18 July 2023
Global Tax Alert

The Latest on BEPS and Beyond

July 2023

EY Tax News Update: Global Edition

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Highlights

On 10-12 July 2023, the Inclusive Framework met in Paris to give a push to a few Base Erosion and Profit Shifting (BEPS) 2.0 deliverables that businesses were awaiting. A statement by the Inclusive Framework reflected an agreement reached by most of the Inclusive Framework member jurisdictions on the remaining elements of the BEPS 2.0 project – the Multilateral Convention on Amount A of Pillar One, a report on Amount B under Pillar One, the Subject-to-Tax Rule (STTR) under Pillar Two and its Multilateral Agreement and an action plan to support the implementation of both pillars.

The statement provided an update on the progress on Amount A for which the Inclusive Framework intends to release the Multilateral Convention (MLC) during the second half of this year after a few outstanding items are resolved. A signing ceremony could then follow by year-end, with the aim to bring the MLC entry into force by 2025.

Amount A is not ready yet and there may be a delay in its entry into effect, likely impacting the timeline for the Digital Services Tax (DST) standstill, which had been anticipated by year-end. Consequently, the statement highlights that the Inclusive Framework members have agreed to extend the standstill if at least 30 jurisdictions, accounting for a minimum of 60% of Ultimate Parent Entities of in-scope Multinational Enterprises (MNEs), sign the MLC by year-end.

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However, Canada and the African Tax Administration Forum have raised concerns over the potential extension of the DST standstill and questions remain about whether jurisdictions will reconsider their imposition of DSTs or similar measures in the near future.

For Amount B, the Inclusive Framework released another consultation draft on the scope and pricing framework for Amount B. Amount B would then be finalized by year-end for incorporation into the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines in January 2024.

On 17 July 2023, the Inclusive Framework also adopted and released a host of Pillar Two documents. The long-awaited STTR model treaty provisions and Commentary were released. The provisions introduce a conditional source-taxing right on an extended list of transactions, but with exceptions for various categories of beneficiaries of the income.

Another document provides additional guidance on the Global anti-Base Erosion (GloBE) rules, including two new safe harbor rules. The qualifying domestic minimum top-up tax (QDMTT) safe harbor rule will be tied to a new peer review process. However, the assessment criteria of this process is pending to be released. The transitional Undertaxed Profits Rule (UTPR) safe harbor will benefit certain ultimate parent entities (UPEs) in jurisdictions that are not adopting a top-up tax and maintain a nominal corporate tax rate of at least 20% and creating an unlevel playing field between certain MNE groups depending on their headquarter location.

All this activity gives us plenty of reading for the upcoming summer break with no doubt that the last months of 2023 will again be full of international developments to bring to you.

BEPS 2.0

OECD

OECD releases documents on Pillar One and Pillar Two

On 17 July 2023, the OECD released several technical documents on Pillars One and Two of the OECD/G20 project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project). At the same time, the OECD released additional documents covering a range of international tax topics, including developments with respect to tax transparency, that were prepared for a meeting between the G20 Finance Ministers and Central Bank Governors in Gandhinagar, India on 17-18 July.

The documents released on Pillar Two have been approved by the Inclusive Framework on BEPS. The Administrative Guidance on the GloBE Model Rules provides additional information on a series of technical issues and includes two new safe harbors. The GloBE Information Return has been finalized and includes a transitional framework for simplified reporting on a jurisdictional, rather than entity, basis in addition to specifying how the information is to be shared among jurisdictions that implement the GloBE Rules. The report on the STTR provides model tax treaty provisions and related commentary that can be used by jurisdictions to incorporate the STTR in their bilateral tax treaties.

On Pillar One, the OECD released a public consultation document on Amount B, reflecting further developments since the earlier consultation on this topic and seeking input from stakeholders. This document does not yet reflect consensus as there are remaining open issues.

See EY Global Tax Alert, *OECD/G20 Inclusive Framework releases documents on Pillars One and Two: First Impressions*, dated 18 July 2023.

OECD releases statement on the progress on Pillars One and Two

On 12 July 2023, at the conclusion of the 15th meeting of the OECD/G20 Inclusive Framework on BEPS, the OECD released a statement reflecting the agreement reached by 138 of the 143 Inclusive Framework member jurisdictions on the remaining elements of their project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project).

