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Global Tax Alert

The Latest on BEPS and Beyond

June 2023

EY Tax News Update: Global Edition

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Highlights

The second half of this year is set to bring significant developments both at the European Union (EU) and Organisation for Economic Co-operation and Development (OECD) levels, shaping the landscape of international taxation. At the EU level, the negotiations on the Unshell proposal, providing rules to prevent the misuse of shell companies, has continued to face contention. But with Spain assuming the Presidency of the EU Council in the second semester of 2023, the negotiations will get a new push and may be completed before year-end.

We will also see new proposals at EU level. For instance, the EU Commission recently released its Fast Track Assured and Safer Tax Excess Refunds (FASTER) proposal as part of its commitment to improve the Capital Markets Union, aiming to simplify withholding tax procedures for certain dividend and interest payments. Additionally, a package of new "EU own resources" has been announced. These resources aim to enhance responsiveness of the EU budget to growing demands and emerging crises without increasing the Member States' budget contributions based on their gross national income. The Wishlist of EU policy makers has included new resources such as an EU financial transaction tax, a tax on cryptocurrencies, and a corporate-profits-based

contribution. Under the corporate-profits-based contribution, Member States would have to pay into the EU budget an additional amount calculated based on the profit statistics of “large companies” operating in their territories. It would be up to the individual Member States to fund this increased contribution to the EU budget.

At the OECD level, significant developments are anticipated in the next few weeks on both Pillar One and Pillar Two. While a multilateral convention to implement Pillar One is targeted for finalization by July 2023, it is not clear whether the policy makers will solve all outstanding technical and political issues in the time that remains. In any case, the Inclusive Framework will meet shortly before the G20 Finance Ministers meet in Gandhinagar on 14-15 July. This will therefore be a key meeting to reach an important milestone in the Pillar One project. The meeting might also be an opportunity to formalize agreement on a number of outstanding issues and workstreams in relation to Pillar Two. For example, the Inclusive Framework members have been negotiating for some time on the method and criteria for Pillar Two peer reviews. Additional administrative guidance for Pillar Two is also expected. In other words, many developments are to come. As always, the editorial team has you covered on the latest on BEPS and beyond.

BEPS 2.0

OECD

OECD Forum on Tax Administration launches peer-to-peer support for developing countries on the implementation of the two-pillar solution

On 13 June 2023, the OECD [announced](#) that its Pillar Knowledge Sharing Network had just held its first virtual meeting. The Knowledge Sharing Network, which was launched at the recent Forum Tax Administration’s Capacity Building Network meeting, aims to support developing countries in implementing the two-pillar solution by providing a global platform for tax administrations to share knowledge. During the virtual meeting, experts from tax administrations in “early implementer” jurisdictions discussed practical advice and lessons learned on implementing Pillar Two. This initiative complements the OECD’s strategy, which includes training, guidance, and hands-on engagements to support developing countries in implementing Pillar One and Pillar Two.

G7 leaders reiterate commitment to implementation of Pillars One and Two

On 19-21 May 2023, the G7 Leaders met in Japan for their annual summit. A [communiqué](#) summarized key topics discussed. Regarding international taxation, this communiqué reaffirms the commitment by the G7 Finance Ministers and Central Bank Governors to the swift global implementation of Pillars One and Two, previously made on 13 May 2023 (see [EY Global Tax Alert](#)).

Tax Inspectors Without Borders commits to assisting developing countries with the implementation of Pillar Two

On 15 May 2023, the Tax Without Borders (TIWB) Governing Board convened for its seventh meeting and subsequently issued a [statement](#). During the meeting, Board members acknowledged the imminent implementation of a global minimum tax and emphasized the importance of capacity building for developing countries to benefit from potential revenues. It was agreed that the TIWB initiative would assist these countries in the practical implementation of the global minimum tax rules, collaborating with other stakeholders.

Furthermore, the board members expressed their intention to broaden the scope of TIWB’s activities. This expansion would include the effective use of country-by-country reporting (CbCR) and auditing of value-added tax on digital trade.

IASB

IASB issues amendments to IAS 12 in light of Pillar Two

On 23 May 2023, the International Accounting Standards Board (IASB) [issued](#) International Tax Reform - Pillar Two Model Rules - Amendments to IAS 12 (the Amendments). The IASB amended the standard to: (i) provide timely relief for affected entities; (ii) avoid diverse interpretations of IAS 12 Income Taxes developing in practice; and (iii) improve the information provided to users of financial statements before and after Pillar Two legislation comes into effect.

The Amendments introduce: (i) a mandatory temporary exception to the accounting for deferred taxes arising from the jurisdictional implementation of the Pillar Two model rules; and (ii) disclosure requirements for affected entities to help users of the financial statements better understand an entity’s exposure to Pillar Two income taxes arising from that legislation, particularly before its effective date.

The mandatory temporary exception - the use of which is required to be disclosed - applies immediately. The remaining disclosure requirements apply for annual reporting periods beginning on or after 1 January 2023, but not for any interim periods ending on or before 31 December 2023.

