the federal personal alternative minimum tax. At the same time but having a corresponding effect for some taxpayers, the TCJA also doubled the standard deduction, moderating the SALT deduction limitation. Additionally, a federal net investment income tax (NIIT) went into effect on January 1, 2013. The 3.8% tax applies to certain net investment income of individuals, estates and trusts that have income over statutory threshold amounts.

<sup>4</sup> This rate was enacted as part of the TCJA. As noted in footnote 3, US state and municipal individual income tax rates apply, as does the federal NIIT. Both the personal income tax rate and the 20% deduction for certain pass-through income is effective for tax years beginning after December 31, 2017, and before January 1, 2026.

<sup>5</sup> Both the lower individual income tax rates and the new deduction for certain pass-through income were enacted as part of the TCJA.

<sup>6</sup> However, many state and local governments impose sales taxes, with combined rates varying from 0% to 10.25%. It is estimated that there are about 7,600 separate sales tax rate jurisdictions in the United States.



## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

- ▶ Republican policymakers used expedited procedures to pass the Tax Cuts and Jobs Act (P.L. 115-97) (TCJA), which was signed by President Donald Trump on 22 December 2017. The new tax law, the first major overhaul of the US tax code in over 30 years, lowers business and individual tax rates and shifts the United States to a territorial tax regime. These changes have dramatically changed the tax landscape and will affect all US taxpayers - both corporate and individual - beginning in 2018.
- ▶ Economic growth and international competitiveness were and remain key drivers of the tax reform effort and tax policy in general. While growth has been strong and unemployment rates remain low, the new tax law was promoted as a way to encourage companies to invest and create jobs in the United States and to reduce their reliance on imports, while at the same time providing a “middle-class tax cut” for individuals and families.
- ▶ Given the large scale of the tax changes and the speed with which the legislation moved through Congress, it is likely that there will be additional fine-tuning in 2018 through the issuance of administrative guidance. The IRS and Treasury Department have already begun issuing implementing guidance and plan to issue additional regulations, especially in the international tax area. There is also a possibility of technical corrections legislation, although such legislation would need to garner bipartisan support in order to pass.

### 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input type="checkbox"/> Around the same corporate tax base size in 2018 <input checked="" type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(5) Treatment of losses	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(10) Thin capitalization	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

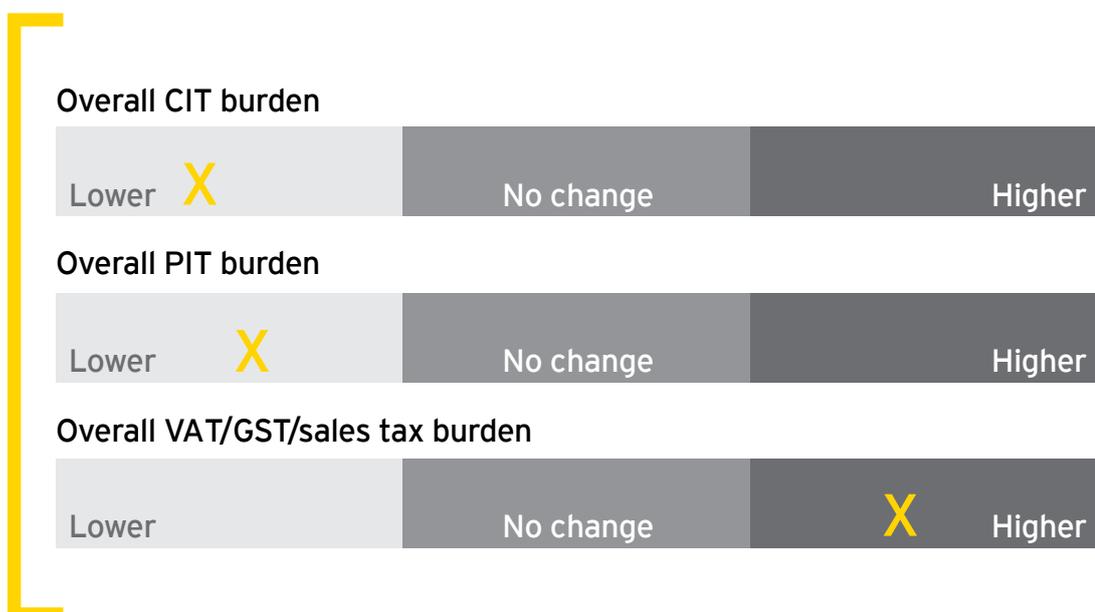


Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate <sup>7</sup>	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base <sup>8</sup>	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input checked="" type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(18) PIT base	<input checked="" type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018

<sup>7</sup> These represent the general trend within the United States, but because each state controls its own sales tax base and rate, there may be deviations among the states.

<sup>8</sup> These represent the general trend within the United States, but because each state controls its own sales tax base and rate, there may be deviations among the states.

## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

- ▶ US tax policy in 2018 will continue to revolve around tax reform - with the focus shifting from the creation and enactment of legislation to understanding and implementing the new tax system. US states, which are traditionally dependent upon the federal tax law for administering their own corporate and personal income taxes, will likely consider whether they will incorporate or decouple from the various provisions of the TCJA. Assuming the states follow the federal base broadening provisions and do not follow the federal rate reductions, it is widely anticipated that the overall state corporate and personal income tax burdens will increase, although the results will vary widely among the states because of their wide variation in imposition of such taxes, tax rates and conformity to various provisions of the federal tax law.
- ▶ Congress may also try to pass legislation to make technical corrections to the law, which will require bipartisan support to be successful.

