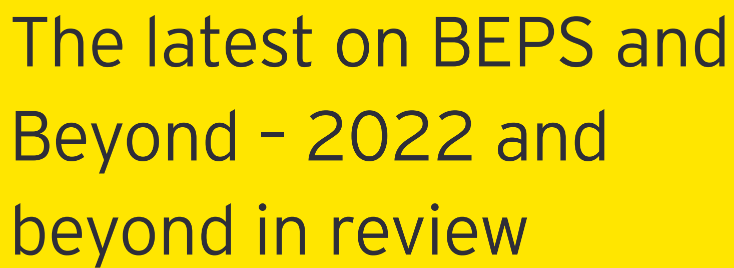

The latest on BEPS and Beyond – 2022 and beyond in review

A review of key OECD, EU and country developments in 2022 and a preview of 2023

EY

Building a better working world

Introduction

Our annual BEPS in Review provides an overview of the most important international tax developments in the past year. 2022 was a remarkable year for fiscal policymaking and the prelude to the introduction of many new tax measures in 2023 and beyond.

The past year was marked by a wide variety of developments - from progress on the G20/ Organisation for Economic Co-operation and Development (OECD) project on Addressing the Tax Challenges Arising from the Digitalisation of the Economy (BEPS 2.0) to groundbreaking green tax agreements such as the Carbon Border Adjustment Mechanism (CBAM). As diverse as these developments may seem, they are, in fact, all interrelated as together they are a response to the turbulent economic and geopolitical situation the world finds itself in.

This edition, also covers the progress of the G20/OECD Inclusive Framework on BEPS (Inclusive Framework) in its negotiations on Pillar One and Two of BEPS 2.0.

Tax developments in the United States (US) made clear that the US will not introduce Pillar Two specific measures in the short term. However, the US adopted the Inflation Reduction Act (IRA), which introduced an alternative minimum tax as well as tax incentives. In contrast, a number of jurisdictions are preparing for the introduction of Pillar Two measures. For example, in Asia Pacific, Korea adopted Pillar Two legislation before the end of the year.

In 2022 the European Union (EU) claimed a leading role on the stage of international tax standard setting. After a year of intense negotiations, the 27 Member States reached an agreement to introduce the BEPS 2.0 Pillar Two rules, leading to the adoption of the Minimum Tax Directive on 15 December 2022. The adoption of the Pillar Two rules by Korea and the adoption of the Minimum Tax Directive by the EU marks a historic event with major consequences for businesses and tax authorities, in particular now that less than a year remains until the rules come into force. In the EU, developments such as the CBAM agreement and the recently adopted Foreign Subsidies Regulation will also have a major impact on governments and companies worldwide. Further, a joint approach to the energy crisis has led to pioneering and controversial fiscal measures at European level in the form of a price cap and windfall tax. For this reason, we emphasize EU developments in our 2022 review.

Finally, 2022 was also an important year for tax reporting and transparency. In the US, some shareholder groups called on companies to publish more information about tax payments. In the EU, we saw important legislative activity, both at an EU and a jurisdiction level. For example, Romania not only introduced Public Country-by-Country Reporting (Public CbCR) legislation in 2022 but set its effective date to January 2023. In addition, new reporting obligations are being discussed at the EU level and elsewhere, for crypto-assets and shell entities. Australia also proposed introducing Public CbCR in its 2022-23 Federal Budget.

To help businesses and investors stay on top of all these developments, this edition of the Latest on BEPS and Beyond: a Year in Review covers all these key developments with a focus on common main themes, describes the interrelationships in retrospect and provides an outlook for 2023.

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BEPS 2.0

Introduction

The project to address the tax challenges arising from the digitalisation of the economy (the so-called 'BEPS 2.0 project') is comprised of:

- Pillar One on the development of new nexus and profit allocation rules to assign more taxing rights to market jurisdictions
- Pillar Two on the development of new global minimum tax rules

The first section of this chapter provides an update on Pillar One, including the latest developments. The second section discusses the current status of Pillar Two, and jurisdictional and regional perspectives on this topic, including the EU tax-related activity on Pillar Two. Finally, some remarks on the way ahead for BEPS 2.0.

Pillar One

In December 2021, the OECD announced plans to release a series of Secretariat working documents in the first half of 2022 on the separate building blocks of Amount A of Pillar One in order to obtain stakeholder input. Between February and June 2022, seven consultation documents were released covering:

- Nexus and Revenue Sourcing (see EY Global Tax Alert),
- Tax Base Determinations (see EY Global Tax Alert),
- Scope (see EY Global Tax Alert),
- Extractives Exclusion (see EY Global Tax Alert),
- Regulated Financial Services Exclusion (see EY Global Tax Alert), and
- A Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A (see EY Global Tax Alert).

On 11 July 2022, the OECD released the Progress Report on Amount A of Pillar One for public consultation, with the aim to request input on the design of the rules as included in the Report (see EY Global Tax Alerts: brief and detailed). The July 2022 Progress Report covered many of the building blocks of Amount A and reflected some updates addressing comments received on the earlier consultation documents. The Progress Report did not cover tax certainty or administration.

The Inclusive Framework requested written comments from stakeholders on the overall design of the Amount A rules, reflected in the Progress Report, with the aim to review the input received and seek to stabilize the rules at its October 2022 meeting (see EY Global Tax Alert). The OECD indicated that after stabilizing the Amount A rules, these would be translated into provisions for inclusion in a Multilateral Convention (MLC) to be signed and ratified by Inclusive Framework members. The published schedule reflected the expectation that this work would be completed so that a signing ceremony for the MLC could be held in the first half of 2023, with the objective of enabling the rules to enter into force in 2024 once a critical mass of jurisdictions would have ratified the MLC.

A public consultation meeting was held on 12 September 2022 to discuss more than 70 comment submissions received from businesses, industry associations, tax advisors and individuals (see EY Global Tax Alert). The key elements of the proposed design for Amount A discussed during the consultation included the marketing and distribution profits safe harbor, the approach for eliminating double taxation with respect to Amount A and other aspects of the rules such as scope, revenue sourcing, tax base and unilateral measures.

On 6 October 2022, the Secretariat of the OECD released a Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One in order to obtain further input from stakeholders on these subjects (see EY Global Tax Alert). The Report included three major sections: (i) Procedures for complying with the Amount A rules, including the filing of the relevant information, payment, and access to relief from double taxation, (ii) Tax certainty framework for Amount A, and (iii) Dispute prevention and resolution mechanisms for issues related to Amount A.

On 8 December 2022, the Secretariat of the OECD released a consultation document on Amount B of Pillar One (see EY Global Tax Alert). This consultation document outlines the main design elements of Amount B, focusing on the scope, the pricing methodology, and the current status of discussions concerning an appropriate implementation framework.

On 20 December 2022, the OECD also released a consultation document on the MLC provisions on Digital Services Taxes (DSTs) and other relevant similar measures (see EY Global Tax Alert). It contains draft MLC provisions implementing the commitments with respect to DSTs and other relevant similar measures, including (i) an obligation to withdraw the measures listed in an Annex to the MLC and stop applying them to any company, (ii) a definition of the measures that the parties to the MLC will commit not to enact in the future and (iii) a mechanism that will eliminate Amount A allocations if this commitment is breached.

With that, the OECD has completed the public consultations on all building blocks of Pillar One in 2022. Technical work on both Amount A and Amount B is expected to be completed in mid-2023. For Amount A, draft MLC provisions are expected to be finalized by mid-2023 with the aim to have a signing ceremony in mid-2023 and have the instrument enter into force in 2024.

A key open question in relation to Pillar One that remains is whether a critical mass of countries will indeed sign the MLC. Uncertainty around the likelihood of the US and some other countries joining has raised speculation on whether such a critical mass will result. The EU has already announced it will come up with an alternative proposal if Pillar One does not materialize.

Pillar Two

At the end of 2021, the OECD released the Global Anti-Base Erosion (GloBE) Model Rules, which marked a significant milestone for the BEPS 2.0 project (see EY Global Tax Alert). The GloBE Model Rules define the scope and key mechanics for the Pillar Two system of global minimum tax rules, including the income inclusion rule (IIR) and the undertaxed payments rule (UTPR).[1]

The release of the GloBE Model Rules took place without the OECD having held a public consultation on specific provisions. Several key elements of the framework remained outstanding at the time of the release of the GloBE Model Rules. This included the Commentary on the GloBE Model Rules, the Implementation Framework addressing administration, compliance and coordination matters – including the design of safe harbors – and the development of the model treaty provision for the subject to tax rule (STTR).

On 22 December 2021, the European Commission (the Commission), two days after the release of the GloBE Model Rules, published a legislative proposal for a Directive setting forth rules to ensure a global minimum level of taxation for multinational groups in the Union (the draft Directive) (see EY Global Tax Alert) (see section "Pillar Two: EU activity"). The draft Directive followed the tight implementation deadline of the GloBE Model Rules as agreed upon by the Inclusive Framework in October 2021, meaning that the IIR should be effective in 2023 and the UTPR in 2024 (see EY Global Tax Alert).