See EY Tax Alert, [Amendments to IAS 12: International Tax Reform Pillar Two Model Rules](#), dated 26 May 2023.

IASB releases Exposure Draft for SMEs Standard for Pillar Two

On 1 June 2023, the IASB released the [Exposure Draft](#) on proposed amendments to the International Financial Reporting Standards (IFRS) for small to medium-sized entities (SMEs) Standard for Pillar Two. The SMEs Standard was amended because Section 29 (Income Tax) is based in IAS 12 (Income Tax), which was recently amended in light of Pillar Two. By aligning Section 29 and IAS 12, the IASB intends to avoid diverse interpretations of Section 29.

Accordingly, the amendments to the SMEs Standard include a temporary exemption for accounting and information disclosures on deferred taxes under Pillar Two rules. The IASB also decided not to introduce new disclosure requirements for SMEs during periods when Pillar Two legislation has been enacted or substantively enacted but is not yet in effect.

The Exposure Draft is open for comments until 17 July 2023.

Country developments

Bahamas announces potential implementation of Pillar Two

On 17 May 2023, Bahamas released a [public consultation](#) announcing the potential implementation of a Corporate Income Tax (CIT) system as well as implementing Pillar Two. According to the consultation document, there is a financial incentive for The Bahamas to create a minimum level of taxation for groups in-scope of the Pillar Two rules, at least from January 2024. This could take the form of a Qualifying Domestic Minimum Top-up Tax (QDMTT).

Although it is not likely for The Bahamas to implement a completely new CIT system by 2024, a new system could be gradually introduced by implementing a QDMTT as the initial phase. Given the limited time remaining until January 2024, it is likely that introducing a QDMTT from January 2024 would involve some retroactive legislation (e.g., legislation passed in 2024 with effect from January 2024).

Czechia releases Pillar Two draft legislation

On 15 May 2023, Czechia published [draft law](#) for public consultation to implement Pillar Two into domestic law. The draft law is generally aligned with the EU Directive on minimum taxation. It includes the Income Inclusion Rule (IIR) and a Domestic Minimum Top-up Tax (DMTT) for periods starting on or after 31 December 2023, and an Undertaxed Profits Rule (UTPR) generally for periods starting on or after 31 December 2024. In line with OECD guidance, a safe harbor provision is also included within the draft law.

According to the draft law, there will be an obligation to submit a return for the DMTT within 10 months after the end of the reporting period.

Guernsey, the Isle of Man and Jersey joint approach on Pillar Two

On 19 May 2023, Guernsey, the Isle of Man and Jersey [announced](#) that they have reached a decision on a joint approach to Pillar Two. This approach will comprise the implementation of an IIR and a domestic minimum tax to provide for a 15% effective tax rate for large in-scope multinational enterprises with group turnover of more than €750 million, from 2025.

The Netherlands releases draft legislation on Pillar Two

On 31 May 2023, the Dutch government sent to Parliament [draft legislation](#) to implement Pillar Two in domestic legislation. The draft legislation follows the legislative proposal released in October 2022 as part of a public consultation. The legislative proposal is structured as a separate tax law that is not intended to be embedded into the existing Dutch Corporate Income Tax Code.

In line with the EU Directive, the Dutch Government proposes that the IIR and the UTPR become effective for financial reporting years starting on or after 31 December 2023 and 31 December 2024 (respectively). The draft legislation also introduces a DMTT, which is proposed to become effective for financial reporting years starting on or after 31 December 2023.

Furthermore, the draft legislation incorporates a transitional safe harbor in line with the OECD guidance and a placeholder for a permanent safe harbor. Procedural aspects such as filing obligations, penalties, and procedures for imposing the new tax are also regulated in the draft legislation.

See EY Global Tax Alert, [The Netherlands issues proposed Pillar Two legislation](#), dated 31 May 2023.

New Zealand releases Pillar Two draft legislation

On 18 May 2023, New Zealand released Pillar Two [draft legislation](#) that introduces the “Multinational Top-Up Tax” and includes an Income Inclusion Rule (IIR) for foreign and domestic operations and an Undertaxed Profits Rule (UTPR).

Notably, the legislation includes a DMTT that is distinct from a QDMTT due to its more limited application. New Zealand’s domestic income inclusion rule (DIIR) is more limited than a QDMTT because it applies only to New Zealand-headquartered groups and limits calculations to the proportion of New Zealand ownership.

The Multinational Top-Up Tax will apply to multinational enterprise (MNE) groups with annual group revenue of at least €750 million. Rather than being classified as an income tax, it is categorized as an “ancillary tax.”

As a key feature of the Multinational Top-up Tax, these rules incorporate the Model Rules, Commentary and Agreed Administrative Guidance developed by the OECD and Inclusive Framework on Pillar Two. These rules are incorporated by reference, rather than being repeated or translated in New Zealand law. Additionally, the legislation specifies that these rules override tax treaties with New Zealand (unless specific reference in the treaty to the GloBE rules themselves).

The application date for the Multinational Top-up Tax would be set by Order in Council once the Government determines that a critical mass of countries has adopted Pillar Two. This would not be earlier than 1 January 2024 for the IIR and 1 January 2025 for the UTPR.

