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Global Tax Alert

The Latest on BEPS and Beyond

July 2022

EY Tax News Update: Global Edition

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Highlights

When the Inclusive Framework on BEPS began its negotiations in 2019 on "overall allocation of taxing rights through profit allocation rules and revised nexus rules, as well as anti-BEPS rules," participating governments committed to an ambitious timeline. A solution based on two Pillars would be delivered as early as 2020. Last week the OECD had to acknowledge that the negotiation timeline would have to be adjusted again. Now the development of the Pillar One rules will not occur until next year. For Pillar Two, the OECD also announced that work on the Implementation Framework for the GloBE rules is well underway following the public consultation, and the design of the Subject To Tax Rule is on-going.

The publication of the Progress Report on Amount A provides insight into the negotiators' latest thinking. It provides companies that may be within the scope of the provisions with an impression of how the provisions are working. However, the report does not always present the full picture. The draft rules are not firm, and key components remain missing. Commentators also express concerns about the feasibility of implementation. Entry into force of the envisioned multilateral instrument requires ratification by a "critical mass" of headquarter and market jurisdictions.

Building a better working world

Despite the uncertainty about the feasibility of Pillar One and the large number of challenges, the document is still an engaging "summer read," if you are on the northern hemisphere. It is a good opportunity to assess whether the Inclusive Framework will manage to stick to its original intention that the negotiation "will be driven by finding the right balance between accuracy and simplicity" and that "any solution needs to be administrable by tax administrations and taxpayers alike." Stakeholders who want to share their views on this with policy makers have until 19 August.

Finally, for those who want to expand their summer reading list, this July edition of the *Latest on BEPS and Beyond* presents an extensive overview of key corporate tax developments around the world with references to our up-to-date collection of global and local tax news alerts. The editorial team takes a break in August and looks forward to reporting on the latest developments in our next edition in September.

OECD

G20 leaders confirm commitment to global tax changes under BEPS 2.0

On 15-16 July 2022, the G20 Ministers of Finance and Governors of Central Banks met in Bali, Indonesia. At the conclusion of their meeting, the G20's chair issued a summary. Among other items, the summary reaffirmed the commitment to the swift implementation of the OECD/G20 two-pillar solution. The summary also includes a call for action to finalize Pillar One, including the signing of the Multilateral Convention in the first half of 2023, and to complete the negotiations that would allow the development of the Multilateral Instrument for implementation of the Subject to Tax Rule (STTR) under Pillar Two.

Before the G20 meeting, the OECD issued the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, providing an overview of the latest international tax developments, including updates on Pillar One and Pillar Two. The Tax Report also announces the launch of the new OECD initiative to help countries address climate change: *The Inclusive Forum on Carbon Mitigation Approaches*. This new initiative will enable the sharing of data and methods to help facilitate an evidence-based dialogue about the different efforts around the world to reach net zero emissions.

OECD releases Progress Report on Pillar One

On 11 July 2022, the OECD Secretariat released a Progress Report on *Amount A of Pillar One* (the Progress Report). The Progress Report is a consultation document that covers many of the building blocks under Amount A and is presented in the form of domestic model rules.

Together with the Progress Report, the OECD released a Cover Note by the OECD/G20 Inclusive Framework on BEPS to the Progress Report providing a revised schedule for the work on Amount A. The OECD also released a Frequently Asked Questions document on Amount A and a Fact Sheet providing an overview of the structure of the Amount A rules.

According to the revised timeline, the Amount A rules will not come into force in 2023 due to the additional work to be done. The Inclusive Framework is seeking written comments from stakeholders on the overall design of the Amount A rules reflected in the Progress Report by 19 August 2022, with plans to review the input received and seek to stabilize the rules at the October 2022 Inclusive Framework meeting. Once the Amount A rules are ready, they will be translated into provisions for inclusion in a Multilateral Convention (MLC), to be signed and ratified by Inclusive Framework members.

The OECD expects that a signing ceremony for the MLC can be held in the first half of 2023, with the objective to enter into force in 2024 once a critical mass of jurisdictions has ratified it.

See EY Global Tax Alert, *OECD releases Progress Report on Amount A of Pillar One of BEPS 2.0 project and invites public comment*, dated 11 July 2022.

See EY Global Tax Alert, *OECD releases Progress Report on Amount A of Pillar One of BEPS 2.0 project: A detailed overview*, dated 15 July 2022.

OECD and country officials discuss BEPS 2.0 Pillars One and Two and other OECD tax work

On 27-28 June 2022, the OECD held its annual tax conference in Washington, DC. The discussion at the conference focused on developments with respect to Pillars One and Two. In addition, there were sessions on the OECD's work on global mobility of workers, tax and climate change, and tax certainty.

On Pillar One, the OECD Secretariat and government panelists acknowledged the political and technical oppositions facing the implementation of the new taxing right for market jurisdictions. They also expressed the intention to spend more time seeking business input and demonstrating how the building blocks of Pillar One, including eliminating double taxation and providing tax certainty, should work in practice.