- ▶ In addition to lower corporate and individual tax rates, key elements of the new law include:

- ▶ A new 20% deduction available only for individuals for certain income received from pass-through entities engaged in certain types of businesses (i.e., most professional services do not qualify for the deduction). As a result of these changes, choice-of-entity decisions may become more complex in 2018 because the changes partly close the gap between the effective tax rates of C corporation earnings and pass-through earnings; the impact of state taxes might also change due to the severe federal limitation on the deduction for state and local taxes.
- ▶ A broader tax base - To pay for the proposed lower rates, an array of base-broadening provisions (e.g., limitations on deductions) was enacted. These changes affect both business and individual taxation, and represent a significant shift from prior tax law.
- ▶ Immediate write-off of qualified property placed in service after 27 September 2017 and before 2023, with the increased expensing phasing down starting in 2023 by 20 percentage points for each of the five following years.



- ▶ Limitations on net interest expense. Businesses will no longer be able to deduct net interest expense exceeding 30% of adjusted taxable income.
- ▶ A fundamentally new international tax system. Domestic corporations are allowed a 100% deduction for the foreign-source portion of dividends received from 10%-owned foreign subsidiaries. There is also a one-time transition tax on post-1986 earnings of 10%-owned foreign subsidiaries accumulated in periods of 10% US corporate shareholder ownership (a 15.5% rate on cash and cash equivalents, and an 8% rate on the remainder). A new broad-based anti-deferral provision taxes “global intangible low-taxed income” (GILTI) on a current basis at a 10.5% effective tax rate, and a new base erosion anti-abuse tax (BEAT) provision levies a minimum tax of 10% (with a 5% transition rate in 2018) on income determined after adding back deductible payments made to related foreign persons.
- ▶ The new law also eliminates performance-based compensation exceptions and extends the deduction limitation to deferred compensation paid to executives who previously held a covered employee position. It expands applicability of the deduction limitation to certain foreign private issuers and private companies that have publicly traded debt. There is a transition rule for compensation provided pursuant to a written binding contract in effect on 2 November 2017 and not modified materially after that date.
- ▶ For tax-exempt entities, which have generally not been subject to limitations on the compensation amounts they pay to executives, the law adds a new 21% excise tax on certain tax-exempt organizations that pay a “covered employee” compensation in a tax year that: (i) exceeds \$1 million (not including excess parachute payments), or (ii) is an excess parachute payment. The new excise tax is effective for tax years beginning after 31 December 2017. The intent of the new excise tax appears to be to treat tax-exempt organizations similarly to taxable businesses with respect to compensation paid to executives above a specified threshold. The law also eliminates many deductions and exclusions for fringe benefit expenses.

## Taxes on digital activity

### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

In 2016, the US Congress made permanent the ban on state and local taxation of internet access.

### Indirect taxes

Some state and local governments do, however, impose sales taxes on online purchases.

## Taxes on wages and employment

The new tax law included many changes that affect employers, compensation and fringe benefits. The resulting compliance effort employers need to undertake is substantial, and there are areas of uncertainty that will require resolution through IRS regulations and other guidance. Among the key changes:

- ▶ The new tax law expands the \$1 million deduction limit that applies to compensation paid to top executives of publicly held companies for tax years beginning after 31 December 2017. Chief financial officers had previously been excluded from the category of covered employees, but now they are explicitly included.

## VAT/GST/sales taxes

In early January 2018, the US Supreme Court announced it will hear *South Dakota v. Wayfair*, dealing with the state's ability to impose a sales and use tax on a business that does not have a physical presence in the state. The state law at issue is a direct challenge to US Supreme Court precedent that has existed for many years. Even in light of this surprising Court action, states will continue to aggressively pursue sales taxes from online businesses and any business that is making sales to customers in the state but does not have a traditional physical presence. In light of the elimination of the federal deduction for state and local taxes, it is also widely anticipated that states, seeking needed revenue for vital government services, will explore expansion of their sales tax base as well as potentially increasing sales tax rates. It is difficult to predict which jurisdictions will do so. Careful attention to state legislative activity in all states is necessary in order to follow these developments.

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

Republican President Donald Trump entered the White House with an agenda that diverged significantly from that of his Democratic predecessor, and he began his term by rolling back a number of regulations put in place by the Obama Administration. With a Republican-controlled Congress, he was able to notch a major legislative victory with the passage of comprehensive tax reform at the end of 2017. However, the slim Republican majority in the Senate in 2017 was not enough to repeal President Obama's Affordable Care Act (ACA), another top Trump Administration priority.

The turbulent political climate is not likely to calm down anytime soon. In fact, the 2018 midterm elections could have significant policy implications going forward, particularly if the election results change which party controls either (or both) chambers of Congress.

The midterm elections are significant as a third of the Senate and the entire House is up for election. Historically speaking, the party that controls the White House often loses seats in midterm elections. Going into 2018, the Republicans hold 239 seats in the House, while the Democrats hold 193. Democrats would need a 24-seat net gain to get control. With 40 House Republicans in districts where President Trump received less than 50% of the vote, and 23 Republicans from districts Hillary Clinton won in 2016, control of both chambers is in play.

Given the deep divisions between the two political parties on major policy issues to date, if the Democrats win control of either the House or the Senate, it is likely that the Republicans will have a difficult time further advancing their agenda.