See EY Global Tax Alert, [New Zealand to adopt the OECD GloBE \(Pillar Two\) rules](#), dated 25 May 2023.

Norway releases draft legislation on Pillar Two for public consultation

On 6 June 2023, Norway released [draft legislation](#) for public consultation to implement Pillar Two in its domestic legislation. The draft legislation includes an IIR and DMTT. These measures are planned to take effect for the financial year 2024. The draft legislation does not include a UTPR provision, although the public consultation document clarifies that the Ministry of Finance will return to proposals on implementing the UTPR at a later date.

Furthermore, the draft legislation incorporates the Transitional Safe Harbor rules in line with the OECD Guidance and also includes aspects of the Commentary and Administrative Guidance. Similar to the EU Directive, the Norwegian legislation is proposed to cover both international MNE groups and large-scale domestic groups with an annual revenue above the €750-million threshold.

The public consultation is open until 1 August 2023.

Switzerland releases public consultation on Pillar Two

On 24 May 2023, the Swiss Federal Council opened the second public consultation of the ordinance that will temporarily regulate the OECD Pillar Two minimum corporate tax in Switzerland during a transition phase. The new part of the ordinance includes the tax obligation (one-stop shop), the joint liability of the Swiss constituent entities as well as procedural and criminal tax law aspects.

The commentary on the ordinance confirms the application of transitional CbCR safe harbor rules as well as the deferred introduction of the UTPR in Switzerland as of 1 January 2025 at the earliest, in line with the EU.

All interested parties can comment on the proposed ordinance until 14 September 2023. The ordinance is intended to apply from 1 January 2024.

See EY Global Tax Alert, [Switzerland opens public consultation on procedural aspects of the OECD’s Pillar Two minimum corporate tax](#), dated 25 May 2023.

Thailand announces new measure to alleviate potential impacts from the implementation of Pillar Two on existing tax incentive programs

Recently, the Board of Investment of Thailand (BOI) issued Notification No. 1/2566 introducing a new measure to alleviate potential impacts from the implementation of Pillar Two on existing tax incentive programs.

Under the new measure, eligible companies (i.e., companies already benefitting from tax incentives and new applicants for tax incentives with consolidated group revenue higher than €750 million) now have the opportunity to convert their current tax exemption system or apply for the new regime, which offers a 50% reduction in corporate income tax. This would effectively result in a reduced tax rate to 10% for a maximum period of 10 years.

To utilize this new measure, certain conditions must be met, and specific application procedures need to be followed. The BOI may subsequently release further guidelines and clarifications.

See EY Global Tax Alert, [Thailand BOI announces new measure for companies impacted by global minimum tax under the BEPS 2.0 Pillar Two project](#), dated 9 June 2023.

US introduces legislation discouraging countries from adopting the UTPR

On 25 May 2023, the Chairman of the House Ways and Means Committee, joined by every Republican member of the Committee, introduced [legislation](#) aimed at discouraging countries from adopting the Pillar Two UTPR, reflecting concern about the potential impact of the UTPR on US MNEs that have an effective tax rate of less than 15% as calculated under the Pillar Two rules on their US profits because they have availed themselves of US tax incentives. The legislation would increase taxes on US income of companies headquartered in countries that enact the UTPR. It would also apply in the context of other foreign taxes imposed on US income that meet specified definitions of extraterritorial or discriminatory taxes.

BEPS and other developments

OECD

Uzbekistan joins Inclusive Framework on BEPS

On 9 June 2023, Uzbekistan [joined](#) the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), bringing the total number of members to 143. As a new Inclusive Framework member, Uzbekistan has committed to comply with the BEPS minimum standards, which are contained in the final reports on Action 5 (Countering Harmful Tax Practices), Action 6 (Preventing Treaty Abuse), Action 13 (Transfer Pricing Documentation) and Action 14 (Enhancing Dispute Resolution). Uzbekistan will also participate on an equal footing with the members of the Inclusive Framework in the remaining standard setting activities, as well as the review and monitoring of the implementation of the BEPS package.

Further, Uzbekistan has committed to addressing the tax challenges arising from the digitalization and globalization of the economy by joining the two-pillar plan to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate, bringing to 139 the total number of jurisdictions participating in the project.

Global Forum Secretariat launches new guidance on implementing secure systems for the automatic exchange of information

On 9 June 2023, the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) [announced](#) that it has developed new guidance for implementing a secure perimeter for automatic exchange of information purposes. The guidance was launched in French on 7 June 2023 and in English on 8 June 2023 and is available on demand to all interested jurisdictions.

The guidance helps jurisdictions interested in automatic exchange of information (AEOI), such as the Common Reporting Standard on financial accounts or CbCR. Its purpose is to assist in the design and implementation of a secure perimeter within the operations of these jurisdictions, ensuring the robustness of information security controls in accordance with internationally agreed requirements for AEOI.

This guidance aligns with the Global Forum Secretariat's Strategy, which aims to unlock the potential of AEOI for developing countries. In combination with the tailored technical assistance on information security available to all member jurisdictions, the guidance provides further support in enabling jurisdictions to implement the elements of AEOI in a cost-effective and timely manner.