Shortly after the release of the Model Rules and the draft Directive, businesses started evaluating the impact of the rules and sharing their concerns regarding some key aspects of the proposal. Criticism focused on the complexity of the rules, the need for clarifications and adaptions and the ambitious implementation deadline. Taking these concerns into account and also concerns expressed by some EU Member States, the French EU Council Presidency released an updated compromise text of the draft Directive, including a one-year delay of the implementation timeline (See EY Global Tax Alert). The delayed implementation deadline in the new compromise text has been widely embraced, such that domestic (draft) legislation of most non-EU jurisdictions contemplates implementation of the IIR effectively in 2024 and the UTPR in 2025. After numerous negotiations in the EU Council and several updated compromise texts, the Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (the Minimum Tax Directive) was adopted on 15 December 2022 (see EY Global Tax Alert).

While the EU is considered the frontrunner in implementing the GloBE Model Rules, activity has also been intense in the US (see section "Pillar Two: US activity"). The US administration initially proposed amendments to the US international tax rules to bring the US legislation closer to the GloBE Model Rules. However, these changes were not ultimately enacted. Legislation that was enacted in August 2022, the IRA, includes a new corporate alternative minimum tax (CAMT), but it operates differently than the GloBE Model Rules. The interaction of the new US CAMT and the pre-existing US Global Intangible Low-Taxed Income (GILTI) and controlled foreign company (CFC) regimes with the GloBE Model Rules as implemented by individual jurisdictions is expected to give rise to complexity and uncertainty. The GloBE Model Rules, which was released by the Inclusive Framework in January 2023, addresses some aspects of these interactions (see EY Global Tax Alerts: First Impressions and Detailed Review).

Throughout 2022, a number of other jurisdictions reacted to the release of the GloBE Model Rules, with several expressing their support or reaffirming their commitment to introducing the rules into domestic legislation. Some others, including Australia, Canada, Ireland, Malaysia, the Netherlands, New Zealand, Switzerland, and the United Kingdom, have gone further by launching public consultations requesting stakeholders to provide input on the national approach or challenges ahead of the implementation. Additionally, a few jurisdictions have already published draft legislation (e.g., Japan, the Netherlands, and the United Kingdom), while a few others have enacted other measures. For example, Mauritius and Colombia adopted a form of domestic minimum top-up tax (although in the case of Colombia the calculation is not necessarily aligned with Pillar Two). In addition, the Swiss Parliament approved the constitutional amendment necessary to implement the GloBE Model Rules, which will be subject to a public vote in June 2023. Following this constitutional amendment, the Swiss Federal Council is expected to release an ordinance to introduce the technical rules.

[1]The UTPR refers to both the undertaxed payments rule and the undertaxed profits rule.

Work on the outstanding elements of Pillar Two at the OECD level also continued during 2022. As a first step, the OECD released the Commentary as well as Illustrative Examples to the GloBE Model Rules in March 2022 (see EY Global Tax Alert). After these releases, the technical work continued throughout the year, and in October 2022, the Inclusive Framework published its sixth annual progress report describing developments in the BEPS 2.0 Project (see EY Global Tax Alert).

On 20 December 2022, exactly one year after the release of the GloBE Model Rules, the OECD released documents on several elements of the implementation package relating to the Globe Model Rules:

- Guidance on Safe Harbors and Penalty Relief, which includes a transitional Country-by-Country Reporting safe harbor, the framework for the development of permanent safe harbors based on simplified calculations, as well as a common understanding of the transitional penalty relief regime for the initial years of application of the GloBE Model Rules (see EY Global Tax Alert),
- A public consultation document on the GloBE Information Return that seeks input on the amount and type of information that groups are expected to collect, retain and report for the application of the GloBE Model Rules, as well as possible simplifications that could be incorporated in the GloBE Information Return and the possibility for groups to provide alternative data points (see EY Global Tax Alert), and,
- A public consultation document on Tax Certainty for the GloBE Model Rules which outlines the various mechanisms for achieving tax certainty under the GloBE Model Rules, including dispute prevention and dispute resolution (see EY Global Tax Alert).

Despite the progress made, there are still many aspects of Pillar Two under development, including how to ensure consistency of implementation. A peer review mechanism is referenced in the public consultation document on Tax Certainty, which will require the release of a peer review methodology and assessment criteria. Moreover, guidance is expected on the interaction between the GloBE Model Rules and the Pillar One rules. Later in 2023, the OECD is expected to release the STTR draft model tax treaty provision and related commentary for public consultation.

It is expected that Administrative Guidance will be released on a rolling basis from now on. Finally, as part of the peer review mechanism referenced above, an assessment framework should be developed to assess the equivalence of domestic rules implementing the GloBE Model Rules to a QDMTT, a Qualified IIR, and a Qualified UTPR. Given all of these moving pieces, 2023 will be an important year for businesses to keep up with the developments and prepare for complying with the domestic implementation of the GloBE Model Rules in jurisdictions around the world.

The EU's adoption of the Minimum Tax Directive at the end of 2022 was followed by global legislative action on Pillar Two. For example, on 31 December 2022, South Korea became the first jurisdiction to enact domestic legislation on the GloBE Model Rules (see EY Global Tax Alert). The legislation includes an IIR as well as a UTPR, both effective for fiscal years beginning on or after 1 January 2024, although the application of the UTPR in a year earlier than 2025 could be softened by a yet-to-be-published Decree. Korea's enactment before the end of 2022 raised the question of how this should be reflected for accounting purposes.

Separately, the International Accounting Standards Board (IASB) had already decided to add an accelerated project to its work plan in November 2022, proposing narrow-scope amendments to International Accounting Standard (IAS) 12 Income Taxes to introduce a mandatory temporary exception from accounting for deferred taxes arising from the implementation of the GloBE Model Rules (including any Qualified Domestic Minimum Top-up Tax (QDMTT)). The amendment would also introduce targeted disclosure requirements and is expected to apply for annual reporting periods beginning on or after 1 January 2023. To this end, the IASB launched a public consultation in January 2023 on amendments to IAS 12 (Exposure Draft) (see EY Local Tax Alert).

In addition, at the Financial Accounting Standards Board (FASB) meeting on 1 February 2023, the FASB staff responded to a technical inquiry about whether an entity should record deferred taxes for the GloBE minimum tax by recognizing GloBE-specific deferred taxes or remeasuring existing deferred taxes at the GloBE minimum tax rate. The staff stated it believes that the GloBE minimum tax as illustrated in the inquiry is an alternative minimum tax as discussed in ASC 740, and, therefore, deferred tax assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax. The FASB staff believes ASC 740-10-30-10 and 30-12 and ASC 740-10-55-31 and 55-32 support this conclusion. The GloBE minimum tax should be viewed as a separate but parallel tax system that is imposed to make sure certain taxpayers pay at least a minimum amount of income tax.

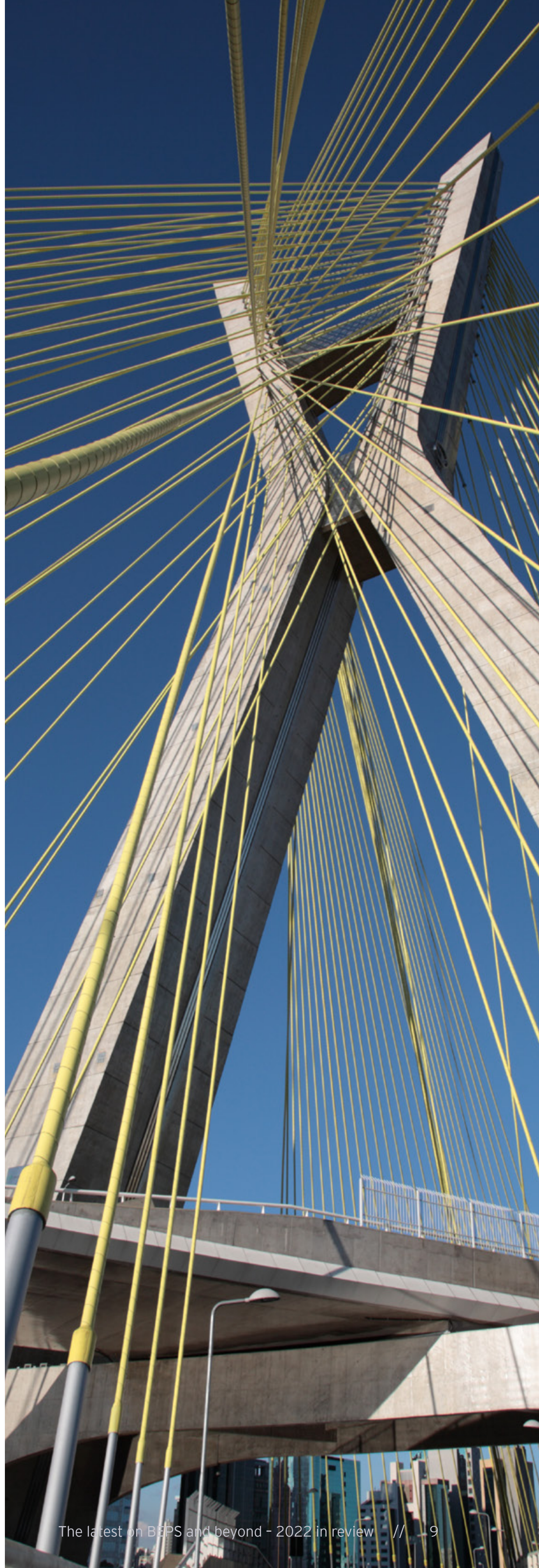
Pillar Two: US activity

The US has been an active participant in the BEPS 2.0 project from the outset. Since the beginning of the Biden Administration in 2021, Treasury Secretary Janet Yellen has been a vocal advocate of robust Pillar Two rules to end what she has referred to as the race to the bottom on corporate income tax (CIT) rates (see EY Global Tax Alert). The Biden Administration made proposals in 2021 (see EY Global Tax Alert) and 2022 (see EY Global Tax Alert) for changes in the US international tax rules to align more closely with the Pillar Two IIR and UTPR.