The July 2023 statement summarizes the Inclusive Framework deliverables in four areas:

1. The Multilateral Convention (MLC) on Amount A of Pillar One
2. Amount B of Pillar One
3. The Subject to Tax Rule (STTR) under Pillar Two
4. Plan for implementation support

See EY Global Tax Alert, *OECD releases outcome statement on progress on Pillars One and Two of BEPS 2.0 project*, dated 12 July 2023.

European Union (EU)

Commission BEPS 2.0 Progress Report announces upcoming OECD releases

On 30 June 2023, as required by the EU Directive on minimum taxation, the European Commission released a Progress Report with a brief assessment of the state of play of the negotiations at the OECD on BEPS 2.0 and Pillar One, in particular.

On Amount A, the OECD Secretariat aims to finalize the technical work by 10-12 July 2023 and present the package of the Multilateral Convention (MLC) and the Explanatory Statement. The signing ceremony of the MLC is expected to take place at the end of 2023. It is also expected that the Inclusive Framework will update its commitment to the DST standstill.

In addition, the OECD Secretariat anticipates a preliminary agreement in the Inclusive Framework this month on the main components of Amount B with the aim to have a final version by the end of 2023. In particular, the OECD aims to reach an agreement on the following elements of Amount B:

- The scope, to better define the list of excluded activities and the pricing methodology for digital goods
- The opening of a validation phase on the pricing framework that will run till the end of the year and that will entail the launch of a new public consultation

Amount B is expected to be included in the OECD Transfer Pricing Guidelines in January 2024, with a review to take place after three years of implementation.

ATAF releases statement on the progress of Pillar One and Pillar Two

On 12 July 2023, the African Tax Administration Forum (ATAF) issued a statement in response to the outcome statement released by the OECD on the progress of Pillar One and Pillar Two. The statement highlights ATAF's concerns regarding the potential delay of the DST standstill and emphasizes their commitment to collaborate with the African Union at the policy level to explore taxation options for digital firms. The aim is to ensure that African countries do not miss out on tax revenues from the profits earned by these firms, both before and after the Multilateral Convention takes effect.

Moreover, ATAF affirms its commitment to working closely with the Inclusive Framework to secure the inclusion of Amount B in the forthcoming January 2024 edition of the OECD Transfer Pricing Guidelines.

Furthermore, the statement notes the successful negotiation between ATAF and African countries within the Inclusive Framework, whereby all payments related to service provisions fall within the scope of the STTR. Additionally, during the STTR negotiations, priority was established for applying the STTR over the GloBE rules, thereby disregarding any tax under an Income Inclusion Rule (IIR), Undertaxed Profits Rule (UTPR), or Domestic Minimum To-Up Tax.

According to the statement, ATAF's involvement in the negotiations of the BEPS 2.0 project has allowed Africa to have a stronger voice in shaping the global tax rules, and they will continue to work towards a fairer international tax system.

Country developments

Australia amends accounting standard to align it with Pillar Two disclosures

On 27 June 2023, the Australian Accounting Standards Board amended Accounting Standard AASB 112 which deals with accounting for income taxes (equivalent to IFRS IAS 12) due to the implementation of the OECD's Pillar Two Model Rules. The amendments are as a consequence of and in line with the amendments to the IFRS IAS 12. The amendments to AASB 112 introduce:

- A mandatory temporary exception to accounting for deferred taxes arising from the implementation of the Pillar Two Model Rules published by the OECD
- Targeted disclosure requirements to help financial statement users better understand an entity's exposure to income taxes arising from the reform, particularly in periods before legislation implementing the rules is in effect

The amended standard applies to annual periods beginning on or after 1 January 2023 that end on or after 30 June 2023. The targeted disclosure requirements are not required for any interim period ending on or before 31 December 2023. Earlier application is permitted.

Bulgaria intends to introduces a domestic top-up tax

On 27 June 2023, the Ministry of Finance of Bulgaria published a draft of a mid-term budget forecast for the period 2023-2025 (Forecast), along with the *2023 Budget Act* amendments. The Forecast outlines Bulgaria's intention to introduce a "domestic top-up tax" starting from 1 January 2024 in line with Council Directive (EU) 2022/2523. However, the specific scope of the term "domestic top-up tax" remains unclear whether such the includes the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR) and/or a Qualified Domestic Top-Up Tax.