OECD updates list of signatories of the CbC MCAA

On 8 June 2023, the OECD [updated](#) the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). According to this update, Faroe Islands signed the CbC MCAA on 17 May 2023. The total number of jurisdictions that have signed the CbC MCAA is now 97.

OECD approves principles of corporate governance and releases update to Guidelines for Multinational Enterprises and OECD Ministers

During the OECD Ministerial Council Meeting on 7-8 June 2023, the OECD Ministers approved the [revised G20/OECD Principles of Corporate Governance](#). These principles, to be endorsed by G20 Finance Ministers and Central Bank Governors in July 2023, include a new section on "Sustainability and resilience," providing recommendations to help companies navigate climate transition risks and other sustainability challenges. The revised principles also address evolving trends such as corporate ownership, the role of institutional investors, increased corporate risks, and the influence of digitalization.

At the same meeting, the OECD released an update to the [Guidelines for Multinational Enterprises](#). The OECD Guidelines for MNEs are recommendations to MNEs to enhance the business contribution to sustainable development and address adverse impacts associated with business activities on people, planet and society. Since their introduction in 1976, the Guidelines have been continuously updated to remain fit for purpose in light of societal challenges and the evolving context for international business. This update reflects a decade of experience since their last review in 2011 and responds to urgent social, environmental, and technological priorities facing societies and businesses.

The Guidelines include a chapter on taxation, which was updated to, among other things, emphasize the importance of tax transparency in upholding the integrity of a country's tax system and ensuring compliance with tax laws. It also highlights various actions from the OECD/G20 Inclusive Framework on BEPS project aimed at improving transparency, including the exchange of CbCRs, disclosure of taxpayer-specific rulings, and mandatory disclosure rules for aggressive tax planning schemes. Additionally, it underscores the significance of the Multilateral Instrument (MLI) in reinforcing the coherence and consistency of the international tax rules, including minimum standards for the for the avoidance of treaty abuse and for the improvement of dispute resolution through positive relationships, cooperation and reciprocity.

Furthermore, the OECD Ministerial Council Meeting resulted in the release of a [statement](#) and [key issues paper](#). The statement reaffirms support for developing countries in swiftly implementing the two-pillar solution and existing international tax rules, emphasizing increased access and use of CbCR. The new Crypto-Asset Reporting Framework and revised Common Reporting Standard were welcomed as international standards. The Ministerial Council encouraged the OECD to collaborate with interested jurisdictions and stakeholders to explore further improvements in tax transparency.

OECD releases crypto-asset reporting framework and 2023 update to the CRS

On 8 June 2023, the OECD [released](#) the crypto-asset reporting framework (CARF) and 2023 update to the Common Reporting Standard (CRS). The CARF has been established to facilitate the automatic exchange of tax-relevant information concerning crypto assets. It is designed to effectively respond to the rapid expansion and evolution

of the crypto-asset market, ensuring that the progress made in global tax transparency is not undermined over time. This document includes the CARF Rules, the Multilateral Competent Authority Agreement (CARF MCAA) on Automatic Exchange of Information under the CARF, and accompanying commentaries. To become a signatory of the CARF MCAA, the Competent Authority of a jurisdiction or its designated representative must sign the Declaration of the Agreement and notify the OECD Secretariat. The CARF MCAA will come into effect between two Competent Authorities on the date on which the second of the two Competent Authorities has provided notification to the OECD Secretariat.

As an alternative to the CARF MCAA, jurisdictions can also establish automatic-exchange relationships through bilateral competent authority agreements based on bilateral double-tax treaties or tax information exchange agreements that permit the automatic exchange of information, or the Convention on Mutual Administrative Assistance in Tax Matters.

The update to the CRS includes amendments to expand its scope to include certain electronic money products and Central Bank Digital Currencies. Furthermore, the changes ensure that indirect investments in crypto assets through derivatives and investment vehicles are now covered by the CRS. Additionally, the amendments aim to strengthen due diligence and reporting requirements, including reporting the role of each Controlling Person, and introduce a provision for genuine nonprofit organizations. The update also includes an Addendum to the Multilateral Competent Authority Agreement (CRS MCAA) on Automatic Exchange of Financial Account Information and their respective commentaries.

The Addendum can only be signed by signatories of the CRS MCAA. When signing the Addendum, or as soon as possible thereafter, the signatory must indicate certain information (e.g., its jurisdiction has the necessary laws in place to implement the update to the CRS and specifying the relevant effective dates).

According to the document, ongoing work is being conducted to develop a dedicated XML Schema to facilitate information exchange under the CARF and an updated version of the CRS XML schema to support exchanges under the amended CRS. These schemas will be published separately.

The OECD recommends transposing the International Standards for Automatic Exchange of Information in Tax Matters (i.e., CARF and CRS) into domestic law. The OECD also recommends following the latest commentaries when applying and interpreting the relevant domestic law provisions.