## 2.7 Current tax policy and tax administration leaders

### Tax policy leaders

- ▶ Donald Trump, President
- ▶ Steven Mnuchin, Treasury Secretary
- ▶ David Kautter, Treasury Assistant Secretary (Tax Policy)
- ▶ Rep. Kevin Brady (R-TX), Chairman, House Ways and Means Committee
- ▶ Rep. Richard Neal (D-MA), Ranking Member, House Ways and Means Committee
- ▶ Sen. Orrin Hatch (R-UT), Chairman, Senate Finance Committee
- ▶ Sen. Ron Wyden (D-OR), Ranking Member, Senate Finance Committee
- ▶ Thomas Barthold, Chief of Staff, Congressional Joint Committee on Taxation

### Tax administration leaders

- ▶ David Kautter, Acting Internal Revenue Service (IRS) Commissioner<sup>9</sup>
- ▶ Douglas O'Donnell, IRS Large Business and International Commissioner

## 2.8 What key tax policy changes did you experience in your country in 2017?

The early months of 2017 were spent filling key tax policy positions in the Administration, and lawmakers focused most of the year on refining and coalescing around the Republican tax reform proposals that culminated in the legislation that passed in late December (see Sections 2.1 and 2.4 above).

House Republicans had released their initial "blueprint" for tax reform in 2016, which started the US tax reform discussion in earnest. The Trump Administration then released its own tax reform outline in April 2017, and in September, the Administration and congressional Republican leaders jointly released a "Unified Framework for Fixing our Broken Tax Code" that aimed to reduce the statutory corporate rate and move toward a territorial system of taxing foreign earnings.

<sup>9</sup> It is expected that President Donald Trump will make an announcement about a nominee for an IRS Commissioner in early 2018.



From this starting point, the Republican House and Senate tax-writing committees crafted legislation under an expedited budget process called “reconciliation.” This process required both chambers to pass the same budget resolution that included reconciliation instructions for tax reform. Using reconciliation allowed the Republican tax bill to pass the Senate by a simple majority as opposed to the usual 60 votes needed, a necessity since Republicans held only 52 seats in the Senate and Democrats were uniformly opposed to the Republican tax plan. The reconciliation process, however, also imposed stringent rules and restrictions on the legislation, including a rule that no title of the bill could add to the deficit beyond the 10-year budget window.

Ultimately, both the House and Senate crafted their own tax reform bills that then had to be reconciled in a House-Senate conference committee. Once reconciled, the House and Senate each passed the agreement, which President Trump signed into law 22 December 2017.

## 2.9 Pending tax proposals

**Open:** One piece of unfinished business left over from 2017 that may be addressed in 2018 is the fate of numerous “tax extenders” - temporary tax provisions that either expired or are expiring. It is possible Congress will try to advance legislation in 2018 that would retroactively extend tax provisions that expired as far back as 2016. Several health-care related tax extenders were already addressed in legislation passed in January 2018 to provide short-term funding for the federal government. The legislation extended a moratorium on the 2.3% excise tax imposed on the sale of medical devices for two years (through 2019), retroactive from December 31, 2017; delayed implementation of the excise tax on high-cost employer health coverage (the “Cadillac” tax) for an additional two years (through 2021); and provided for a one-year moratorium on the annual excise tax imposed on health insurers for calendar year 2019.

**Closed:** N/A

## 2.10 Consultations opened/closed

Not applicable

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches
- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers**

- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions

## 3.2 General approach to tax enforcement in 2017

In 2017, The IRS Large Business and International division (LB&I) started transitioning towards issue-based examinations and a campaign process that uses multiple treatment streams – including “soft letters,” published guidance, and issue-based examinations – to address areas of potential compliance risk. It is anticipated that over time, the use of campaigns will become a larger portion of LB&I’s compliance activity.

## 3.3 Key risk factors and audit triggers in 2018

1	Various	The majority of returns will likely be assigned to exam teams and they will decide what issues to examine. It is unclear what will happen to audits related to tax code sections repealed in the tax reform legislation. In addition, it is expected that a significant priority for LB&I going forward will be identification of compliance risks related to the tax reform legislation.
---	---------	---

## 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain).  
 Yes  
 No
- ▶ Do you expect the tax authority to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)  
 Yes  
 No

## 3.5 Tax enforcement developments in 2017

The IRS LB&I division is implementing a new issue-based exam selection process centered on “campaigns.” Under this new audit process, LB&I will identify and develop campaigns focused on specific issues and corresponding potential compliance risks and select returns with those issues. Campaign-related actions may include a variety of tools and treatment streams such as development of revenue agent training materials, practice units, published guidance, issue-based examinations, and “soft” letters. The purpose of the change is to streamline operations and improve identification of noncompliance to better utilize LB&I’s limited resources.

It should be noted, however, that returns selected as part of a campaign are as yet a small percentage of LB&I’s overall audit plan. Most audits continue to be performed under the traditional method of assigning a tax return to a revenue agent who then decides the issues to be audited.



Low angle view of New York Stock Exchange, Wall Street, New York, USA

### 3.6 Potential tax enforcement developments in 2018

In response to concerns about the IRS' inability to effectively audit partnerships, Congress adopted an entirely new regime for the audit of partnerships as part of the Bipartisan Budget Act of 2015 (Budget Act), which replaces the existing partnership audit regimes. The Budget Act generally applies to partnership tax years beginning after 31 December 2017. The Budget Act rules can change which partners bear the burden of paying tax, how much tax is paid and how the IRS will conduct partnership audits. Many questions are still unanswered, and further guidance is needed in order for the new system to function. The IRS is in the process of issuing various regulations that explain how the IRS will administer these Budget Act partnership audits for partnership returns for the 2018 tax year and beyond.

In early 2018, LB&I released five directives concerning how agents conduct transfer pricing audits. These adjustments to transfer pricing audits are a result of LB&I's need to better manage transfer pricing examinations given its shrinking resources.

Finally, the IRS will be evaluating enforcement initiatives in conjunction with the implementation of the Tax Cuts and Jobs Act.