On Pillar Two, the OECD Secretariat and several government panelists sought to eliminate doubt that enactment of changes to the US global intangible low-taxed income (GILTI) regime would result in the amended GILTI provisions being considered to be a qualified income inclusion rule (IIR) for Pillar Two purposes. One senior United States (US) Treasury official expressed confidence that these changes will be enacted in the next several weeks; another US Treasury official discussed the treatment of the current GILTI regime as a controlled foreign corporation (CFC) regime for Pillar Two purposes and provided a high-level overview of approaches for rules on how to "push down" GILTI taxes for allocation to foreign countries as Covered Taxes under Pillar Two.

The OECD Secretariat announced that items of administrative guidance that are developed as part of Pillar Two will be released as they are completed, with the first guidance expected to be released soon. In addition, the debate continued over how tax incentives, including US tax credits such as the research and development tax credit, should be treated under Pillar Two. The OECD Secretariat and US Treasury panelists defended the treatment reflected in the Model Global Anti-Base Erosion (GloBE) Rules under Pillar Two while business panelists criticized the treatment and urged a reconsideration of those rules.

See EY Global Tax Alert, *OECD and country officials discuss BEPS 2.0 Pillars One and Two and other OECD tax work*, dated 30 June 2022.

OECD updates arbitration profiles of 19 jurisdictions

On 28 June 2022, the OECD published the Arbitration Profiles of 19 jurisdictions applying Part VI (mandatory binding arbitration) of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). All the Arbitration Profiles have the same structure and contain the following: (i) references to a jurisdiction's MLI position, Mutual Agreement Procedure (MAP) profile and the synthesized texts obtainable from the MLI Matching Database; (ii) indication of the type of arbitration process that will apply to that jurisdiction as the default type of arbitration; (iii) reservations made; (iv) hyperlinks to the competent authority agreements concluded in respect to the Arbitration clause of the MLI; and (v) any further clarifications.

European Union

Commission opens consultation on tax enablers

On 6 July 2022, the European Commission (the Commission) launched a public consultation on its initiative to regulate the role of tax enablers. The Commission aims with this initiative to step up the fight against tax evasion and aggressive tax planning by setting rules applicable to the professionals creating structures with no substance.

The public consultation runs until 12 October 2022 and consists of a questionnaire and the opportunity to submit a position paper. A concrete legislative proposal is expected to be developed by the Commission and released during the first quarter of 2023.

The Commission has provided little detail on how it intends to shape the initiative. Nevertheless, the questions of the survey provide some glimpse at the Commission's current thinking, asking for input on the following ways to tackle the role of enablers in facilitating tax evasion and aggressive tax planning: (i) establishment of an EU register of enablers and the obligation to register; (ii) introduction of due diligence procedures to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning; (iii) creation of a code of conduct that would prohibit the enablers without any complementary mandatory measures; and (iv) introduction of a new reporting requirement for "EU taxpayers" of participations above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU.

In terms of enforcement, the questionnaire includes the option of imposing monetary penalties and/or prohibiting the provision of services by tax enablers.

Czech Council Presidency sets tax priorities

On 6 July 2022, the Czech Presidency of the Council of the EU released its programme summarizing its main priorities. In the tax area, the Czech Council Presidency will aim to simplify the tax system, combat tax evasion and reduce the number of unjustified tax exemptions. In addition, it will focus on the current legislative proposals, including Pillar One and Pillar Two, and the area of strengthening tax transparency. Other priorities of the Presidency are updating the EU list of non-cooperative jurisdictions and reaching a political agreement on the Carbon Border Adjustment Mechanism. Finally, the Presidency intends to discuss with the Member States the possibilities of introducing new EU own resources from 1 January 2023.

The Czech Presidency presented this programme to the EU Finance Ministers for an exchange of views during the ECOFIN meeting held on 12 July 2022. Regarding the OECD Two-pillar solution, the Minister of Finance of Czechia stated that the Council wishes to complete the relevant debate on the implementation of the two pillars.

European Parliament recommends alternative paths for the adoption of tax Directives

Also on 6 July, members of the European Parliament (MEPs) adopted a resolution on national vetoes that undermine the global tax deal. In the resolution, the MEPs underline that Hungary's reported demands were already taken into account in the international agreement and urged Hungary to put an immediate end to its blockage of the global tax deal. The MEPS also suggested that the Commission and the Member States not engage in political bargaining with the Member States who abuse their national vetoes. Furthermore, the MEPS indicated that the Commission should refrain from approving Hungary's national recovery and resilience plan unless all the criteria are fully complied with.

If Hungary persists with its veto, MEPs call for alternative options to be explored, including the enhanced cooperation procedure, the unilateral implementation of the Pillar Two Directive by all Member States, and the use of Article 116 Treaty of the Functioning of the EU that allows proposals on taxation to be adopted by co-decision and decided by qualified majority voting among the Member States. For the longer term, the MEPs suggest considering the benefit of gradually transitioning to qualified majority voting on tax matters.

The Commission releases the 2022 Annual Report on Taxation

In June 2022, the Commission published the 2022 Annual Report on Taxation, launching the long-term strategy for taxation in the EU. The Commission's Annual Report on Taxation describes the status quo of tax systems, rules and policies at the Member State level and across the EU as a whole.