The existing US international tax system includes the GILTI rules, enacted in 2017 with the Tax Cuts and Jobs Act, that subject US MNEs to US tax on certain low-taxed foreign income of their CFCs but operate differently than the Pillar Two IIR in several respects. Legislation was developed in the US to more closely align the GILTI rules with the IIR, including incorporation of a jurisdiction-by-jurisdiction approach and a 15% tax rate, but such legislation would not have addressed all of the technical differences between the GILTI rules and the IIR. While the Build Back Better Act that included these modifications to the GILTI rules (see EY Global Tax Alert) was approved by the US House of Representatives in December 2021, the legislation was not ultimately enacted. Moreover, the Biden Administration's budget proposal with respect to a UTPR did not receive any legislative attention in 2022.

The IRA enacted in the US in August 2022 includes a new CAMT (see EY Global Tax Alert). While the CAMT is based on financial statement income and a 15% rate, it operates differently than the Pillar Two rules. For MNEs subject to the US GILTI and CAMT rules, the interaction of these rules with Pillar Two rules implemented by other jurisdictions would give rise to complexity and uncertainty. The Administrative Guidance agreed by the Inclusive Framework and released in early 2023 addressed some aspects of the interaction between the US GILTI rules and Pillar Two rules.

Following the 2022 mid-term elections, the legislative environment in the US will be challenging in 2023 and 2024, with Republicans holding a very narrow majority in the House of Representatives and Democrats holding a very narrow majority in the Senate. Republicans in the House have announced plans for investigation and oversight of the Biden Administration in 2023, including a focus on the Administration's negotiations with respect to the BEPS 2.0 project.



Pillar Two: EU activity

From the beginning of the BEPS 2.0 project, key EU Member States such as France and Germany, but also the Commission, have been actively supporting the design and introduction of global minimum tax rules. Just before the end of 2021 and the start of the French Presidency of the Council of the European Union, the Commission published a legislative proposal for a Directive setting forth rules to ensure a global minimum level of taxation for multinational groups in the Union (the draft Directive) (see EY Global Tax Alert). The draft Directive was intended to ensure the GloBE Model Rules, as agreed by the Inclusive Framework, were implemented in a coordinated manner throughout the EU, adjusted to comply with EU law and take into account the specifics of the EU Single Market.

Negotiations on the draft Directive among EU Member States took up almost the entire year. During various meetings of the ECOFIN throughout 2022, the proposal was presented for adoption, but unanimous agreement was not reached. Initially, the concerns expressed by Member States related to the complexity of the rules in combination with the tight implementation timeline (see EY Global Tax Alert). As a consequence, the implementation timeline was effectively extended by one year, and an option to delay introduction was created for small Member States. Following these amendments, most of the EU Member States joined the agreement (see EY Global Tax Alert). The opposition by Hungary – the last holdout – was related to the access to EU funds (see EY Global Tax Alert). The result was that France could not conclude the negotiations during its Council Presidency and had to hand over the negotiations to the Czech Republic. Continued negotiations ultimately led to Pillar Two being combined in a package with negotiations on funding for Ukraine and the question of whether and to what extent Hungary's access to certain EU funds should be frozen or withheld. A compromise was reached with the Minimum Tax Directive (the Directive) being formally adopted on 15 December 2022 (see EY Global Tax Alert).

As for the next steps, Member States now have less than one year to transpose the Directive into national legislation, as implementation needs to take effect for fiscal years starting on or after 31 December 2023. Considering the short deadline for implementation, some Member States started their legislative preparations in 2022, including the Netherlands and Germany.

Given the release of the Inclusive Framework Guidance on Safe Harbors on 20 December 2022 and the Administrative Guidance in early 2023, a question that has arisen is how this guidance released after the adoption of the Directive should be taken into account in the interpretation and implementation of the Directive.

The preamble of the Directive refers to the GloBE Implementation Framework as a source of illustration and interpretation and states that Member States may choose to incorporate such guidance into domestic law. The Directive also includes a specific provision (Article 32) that deems the top-up tax due by a group in a jurisdiction to be zero if the level of taxation fulfills the conditions of a "qualifying international agreement on safe harbors". It is unclear whether the current approach in the Directive suffices to incorporate the safe harbor rules (and any following) releases into the (implementation of the) Directive. If there are doubts as regards the compatibility of the commentary and its updates and guidance with the Directive, the Commission and Member States may explore whether there are further options available for ensuring alignment.

Tax Policy matters: Implementation of BEPS 2.0 Pillar Two in the European Union (26 January 2023)

Pillar Two: Asia Pacific activity

In 2022, countries in the Asia Pacific region have taken various steps toward their commitment to implement Pillar Two. For example, Singapore and Hong Kong have issued formal public statements affirming their intention to align with Pillar Two initiatives. Jurisdictions such as Australia, New Zealand, and Malaysia have launched public consultation exercises requesting input on the design and implementation of GloBE Model Rules in domestic legislation. Additionally, before the end of the year, Japan proposed draft legislation for certain GloBE provisions in its tax reform proposal (see EY Local Tax Alert) which was submitted on 3 February 2023 to the Japanese Diet (bicameral legislature) (see EY Global Tax Alert). Furthermore, South Korea passed legislation adopting the IIR and UTPR (see EY Global Tax Alert). Overall, while jurisdictions in the Asia Pacific region have been quick to consider Pillar Two, several jurisdictions have indicated that they intend to await international trends and developments before committing to specific implementation timelines.

Regionally, the OECD, along with local development organisations, have been actively engaging with developing Asia Pacific jurisdictions to increase understanding of Pillar Two developments. These partnering organizations are conducting several consultations and meetings with both members and non-members of the Inclusive Framework to share experiences on establishing Pillar Two legislation in a regional context, capacity-building issues, and expanding resources and technology. Developing countries are currently reviewing their income tax regimes to consider implementing a QDMTT and to ensure that any domestic income tax incentives or credits do not disqualify such countries from having a qualified IIR or QDMTT.

While Asia Pacific jurisdictions are actively considering Pillar Two measures, it is expected that the timing of implementation, as well as the specific GloBE provisions to be adopted, may vary across the region. This may be due to the diverse level of resources and capacity among the jurisdictions and the number of non-Inclusive Framework members in the Asia Pacific region.

South Korea's IIR and UTPR rules are effective 1 January 2024, and Hong Kong (see EY Global Tax Alert) and Japan have indicated plans to implement the IIR in 2024. Additionally, some countries have announced intentions to adopt minimum effective tax rates on large multinational enterprise groups effective 2024 or 2025. However, most countries have not specified their timelines and are generally expected to follow international trends. Overall, OECD/G20 countries are likely expected to implement all of the GLoBE rules (including the IIR, UTPR, and QDMTT), while other countries may only want to implement certain rules (e.g., a QDMTT).

State as of the end of 2022 – Asia Pacific jurisdiction-specific developments

- Australia released a Consultation Paper on domestic implementation of Pillar Two and will work towards releasing draft legislation in early 2023.
- Hong Kong announced that it plans to apply a global minimum effective tax rate on large multinational enterprise groups and implement a domestic minimum top-up tax starting 2025 and onwards. Hong Kong will defer the implementation of the IIR to 2024 at the earliest.
- Indonesia issued government Regulation No. 55 of 2022 which provided the legal basis for implementation of Pillar On and Two. Detailed regulations are forthcoming however Indonesian officials have previously indicated that Indonesia is planning to design regulations to implement the IIR by 2023 and the UTPR by 2024. Indonesia is also considering a QDMTT, however further analysis is required before implementation.
- Japan's ruling party published its 2023 Tax Reform Outline, which states it will introduce legislation to adopt the IIR in accordance with the Inclusive Framework. IIR is expected to be enacted in 2023 and will apply to fiscal years beginning on or after 1 April 2024. The QDMTT and UTPR will be considered in the 2024 Tax Reform Outline based on the developments of international discussions.
- Korea passed Pillar Two legislation adopting the IIR and UTPR effective 1 January 2024. Additional legislation may follow to provide details (e.g., possible safe harbors). There has been no announcement regarding the STTR.
- Malaysia reaffirmed its commitment to implement Pillar Two and stated that Malaysia is targeting to implement a QDMTT in 2024, as part of the government's Budget 2023 proposals.