# Vietnam

## Tax policy and controversy

Huong Vu  
huong.vu@vn.ey.com  
+84 4 3831 5100

EY key contact

## 1 | Tax rates (2017-18)

### 1.1 Key tax rates

	2017	2018	Percentage change
Top corporate income tax (CIT) rate (national and local average if applicable)	20%	20% <sup>1</sup> (except for small and medium-sized enterprises (SMEs))	0%
Top personal income tax (PIT) rate (national and local average if applicable)	Resident: 35%  Nonresident: 20%	Resident: 35% <sup>2</sup>  Nonresident: 20% <sup>3</sup>	0%
Standard value-added tax (VAT), goods and services tax (GST) or sales tax rate	10%	10% <sup>4</sup>	0%

## 2 | Tax policy in 2018

### 2.1 Key drivers of tax policy change

The government is focusing on greater support of SMEs and micro enterprises in 2018.

<sup>1</sup> Corporate Tax Law 32/2013/QH13 dated 19 June 2013.

<sup>2</sup> Personal Income Tax Law No. 04/2007/QH12 dated 21 November 2007.

<sup>3</sup> Ibid.

<sup>4</sup> 2014 VAT GST Sales tax guide, Ernst and Young.

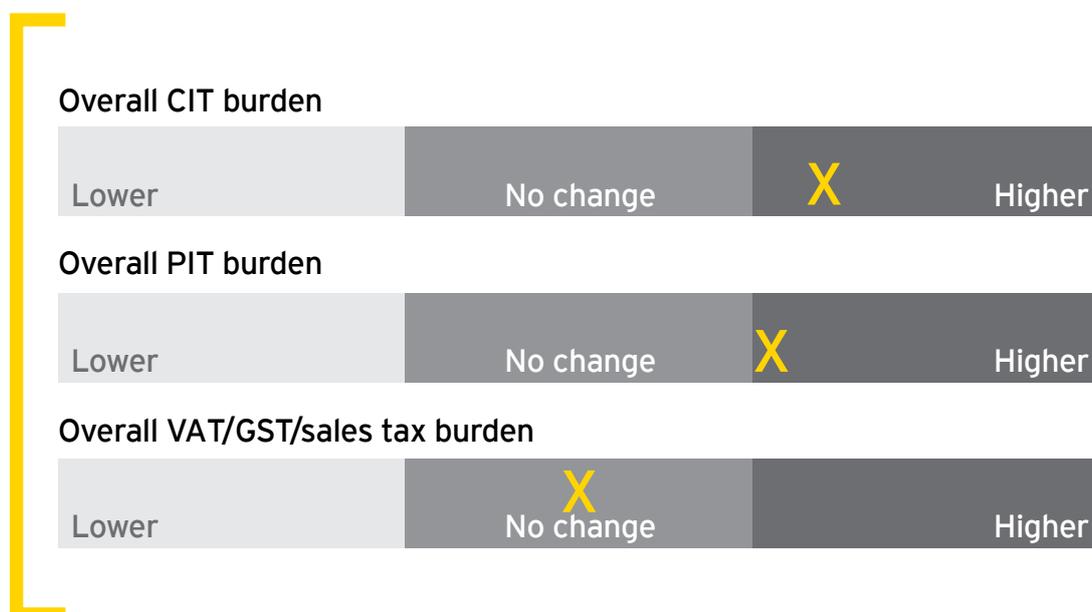
## 2.2 Tax burdens in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(1) Headline CIT rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(2) Overall size of corporate tax base in 2018	N/A	<input type="checkbox"/> Smaller corporate tax base in 2018 <input checked="" type="checkbox"/> Around the same corporate tax base size in 2018 <input type="checkbox"/> Larger corporate tax base size in 2018
(3) Interest deductibility	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(4) Hybrid mismatches	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(5) Treatment of losses	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(6) Capital Gains Tax (impacting corporations)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no Capital Gains Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(7) Withholding taxes	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(8) Taxes on digital activity impacting businesses (including changes to PE definition, etc.)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(9) Controlled Foreign Companies (CFC)	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes in 2018 <input type="checkbox"/> N/A, as there is no CFC regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018

Tax types	Any changes proposed/known or possible for 2018?	What is the expected tax burden in 2018, as compared to 2017?
(10) Thin capitalization	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no thin capitalization regime	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(11) Transfer Pricing changes	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(12) Research and Development (R&D) incentives	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(13) Other business incentives - including depreciation/amortization/capital asset allowances, etc.	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(14) Changes to tax enforcement approach	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(15) VAT, GST or sales tax rate	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(16) VAT, GST or sales tax base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018 <input type="checkbox"/> N/A, as there is no VAT, GST or sales Tax	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018
(17) Top marginal PIT Rate	<input type="checkbox"/> Change proposed or known for 2018 <input checked="" type="checkbox"/> Additional change possible or somewhat likely in 2018 <input type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input type="checkbox"/> Same burden in 2018 <input checked="" type="checkbox"/> Increased burden in 2018
(18) PIT base	<input type="checkbox"/> Change proposed or known for 2018 <input type="checkbox"/> Additional change possible or somewhat likely in 2018 <input checked="" type="checkbox"/> No changes expected in 2018	<input type="checkbox"/> Lower burden in 2018 <input checked="" type="checkbox"/> Same burden in 2018 <input type="checkbox"/> Increased burden in 2018



## 2.3 Tax policy outlook for 2018 – summary



## 2.4 Tax policy outlook for 2018 – detail

### Corporate income taxes

The corporate tax rate remains unchanged at 20%, but falls to 15% for micro enterprises and 17% for SMEs.

### Taxes on digital activity

#### Direct taxes (including enforcement approaches such as a DPT or tech sector audit focus)

No change

#### Indirect taxes

No change

### Taxes on wages and employment

The salary levels at which social insurance is charged will be increased, meaning that the tax base to calculate PIT shall also be changed accordingly.