On BEPS 2.0, the report mentions that while the two-pillar agreement is welcomed, the scope of these reforms remains limited, providing for substantial sectoral and other carve-outs, thus allowing for non-negligible loopholes. Therefore, it is necessary for the EU to go beyond the OECD/G20 agreement. In that respect, the Commission has initiated several additional proposals, including the Debt-Equity Bias Reduction Allowance, Unshell and the Business in Europe: Framework for Income Taxation.

Code of Conduct Group on Business Taxation releases report on the conclusions of the work undertaken in the first semester of 2022

On 2 June 2022, the report on the Code of Conduct Group (COCG) on Business Taxation work during the first half of 2022 under the French Presidency was released.

The key elements of the report are the revision of the CoCG Mandate, the impact of Pillar Two on the EU list criteria, the introduction of a criterion on beneficial ownership and the re-delineation of the geographical scope of the EU list.

Regarding the impact of Pillar 2, the Group expressed an interest in continuing the work at a technical level to evaluate the possible implications resulting from the implementation of Pillar Two on the listing criteria. This work includes the implications relating to preferential tax regimes (criterion 2.1) and schemes facilitating the creation of offshore structures or schemes designed to attract profits that do not reflect real economic activity in the jurisdiction concerned (criterion 2.2).

Country developments

Australia: US GILTI rules do not correspond to Australia's CFC rules for hybrid mismatch purposes

On 29 June 2022, the Australian Taxation Office (ATO) issued its final Taxation Determination TD 2022/9 in relation to whether section 951A of the US Internal Revenue Code (US GILTI rules) corresponds to Australia's CFC rules for the purpose of Australia's hybrid mismatch rules.

The ATO considers that the US taxation of payments as a result of the application of the US GILTI rules will not be considered as "subject to foreign income tax" for the purpose of Australia's hybrid mismatch rules because the US GILTI rules do not "correspond" to Australia's CFC rules. According to the TD, the purpose of the US GILTI rules is to impose a minimum rate of tax on deemed high or above-normal returns of CFCs, which differs from the purpose of Australia's CFC rules to deter tainted income from being shifted offshore with the aim of avoiding or deferring Australian tax.

Consequently, under the Australian hybrid mismatch rules, Australian taxpayers could be denied deductions for certain payments, notwithstanding that those payments are included in the tax base of a US taxpayer. In addition, where an Australian entity's income is subject to US federal income tax under the US GILTI rules, such income would not be considered "dual inclusion income" despite those amounts being included in the tax base of the US taxpayer.

The Austrian Ministry of Finance releases Guidance on mutual agreement and arbitration procedures

On 5 May 2022, the Ministry of Finance of Austria released Guidance on mutual agreement and arbitration procedures under Tax Treaties, the EU Arbitration Convention and the EU Taxation Dispute Settlement Act. The Guidance replaces previous Information of the Ministry of Finance provided via BMF-010221/0237-IV/8/2019. The Guidance provides an overview of the formal and material conditions of these procedures in Austria and is aiming at serving as a guideline for taxpayers applying for a MAP.

Under Section A, the Guidance describes the objective of the procedures and states their legal basis. Under Sections B, C and D, the MAP, Arbitration and Advance Pricing Agreements are explained, respectively. The Sections describe the steps in the process followed for these procedures under each of the above legal instruments and makes use of examples and illustrations/flow charts.

The Guidance also comprises Annexes 1 and 2. The former includes Article 25 of the OECD Model Convention, while the latter mentions special features of the Austrian Tax Treaties in connection with the MAP as of 1 January 2022.

Bulgaria ratifies the MLI

On 24 June 2022, Bulgaria published in the *Official Gazette* Decree No.153 which ratifies domestically the MLI. Bulgaria submitted its MLI positions, listing its reservations and notifications as well as the 64 tax treaties (66 tax treaties were listed in the MLI signature) it wishes to be covered by the MLI as Covered Tax Agreements (CTAs).

Cyprus introduces transfer pricing rules and documentation requirements

On 30 June 2022, Cyprus introduced Transfer Pricing (TP) rules and documentation requirements in accordance with recommendations of the OECD on Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations with retrospective effect as of 1 January 2022.

Accordingly, Cypriot tax resident companies should maintain TP documentation that backs up their controlled transactions with related parties. The TP documentation consists of a Local File and a Master File as well as a Summary Information Table.

The Local File applies if the transactions with connected persons exceed (or should have exceeded based on the arm's-length principle) the amount of €750,000 in aggregate per category of transaction per tax year, and it should be prepared by the income tax return submission deadline (i.e., 15 months after calendar year-end).

The Master File applies to a Cypriot taxpayer when it is a part of a multinational enterprise (MNE) Group subject to Country-by-Country (CbC) reporting (CbCR), and it is either the Ultimate Parent Entity (UPE) or the Surrogate Parent Entity.

The Summary Information Table applies to taxpayers engaged in transactions with connected persons.

In addition, the amendments contain provisions on the application of Advanced Pricing Agreements (APAs) that can be either unilateral, bilateral or multilateral. Upon submission of an APA request to the Tax Department, the Tax Commissioner shall accept or reject the APA request within 10 months. The Tax Commissioner has the right to extend the timeframe up to 24 months upon notification of the applicant. The APA will be valid for a period of up to four years.

Moreover, the amendments of the Assessment and Collection of Taxes Law introduce penalties for non-compliance with the TP documentation ranging from €500 to €20,000.