- New Zealand released a public consultation document on the adoption of GloBE Model Rules. New Zealand is expected to adopt model rules to implement the IIR, UTPR and STTR. However, there has been no official announcement from the Government yet. Implementation of a DMTT is also being considered.
- The House Committee on Ways and Means of Philippines is studying the impacts of and will likely impose a 15% global minimum corporate income tax.
- Singapore confirmed it will abide by the international consensus regarding Pillar Two . Singapore will introduce a minimum effective tax rate of 15% for large multinational enterprise groups to be implemented on or after 1 January 2025. Singapore will implement a domestic top-up tax, however no announcement has been made regarding the adoption of the IIR or UTPR.
- The Ministry of Finance of Taiwan stated that it is considering the adoption of a 15 percent minimum multinational corporation tax rate (increase from the current 12 percent), effective 1 January 2024 at the earliest
- The Ministry of Finance of Thailand was tasked to set up a special working group to study Pillar Two impacts. The Director-General of the Revenue Department has given an interview that Thailand expects to enforce Pillar Two in 2024. Although tax incentives may become a less attractive for promoting investment, the Director-General has emphasized the need to formulate a non-tax incentive regime to support investment. This includes the development of a skilled labor market, supporting the factors of production market, infrastructure, and other relevant areas
- The Ministry of Finance of Vietnam issued a decision approving a tax reform plan, under which it will research and propose local legislation in line with the GloBE Model Rules. New regulations may apply between 2023-2025

Pillar Two: Implementation graph

Jurisdiction	Date of latest development	Type of development	STTR	QDMTT	IIR	UTPR	Expected date of entry into effect	EY Global Tax Alert
Australia	04 Oct 2022	Public consultation	It is not clear yet	It is not clear yet	It is not clear yet	It is not clear yet	It is not clear yet	For more details click here
Canada	03 Nov 2022	Official communication	🔴	🟢	🟢	🟢	IIR and DMTT - 2023 as of a date to be fixed. UTPR - No earlier than 2024	For more details click here
Colombia	13 Dec 2022	Final Legislation	🔴	🟢	🔴	🔴	Taxable year 2023	For more details click here
European Union	15 Dec 2022	Final legislation	🔴	🟢	🟢	🟢	IIR - 31 December 2023 UTPR - 31 December 2024	For more details click here
Hong Kong	15 Aug 2022	Official communication	🔴	🟢	🟢	🟢	IIR - 2024 at the earliest QDMTT and UTPR- Not clear yet	For more details click here
Indonesia	20 Dec 2022	Official communication	🔴	🔴	🟢	🟢	It is not clear yet	N/A
Ireland	26 May 2022	Public consultation	🟢	🟢	🟢	🟢	IIR - 31 December 2023 UTPR - 31 December 2024	For more details click here
Japan	03 Feb 2023	Draft legislation	🔴	🔴	🟢	🔴	Fiscal years beginning on 1 April 2024 or after	For more details click here
Malaysia	07 Oct 2022	Official communication	🔴	🟢	🟢	🟢	QDMTT - 2024	N/A
Netherlands	24 Oct 2022	Public consultation	🔴	🟢	🟢	🟢	IIR and QDMTT- 31 December 2023 UTPR - 31 December 2024	For more details click here
New Zealand	05 May 2022	Public consultation	🔴	🔴	🟢	🟢	It is not clear yet	For more details click here
Philippines	22 Aug 2022	N/A	N/A	Under review	N/A	N/A	N/A	N/A
Singapore	14 Feb 2023	Official communication	🔴	🟢	🟢	🟢	1 January 2025	N/A
South Korea	31 Dec 2022	Final legislation	🔴	🔴	🟢	🟢	1 January 2024	For more details click here
Switzerland	16 Dec 2022	Draft legislation	🔴	🟢	🟢	🟢	1 January 2024	For more details click here
Taiwan	14 Dec 2022	Unofficial announcement	N/A	Under consideration	N/A	N/A	1 Jan 2024 at the earliest	N/A
Thailand	15 Feb 2023	Unofficial announcement	It is not clear yet	Under consideration	It is not clear yet	It is not clear yet	2024	N/A
United Kingdom	17 Nov 2022	Official communication	🔴	🟢	🟢	🟢	IIR and QDMTT - 31 December 2023 UTPR - 31 December 2024	For more details click here
United States of America	01 Feb 2023	N/A	🔴	🔴	🔴	🔴	N/A	N/A
Vietnam	22 Nov 22	Announcement	It is not clear yet	It is not clear yet	It is not clear yet	It is not clear yet	N/A	N/A

State of play 15 February 2023

Closing reflections on BEPS 2.0 and looking forward to 2023 and beyond

The BEPS 2.0 project is at an inflection point now, with Pillar Two global minimum tax rules on the cusp of adoption in jurisdictions around the world. The design agreed by the Inclusive Framework – reflected in the GloBE Model Rules, Commentary and first tranche of Administrative Guidance, together with the transitional safe harbors for the initial years the rules are in effect – provides a solid base for jurisdictions to use in developing domestic legislation that aligns with the agreement. However, even as jurisdictions are activating their legislative processes, with many aiming to have global minimum tax rules in effect beginning in 2024, there remains significant work ahead of the Inclusive Framework on Pillar Two.

The Inclusive Framework's Pillar Two work plan for 2023 includes key remaining components of the global minimum tax architecture. The draft GloBE Information Return must be further refined, finalized and agreed, so that this coordinated approach to documentation can be implemented by jurisdictions on a timely basis. The challenging matter of developing workable and effective dispute prevention and resolution mechanisms to address the inevitable deviations in jurisdictions' Pillar Two rules requires serious attention. A wide range of technical topics have been identified for much-needed administrative guidance. Further work on safe harbors also must be done, including the planned QDMTT safe harbor. In addition, the intended coordinated operation of the GloBE Rules around the world is dependent upon establishment of a robust peer review process, through which the qualified status of domestic legislation will be assessed so that determinations can be made that will govern the prioritization of jurisdictions' rights to impose top-up tax on each in-scope company's income in each jurisdiction. Finally, the Inclusive Framework also is committed to developing and releasing the still-missing element of the Pillar Two package: the Subject to Tax Rule, which is a priority for developing countries in particular and which requires model treaty language and explanatory commentary.

We have never before seen a global tax initiative of this scale and complexity. There will need to be a continual feedback loop encompassing the activity at the global and jurisdictional levels. While jurisdictions are continuing to participate in this essential work in the Inclusive Framework, they each also will be busy at home with the work needed to mesh the agreed Pillar Two design with their own existing international tax rules and tax compliance construct and incorporate global minimum tax rules into their overall domestic tax legislative, regulatory and administrative system. Jurisdictions will need to monitor what other jurisdictions are doing on an ongoing basis, as well as taking necessary action to respond to developments in the Inclusive Framework negotiations. Moreover, the Inclusive Framework will have continuing responsibility in the years ahead under both the peer review and administrative guidance processes, which will require monitoring how jurisdictions operate and administer the Pillar Two rules they implement and addressing technical and practical issues that arise.

With global minimum tax rules expected to take effect in jurisdictions around the world beginning in 2024, it is important for global companies to focus now on the necessary preparations. Key action steps include:

- Monitoring developments in the Inclusive Framework and relevant jurisdictions and considering opportunities to engage proactively with policymakers
- Modeling the potential impacts
- Evaluating the applicability of the transitional safe harbors, including the possibility of adjusting the approach used for CbCR to align with safe harbor qualification requirements
- Identifying any data gaps and determining changes needed in systems and processes to meet compliance obligations
- Communicating across the organization about the tax, financial and operational implications and the technology and resource needs

While Pillar Two will dominate the global tax policy landscape in 2023, there will be activity on Pillar One as well. There is substantial technical and political work still to be done to get to agreement in the Inclusive Framework, but the aim is to have the MLC for Amount A ready for signature by mid-2023 and to finalize the Amount B rules in the same timeframe. Global companies should be keeping an eye on the ongoing Inclusive Framework negotiations on both Amount A and Amount B, as well as watching for signs of potential unilateral action in relevant jurisdictions.

The EU in Global Tax Standard Setting

Introduction

In the past years, the EU has emerged as the frontrunner in the development and adoption of new international tax standards. After the publication by the OECD/G20 of the final reports on the fifteen actions of the Base Erosion and Profit Shifting project (BEPS 1.0) in 2015, the EU was quick in implementing both the minimum standards and the common approaches through the adoption of the Anti-Tax Avoidance Directives (ATAD) I and II and of additions to the Directive on Administrative Cooperation (DAC). However, the EU also went beyond, for example, by agreeing on Public CbCR in 2021 (see EY Global Tax Alert).

As evidenced by the adoption of the Minimum Tax Directive, 2022 was no exception. We also saw several EU tax initiatives that were not rooted in OECD processes, as will be discussed in section "EU CIT initiatives beyond BEPS 2.0". The EU's frontrunner position in tax standard setting fits a broader trend of the EU developing policies with a global impact. For example, over the past years, the EU has also taken the lead in areas such as privacy protection. Since the adoption of the EU's General Data Protection Regulation, many third countries (i.e., non-EU countries) have introduced similar regulations. In 2023, this trend is expected to continue. However, the adoption of standards in the EU is not an easy process, especially in the field of tax, since the decision-making processes require a delicate balancing act of the EU institutions.