Moreover, the Ministry of Finance is proposing to amend PIT rates. No final decision to ratify this proposal has been issued, however

### VAT/GST/sales taxes

No changes

## 2.5 OECD MLI

- ▶ In your opinion, in which year is the OECD Multilateral Instrument likely to be ratified in your country? (Year)
  - 2018
  - 2019
  - 2020 or later
  - Do not expect my country to participate/ratify
- ▶ Do you expect your country to adopt a (mandatory) Principal Purpose Test (PPT) under the BEPS MLI during the course of 2018?
  - Yes
  - No

## 2.6 Political landscape

No changes

## 2.7 Current tax policy and tax administration leaders

Tax policy leaders:

- ▶ Phung Quoc Hien, Head of Financial & Budget Committee of the National Assembly
- ▶ Vu Thi Mai, Deputy Minister of Ministry of Finance

- ▶ Bui Van Nam, General Director of General Department of Taxation of Ministry of Finance

Tax administration leaders:

- ▶ Do Hoang Anh Tuan, Deputy Minister of Ministry of Finance
- ▶ Cao Anh Tuan, Deputy Director of General Department of Taxation of Ministry of Finance

## 2.8 What key tax policy changes did you experience in your country in 2017?

- ▶ Decree 20/2017/ND-CP on tax administration of enterprises with related party transactions
- ▶ Circular 41/2017/TT-BTC guiding Decree 20/2017/ND-CP on tax administration of enterprises with related party transactions
- ▶ Law 04/2017/QH14 regarding small and medium-sized enterprises (SMEs) effective from 1 January 2018
- ▶ Decree 146/2017/ND-CP amending and supplementing Decree 100/2016/ND-CP and Decree 12/2015/ND-CP effective from 1 January 2018
- ▶ Decree 141/2017/ND-CP on new minimum regional salary effective from 1 January 2018
- ▶ Decree 125/2017 amending and supplementing Decree 122/2016/ND-CP effective from 1 January 2018
- ▶ Law on Foreign Trade Administration No. 05/2017/QH14 effective from 1 January 2018
- ▶ Law on Technology Transfer No. 07/2017/QH14 effective from 1 July 2018

## 2.9 Pending tax proposals

The Ministry of Finance has issued draft proposals to amend the law on Tax Administration and to amend five tax laws (i.e., value-added tax, corporate income tax, special consumption tax, personal income tax, natural resource tax) to the Government.

## 2.10 Consultations opened/closed

### Open

- ▶ Draft Circular amending and supplementing a number of articles of Circular No. 110/2015/TT-BTC dated 28 July 2015 of the Ministry of Finance guiding electronic transactions in the field of tax
- ▶ Draft Decree regulating invoices for the sale of goods and services
- ▶ Draft Circular amending and supplementing a number of articles of Circular No. 215/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance guiding the enforcement of tax administrative decisions

### Closed

- ▶ Draft Decrees on the Special Preferential Import Tariffs of Vietnam for implementation of the FTAs with some countries for the period 2018-22

# 3 | Tax enforcement in 2018

## 3.1 General approach to tax enforcement in 2018

- A. Will proactively build trust-based relationships with taxpayers, encouraging cooperative compliance, while still insisting on substance-based approaches
- B. Will be open to trust-based relationships, generally seen as non-aggressive in dealings with taxpayers, while also insisting on substance-based approaches

- C. Will be neutral in approach - will not be viewed as overly open or openly aggressive in dealings with taxpayers
- D. Will apply highly robust scrutiny to all taxpayers, using all available tools and laws, but will generally be seen as being fair and balanced when dealing with taxpayers
- E. Will be viewed as generally aggressive with taxpayers, applying highly subjective and/or retroactive interpretations or threatening/using criminal sanctions**



### 3.2 General approach to tax enforcement in 2017

The Vietnamese tax authorities currently have a heavy focus on transfer pricing and capital gains tax audits, especially after indirect transfer transactions have concluded. VAT refunds continue to be inefficient, resulting in a long process for taxpayer and driving many tax disputes. The Ministry of Finance and the General Taxation Department have been reviewing several VAT refund dossiers which had been completed by local tax authorities. Customs authorities are doing more audits of post customs clearance, concentrating on the dutiable value of imported goods and HS code classification

### 3.3 Key risk factors and audit triggers in 2018

1	<b>Capital gains tax</b>	The tax authority pays much attention to indirect capital transfer transactions, in order to impose capital gain tax.
2	<b>Transfer pricing</b>	Under the new regulations, transfer pricing documentation requirements have become far stricter, demanding three tiers of documentation (global master file, local file and country-by-country report). Moreover, the timeline to submit transfer pricing documentation is also specified.
3	<b>Technology transfer</b>	The tax authority is paying closer attention to technology transfer agreements, especially between related parties. Technology transfer contracts and some part of technology transfer in specific circumstances as specified by certain laws (e.g., investment project, capital contribution by technology, franchising) from overseas to Vietnam or from Vietnam to overseas must be registered with the competent authority.  The price of technology transfer between related companies shall be audited.

### 3.4 Retroactive application of tax laws in 2018

- ▶ Do you expect the tax authority to make use of a retroactive/retrospective application of the BEPS recommendations in 2018? (If yes, please explain why).
  - Yes
  - No
- ▶ Do you expect the tax authority tend to use a retroactive application of other national tax legislation in 2018? (If yes, please explain)
  - Yes
  - No

### 3.5 Tax enforcement developments in 2017

For a number of areas where regulations are ambiguous, tax authorities are becoming more aggressive and tend to present unfavorable interpretations of regulations in order to collect more tax

### 3.6 Potential tax enforcement developments in 2018

Historically, taxpayers have often tried to settle disputes (via explanation, arguments to convince authorities or trying to compromise on issues) rather than pursuing litigation. More recently, a greater number of tax appeals by to higher level tax authorities and more tax court cases have been experienced.