See EY Global Tax Alert, *Cyprus introduces transfer pricing rules and documentation requirements*, dated 1 July 2022.

Czech Republic releases Guidance on Mandatory Disclosure Regime (MDR)

On 21 June 2022, the Czech Republic issued Guidance on the mandatory disclosure and automatic exchange of information among EU Member States in the field of taxation related to reportable cross-border arrangements (the so-called DAC6 or MDR). This Guidance includes frequently asked questions (FAQs) and answers and also practical examples for the reporting requirements. Among other items, the FAQs addresses some questions on tax transparent entities.

Danish Tax Council decides on the tax treatment of payments facilitated by a Danish Parent entity to and from a subsidiary located in an EU blacklisted jurisdiction

On 13 June 2022, the Danish Tax Board published binding tax ruling SKM2022.303.SR. The case concerned a parent entity's facilitation in a transfer of payments on behalf of one of its subsidiaries from its customers to its suppliers and whether it can be considered payments covered by section 5H of the *Danish Tax Assessment Act* if the subsidiary is located in a country included on the EU blacklist.

Under Section 5H of the *Danish Tax Assessment Act*, a taxpayer normally cannot claim a tax deduction for payments if the following two conditions exist: (i) the payee is tax resident or registered in a designated non-cooperative jurisdiction; and (ii) the payee and payor are affiliated or closely related.

In this case, the Danish parent entity played the role of a "central treasury" within the group as it could accept payments from customers and proceed with payments to suppliers on behalf of a subsidiary of the group. However, these payments were reported as income or expenses of the subsidiary and not the parent. One of the subsidiaries of the group was located – and as such, tax resident – in an EU blacklisted jurisdiction and proceeded to transactions with its sellers and customers within this jurisdiction which were further facilitated by the Danish parent entity.

The Danish Tax Council analyzed whether the facilitation payments from the customers of the subsidiary to the subsidiary's internal account held at the Danish parent fall under the definition of payments under the *Danish Tax Assessment Act*.

The Danish Tax Council concluded that while the definition of payments in the *Danish Tax Assessment Tax* should be interpreted broadly, the facilitation of the subsidiaries' payments to customers and suppliers by the Danish parent entity on behalf of this subsidiary should not fall within the scope of this definition since these payments have no impact on the Danish parent entity's taxable income. The decision of the Danish Tax Council is in line with the recommendation provided by the Danish Tax Authorities.

Dominican Republic clarifies Country-by-Country reporting

On 22 June 2022, the Directorate General of Internal Revenue clarified CbC reporting in Notice No. 18-22. In particular, the Notice provides that the CbCR requirement in the Dominican Republic is aligned with BEPS Action 13 in relation to currency fluctuations. Accordingly, it indicates that if an MNE Group is subject to the same threshold (i.e., €750 million or equivalent amount in local currency according to the exchange rate of January 2015) in the UPE jurisdiction, CbCR is not required in the Dominican Republic.

Germany's Scientific Advisory Council at the Ministry of Finance releases an opinion on OECD Pillar One and Pillar Two

On 7 July 2022, the Scientific Advisory Council (SAC) at the Ministry of Finance of Germany released an opinion on OECD Pillar One and Pillar Two drafted on 31 March 2022. The opinion examines the advantages and disadvantages of the upcoming implementation of the two pillars while it also analyzes its economic implications for Germany resulting from such implementation.

With respect to Pillar One, the SAC stresses that the allocation of taxing rights to market jurisdictions is not easy if a common tax base is required. According to the opinion, while Pillar One prevents the unilateral introduction of digital taxes, alternatives should be examined before allocating taxing rights to the market jurisdictions. Overall, the SAC concludes that since Germany maintains an export surplus, Pillar One would likely not result in additional tax revenue for Germany. That said, the SAC also concludes that Pillar One should not result in significantly reduced tax revenue in Germany. Background is, that the currently foreseen rule only relates to the residual profit of very large groups.

With respect to Pillar Two, the opinion states that Germany's tax revenue increase is yet uncertain and depends on multiple factors, for instance, the change in companies' and jurisdictions' behavior once Pillar Two is implemented. Eventually, the SAC also concludes that an increase in Germany's tax revenue would be reduced if low-tax jurisdictions increased their tax accordingly. The SAC indicates that countries that use tax incentives to attract investments, e.g., developing countries, are expected to be affected the most. In addition, according to the SAC, tax competition will probably be reduced but not eliminated since countries may shift towards using other instruments such as subsidies. Finally, the SAC suggested that the EU should not implement Pillar Two before its significant partners do likewise since early adoption at the EU level may affect its competitive position while also being irrevocable.

Germany releases updated list of countries for automatic exchange of information for 2022

On 4 July 2022, the German Ministry of Finance released the updated list of countries for automatic exchange of information regarding financial accounts in fiscal matters, applicable from 30 September 2022.

For Germany, automatic exchange of information takes place reciprocally with the rest of the EU Member States. It also includes third-country members of the multilateral agreement signed by Germany; members of the convention on mutual administrative assistance in tax matters; and countries that have entered into agreements with the EU on the automatic exchange of information.