Leveling the playing field and competition

For the EU, a key objective in standard setting is to ensure that it can implement its policy aims while also achieving a level playing field. Not only should rules apply consistently throughout all 27 Member States, but the EU is also keen to ensure that EU norms on privacy, environmental or taxation policies apply globally. While the underlying reasoning behind these extraterritorial effects may also be that the EU is convinced about its values and policies, actions to ensure external application are primarily put in place to guarantee that stricter regulatory measures do not have a negative effect on the competitive position of the EU. The EU's role in global taxation has resulted in an increasing realisation amongst stakeholders worldwide that the EU's decision-making may influence global tax policy as new EU initiatives increasingly have an "external effect".

Targeting third-country regimes

In the tax area, an early example of the external impact is the EU Code of Conduct (CoC) on business taxation. In place since the late 1990s for the Member States, the EU expanded the CoC in 2016 to assess third countries' tax regimes against harmful elements. At the core of the assessments is the requirement for non-EU tax jurisdictions to meet the internationally agreed OECD/G20 minimum standards on tax transparency and BEPS 1.0. Not meeting the minimum standards can lead to a jurisdiction being included in the EU list of non-cooperative jurisdictions for tax purposes (the so-called 'blacklist'). The listing by the EU has had a great impact on the worldwide adoption of the OECD/G20 work on tax transparency and BEPS 1.0. In 2022, the Member States updated the list of non-cooperative jurisdictions twice - in February (see EY Global Tax Alert) and in October (see EY Global Tax Alert). Expected changes to the CoC's criteria will have a further impact on governments, businesses and investors outside the EU.

Increasing tax transparency in the EU and beyond

The Public CbCR Directive also has an impact beyond the EU. As discussed in section "EU and tax reporting", it affects a large group of businesses headquartered outside the EU and will also require per-country breakdowns of detailed information for certain non-EU jurisdictions.

Further tax transparency measures are expected in two other recent EU initiatives. In December 2021, the European Commission presented a proposal for a Directive the laying down rules to prevent the misuse of shell entities for tax purposes (Unshell or the draft Directive) (see EY Global Tax Alert). In 2022, Member States engaged in negotiations on the proposal (see Czech Council Presidency's Report to the Council). Unshell would introduce an EU-wide substance test and reporting obligation for taxpayers to identify certain 'shell companies' that are misused for tax purposes. The draft Directive also includes provisions on the consequences of the qualification of a shell entity and the government-to-government exchange of information provided by taxpayers. A complementary proposal under development by the Commission would target entities outside the EU as part of the "Securing the Activity Framework for Enablers" (SAFE) initiative on which the Commission held a public consultation in 2022 (see EY comment letter).

State aid and tax competition by third countries

Another groundbreaking EU policy adopted in 2022 is the Foreign Subsidies Regulation, which expands the scope of the EU's existing state aid prohibition to "subsidies" provided by third countries (see EY Global Tax Alert). For many years the EU already has had in place a comprehensive set of rules against distortive state aid provided by EU Member States themselves. Under these rules, the Commission launched high-profile state aid investigations in Member States' tax practices (see EY Global Tax Alert). To address concerns over distortions of the EU's internal market which arise as a result of subsidies, including tax incentives being provided by third countries, the state aid rules have been effectively extended outside the EU.

Sustainability/green taxes

A final example of a tax-like measure was agreed upon in 2022 as part of the EU's Fit for 55 initiative: the CBAM (see EY Global Tax Alert). In December 2022, EU negotiators reached a provisional agreement on a mechanism that effectively imposes a levy on certain emission-intensive imports. CBAM intends to prevent carbon leakage whereby emission-intensive production is relocated to third countries. CBAM will first enter into effect in late 2023. The adoption of CBAM allows the EU to implement stricter carbon emission policies in the Union, including by imposing a stricter Emissions Trading System for which EU policymakers also reached a political agreement on the brink of 2023 (see EY Global Tax Alert).

Tax decision-making in the EU

The EU treaties prescribe that the adoption of tax Directives, in principle, requires unanimity among all 27 Member States. Non-tax matters typically merely require a qualified majority of Member States to support the proposal. The unanimity requirement has resulted in lengthy and stalled negotiations and other complications (see section "Pillar Two: EU activity"). For example, the proposal for a Public CbCR Directive was first published by the Commission in 2016 and only adopted in 2021.

Frustrations on the unanimity requirement resulted in increasing calls for change to qualified majority voting on tax matters. In 2019, the Commission already published a Communication in which it proposed changing to qualified majority voting for tax matters. This proposal was put forward during the Conference on the Future of Europe held in 2022. The European Parliament also expressed support for these proposals (see Latest on BEPS and Beyond of June 2022). The proposals have been shared with the Member States since modifications to the EU treaties require their unanimous support, including from national parliaments. As some Member States object to modification of the treaties, it is to be seen whether the proposals will be adopted. For 2023, therefore, the EU will likely resort to adopting strategies it has used before while exploring more diverse ways of EU cooperation as proposed by the 2022 Czech Council Presidency.

With the debate on qualified majority voting pending, the European Commission, in cooperation with key EU Member States, more recently developed strategies to either 'convince' EU Member States to join the agreement or to avoid unanimity voting on certain tax-related proposals.

Firstly, the Minimum Tax Directive showed that unanimity may be reached by including the tax matter in a broader compromise package which contains a strong incentive for disagreeing jurisdictions to join the consensus. In the negotiations on the Minimum Tax Directive, the agreement on the Directive was linked to a decision on access to EU subsidies for the disagreeing jurisdiction. Secondly, some tax (related) measures have been tabled as non-tax measures by the Commission at the time of presenting the proposal. For example, the Public CbCR Directive was tabled in 2016 and adopted in 2021 as a company law matter for which a qualified majority procedure applies. Despite complaints by several Member States that objected and argued that unanimity was required, history repeated itself in 2022. In October, the EU adopted by a qualified majority a "solidarity contribution" as part of the as part of the Energy Regulation (see EY Global Tax Alert). Thirdly, Member States in favor may pressure unwilling Member States by exploring alternatives such as unilateral implementation and "enhanced cooperation" – a procedure under which a tax Directive would be implemented by a subgroup of Member States (see Latest on BEPS and Beyond of September 2022).

Implications

The increasing worldwide impact of standard setting by the EU has important ramifications for businesses and investors around the world. The EU has proven to be the ‘first mover’ on many cross-border tax developments, including on BEPS 1.0, tax transparency, BEPS 2.0 and environmental taxes. While policy changes may be aimed at changing the policy environment in the EU, these measures are often followed by measures that seek to level the playing field with third countries. To enforce the global adoption of the policies, the EU may announce defensive measures towards these non-EU jurisdictions in cases where they do not meet the standards and/or, in another fashion, incentivize such jurisdictions to take similar measures. The extent to which the EU can fulfill the role of standard setter depends on the ability of the European Commission to present proposals on which the EU Member States will reach an agreement. While the unanimity requirement has caused delays in the adoption of EU tax rules, the past year has shown that the Commission, supported by some key EU Member States, can pursue various successful paths to reach unanimity or circumvent unanimity voting. This means that taxpayers around the globe should monitor the tax policy ambitions of the Commission, as it is proving to be more and more successful in executing them.

EU and tax reporting

Implementation of Public CbCR in the EU and beyond becomes more clear

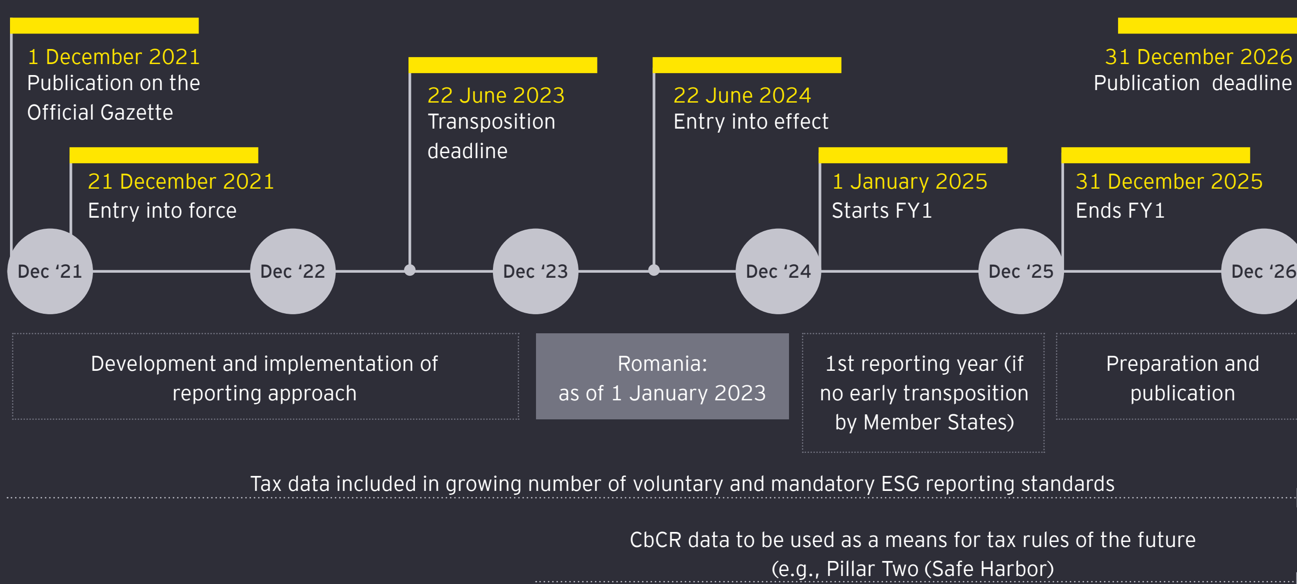
In 2022, national legislators across the EU made progress in the implementation of Public CbCR. Right before the start of the year, the EU's Public CbCR Directive (the Directive) entered into force (see EY Global Tax Alert), requiring Member States to transpose the rules by 22 June 2023.