More details on the implementation of Pillar Two in Bulgaria are expected in the following months.

Canada releases statement on DST standstill

On 12 July 2023, the Canadian Deputy Primer Minister issued a statement on international tax reform negotiations. This statement is in response to the Outcome Statement released by the OECD on the progress achieved on Pillar One and Pillar Two. According to the Canadian statement, Canada strongly support the two-pillar plan agreed to in 2021 and has been working since then to bring it into effect.

However, due to the absence of a firm and binding multilateral timeline for Pillar One's implementation, Canada finds it difficult to endorse the prolonged standstill on the DST. As outlined in the statement, the Inclusive Framework members agreed in 2021 to temporarily suspend the implementation of DSTs to allow ample time for negotiations on Pillar One. Nonetheless, Canada has made it clear that if the Multilateral Convention to implement Pillar One does not come into effect before 1 January 2024, Canada will proceed with implementing its own DST from that date onward.

Cyprus confirms agreement with Pillar Two transitional CbCR Safe Harbour

On 22 June 2023, the government of Cyprus issued a statement confirming its consent to the transitional Country-by-Country Reporting (CbCR) Safe Harbour under Pillar Two. This confirmation becomes relevant in the context of the EU Directive on minimum taxation because Article 32 of the EU Directive mandates that all EU Member States must consent to the conditions of a qualifying international agreement on safe harbors. Because Cyprus is not part of the Inclusive Framework and did not participate in the agreement regarding the transitional CbCR Safe Harbour under Pillar Two, this statement serves as confirmation of its support for the transitional CbCR Safe Harbour.

Denmark releases draft legislation on Pillar Two

On 23 June 2023, Denmark published draft legislation, for public consultation, to implement Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This draft legislation includes the IIR and a Domestic Minimum Top-up Tax applicable from 31 December 2023. It also includes an UTPR generally applicable from 31 December 2024.

The draft legislation incorporates a temporary CbCR safe harbor in line with the OECD guidance and also includes aspects of the Commentary and Administrative Guidance.

Germany releases revised draft bill on Pillar Two

On 10 July 2023, the German Ministry of Finance published a revised draft bill for public consultation regarding the implementation of the EU Directive on Pillar Two. It builds upon the discussion draft that was released in March 2023 and includes some provisions that are part of the OECD Administrative Guidance published in February 2023 and were not reflected in the first draft bill (e.g., the allocation of taxes arising from blended controlled foreign company (CFC) tax regimes, such as global intangible low-tax (GILTI)). In addition, the revised draft bill includes a new allocation system for the tax liability of a "minimum tax group" (i.e., all domestic Constituent Entities in Germany and the domestic group parent). Under this new allocation system, low-taxed Constituent Entities whose top-up tax amounts are attributed to the domestic group parent are required to compensate the domestic group parent. This applies to the share of top-up tax attributable to the relevant Constituent Entity and actually paid by the domestic group parent. Conversely, this also applies to top-up tax refunds.

Moreover, the draft bill includes changes to certain tax provisions in Germany outside of the proposed Pillar Two legislation, such as: (i) the abolishment of the German royalty deduction limitation rule; (ii) the lowering of the low-tax threshold for German CFC taxation purposes from 25% to 15%; and (iii) the carve-out of CFC income from German trade tax.

The consultation period for this revised draft bill will remain open until 21 July 2023.

See EY Global Tax Alert, *German Federal Ministry of Finance publishes draft BEPS 2.0 Pillar Two implementation bill and accompanying measures*, dated 12 July 2023.

Gibraltar announces implementation of Pillar Two

On 11 July 2023, HM Government of Gibraltar announced its budget measures for the year 2023/24. Among other items, the budget measures highlight the planned introduction of Pillar Two in Gibraltar. As part of the implementation plan, the budget measures propose a consultation process to explore the introduction of new tax incentives, a new regime for companies within the scope of Pillar Two and a domestic minimum top-up tax.