# Connect with us



A hand in a white shirt sleeve holds a glowing, translucent sphere containing financial data. The background is a blurred stock market ticker with green and red numbers on a blue background. A large yellow rectangle is overlaid on the right side of the image, containing text.

The **2018 outlook for tax policy** covers a total of 41 jurisdictions. All jurisdictions, as well as daily EY global tax alerts, can be accessed on the internet at:

---

**[ey.com/2018taxpolicyoutlook](https://www.ey.com/2018taxpolicyoutlook)**

---

# EY contacts

## Global leaders

**Chris Sanger**  
EY Global Tax Policy Leader  
csanger@uk.ey.com  
+44 20 7951 0150

**Rob Hanson**  
EY Global Tax Controversy Leader  
rob.hanson@ey.com  
+1 202 327 5696

## Area leaders

<b>EY Americas</b>	Tax Policy	<b>Cathy Koch</b>	cathy.koch@ey.com	+1 202 327 7483
	Tax Controversy	<b>Rob Hanson</b>	rob.hanson@ey.com	+1 202 327 5696
<b>EY Asia-Pacific and EY Japan</b>	Tax Policy	<b>Alf Capito</b>	alf.capito@au.ey.com	+61 2 8295 6473
	Tax Controversy	<b>Howard Adams</b>	howard.adams@au.ey.com	+61 2 9248 5601
<b>EY EMEIA</b>	Tax Policy and Controversy	<b>Jean-Pierre Lieb</b>	jean.pierre.lieb@ey-avocats.com	+33 1 55 61 16 10

## Market leaders

<b>Argentina</b>	Tax Policy	<b>Carlos Casanovas</b>	carlos.casanovas@ar.ey.com	+54 11 4318 1619
	Tax Controversy	<b>Felipe-Carlos Stepanenko</b>	felipe-carlos.stepanenko@ar.ey.com	+54 11 4318 1777
<b>Australia</b>	Tax Policy	<b>Alf Capito</b>	alf.capito@au.ey.com	+61 2 8295 6473
	Tax Controversy	<b>Martin Caplice</b>	martin.caplice@au.ey.com	+61 8 9429 2246
<b>Austria</b>	Tax Policy and Controversy	<b>Markus Schragl</b>	markus.schragl@at.ey.com	+43 1 21170 1268
<b>Belgium</b>	Tax Policy	<b>Herwig Joosten</b>	herwig.joosten@be.ey.com	+32 2 774 9349
	Tax Controversy	<b>Leen Ketels</b>	leen.ketels@be.ey.com	+32 2 774 6022
<b>Brazil</b>	Tax Policy	<b>Washington Coelho</b>	washington.coelho@br.ey.com	+55 11 2573 3446
	Tax Controversy	<b>Frederico God</b>	frederico.h.god@br.ey.com	+55 11 2573 3232
<b>Bulgaria</b>	Tax Policy and Controversy	<b>Milen Raikov</b>	milien.raikov@bg.ey.com	+359 2 8177 100
<b>Canada</b>	Tax Policy and Controversy	<b>Fred O'Riordan</b>	fred.r.oriordan@ca.ey.com	+1 613 598 4808
<b>Chile</b>	Tax Policy	<b>Osiel González</b>	osiel.gonzalez@cl.ey.com	+56 2 676 1141
	Tax Controversy	<b>Carlos Martínez</b>	carlos.martinez.c@cl.ey.com	+56 2 676 1710
<b>China</b>	Tax Policy	<b>Becky Lai</b>	becky.lai@hk.ey.com	+852 2629 3188
	Tax Controversy	<b>Lawrence Cheung</b>	lawrence-f.cheung@cn.ey.com	+86 755 2502 8383
<b>Colombia</b>	Tax Policy and Controversy	<b>Margarita Salas</b>	margarita.salas@co.ey.com	+57 1 484 7110
<b>Costa Rica</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Croatia</b>	Tax Policy	<b>Denes Szabo</b>	denes.szabo@hr.ey.com	+386 31 67 47 80
	Tax Controversy	<b>Masa Saric</b>	masa.saric@hr.ey.com@hr.ey.com	+385 1 580 0935
<b>Cyprus</b>	Tax Policy and Controversy	<b>Philippus Raptopoulos</b>	philippus.raptopoulos@cy.ey.com	+357 25 209 999
<b>Czech Republic</b>	Tax Policy and Controversy	<b>Lucie Rihova</b>	lucie.rihova@cz.ey.com	+420 225 335 504
<b>Denmark</b>	Tax Policy	<b>Jens Wittendorf</b>	jens.wittendorff@dk.ey.com	+45 51 58 2820
	Tax Policy	<b>Bjarne Gimsing</b>	bjarne.gimsing@dk.ey.com	+45 25 29 3699
	Tax Controversy	<b>Johannes Larsen</b>	johannes.r.larsen@dk.ey.com	+45 73 23 3414
<b>Dominican Republic</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Ecuador</b>	Tax Policy and Controversy	<b>Fernanda Checa</b>	fernanda.checa@ec.ey.com	+593 2 255 3109
<b>El Salvador</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Estonia</b>	Tax Policy and Controversy	<b>Ranno Tingas</b>	ranno.tingas@ee.ey.com	+372 611 4578
<b>European Union</b>	Tax Policy	<b>Marnix Van Rij</b>	marnix.van.rij@nl.ey.com	+31 70 328 6742
	Tax Controversy	<b>Klaus von Brocke</b>	klaus.von.brocke@de.ey.com	+49 89 14331 12287
<b>Finland</b>	Tax Policy and Controversy	<b>Jukka Lyijynen</b>	jukka.lyijynen@fi.ey.com	+358 207 280 190
<b>France</b>	Tax Policy and Controversy	<b>Charles Menard</b>	charles.menard@ey-avocats.com	+33 1 55 61 15 57
<b>Germany</b>	Tax Policy	<b>Hermann Ottmar Gauß</b>	hermann.gauss@de.ey.com	+49 30 25471 16242
	Tax Controversy	<b>Jürgen Schimmele</b>	juergen.schimmele@de.ey.com	+49 211 9352 21937
<b>Greece</b>	Tax Policy	<b>Stefanos Mitsios</b>	stefanos.mitsios@gr.ey.com	+302 102 886 365
	Tax Controversy	<b>Tassos Anastassiadis</b>	tassos.anastassiadis@gr.ey.com	+302 102 886 592
<b>Guatemala</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Honduras</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Hong Kong SAR</b>	Tax Policy	<b>Becky Lai</b>	becky.lai@hk.ey.com	+852 2629 3188
	Tax Controversy	<b>Wilson Cheng</b>	wilson.cheng@hk.ey.com	+852 2846 9066
<b>Hungary</b>	Tax Policy and Controversy	<b>Botond Rencz</b>	botond.rencz@hu.ey.com	+36 145 18602