The Directive introduces a requirement for EU-based multinational enterprises (MNEs) and non-EU-based MNEs doing business in the EU through a branch or subsidiary to disclose publicly the income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees. MNEs with a consolidated revenue of more than EUR 750 million in each of the last two consecutive financial years are in scope. The information needs to be disclosed for all 27 EU Member States and all jurisdictions included in Annex I and Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes (the so-called EU blacklist and gray list) (see EY Global Tax Alert). For all other jurisdictions, it is sufficient for aggregated data to be disclosed.

National legislation put forward in 2022 gives a clearer view of the impact of the rules. This shows that MNEs may be subject to reporting earlier than expected and that Member States may take diverging approaches.

Firstly, regarding timing, the Directive prescribes that reporting will be required for reporting fiscal years starting on or after 22 June 2024 at the latest. However, it has become clear that some Member States are aiming at an entry into effect before this date. In fact, Romania has adopted national rules that require reporting for financial years starting on 1 January 2023 (see EY Global Tax Alert). Also, the Netherlands has published a draft bill. Other jurisdictions, such as Hungary and Spain, require reporting only for fiscal years starting on or after 22 June 2024, but each of these jurisdictions has included other particularities. For example, Spain has limited the time for publication to six months after the balance sheet date instead of the 12 months included in the Directive (see EY Global Tax Alert).

Secondly, the adoption of the Directive was only possible on the basis of a legislative compromise that introduced elements of flexibility (see EY Global Tax Alert). For example, Member States may elect to introduce an option for MNEs to defer part of their annual publication. Based on its draft legislation, Hungary does not intend to make use of this flexibility, and consequently, in-scope groups would not be allowed to defer the disclosure of commercially sensitive information in Hungary.



Please note this is an example for MNEs with financial year that follows the calendar year

Implementation of Public CbCR in the EU is a significant step forward in the public tax transparency movement, taking it from largely voluntary to mandatory. It has paved the way for other jurisdictions to propose Public CbCR as well. On 25 October 2022, the Australian government proposed legislation (see EY Global Tax Alert). As a result, tax data will soon be available to a wide range of stakeholders.

For 2023, this means that businesses should assess the impact of two legislative developments which are built on CbCR, review their CbC Reports in anticipation of Public CbCR and assess the impact on their compliance with the Pillar Two GloBE Model Rules in light of the temporary Pillar Two safe harbor.

The trend toward increased tax transparency is expected to continue. Initiatives such as Public CbCR underline the continued intention of the EU to develop and expand tax transparency. Such initiatives will raise the bar for businesses and investors on how transparent they are about their approach to tax in the years to come. It is necessary for businesses to make a comprehensive assessment and perform continuous reviews, to be best informed on how to adapt and implement the new reporting requirements, and also to develop a broader and consistent tax transparency approach at an early stage.

Other Public Tax Reporting

Current state

In the rapidly evolving global tax landscape, there has been a remarkable shift towards greater tax transparency from MNEs. While the move towards greater tax transparency initially took place in the context of addressing tax avoidance, in more recent years, it has been earmarked as an element of Environmental, Social and Governance (ESG) reporting. This shift has been driven by a growing demand from a wide range of stakeholders, including politicians, investors, non-governmental organisations, and the public, for increased disclosures and visibility regarding businesses' tax policies and contributions.

In the context of this ESG shift, the Global Reporting Initiative (GRI) launched the global reporting standard GRI 207: Tax within its set of sustainability reporting standards with effect from 1 January 2021. GRI 207: Tax is the first global reporting standard to combine management approach disclosures on tax strategy with public country-by-country tax contribution.

Although the GRI is one of the leading standard-setters in the ESG reporting field, other standards are also being used by MNEs for public tax reporting, including reporting based on the B-Team Responsible Tax Principles and the World Economic Forum (WEF) Metrics. The WEF advises businesses to report on Total Tax Paid instead of reporting the country-by-country breakdown of corporate income taxes as the GRI standard requires. The variety of options and standard-setters illustrates, on the one hand, the increased focus and demand for more granular information while, on the other hand, the different positions by standard-setters illustrate the lack of uniformity in the demands for public tax transparency. This, in turn, creates the possibility for businesses to choose tailor-made reporting while also creating uncertainty as to what type of reporting will best stand the test of time. The increased focus on public tax transparency is corroborated by assessing the number of businesses voluntarily disclosing tax information, which has steadily increased yearly in the past six years.[2] Given this distinct trend, it can be expected that voluntary reporting will be more prevalent and evident, and more businesses will start following the example of their peers. However, there is also the expectation that mandatory standards such as the EU Public CbCR will continue to be introduced. This has created a call for a uniform global public tax reporting standard.

Developments in 2022

The EU Platform on Sustainable Finance released its final report on the Minimum Safeguards on 11 October 2022. The report focuses on developing ESG policies in the EU and highlights taxation as one of the four core topics relevant to such safeguards. The report explains that while tax is not specifically mentioned in the Corporate Sustainability Reporting Directive (CSRD), it can reasonably be concluded that it falls under the category of "sustainability impacts, risks, and opportunities." Moreover, the final report expects that the European Sustainability Reporting Standards (ESRS) will provide investors with information to evaluate the adequacy of a company's tax strategies and risk processes because the OECD MNE Guidelines stipulate that tax matters are to be considered important matters of board oversight and risk management, and this information will provide investors with information to evaluate a company's tax strategies and risk processes.

On 16 November 2022, the European Financial Reporting Advisory Group (EFRAG) approved the updated version of the ESRS. The ESRS outline requirements for comprehensive corporate reporting on ESG issues and require companies to report on all material impacts, risks, and opportunities. If topics or impacts are not covered by the ESRS, the GRI standards can be used to meet disclosure requirements. Further, according to the EFRAG, the ESRS are aligned with the GRI Standards as much as possible, which reinforces the significance of the GRI Standards for businesses operating in the EU.[3] The European Commission is expected to adopt the first set of ESRS, consisting of 12 standards, by June 2023 (see EY Global Tax Alert).

As tax transparency becomes more prominent, there has been a rise in the number of stakeholders actively advocating to bring more businesses on the

[2]See Giulia Aliprandi et al. (2022). Public Country-by-Country Reports: a New Dataset. Available from https://www.taxobservatory.eu/wp-content/uploads/2022/11/Public_CbCRs_database_description.pdf

[3]See GRI. (2022). GRI and the European Sustainability Reporting Standards (ESRS). Available from https://globalreporting.org/media/q10htdar/q-and-a-gri-and-the-esrs.pdf

bandwagon of tax transparency. This has happened by filing shareholder resolutions requesting the Board of Directors to issue a tax transparency report prepared in accordance with the GRI Tax Standard. Compared to 2021, we have seen at least a four-fold increase in the number of tax transparency shareholders' resolutions.

Next steps

Notwithstanding the above, other tax transparency-related initiatives are also being advanced. For example, in 2021, the European Commission announced a legislative proposal for the publication of effective tax rates paid by large companies based on the methodology used in the Minimum Tax Directive (ETR publication). Following the adoption of the Minimum Tax Directive in December 2022, we might see the ETR initiative gaining renewed traction.

All in all, in 2022, tax transparency has crystalized as a trend and made it clearer that tax transparency is here to stay.

DAC: Administrative Assistance

The EU's Directive on Administrative Cooperation on tax matters (DAC) originally provided for cooperation between tax authorities of Member States and the exchange of information on employment income, pension income and certain other payments. Since its first adoption, the DAC has been amended multiple times to allow for the automatic exchange of information across multiple fields of taxation.

Directive on tax transparency rules for reportable cross-border arrangements (DAC6)

DAC6 introduced some relevant changes to the DAC framework, including the introduction of a reporting obligation on certain cross-border arrangements concerning a Member State and one or more other states. DAC6 has been in force since 25 June 2018 and includes a commitment of the Member States and the Commission to evaluate the relevance of hallmarks for reporting (Annex IV). The Commission would have to present a report to the Council every two years after 1 July 2020. However, no report from the Commission was published in 2022.

Directive on tax transparency rules for digital platforms (DAC7)

On 22 March 2021, the Council adopted new rules revising the DAC to extend the EU tax transparency rules to include a reporting obligation for digital platforms located both inside and outside the EU and an automatic exchange of information between Member States' tax administrations on revenues generated by sellers on these platforms (see EY Global Tax Alert). DAC7 also introduced a number of generic changes to the DAC not limited to digital platforms, including a legal framework for the conduct of joint audits between two or more Member States as of 1 January 2024.