Spain notifies completion of domestic procedures for certain Covered Tax Agreements under the MLI

On 1 June 2023, Spain submitted an additional [notification](#) to the OECD indicating the completion of its internal procedures for the entry into effect of the MLI provisions with respect to certain Covered Tax Agreements (CTAs). This notification is required when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI. In this case, Spain's notification relates to CTAs with Bulgaria and South Africa.

Following Spain's notification of the completion of its internal procedures regarding the CTAs, the MLI will take effect on the notified treaties 30 days after the deposit with the OECD.

Viet Nam deposits instrument of ratification of the MLI with the OECD

On 23 May 2023, Viet Nam [deposited](#) its instrument of ratification of the MLI with the OECD. When depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Viet Nam confirmed its preliminary positions. The MLI will enter into force for Viet Nam on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of their instrument of ratification (i.e., on 1 September 2023).

Sierra Leone joins Global Forum

On 15 May 2023, Sierra Leone [joined](#) the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), becoming the 168th member. With the inclusion of Sierra Leone in the Global Forum, Sierra Leone commits to combatting offshore tax evasion through the implementation of the internationally agreed standards of exchange of information on request and automatic exchange of financial account information.

European Union

European Commission publishes draft Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER)

On 19 June 2023, the European Commission (Commission) published a legislative proposal for a Directive setting forth rules that aim to make withholding tax (WHT) procedures in the EU more efficient and secure for investors, financial intermediaries and Member States (the draft [Directive](#) is also referred to as FASTER).

The draft Directive proposes the introduction of (i) a common EU digital tax residence certificate to be issued within one working day after the submission of a request; (ii) a choice for Member States between "relief at source" procedure and a "quick refund" system or a combination of both; and (iii) a standardized reporting obligation through the establishment of a national register of certified financial intermediaries open to non-EU intermediaries as well on a voluntary basis.

Together with the draft Directive, the Commission also launched a [public consultation](#) where public input can be provided on the proposal in the form of open comments by 14 August 2023.

The draft Directive will now move to the negotiation phase among Member States with the aim of reaching a final agreement. The Commission proposes that the Member States shall transpose the Directive into their national laws by 31 December 2026 for the rules to come into effect as of 1 January 2027.

Conclusions of the ECOFIN meeting

During the 16 June 2023 Economic and Financial Affairs (ECOFIN) Council [meeting](#), the Council adopted its report (progress report) to the European Council on tax issues and the Code of Conduct Group (COCG) progress report.

Swedish Presidency progress report

The presidency progress [report](#) includes the state of play on all key tax initiatives, including DAC8 (Directive introducing tax transparency rules for crypto assets), the Code of Conduct, and Unshell.

On Unshell, the Presidency confirms that there are still many outstanding issues of contention in the negotiations between Member States.

As a new item, the report references a draft "Multilateral Convention on the International Tax Dispute Resolution Council" that a number of Member States have developed under the EU's [Fiscalis](#) program. This initiative aims to establish an "alternative dispute resolution commission of a permanent nature" (a "Standing Committee"), which is foreseen in the [Directive](#) on tax dispute resolution mechanisms. Under the Directive on tax dispute resolution mechanisms, an advisory commission is set up to provide its opinion on how to resolve the dispute that has arisen. The standing committee replaces the advisory commission and is responsible for delivering opinions on dispute resolution while providing flexibility in the choice of dispute resolution methods.

Code of Conduct Group progress report

The Member States also approved the ECOFIN [report](#) on the progress achieved by the Code of Conduct Group (COCG) during the Swedish Presidency. There are three material issues mentioned in the report: (i) new criterion on beneficial ownership information (COCG continued working on the design); (ii) a monitoring mechanism on tax defensive measures against listed jurisdictions (COCG concluded that further work is needed to develop an efficient, flexible monitoring mechanism); and (iii) extension of the geographical scope (COCG examined the possibility of extending the geographical scope of the EU list and how jurisdictions would be selected for the EU screening exercise). For all these the workstreams, the COCG concluded that further work is necessary.

Commission launches public consultation on CBAM reporting obligations during transitional period

On 13 June 2023, the Commission launched a [public consultation](#) on a draft [Implementing Regulation](#) establishing reporting obligations for the transitional period (from 1 October 2023 to 31 December 2025) of the carbon border adjustment mechanism (CBAM). Stakeholders may provide input until 11 July 2023.

As for the next steps, the Commission will examine the feedback received once the consultation has concluded and shape the final version of the Implementing Regulation.

Commission publishes Q&A on the Foreign Subsidies Regulation

On 7 June 2023, the European Commission (the Commission) published a [Questions and Answers](#) (Q&A) on various aspects of the Foreign Subsidies Regulation (FSR), which will apply as of 12 July 2023. The FSR effectively expands the scope of the European Union's (EU) existing state aid rules to also cover state aid provided by non-EU jurisdictions.

While nonbinding, the Q&A provides several insights on procedural and jurisdictional issues, implementation and practical aspects. Among others, the Q&A indicates that the notification requirements do not apply to mergers and acquisitions for which the agreement was concluded on or after 12 July 2023 but implemented before 12 October 2023. In addition, the Q&A suggests a broad definition of contributions for the threshold of the rules, which will include tax exemptions and tax holidays.