The updated list includes three new jurisdictions for 2022, namely Ecuador, Kazakhstan and Maldives, reaching a total number of 107.

The list for 2023 is expected to be announced in an upcoming bill.

Greek Ministry of Finance releases an updated list of jurisdictions for CbC MCAA purposes

On 18 April 2022, the Greek Ministry of Finance updated the list of jurisdictions under the OECD Automatic Exchange of Information Agreement on Country-by-Country Reporting (CbC MCAA). In 2022, Greece will apply the CbC MCAA to 43 jurisdictions on a reciprocal basis and 12 jurisdictions on a unilateral basis, i.e., these jurisdictions will send CbC reports to Greece, but not vice versa.

Greece enacts legislation on Anti-Tax Avoidance Directive (ATAD) reverse hybrid mismatches provision

On 30 June 2022, Law 4949/2022 was published introducing the reverse hybrid rule in Greece as suggested under ATAD II. The relevant provision counteracts hybrid mismatches resulting from reverse hybrid entities, i.e., entities that are considered transparent from a Greek tax perspective and if at least 50% of the voting rights, capital interests or profit rights in the entity are directly or indirectly held by related parties that are resident in a jurisdiction that qualifies the entity as non-transparent. In such a case, the reverse hybrid entity would become subject to corporate income tax in Greece. An exemption for collective investment vehicles meeting certain conditions is included.

This provision shall apply retroactively from 1 January 2022.

Hong Kong releases public consultation to refine its foreign source income exemption regime

On 17 June 2022, Hong Kong commenced a consultation (link) on refining the foreign source income exemption (FSIE) regime. This refinement is in response to the concern of the EU over potential double non-taxation arising from Hong Kong's FSIE regime for certain passive income.

According to the consultation document, the refined FSIE regime will apply to four types of passive income: (i) interest; (ii) income from intellectual properties; (iii) dividends; and (iv) disposal gains in relation to shares or equity interest. The in-scope offshore passive income would continue to be exempt from profits tax in Hong Kong under the FSIE regime if the relevant entity meets the economic substance or nexus approach requirements. Holding companies will be subject to a reduced economic substance requirement. In addition, a new participation exemption rule will be introduced for offshore dividends and disposal gains in relation to shares or equity interest such that the relevant income will continue to be tax-exempt in Hong Kong if the conditions are satisfied, regardless of whether the economic substance requirement is met. A unilateral tax credit will also be introduced such that overseas taxes paid in non-treaty countries will be creditable against the Hong Kong tax payable on the same income under the refined FSIE regime.

Active income (e.g., trading profits, service income) will continue to be exempt from profits tax if it is regarded as offshore sourced based on Hong Kong's existing source rules.

The bill is planned to be introduced in October 2022 and it will enter into force from 1 January 2023 with no grandfathering arrangement.

See EY Global Tax Alert, *Hong Kong proposes to refine its foreign source income exemption regime for certain passive income*, dated 30 June 2022.

Stricter Hungarian transfer pricing rules as from 2022

On 21 June 2022, the Hungarian Government submitted a bill containing amendments and clarifications to its TP regulation. According to the bill, taxpayers falling under the TP documentation obligation will be subject to new reporting obligations in their annual corporate income tax return. However, the type of information has not yet been made available. Also, application of TP adjustments will be prohibited if the profit level achieved by the taxpayer on a given intercompany transaction falls within the interquartile range. Also, if the profit level achieved by the taxpayer on a given transaction does not fall within the interquartile range, taxpayers will be obliged to adjust their profit level to the median value of the underlying benchmark analysis.

The penalty for not or incompletely fulfilling the reporting obligation will be increased from HUF2 million (approximately US$4,960) to HUF5 million (approximately US$12,400) per controlled transaction. Furthermore, the tax authorities may impose fines of HUF10 million (approximately US$24,800) in case of repeated infringements. In addition, the procedural fee of unilateral APA requests will be HUF5 million (approximately US$12,400) instead of the HUF2 million (approximately US$4,960). For bilateral or multilateral procedures, the procedural fee will be HUF8 million (approximately US$19,600). The new regulations regarding fines will be applicable from the 30th day following the promulgation of the law and regarding the procedural fee of APA requests, from the 31st day.

Furthermore, taxpayers will be obliged to use the interquartile range for analyses based on a public database. The bill also introduces the definition of "at arm's-length range" which will be in line with the OECD Transfer Pricing Guidelines. The new regulations will likely enter into force for the TP documentation for the financial year 2022.

Hungary's veto on the EU Pillar Two proposal directive may result in the termination of the tax treaty with the US

On 8 July 2022, the US notified Hungary of the termination of the Hungary-US tax treaty signed in 1979. Provided that the US indicates its intention through official formalities to terminate the treaty this month, that will likely mean that the termination will take effect in 2024.

On 11 July 2022, Hungary issued two press releases (press release I and press release II), mentioning that the official justification for the termination was Hungary's objection to adopting the EU Pillar Two Proposal Directive.

An updated tax treaty between Hungary and the US was signed in 2010 to address US concerns that the benefits of the treaty were not reciprocal. But the updated treaty has only been ratified by Hungary. The (potential) termination of the treaty does not automatically trigger the application of the newly negotiated treaty. However, if the new treaty is ratified this year (2022), it can take effect from 1 January 2024.