<b>India</b>	Tax Policy	<b>Ganesh Raj</b>	ganesh.raj@in.ey.com	+91 120 6717110
	Tax Controversy	<b>Rajan Vora</b>	rajan.vora@in.ey.com	+91 22 619 20440
<b>Indonesia</b>	Tax Policy and Controversy	<b>Yudie Paimanta</b>	yudie.paimanta@id.ey.com	+62 21 5289 5585
<b>Ireland</b>	Tax Policy and Controversy	<b>Kevin McLoughlin</b>	kevin.mcloughlin@ie.ey.com	+353 1 2212 478
<b>Israel</b>	Tax Policy	<b>Arie Pundak</b>	arie.pundak@il.ey.com	+972 3 568 7115
	Tax Controversy	<b>Gilad Shoval</b>	gilad.shoval@il.ey.com	+972 3 623 2796
<b>Italy</b>	Tax Policy	<b>Giacomo Albano</b>	giacomo.albano@it.ey.com	+39 0685567338
	Tax Controversy	<b>Maria Antonietta Biscozzi</b>	maria-antonietta.biscozzi@it.ey.com	+39 02 8514312
<b>Japan</b>	Tax Policy and Controversy	<b>Koichi Sekiya</b>	koichi.sekiya@jp.ey.com	+81 3 3506 2447
<b>Kazakhstan</b>	Tax Policy and Controversy	<b>Konstantin Yurchenko</b>	konstantin.yurchenko@kz.ey.com	+7 495 641 2958
<b>Latvia</b>	Tax Policy and Controversy	<b>Ilona Butane</b>	ilona.butane@lv.ey.com	+371 6704 3836
<b>Lithuania</b>	Tax Policy and Controversy	<b>Kestutis Lisauskas</b>	kestutis.lisauskas@lt.ey.com	+370 5 274 2252
<b>Luxembourg</b>	Tax Policy	<b>Marc Schmitz</b>	marc.schmitz@lu.ey.com	+352 42 124 7352
	Tax Controversy	<b>John Hames</b>	john.hames@lu.ey.com	+352 42 124 7256
<b>Malaysia</b>	Tax Policy and Controversy	<b>Amarjeet Singh</b>	amarjeet.singh@my.ey.com	+60 3 7495 8383
<b>Malta</b>	Tax Policy and Controversy	<b>Robert Attard</b>	robert.attard@mt.ey.com	+356 2134 2134
<b>Mexico</b>	Tax Policy	<b>Jorge Libberos</b>	jorge.libberos@mx.ey.com	+52 55 5283 1439
	Tax Controversy	<b>Enrique Ramirez</b>	enrique.ramirez@mx.ey.com	+52 55 5283 1367
<b>Middle East</b>	Tax Policy and Controversy	<b>Balaji Ganesh</b>	balaji.ganesh@kw.ey.com	+202 27260260
<b>The Netherlands</b>	Tax Policy and Controversy	<b>Arjo van Eijnsden</b>	arjo.van.eijnsden@nl.ey.com	+31 10 406 8506
<b>New Zealand</b>	Tax Policy	<b>Aaron Quintal</b>	aaron.quintal@nz.ey.com	+64 9 300 7059
	Tax Controversy	<b>Kirsty Keating</b>	kirsty.keating@nz.ey.com	+64 9 300 7073
<b>Nicaragua</b>	Tax Policy and Controversy	<b>Rafael Sayagués</b>	rafael.sayagues@cr.ey.com	+506 2208 9880
<b>Norway</b>	Tax Policy and Controversy	<b>Arild Vestengen</b>	arild.vestengen@no.ey.com	+47 24 002 592
<b>Panama</b>	Tax Policy and Controversy	<b>Luis Ocando</b>	luis.ocando@pa.ey.com	+507 208 0144
<b>Peru</b>	Tax Policy and Controversy	<b>David de la Torre</b>	david.de.la.torre@pe.ey.com	+51 1 411 4471
<b>Philippines</b>	Tax Policy	<b>Wilfredo U. Villanueva</b>	wilfredo.u.villanueva@ph.ey.com	+63 2 894 8180
	Tax Controversy	<b>Luis Jose P. Ferrer</b>	luis.jose.p.ferrer@ph.ey.com	+632 894-8362
<b>Poland</b>	Tax Policy	<b>Zbigniew Liptak</b>	zbigniew.liptak@pl.ey.com	+48 22 557 7025
	Tax Controversy	<b>Agnieszka Talasiewicz</b>	agnieszka.talasiewicz@pl.ey.com	+48 22 557 72 80
<b>Portugal</b>	Tax Policy	<b>Carlos Manuel Baptista</b>	carlos.lobo@pt.ey.com	+351 217 912 000
	Tax Controversy	<b>Paulo Mendonca</b>	paulo.mendonca@pt.ey.com	+351 21 791 2045
<b>Puerto Rico</b>	Tax Policy and Controversy	<b>RosaRodriguez-Ramos</b>	rosa.rodriguez@ey.com	+ 1 787 772 7062
<b>Romania</b>	Tax Policy and Controversy	<b>Emanuel Bancila</b>	emanuel.bancila@ro.ey.com	+40 21 402 4100
<b>Russia</b>	Tax Policy	<b>Alexandra Lobova</b>	alexandra.lobova@ru.ey.com	+7 495 705 9730
	Tax Controversy	<b>Alexei A. Nesterenko</b>	alexei.nesterenko@ru.ey.com	+7 495 662 9319