As for next steps, the Implementing Regulation and notification forms are expected to be published prior to the application of the rules, meaning before 12 July 2023.

UN releases policy brief to reform the international financial architecture

On 18 May 2023, the United Nations (UN) Secretary-General issued a [policy brief](#) to reform international financial architecture in preparation for the "Summit of the Future," to be held in 2024. This event aims to build a new global consensus on what the future should look like, and what we can do today to secure it. The UN Secretary-General has been asked to provide action-oriented recommendations to contribute to the Summit's preparations. These recommendations are built upon proposals presented in the report "[Our Common Agenda](#)," which was developed in response to the declaration on the UN's 75th anniversary. This policy brief represents one of these contributions, incorporating inputs from Member States, intergovernmental and multi-stakeholder consultations, and aligning with the principles in the United Nations Charter, the Universal Declaration of Human Rights, and other relevant international instruments.

The policy brief includes a section addressing "Redesign the global tax architecture for equitable and inclusive sustainable development." A central idea raised in action plan is to rebalance both decision making and resource allocation in international financial institutions to reflect the voice of all country members, especially developing countries and to link access to financing based more on needs and vulnerabilities and less on quotas. This theme is embedded in all of the action recommendations.

The policy brief enumerates three distinct actions aimed at reforming the international financial architecture, all echoing the new policy recommendations by the OECD in the first BEPS agenda and "BEPS 2.0." Action 15 highlights the importance of simplified international tax rules due to the digitalization and globalization of the economy, with developing countries advocating for straightforward measures such as digital or withholding taxes. Action 16 underlines that developing countries are calling for a global minimum rate higher than 15% and emphasizing source-country taxation to combat tax base erosion. Action 17 promotes the adoption of publicly accessible CbCR by multinational enterprises and the strengthening of beneficial ownership transparency systems. Further, it proposes establishing nonreciprocal tax information exchange mechanisms to support the interests of developing countries.

Country developments

Australia releases guidelines on intangible arrangements

On 17 May 2023, the Australian Taxation Office (ATO) released the second draft of [Practical Compliance Guideline \(PCG\) 2023/D2](#) on intangible arrangements with foreign related parties. This PCG focuses on transfer pricing and outlines the ATO's compliance approach and risk factors associated with intangible arrangements involving the development, enhancement, maintenance, protection, and exploitation (DEMPE) of intangible assets or their migration offshore.

The PCG introduces a risk-assessment framework with two categories: (i) migration of intangible assets, and (ii) mischaracterization of DEMPE activities. Taxpayers are expected to provide detailed analysis and supporting evidence for in-scope intangible arrangements. The PCG does not address issues relating to how intangible arrangements should be remunerated, priced, or benchmarked. In addition, it is expected that taxpayers will be required to disclose the risk rating for their intangible arrangements through their Reportable Tax Positions schedule (where applicable).

See EY Global Tax Alert, [Australian Taxation Office issues second draft of compliance guidelines on intangibles arrangements](#), dated 25 May 2023.

Canada releases public consultation to update transfer pricing rules

On 6 June 2023, the Canadian Department of Finance released a [consultation paper](#) to reform and modernize Canada's transfer pricing rules. The consultation document includes a series of potential changes intended to provide greater clarity on the application of the arm's-length principle in Canada. The consultation document provides stakeholders with the opportunity to provide input on administrative matters connected to transfer pricing, such as documentation and penalty provisions and the possibility of adopting more modern or simplified approaches in specific situations. The proposed changes include: (i) new de minimis transaction rules and exemptions for small taxpayers; (ii) safe-harbor interest rates or ranges; (iii) higher thresholds for transfer-pricing penalties; (iv) new streamlined pricing approaches for certain transactions, such as low-value-adding intra-group services and distribution.

The consultation document also explores the potential adoption of a standardized OECD-style Local File/Master File model for transfer pricing documentation. For the Local File, Canada proposes an alternative approach that balances materiality considerations with safeguards against base erosion. As for the Master File, Canada suggests requiring the filing of a prescribed form upon request by the Canadian Revenue Agency, but only for taxpayers who are part of larger MNE groups subject to CbCR requirements.

Germany's Lower House of Parliament approves bill implementing EU Public CbCR Directive

On 11 May 2023, the Lower House of the Parliament of Germany [approved](#) the government bill implementing the EU Public Country-by-Country Reporting Directive (the Directive) into domestic law.

The legislation is generally in line with the Directive and the approved government bill now includes increased penalties for violations of the disclosure requirements (up to €250,000).

The bill needs to be approved by the German Federal Council (upper house of Parliament) and published in the *Official Gazette* before it enters into force. The bill is expected to apply for financial years beginning on or after 21 June 2024.