Ireland publishes updated Guidance on anti-hybrid rules

On 29 June 2022, Irish Revenue published updated Guidance on the anti-hybrid rules. The Guidance has been updated to reflect amendments introduced in *Finance Act 2021* and can be summarized as follows:

- Section 3: Interpretation: to include forms of business that do not have legal personality under the laws of the territory in which it is established.
- Section 5: Worldwide system of taxation: widens the scope of the rules to include situations where an individual payee or investor is subject to a system, or effective system, of worldwide taxation.
- Section 7: Associated enterprises: the Guidance now includes a section on the application of the "associated enterprises" test to Irish partnerships.

Finally, Guidance has been added for the introduction of the Reverse Hybrid rule including relevant definitions and guidelines on the operation of the rule (Section 12).

Ireland publishes Tax Treaty Policy Statement

On 27 June 2022, the Irish Minister for Finance published Ireland's Tax Treaty Policy Statement. The Statement follows a public consultation – held in 2021 – on the topic of how Ireland's tax treaty network could continue to support economic growth and prosperity, particularly for new or emerging sectors of the economy.

The Statement provides an overview of Ireland's broad policy direction in relation to tax treaties focusing on two central themes:

- Considerations for Ireland's economy and trade
- Particular emphasis on tax treaties with developing countries

Tax Treaty Policy

The Statement notes that the benefits of double taxation agreements have long been established. It highlights that, as a small open economy, Ireland benefits from globalized trade with double taxation agreements being important in facilitating engagement with Ireland's key economic partners.

Ireland has three priority areas:

- Priority A: to have a tax treaty with all G20 countries
- Priority B: to ensure Ireland develops tax treaties with all OECD members and EU accession countries
- Priority C: to the extent necessary, update its existing tax treaties through renegotiation or the addition of protocols, taking due account of international tax developments

Ireland currently has signed 76 treaties including all G20 members excluding Argentina, Brazil and Indonesia. A list of Ireland's treaties can be accessed here.

Policy on Developing Countries

In ensuring that Ireland's tax treaty policy with respect to developing countries is consistent with its wider international development policy, the policy statement sets out some core principles. In particular, Ireland commits to not approaching any Least Developed Country (per the United Nation's definition of same) to negotiate a tax treaty. Where Ireland is approached by a Least Developed Country, Ireland will carry out analysis to guard against negative spillovers and consider the partner's preference regarding source taxation. Further, Ireland will incorporate anti-BEPS measures to ensure robust defenses against potential tax avoidance.

The Statement will be a "living document" subject to updates in accordance with the evolution of the Irish economy and global tax environment.

Italy releases Public Consultation on Legislative Proposal implementing DAC7

On 30 June 2022, the Italian Finance Department of the Ministry of Economy and Finance issued a public consultation on the legislative proposal implementing the Directive on Administrative Cooperation to expand reporting obligations and exchange of information to cover sales through digital platforms (the so-called DAC7) in domestic law.

DAC7 expands the automatic exchange of information and reporting obligations to cover certain transactions through digital platforms. Additionally, it modifies existing regulations with the aim of improving administrative cooperation in the exchange of information, as regards, for instance, joint audits, information requests and data breaches.

The purpose of the public consultation is to obtain views from interested stakeholders (e.g., economic operators, trade associations, professional associations and experts in the field) on the legislative proposal as a whole or parts of it. The public consultation allows the public to provide feedback through a comment box limited to 500 characters.

Comments should be submitted by 20 July 2022 through the website of the Ministry of Economy and Finance and the draft bill, as possibly amended after the public consultation, should enter into force on 1 January 2023.

Luxembourg publishes Circular on CFC legislation

On 17 June 2022, the Luxembourg Tax Administration published Circular LIR No. 164/ter (the Circular) containing amendments and clarifications relating to the CFC regime. The Circular provides additional clarifications concerning: (i) the control criterion; (ii) the subject to tax test to be met by CFCs; (iii) the exemption thresholds; (iv) the definition of an associated company; and (v) the determination of the CFC profits.

Regarding the control criterion, all the participations held directly or indirectly are added together to determine if the legal or economic control criterion is met. Also, any shares owned by the CFC itself are ignored when determining whether the control criterion is met. In the case of a restructuring substantiated with business motives, reductions of shareholdings in the CFC will not be considered abusive.

To determine whether the subject to tax test is met, the Circular clarifies that: (i) the 7% surcharge for the employment fund should not be taken into account; (ii) the profit of the CFC should be determined in accordance with the Luxembourg income tax law to compare with the tax liability that would be due in Luxembourg; (iii) the income allocated to a permanent establishment, or CFC, treated as exempt, or not included, in the Luxembourg taxable base, should be disregarded; and (iv) foreign taxes paid by the CFC should be converted into Euro by using the FX rate at end of the CFC's financial year.

Furthermore, some clarifications are also given regarding the small profit exemption. For instance, this exemption applies to CFCs with low added value, e.g., support or administrative entities.

The term "associated company" for CFC purposes has been clarified by the Luxembourg Tax Administration stating that all direct and indirect participations should be added together for the 25% threshold and, unless business motives are presented, participation restructurings below 25% will be considered as abusive.