The implementation of Pillar Two in Gibraltar will take effect no earlier than accounting periods beginning on or after 31 December 2024.

Liechtenstein submits Pillar Two legislation to Parliament

On 11 July 2023, the Government of Liechtenstein approved the Pillar Two draft bill and submitted it to the Parliament for discussion. The Domestic Minimum Top-up Tax and the Income Inclusion Rule will apply for tax years from 1 January 2024. The applicability of the UTPR will be determined by Liechtenstein through an ordinance, at the earliest for assessments of tax years beginning on or after 1 January 2025.

The Parliament will discuss the draft bill in detail in September later this year, aiming for the bill to enter into force by year-end.

Switzerland approves constitutional amendment allowing Pillar Two implementation

On 18 June 2023, Switzerland approved the legal basis for the introduction of Pillar Two in the form of a constitutional amendment by a public vote. This amendment includes a transitional provision that gives authority to the Swiss Federal Council to implement Pillar Two in a first step by way of an ordinance until the permanent tax bill will be enacted.

The approval of the constitutional amendment does not have an immediate effect on the implementation and enactment of Pillar Two in Switzerland, as it only creates the legal basis to implement Pillar Two. The Swiss Federal Council will continue to work on the ordinance to likely issue the transitional Pillar Two ordinance in the last quarter of 2023.

See EY Global Tax Alert, *Switzerland votes to amend Constitution to allow Pillar Two implementation*, dated 20 June 2023.

United Kingdom enacts Pillar Two legislation

On 11 July 2023, the United Kingdom (UK) Pillar Two legislation received Royal Assent as part of *Finance (No 2) Act 2023*. The UK legislation includes an IIR (the "Multinational Top-Up Tax") and a QDMTT (the "Domestic Top-Up Tax"), but not yet the UTPR. Both the IIR and the QDMTT take effect for accounting periods beginning on or after 31 December 2023, and both include the safe harbors.

The rules are intended to closely align with the Model Rules, and while some small deviations have been identified, these are unintentional and expected to be rectified.

UK releases guidance on Pillar Two

On 15 June 2023, His Majesty's Revenue and Customs (HMRC) released, for public consultation, draft guidance for the implementation of Pillar Two in the UK. The guidance is described as partial and will eventually make up three chapters of HMRC's guidance manual on multinational and domestic top-up tax. The three chapters are:

1. Introduction: provides an overview of the taxes and guidance on chargeability; this chapter also includes a graphic comparing the UK legislation and the OECD Model Rules
2. Scope: includes definitions of key terms, and guidance on excluded entities, the revenue threshold test, the transitional CbCR safe harbour, and determining ownership for the purposes of the rules
3. Administration: includes more details on filing, notifications and payments

The consultation document will run until 12 September 2023. The HRMC also announced that it will publish further guidance later, including updated versions of the draft chapters.

BEPS and other developments

OECD

OECD releases 2023 report on tax transparency in Africa

On 6 July 2023, the OECD published a progress report, "Tax Transparency in Africa 2023." The report provides an update on the progress achieved to date and countries' experiences showing the impact of the Africa Initiative on their revenue collection. It also details capacity-building activities carried out by the Global Forum and its partners in Africa throughout 2022 and proposes practical strategies for further progress.

During the same meeting, the OECD presented the "Toolkit for Establishing a Function for CrossBorder Assistance in the Recovery of Tax Claims." This toolkit provides guidance on building the frameworks necessary for this form of assistance with a focus on the establishment and management of a dedicated function within a tax authority.

Multilateral instrument developments

On 3 July 2023, Romania, for purposes of the Multilateral Instrument (MLI), made a notification to the OECD. In this notification, Romania confirmed the completion of its internal procedures for the entry into effect of the provisions of the MLI with respect to the Covered Tax Agreement (CTA) with Mexico. Following Romania's notification, the MLI will take effect on this CTA 30 days after the deposit with the OECD.

Similarly, on 27 June 2023, Finland also made a notification to the OECD, withdrawing the reservation of Article 9 of the MLI which relates to capital gains from shares or interests derived from immovable property. Consequently, Article 9 of the MLI will apply to CTAs with Finland that have chosen to adopt it. Additionally, in the same notification, Finland chose to apply Article 9(4) of the MLI, which determines taxing rights for gains from the sale of shares or comparable interests derived over 50% from immovable property within the preceding 365 days. As a result of this notification, Article 9 of the MLI will take effect for Finland's CTAs (subject to matching position) from 1 January 2024.