The Member States had until 31 January 2022 to transpose the amendments into national law, and the new rules will apply as of 1 January 2023. In early 2023, the Commission launched infringement proceedings against 14 Member States.

Directive proposal on tax transparency rules for crypto-assets (DAC8)

On 8 December 2022, the Commission published a legislative proposal for revision of the DAC to cover the exchange of information on crypto-assets (see EY Global Tax Alert). The proposed rules also contain updates to existing automatic exchange of information rules, including establishing minimum penalties for non-compliance and provisions targeting high-net-worth individuals.

The proposed rules are generally consistent with the OECD initiative on the Crypto-Asset Reporting Framework (CARF) and the amendments to the OECD Common Reporting Standard (CRS) with some deviations, such as the requirement for non-EU entities to report inside the EU under certain circumstances (see EY Global Tax Alert).

The proposal requires unanimous agreement, following which Member States will have until 31 December 2025 to transpose the main rules into national law. The new provisions will apply as of 1 January 2026.

Expected 2023 activities

On 14 December 2022, the Swedish Council Presidency programme, which highlights the main priorities in the tax area during its six-month term, was published. One of the priorities of the Swedish Council Presidency of the Council in the first half of 2023 is to ensure greater tax transparency, reinforce the exchange of relevant information within the EU and advance the work on further strengthening EU administrative cooperation on taxation. It is therefore expected that the Swedish Council Presidency will seek to make progress on the negotiations on DAC8 regarding which a political agreement is expected by the end of June.

Late January 2023, the Commission launched an evaluation of DAC2-6[4] and announced a call for evidence and a public consultation for later this year. In addition, on 20 January 2023, the Commission opened a public consultation on the draft Implementing Regulation introducing criteria of equivalence of information automatically exchanged under agreements between Member States and a non-EU country to that under DAC7. The public consultation run until 17 February 2023, and now the Commission will take the comments provided into consideration when finalizing the drafting on this initiative.

[4]For a recap on DACs please visit this EY Global Tax Alert, dated 9 December 2022.

It is expected that the EU will continue to amend the DAC to introduce new reporting requirements answering to persisting calls for increased tax transparency. Additional amendments will also be required to facilitate administrative cooperation for new tax rules, such as the Minimum Tax Directive. The 2023 evaluation of DAC is an important opportunity for the Commission and Member States to analyze the critical report of the EU Court of Auditors and for taxpayers, intermediaries and other stakeholders to share their practical experiences with the Directives.

Closing observations

The importance of tax data extends beyond compliance and reporting requirements. Today, investors are placing increasing pressure on companies to provide detailed information about their tax practices, including voluntary tax reporting (e.g., GRI, WEF metrics). This is driven not just by a desire for transparency but also by the growing recognition of tax as an ESG metric. Investors want to understand how a company's tax practices impact society and whether those practices align with the company's ESG objectives. Some companies might argue that tax is not a material concern from a financial perspective, but this may not hold true when considering the broader societal impact of taxes. Therefore, companies will find it challenging to justify ignoring tax as a material ESG metric. Companies that fail to report detailed tax data may face questions from stakeholders and investors, who are increasingly interested in the impact of a company's tax practices on society.

Against the backdrop of increased interest in ESG reporting and new national-level requirements from many revenue authorities, tax strategy and the governance of tax operations have become core elements of a company's license to operate. Good governance in tax supports trust between the company and other stakeholders, encouraging operational excellence and improved financial outcomes.

Consequently, the responsibility for tax governance is no longer solely within the realm of the tax department. Increasingly, a wider group of stakeholders, including the board of directors, the audit committee, and C-suite, are becoming actively engaged in the setting and monitoring of tax strategy and decision-making. This shift in approach is making tax governance an integral part of daily operations, impacting all aspects of the tax department's activities.

To effectively report on their tax practices, businesses must determine what information, both qualitative and quantitative, is most relevant to stakeholders and commit to gathering, verifying and understanding it. This takes time and effort, but failing to do so can put businesses at a disadvantage when answering key questions from investors and other relevant stakeholders. Considering tax impacts and developing a narrative for tax disclosures should be a part of long-term business transformation. Companies also need to pay attention to changing views of stakeholders and new metrics and reporting requirements.

Overall, the future of tax transparency is likely to be shaped by a variety of factors, including technological developments, economic trends, and political and policy changes. It will be important for governments, businesses, and other stakeholders to adapt to these changes and work together to ensure that tax systems are fair, effective, and transparent.

EU CIT initiatives beyond BEPS 2.0

Introduction

For the European Commission, 2022 was an important year to advance tax initiatives beyond the Minimum Tax Directive. As outlined in its 2021 Communication on Business Taxation for the 21st Century (the Communication) (see EY Global Tax Alert), the Commission scheduled the release of a number of tax initiatives, including the ETR publication, Unshell, DEBRA and BEFIT. While not all proposals have been delivered in line with the schedule in 2022, the Commission made important progress on a number of tax files and also delivered a few emergency measures that were not foreseen at the beginning of the year. On other fronts, the Commission will aim to make progress in 2023, as this is the last full calendar year of its term and the last year before European parliamentary elections.

Finally, with Sweden taking over the Council Presidency for the first semester of 2023, progress can also be expected on the CoC workstreams since, as announced in its Programme, one of the Council Presidency's priorities in the area of direct taxation is the development of measures against harmful tax competition such as the update of the EU list of non-cooperative jurisdictions.

Other initiatives

Combat shell entities and tax enablers as means for tax avoidance is at the top of EU Leaders' agenda

On 22 December 2021, the Commission published a legislative proposal for a Directive laying down rules to prevent the misuse of shell entities for tax purposes (Unshell or the draft Directive). The draft Directive aims at introducing an EU-wide "substance test" to assist Member States in identifying entities in the EU that are engaged in an economic activity but do not have minimal substance and, in the view of the Commission, are misused to obtain tax advantages ("shell companies") (see EY Global Tax Alert). As a consequence of being qualified as a "shell company", an entity would be denied certain benefits, such as those deriving from a tax treaty. The Directive is proposed to enter into effect on 1 January 2024.

The Member States discussed the proposal throughout the year. While there was not much public reporting on the negotiations, it became clear that there was little support for the Commission's proposal. The Member States are currently discussing a new draft of the Directive that has not been made public but reportedly deviates significantly from the framework proposed by the Commission. The ECOFIN Progress Report issued in December 2022 made clear that further technical analysis would still be required. It also signaled that the Member States disagree on whether the Directive should prescribe tax consequences provisions on the identification of and reporting on shell entities or should have a more limited scope, for example, by only focusing on reporting. As negotiations have taken more time, it is unlikely that the rules, if agreed upon, will enter into effect as of 2024.

With the impact of Unshell limited to entities resident in the EU, the Commission announced already in 2021 its intention to develop a complementary proposal that would target shell entities outside the EU. This broader initiative is now called "SAFE" - Securing the Activity Framework of Enablers. Besides having an impact on shell entities, it more widely aims to address intermediaries who, in the perception of the EU, provide aggressive tax advice. In July 2022, the Commission launched a public consultation presenting the overall objective and policy options to be developed under SAFE and requesting stakeholders to provide feedback.

The Commission is currently assessing feedback and announced the release of a proposal on 7 June 2023.

While the reform of the CoC mandate has been ticked off of the to-do list, further technical work is expected in 2023

On 1 December 1997, the Council of the EU and representatives of the governments of the EU Member States adopted a resolution on a CoC for business taxation, reflecting a political commitment by the Member States to curb harmful tax competition. As provided by the resolution, a Code of Conduct Group (the COCG) was set up. Initially, the COCG reviewed Member States' tax systems. Since 2016, one of the CoC Group's main tasks has been the preparation of the revision of the EU list of non-cooperative jurisdictions for tax purposes (EU list). In 2022, the EU list was updated twice. The first revision of 2023 took place on 14 February 2023, while the second one is due in October 2023.

EU list of non-cooperative jurisdictions (14 February 2023)

Annex I	
American Samoa	Palau
Anguilla	Panama
Bahamas	Russia
British Virgin Islands	Samoa
Costa Rica	Trinidad and Tobago
Fiji	Turks and Caicos Islands
Guam	US Virgin Islands
Marshall Islands	Vanuatu

Annex II	
Albania	Israel
Armenia	Jordan
Aruba	Malaysia
Belize	Montserrat
Botswana	Qatar
Curaçao	Seychelles
Dominica	Thailand
Eswatini	Turkey
Hong Kong	Vietnam

In 2022, the Member States agreed on a revision of the CoC (see EY Global Tax Alert). The update expands the scope of the CoC for Member States from preferential measures to cover tax features of general application, which create opportunities for double non-taxation or that can lead to the double or multiple uses of tax benefits for the same amount of income. The revised CoC applies as of 1 January 2023, while the expanded scope will apply from 1 January 2024 and will only cover general features introduced/amended after 1 January 2023. Similar conditions already apply to the assessments of non-EU country regimes.

Going forward, as reflected in a COCG Report of 2 June 2022, the COCG will continue working on evaluating the impact of Pillar Two on the CoC listing criteria. In addition, in the Council Conclusions of 24 November 2022, the Council called for the COCG to continue working on incorporating beneficial ownership as a transparency criterion.