For the determination of the CFC profits, the Circular clarifies that the profits of the CFC to be included are those that should not be generated by the CFC itself. Furthermore, any CFC losses should be deducted from the CFC profits in future years. The amount of the profits to be included should be in proportion with the participation in the CFC.

Netherlands submits Bill implementing Public Country-by-Country Reporting Directive to Parliament for approval

On 1 July 2022, the Dutch Government submitted to the lower house of the Parliament a bill (together with the explanatory memorandum) implementing the Public Country-by-Country Reporting Directive (PCbCR Directive). The PCbCR Directive requires MNEs doing business in the EU and meeting a number of thresholds to publicly disclose the income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees per country.

Member States must transpose the Directive into national legislation by 22 June 2023. The first financial year of public reporting will be the year starting on or after 22 June 2024.

Netherlands publishes updated Transfer Pricing Decree

On 1 July 2022, the Dutch State Secretary of Finance (Finance Secretary) published a new decree related to transfer pricing and the interpretation of the arm's-length principle in the Netherlands (the Decree). The Decree replaces the previous transfer pricing decree dated 11 May 2018 and reflects the most recent changes in the OECD's TP Guidelines.

The Decree provides information regarding the position of the Dutch Tax Administration concerning the application of the arm's-length principle and the OECD TP Guidelines in the Netherlands. In addition, the Decree provides further interpretation of the arm's-length principle where the OECD TP Guidelines leave room for own interpretation or where there is a need for clarifications in practice.

For specific transfer pricing issues, there may be tension between the Guidance outlined in the OECD TP Guidelines and Dutch case law. The Decree acknowledges this and stipulates that the OECD TP Guidelines will be taken as the starting point in cases where taxpayers request certainty in advance to ensure that unilaterally given advance certainty is also internationally defensible. It is also noted that if the application of the OECD TP Guidelines leads to a transfer pricing mismatch due to which part of the profits remains untaxed, the Dutch Tax Administration can deviate from the content of the Decree.

The Decree also confirms that insofar as the recent changes to OECD TP Guidelines provide further clarification about the application of the arm's-length principle, these changes also apply to years in which these changes were not yet published.

See EY Global Tax Alert, *The Netherlands issues new transfer pricing decree*, dated 4 July 2022.

Netherlands updates Decree on Profit Allocation to Permanent Establishments

On 1 July 2022, the Dutch Minister of Finance published in the *Government Gazette* an updated Decree on Profit allocation to Permanent Establishments (PEs) to provide clarifications on how the Dutch Tax Administration assesses such a profit allocation.

Clarifications are provided with respect to the introduction of an object exemption in the *Corporate Income Tax Act* in 2012, according to which both profits and losses of a foreign PE are eliminated from the worldwide profit of a Dutch entity. In addition, the Decree clarifies that the profit allocation to a PE in treaty situations is based on the relevant article in the treaty. In contrast, in non-treaty cases, it should be based on the most recent text of Article 7 OECD Model Convention and its Commentary. Lastly, the Decree mentions that the prevention of double non-taxation resulting from the deviated interpretation of the arm's-length principle used for profit allocations to a PE is of significant importance.

The updated Decree enters into force on 2 July 2022 and replaces Decree No. IFZ 2010/457M of 15 January 2011.

See EY Global Tax Alert, *The Netherlands issues new decree on profit attribution to permanent establishments*, dated 18 July 2022.

Netherlands releases timetable of tax initiatives for the remainder of 2022

On 17 June 2022, the Dutch Minister of Finance and the Dutch State Secretary of Finance sent a letter accompanied by a tax initiatives timeline for the third and fourth quarter of 2022 to the Parliamentary Finance committee.

According to the timeline, in July, an evaluation of the Debt-Equity Bias Reduction Allowance Directive Proposal will be issued and a letter listing the options against dividend-stripping will be released.

Moreover, in September 2022, the Tax Plan for 2023 will be published and more developments around Pillar One are also expected around this time.

Netherlands introduces amendments to the international tax rulings decree to reflect treatment of reverse hybrids and arm's-length mismatches

On 17 June 2022, the Dutch Minister of Finance published in the *Government Gazette* amendments to the international tax rulings Decree (Decree) to confirm that e.g., requests for advance certainty in relation to reverse hybrid entities and mismatches in the application of the arm's-length principle will be governed by the procedures of this Decree.

This document amends Decree No 2019/13003. In addition to editorial adjustments and the update of a reference, the amendments ensure that tax a ruling is not available to an applicant whose ultimate beneficial owner – or any intermediate holder – with an interest of 5% or more in the applicant appears on the EU sanctions list. It also provides that more information on the global organizational and shareholder structure should be provided when requesting a tax ruling.

The amendments entered into force on 18 June 2022.

Poland proposes significant changes to Corporate Income Tax law

On 28 June 2022, the Polish Government announced draft legislation implementing changes to the Polish Corporate Income Tax law. Recently this draft was subject to a public consultation, which ended on 12 July 2022.

Among other changes, the draft legislation introduces some amendments to the limitations of debt financing costs provisions, i.e., it: (i) explicitly indicates that the higher of PLN3m or 30% of tax EBITDA (earnings before interest, taxes, depreciation and amortization) should be applied as a maximum threshold; and (ii) introduces new exceptions from non-deductibility of related party financing costs related to so called "capital transactions," for example for acquisitions of shares of unrelated entities.