Germany issues new transfer pricing guidelines

On 6 June 2023, the Federal Ministry of Finance of Germany issued new [administrative principles](#) clarifying the German transfer pricing rules. The new guidance replaces the Administrative Principles Transfer Pricing (AP TP) issued on 14 July 2021 and is intended to align the AP TP to the current transfer pricing rules in Germany. Importantly, the administrative principles include new administrative guidance on the German cross-border transfer of function rules to align the existing Administrative Principles on Transfer of Business Functions as of 13 October 2010 with recent legal changes of the cross-border transfer of function rules in the *German Foreign Tax Act* and the corresponding updated Order Decree Law on Transfer of Business Functions. With respect to intercompany financing transactions, the Ministry of Finance aligns its interpretation on the examination of income allocation between entities involved in financing transactions with recent German jurisprudence of the Federal Fiscal Court on the determination of intercompany interest rates for intercompany loans.

The provisions of the updated AP TP apply to all open tax cases effective immediately, with the exception of cross-border transfer of functions realized before 1 January 2022, for which the existing Administrative Principles on Transfer of Business Functions as of 13 October 2010 still apply.

German government responds to Parliamentary questions on DAC6

On 8 May 2023, the Government of Germany [issued](#) responses to questions of the Parliament regarding the interim findings and outcomes of the application of rules implementing the Directive on Administrative Cooperation on cross-border tax arrangements (DAC6 or MDR) into domestic law.

According to the findings, by 31 March 2023, the German Federal Tax Office had received 26,921 disclosures of cross-border tax arrangements, the vast majority of which (76.5%) were filed by intermediaries and the rest by relevant taxpayers. In addition, 24 out of the 206 identified potentially aggressive tax planning arrangements that led to a need for legal policy action.

In addition, the responses indicate that according to a coalition agreement of the German government, the reporting obligation under DAC6 will be extended to purely domestic arrangements.

Irish Revenue releases Tax and Duty manual on foreign entity classification for Irish tax purposes

On 18 May 2023, Revenue Commissioners - Irish Tax and Customs (Revenue) published the Tax and Duty Manual (TDM) [Part 35C-00-02](#) to clarify the foreign entity classification for Irish tax purposes.

Where a foreign entity is involved in a transaction that is within the scope of Irish taxes, the classification of that foreign entity can be essential in determining the Irish tax implications and availability of Irish tax relief. Generally, there are two entity classifications for Irish tax purposes - entities that are "opaque," such as Irish companies, and entities that are "transparent," such as partnerships. The purpose of the TDM is to provide clarity on the approach taken to classify a foreign entity for Irish tax purposes; however, it is noted that each entity should be considered individually based on its own facts and the principles set out in case law.

The TDM sets out examples of the case law to be considered when determining the classification of a foreign entity, including the relevant factors derived from case law and the application of the "Two-Stage Test." Where there continues to be uncertainty after the classification of these entities, it may be possible to submit a request to Revenue through the Revenue Technical Service (RTS) framework.

Kenya enhances Corporate Income Tax (CIT) filing to include details of related party transactions

On 5 June 2023, the Kenya Revenue Authority issued a [Public Notice](#) notifying taxpayers that the CIT Return on the [iTax Platform](#) has been enhanced, allowing the declaration of transactions between related parties. This option is available for persons with related parties for which (i) the ascertainment of gains or profits from business related to stock is deemed to be derived from Kenya; or (ii) the gains or profits of business are derived under a preferential tax regime.

When filing the CIT return, taxpayers with transactions with related parties should indicate the existence of (i) related parties outside Kenya; and (ii) controlled transactions, under the Tax Company return.

Luxembourg releases circular clarifying the calculation of taxable income of hybrid entities

On 9 June 2023, the Luxembourg Inland Revenue released [Circular L.I.R. no. 168quater/1](#), providing clarifications on the determination of the taxable income in case of hybrid entities subject to corporate income tax in Luxembourg.

Hybrid entities are taxed in Luxembourg on their income from movable property, rental income and miscellaneous income, on a net basis (income less related costs) and only when they are not taxed elsewhere. The Circular further clarifies that income distributions to the hybrid entity's holders are not subject to withholding tax in Luxembourg, while withholding taxes paid abroad are credited against Luxembourg CIT.

Luxembourg publishes Decree implementing DAC7 in Official Journal

On 19 May 2023, Luxembourg [published](#) in its *Official Gazette* a Decree implementing DAC7 into domestic law. DAC7 expands reporting obligations and exchange of information to cover sales through digital platforms.

The Decree entered into force on 1 June 2023 (the first day of the month following its publication in the Official Journal) with the exception of the provision on joint audits, which will enter into force on 1 January 2024.

Luxembourg Inland Revenue clarifies registration procedure under DAC7

On 12 June 2023, the Luxembourg Inland Revenue published a [newsletter](#) providing clarifications with regard to the registration procedures under the Directive on Administrative on reporting obligations of digital platform operators (DAC7).

According to the newsletter, both Reporting and Excluded Platform Operators should register electronically via MyGuichet with the tax administration by 31 December 2023. Reporting Platform Operators should also file electronically to the administration of direct contributions the income received by sellers passing through their platform related to covered activities under DAC7 on an annual basis.

The information should be communicated by 31 January of the year following the calendar year during which the seller is identified as a Reportable Seller. Thus, the first declaration will concern information relating to 2023 and must be filed with the administration by 31 January 2024.