Debt-equity reduction allowance proposal Directive on hold

On 11 May 2022, the Commission published a legislative proposal on the Debt-equity bias reduction allowance (DEBRA) initiative (see EY Global Tax Alert). The proposal aims to encourage companies to finance their investment through equity contributions rather than debt financing. This involves, among others, two measures that apply independently (i) a notional interest allowance on equity funding and (ii) a further limitation to interest deduction on debt funding.

DEBRA's reception by the Member States has not been positive, with concerns arising around the introduction of an additional limitation to interest deduction, the proportional nature of the proposal, the simplicity of the rules and its implementation costs. Also, the European Economic and Social Committee (EESC) recommended a substantial reconsideration of the proposal and exceptions to the scope for Small and Medium-sized Enterprises (SMEs) and microenterprises.

On 6 December 2022, ECOFIN noted in its Progress Report to the European Council that the DEBRA proposal would be put on hold due to its interplay with other corporate tax files.

BEFIT: a single corporate tax rulebook for the EU

With the Common Consolidated Corporate Tax Base Directive (CCCTB) proposals of 2011 and 2016 reaching a dead-end due to Member States' opposition, the Commission decided to develop a new approach to a uniform tax system within the EU. In 2022, the Commission started its work on the Business in Europe: Framework for Income Taxation (BEFIT) initiative, which is aimed at moving the EU towards a common set of rules for determining taxable income and providing for a more efficient allocation of taxing rights between the Member States. To achieve this, BEFIT will consolidate the profits of the EU members of a multinational group into a single tax base, which will then be allocated to the Member States using a formula.

On 13 October 2022, the Commission launched a public consultation, providing insight into some of the policy options and elements of the future proposal. As regards scope, the Commission is inclined to align BEFIT thresholds with those under Pillar Two as much as possible. The public consultation ended on 26 January 2023 (see EY Comment Letter).

The Commission is expected to table a concrete legislative proposal in the third quarter of 2023.

Efforts for an EU-wide withholding tax system start taking shape

In 2021, the European Parliament expressed its concerns regarding the current withholding tax system in the EU and put together a report calling on the Commission to, among others, fulfill its commitment to developing a harmonized withholding tax framework for relief at source, accompanied by an exchange of information process for tax authorities of the member states (see EY Global Tax Alert, EY Global International Tax Services Policy Leader Marlies de Ruiter's statement for the European Parliament's public hearing on withholding tax and the EY comment letter to the EU public consultation).

In its 2020 Annex to the Action Plan for a Capital Markets Union, the Commission set an ambitious indicative time for the proposal on withholding tax to be released by the end of 2022. Although it fell short of this forecast, it did manage to progress on its withholding tax initiative by launching a public consultation in April 2022. The public consultation consisted of a questionnaire with reference to the different policy options as regards the establishment of withholding tax refund procedures, a common EU relief at source system and enhancing existing administrative cooperation framework, and laid down questions on the need to combat tax abuse and accountability in case of underreporting during withholding tax procedures to avoid tax abuse and loss of tax revenue. You can find the EY comment letter submitted to the EU public consultation here.

With the public consultation ending in June 2022, the Commission is now analyzing the input received, which is expected to feed into a concrete legislative proposal on a common system for the avoidance of double taxation and prevention of tax abuse in the area of

withholding taxes (FASTER: Faster and Safer Tax Excess Refund) to be released on 7 June 2023.

EU provides a temporary response to the energy crisis

Energy prices were already on the rise before 2022, but the war in Ukraine resulted in unprecedentedly high levels of electricity wholesale price. As a response, EU Energy Ministers initiated discussions on the introduction of temporary emergency measures (see EY Global Tax Alert). As a result, in September 2022, the Commission came forward with a proposal for a regulation including two tax-related measures targeting companies in the energy sector that the EU considers have benefited disproportionately from the high energy prices (the Energy Regulation) (see EY Global Tax Alert). The Energy Regulation was adopted on 6 October 2022. It includes, among others, a revenue cap on infra-marginal electricity generating companies and an EU-wide "solidarity contribution", which will be levied at a rate of at least 33% over the surplus profits of companies in the crude petroleum, natural gas, coal and refinery sector (see EY Global Tax Alert). The revenue cap applies from 1 December 2022 to 30 June 2023, and the solidarity contribution to fiscal years 2022 and/or 2023.

Although a Regulation has a direct effect, most Member States have translated the obligation into domestic rules. As with other tax legislation adopted at EU level, Member States have taken different approaches. Perhaps the most striking example is that of Croatia, where the solidarity contribution has been introduced, applying to all sectors.

Time-line	2021				2022				2023				2024				2025	2026
EU devel-opment	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1-Q4	Q1-Q4
Foreign Subsidies Regulation		7 May						28 Nov	12 Jan									
Pillar Two Directive				22 Dec				15 Dec				31 Dec (IIR)				31 Dec (UTPR)		
Unshell				22 Dec						Expected in May 30 Jun			1 Jan					
DEBRA (on hold)						11 May						31 Dec	1 Jan					
Energy Regulation							14 Sep	6 Oct Q4										
DAC8								8 Dec		Expected in May							31 Dec	1 Jan
ETR Publication										Q2 (TBC)			Expected in 2024					
Pillar One Directive										Expected in Q2								
SAFE										Expected on 7 June								
WHT Initiative										Expected on 7 June								
BEFIT											Expected in Q3							

State of play 21 March 2023

Proposal and negotiations

Adoption

Transposition

Entry into effect

Closing remarks

2023 is the last full calendar year for the European Parliament and Commission in their five-year terms. EU citizens will elect a new Parliament in June 2024, and a new Commission will be appointed later that year. The Commission will therefore publish a number of unreleased proposals, such as the SAFE and FASTER initiatives mentioned above. For the European Parliament, it may mean that spokespersons on tax matters will want to put themselves in the voter's spotlight.

However, which tax proposals will actually take off depends on the Member States. The monthly ECOFIN meetings of EU Finance Ministers will have bursting agendas assuming that 2023 will also be marked by geopolitical and macroeconomic challenges. In response to these challenges, Member States will seek to design policies that make the EU more innovative, accelerate greening and support strategic industries. Policies that could have a major impact on tax rules in Europe and beyond, given the major role that taxation plays in meeting geopolitical objectives and addressing macroeconomic imbalances. Input from businesses and residents is indispensable to ensure that these policies are effective.

As the Member States consider these major issues, there is an important task ahead for the implementation of EU rules agreed upon in 2022. All 27 Member States will need to enact complex minimum tax laws within a short timeframe but also think about practical implementation. In addition to working on the implementation within the Inclusive Framework, coordination at EU level is also required. This is an additional opportunity for companies to share their experiences with minimum tax rules both with the OECD and the EU.

In other words, EU tax policy in 2023 is in flux on many fronts simultaneously. It is, therefore, crucial to stay on top of the latest developments and timely assess their impact on business operations and investment decisions.

A look at 2023

The content in this 2022 publication of the latest on BEPS and beyond shows that in 2022 important milestones were reached, in particular regarding the adoption of the Pillar Two GloBE Model Rules. However, even on this milestone, important open ends remain. Final rules on permanent safe harbors, a dispute resolution mechanism, and the content of the GloBE Information Return are still outstanding. With Pillar Two becoming effective in January 2024, the earlier clarity on these issues can be provided, the better.

Besides these open points in already adopted legislation leading to additional guidance being released in 2023, we are also expecting a wave of other legislative proposals to come out of the OECD and the EU in 2023 and beyond.

The OECD is still working on Pillar One and the STTR of Pillar Two. Regardless of whether a critical mass of jurisdictions will sign the Pillar One MLC, legislative developments will be put forward in 2023, if not on Pillar One, then on alternative measures adopted instead. These alternative measures may have a different scope and, with that, impact a much wider group of businesses compared to Pillar One, for example, if some form of an EU-wide digital levy were introduced.

Beyond Pillar One and Two, the EU is working on a host of other issues, from addressing shell entities and increasing public tax transparency to innovative proposals such as introducing regional formulary apportionment in the form of BEFIT. Also, the formalisation of many of the green taxes foreseen in the EU Green Deal will take place in 2023.

And as we saw in 2022, the volatile economic and geopolitical environment may also drive the adoption of "surprise taxes", such as the solidarity contribution (or so-called windfall tax), which was designed and adopted in a matter of weeks in 2022.

All in all, we hope that this edition of the Latest on BEPs and beyond provides you with a good starting point for understanding the developments in 2023. And with our monthly editions of the Latest on BEPS and beyond, we hope to also keep you updated throughout 2023.

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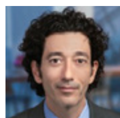

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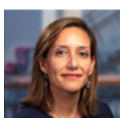

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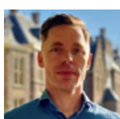

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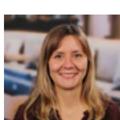

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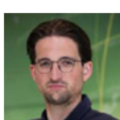

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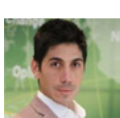

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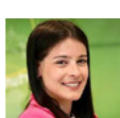

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