The draft legislation also includes changes to the so-called "shifted profits tax" introduced as of 1 January 2022. The changes intend to clarify the conditions which trigger the application of the 19% shifted profits tax. Another amendment provides an additional condition, that at least 10% of shifted profits paid by the Polish entity must be subsequently transferred by the foreign recipient to another entity for the shifted profits tax to apply.

In addition, changes are also suggested with respect to regulations regarding TP documentation for transactions with low-taxed jurisdictions, including an increase of minimum thresholds triggering certain documentation obligations.

Finally, the draft legislation includes amendments to the withholding tax CFC regimes.

The majority of the changes proposed in the draft legislation are to come into force as of 1 January 2023.

See EY Global Tax Alert, *Poland proposes significant changes to Corporate Income Tax law*, dated 7 July 2022.

Qatari General Tax Authority clarifies the due date for the submission of the local and the master files

On 8 June 2022, the Qatari General Tax Authority Chairman issued Decision no. 10 of 2022. This Decision clarifies the deadline for the submission of the local and master file for tax years beginning on or after 1 January 2020. According to the Decision, the deadline for submitting both files is sixty days from the deadline of filing the corporate income tax return. In the case of delays, penalties of QAR500 (approximately US$137) daily up to a maximum of QAR180,000 (approximately US$49,450) are expected to be imposed.

Slovak Republic adopts DAC7 into domestic law

On 15 June 2022, the Slovak Republic approved an amendment to the *Act on International Cooperation in Tax Administration*, implementing the Directive on Administrative Cooperation (the so-called DAC7) to expand reporting obligations and exchange of information to cover sales through digital platforms.

The amendments include the definitions of the reporting digital platform operators and a joint tax audit and the obligations of the reporting digital platform operators and the sellers. It also provides a list of the sellers exempt from notification requirements and a list of the information to be obtained and shared by the digital platform operator. The Amendment takes effect on 1 January 2023 except for provisions concerning joint tax audits which will be effective from 1 January 2024.

In addition, the legislation defines the scope and the requirements to automatically exchange information. Finally, additional paragraphs include information on the applicable fines and the relevant deadlines.

Swedish Ministry of Finance proposes new Withholding Tax Act

On 7 June 2022, the Swedish Ministry of Finance issued a press release and a proposal for a new withholding tax law related to dividend distributions. According to the proposal, the current *Withholding Tax Act* will be replaced by a new law, with the 30% tax rate remaining unchanged.

The draft law introduces, among others, additional requirements for relief at source, new anti-avoidance rules, and amendments to the beneficial owner concept in Swedish domestic law to align with the beneficial owner concept in the OECD Model Tax Convention. Furthermore, the draft legislation establishes new reporting obligations for dividend recipients, dividend payers, or authorized intermediaries.

The proposal is currently subject to public consultation and the consultation period ends on 7 October 2022.

If adopted, the main elements of the law will enter into force on 1 July 2023 and apply from 1 January 2024.

Swiss Federal Council releases dispatch on constitutional amendment for BEPS 2.0 implementation in Switzerland

On 23 June 2022, the Swiss Federal Council published a dispatch alongside the proposed constitutional amendment for the imminent BEPS 2.0 implementation in Switzerland. The dispatch provides the basis for the upcoming parliamentarian discussions, culminating in a public vote likely to take place in June 2023. It seems likely that Switzerland will be able to adhere to its internal deadlines, with the IIR, UTPR and Qualified Domestic Minimum Top-up Tax to be introduced by 1 January 2024.

As a result of the feedback received during the public consultation procedure, some aspects were adjusted in the dispatch, and the updated draft constitutional amendment, including: (i) potential additional proceeds resulting from the Qualified Domestic Minimum Top-up Tax, IIR and UTPR, will be shared between the Cantons and the Federation; (ii) after the additional required contributions to the national fiscal equalization scheme, the remaining proceeds should be used for measures to increase the attractiveness of the Swiss business location; and (iii) when enacting the temporary ordinances the legislation procedure should consider the modalities of foreign domestic Pillar Two implementations – such as in the EU Member States and the US.

From a procedural point of view, Pillar Two will be introduced in a first step by way of two ordinances. The first ordinance will regulate the material aspects and the second all procedural aspects.

See EY Global Tax Alert, *Swiss Federal Council releases dispatch on constitutional amendment for BEPS 2.0 implementation in Switzerland*, dated 24 June 2022.

Tunisian Ministry of Finance limits the scope of Country-by-Country Reporting and issues list of CbCR jurisdictions

On 17 June 2022, the Tunisian Ministry of Finance issued Common Note No. 18 (repealing and replacing Common Note No. 4), limiting the scope of taxpayers subject to CbCR in 2020 and 2021 reporting fiscal years to UPEs resident in Tunisia.

Further, on 15 June 2022, Tunisia published the list of jurisdictions with which it will automatically exchange CbC reports as of the 2020 reporting fiscal year, comprising 90 countries. From the 2022 reporting fiscal year, the list will apply for secondary local filing.

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