Malaysia introduces new Transfer Pricing Rules 2023

On 29 May 2023, the Inland Revenue Board of Malaysia (IRB) released new [Transfer Pricing \(TP\) Rules](#), revoking the TP guidelines issued in 2012. Taxpayers are required to prepare and maintain robust local TP documentation, providing additional information and analysis on the MNE Group, such as groupwide organization structure, description

on group's business, supply chain of business products or services of the Group, etc. The contemporaneous TP documentation must be prepared prior to the due date for filing the tax return and the date of preparation must be stated on the documentation.

The new rules tighten the band of the "arm's-length range" between the 37.5th and 62.5th percentiles of the data set to assess the appropriate price. If the price falls within the range, it is generally acceptable. However, the IRB has discretion to adjust the price of a controlled transaction to the median or any point above the median, due to comparability defects which cannot be quantified, identified or adjusted. Also, when the price is outside the range, the arm's-length price is determined as the median.

The new rules provide additional guidance on comparability analysis including the accurate delineation of a controlled transaction before determining a comparable uncontrolled transaction, and functional analysis considerations for the accurate delineation of a controlled transaction. Furthermore, they emphasize that the contributor to the value of the intangible property through DEMPE is entitled to an arm's-length consideration, regardless of legal ownership.

These rules will apply for the year of assessment (YA) 2023 (i.e., 1 January 2023 to 31 December 2023 and subsequent YAs).

Poland to lift COVID-19 suspension for MDR deadlines by the end of June 2023

Recently, Polish authorities [announced](#) that they anticipate the country's COVID-19 epidemic emergency status to be canceled on 1 July 2023.

Mandatory disclosure rules (MDR) reporting deadlines for certain tax arrangements have been suspended due to the epidemic emergency status. The planned lifting of the epidemic emergency status means that the suspension of MDR reporting deadlines will end 30 days from the point when the epidemic emergency is lifted (i.e., end of July 2023).

See EY Global Tax Alert, [Poland to lift COVID-19 suspension for MDR deadlines by end of June 2023](#), 4 May 2023.

Qatar issues Amended Regulations including updated economic substance rules

On 16 May 2023, the Council of Ministers of Qatar published Decision No. 3 of 2023 (Amended Regulations), amending the Executive Regulations of the Income Tax Law.

The Amended Regulations expand on current economic substance rules in Qatar, among other changes. Qatar's economic substance rules apply to entities that in the two preceding fiscal years meet a number of requirements (Relevant Entity). A number of entities are excluded. The rest Relevant Entities are considered to be Reporting Relevant Entities and must indicate in their annual corporate tax return whether they have (i) an exclusively owned or used location in Qatar, and (ii) at least one active bank account in Qatar (Minimum Economic Substance). The Reporting Relevant Entity will need to demonstrate that it also meets at least one additional condition, among a list of several.

In case a Reporting Relevant Entity is unable to demonstrate Minimum Economic Substance, the tax authorities can either decline to issue a tax residency certificate or apply a financial penalty equal to 15% of the net income of the Reporting Relevant Entity.

The Amended Regulations are effective from 17 May 2023, the day after they were published in the *Official Gazette*.

See EY Global Tax Alert, [Qatar amends Executive Regulations to the Income Tax Law](#), dated 24 May 2023.

Spain introduces DAC7, amends MDR and amends interest limitation rules

On 25 May 2023, Spain published in the *Official Gazette* [Law 13/2023](#), introducing several tax measures. Among other items, the Law implements DAC7 into domestic law. DAC7 expands reporting obligations and exchange of information to cover sales through digital platforms. The bill will apply retroactively as of 1 January 2023.

The new law also modifies the Mandatory Disclosure Rules (MDR or DAC6) following the Court of Justice of the European Union decision of 8 December 2022. As per the amendment, lawyers bound by professional secrecy are now only required to inform their clients of their information obligation waiver, rather than notifying all intermediaries. This change took effect on 26 May 2023.

Furthermore, the Law amended the interest deduction limitation in line with the Anti-Tax Avoidance Directive (ATAD) that allows companies to deduct their net financial expenses only up to 30% of their operating profit (earnings before interest, taxes, depreciation and amortization or EBITDA), with a minimum deduction of €1 million, allowing a deferral of the transposition of certain provisions. Effective from 1 January 2024, the Law will introduce a new definition of EBITDA, excluding all expenses or income that have not been included in the taxable base of the CIT (e.g., exempt dividends or capital gains under the participation exemption regime or exempt income derived from permanent establishments).

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP (United States), Global Tax Desk Network, New York

- ▶ Ana Mingramm ana.mingramm@ey.com
- ▶ Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- ▶ Roberto Aviles Gutierrez roberto.aviles.gutierrez1@ey.com

Ernst & Young Belastingadviseurs LLP, Rotterdam

- ▶ Marlies de Ruyter marlies.de.ruyter@nl.ey.com
- ▶ Maikel Evers maikel.evers@nl.ey.com
- ▶ Andromachi Anastasiou andromachi.anastasiou@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- ▶ David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- ▶ Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com

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