<b>Singapore</b>	Tax Policy	<b>Russell Aubrey</b>	russell.aubrey@sg.ey.com	+65 6309 8690
	Tax Controversy	<b>Siew Moon Sim</b>	siew-moon.sim@sg.ey.com	+65 6309 8807
<b>Slovak Republic</b>	Tax Policy	<b>Richard Panek</b>	richard.panek@sk.ey.com	+421 2 333 39109
	Tax Controversy	<b>Peter Feiler</b>	peter.feiler@sk.ey.com	+421 2 333 3915
<b>Slovenia</b>	Tax Policy and Controversy	<b>Denes Szabo</b>	denes.szabo@hr.ey.com	+386 31 67 47 80
<b>South Africa</b>	Tax Policy	<b>Lucia Hlongwane</b>	lucia.hlongwane@za.ey.com	+27 76 830 4144
	Tax Controversy	<b>Mmangaliso Nzimande</b>	mmangaliso.nzimande@za.ey.com	+27 11 772 0900
<b>South Korea</b>	Tax Policy and Controversy	<b>Dong Chul Kim</b>	dong-chul.kim@kr.ey.com	+82 2 3770 0903
<b>Spain</b>	Tax Policy	<b>Javier Seijo Perez</b>	javier.seijoperez@es.ey.com	+34 91 572 7414
	Tax Controversy	<b>Maximino Linares</b>	maximino.linaresgil@es.ey.com	+34 91 572 71 23
<b>Sweden</b>	Tax Policy and Controversy	<b>Per Holstad</b>	per.holstad@se.ey.com	+46 8 520 590 00
<b>Switzerland</b>	Tax Policy	<b>Roger Krapf</b>	roger.krapf@ch.ey.com	+41 58 286 2125
	Tax Controversy	<b>Martin Huber</b>	martin.huber@ch.ey.com	+41 58 286 6120
<b>Taiwan</b>	Tax Policy and Controversy	<b>ChienHua Yang</b>	chienhua.yang@tw.ey.com	+886 2 2757 8888
<b>Thailand</b>	Tax Policy and Controversy	<b>Yupa Wichitkraisorn</b>	yupa.wichitkraisorn@th.ey.com	+66 2 264 0777
<b>Turkey</b>	Tax Policy and Controversy	<b>Erdal Calikoglu</b>	erdal.calikoglu@tr.ey.com	+90 212 408 53 75
<b>Ukraine</b>	Tax Policy and Controversy	<b>Vladimir Kotenko</b>	vladimir.kotenko@ua.ey.com	+380 44 490 3006
<b>United Kingdom</b>	Tax Policy	<b>Chris Sanger</b>	csanger@uk.ey.com	+44 20 7951 0150
	Tax Controversy	<b>James Wilson</b>	jwilson8@uk.ey.com	+44 20 7951 5912
<b>United States</b>	Tax Policy	<b>Nick Giordano</b>	nick.giordano@wc.ey.com	+1 202 467 4316
	Tax Controversy	<b>Heather Maloy</b>	heather.maloy@ey.com	+1 202 327 7758
<b>Venezuela</b>	Tax Policy and Controversy	<b>Jose Velazquez</b>	jose.a.velazquez@ve.ey.com	+58 212 905 6659
<b>Vietnam</b>	Tax Policy and Controversy	<b>Huong Vu</b>	huong.vu@vn.ey.com	+84 9 0343 2791

#### About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

#### About EY's Tax Policy and Controversy Services

EY's global tax policy network has extensive experience helping develop policy initiatives, both as external advisors to governments and companies and as advisors inside government. Our dedicated tax policy professionals and business modelers can help address your specific business environment and improve the chance of a successful outcome.

Our global tax controversy network will help you address your global tax controversy, enforcement and disclosure needs. In addition, support for pre-filing controversy management can help you properly and consistently file returns and prepare relevant backup documentation. Our professionals leverage the network's collective knowledge of how tax authorities operate and increasingly work together to help resolve controversy and pre-filing controversy issues.

© 2018 EYGM Limited.  
All Rights Reserved.

EYG no. 01977-183GBL

ED none

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

[ey.com](http://ey.com)

## EY contacts

### Global leaders

**Chris Sanger**

*EY Global Tax Policy Leader*  
[csanger@uk.ey.com](mailto:csanger@uk.ey.com)  
+44 20 7951 0150

**Rob Hanson**

*EY Global Tax  
Controversy Leader*  
[rob.hanson@ey.com](mailto:rob.hanson@ey.com)  
+1 202 327 5696