Furthermore, on 20 June 2023, Japan made a notification in relation to the MLI. In this notification, Japan includes the tax treaty with Viet Nam as a CTA. The MLI shall have effect for taxes withheld at source on 1 January 2024. With respect to all other taxes, the MLI shall have effect in Japan and Viet Nam for taxable periods beginning or after 1 March 2024 and 1 January 2025, respectively.

In addition to the aforementioned MLI developments, on 29 June 2023, the OECD updated the MLI database. This updated database allows users to check how the MLI modifies a specific tax treaty and it also offers a more intuitive interface that makes it easier to search for and access information. Additionally, the updated database includes historical data, which allows users to view the application of the BEPS MLI at specific points in time.

OECD releases 2023 report on tax transparency in Latin America

On 27 June 2023, the OECD published a progress report, "Tax Transparency in Latin America 2023," in connection with the eighth meeting of the Punta del Este Declaration, an initiative established in 2018 and focused on improving effective exchange of information in tax administrations in Latin America. The report provides an update on the progress achieved to date and describes how jurisdictions in the region have developed and implemented a strategy to increase the use of exchange of information as a tool to support audits and investigations using the international network and the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).

Additionally, the report highlights the growing interest in the multilateral pilot project to expand the use of information exchanged via tax-treaty channels for purposes beyond taxation. The aim of the pilot project is to strengthen the efforts of the government in combating illicit financial flows (IFFs), as the information maximize the effective use to tackle financial crimes such as money laundering, terrorism financing, corruption, and customs violations.

Two outcome statements were released in connection with the meeting, describing the accomplishments to date, calling on other Latin American countries to join the initiative, and looking forward to further collaboration in Latin America on tax transparency.

See EY Global Tax Alert, *OECD releases 2023 report on tax transparency in Latin America*, dated 30 June 2023.

OECD announces support to developing countries

On 23 June 2023, the OECD Secretary General released a statement after the closing session of the Summit for a New Global Financing Pact. The objective of the Summit was to set the foundations for a new global financing architecture and simultaneously address climate change, biodiversity and development challenges and help all countries achieve the Sustainable Development Goals.

Among other items, the Secretary General noted that the OECD will continue to lead efforts to help strengthen domestic resource mobilization in developing countries, including through the joint OECD- United Nations Development Programme (UNDP) Tax Inspectors Without Borders initiative. Further, together with the Platform for Collaboration on Tax, the OECD will launch an operational

task force to increase and co-ordinate efforts on technical assistance and capacity building on tax. In addition, the OECD will deliver by the G20 Leaders' Summit in Delhi, to be held in September 2023, an action plan to support developing countries' implementation of the Two-Pillar tax reform.

OECD releases 2023 update on peer review of preferential tax regimes

On 21 June 2023, the OECD released an update on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (harmful tax practices) of the OECD/G20 BEPS Project.

The updated results cover new decisions on five preferential tax regimes. According to the press release, a total of 319 tax regimes have been reviewed, or are under review by the Forum on Harmful Tax Practices (FHTP). This latest review reflects that three regimes have been abolished (one for Aruba and two for San Marino). Additionally, a regime for Jordan has been amended to align with the standard and is now considered nonharmful, and a regime for Albania is currently in the process of being amended. No regimes are identified as currently under review.

See EY Global Tax Alert, *OECD releases 2023 update on peer review of preferential tax regimes*, dated 23 June 2023.

European Union

Commission adopts implementing regulation on Foreign Subsidies Regulation

On 10 July 2023, the Commission adopted the rules for implementing the Foreign Subsidies Regulation (the Implementing Regulation). The FSR aims to prevent distortions of the EU's internal market which arise as a result of subsidies from foreign (non-EU) countries.

The Implementing Regulation details procedural aspects of the implementation of the Foreign Subsidies Regulation (FSR) and it is accompanied by two annexes, including the notification forms for concentrations involving foreign financial contributions and for foreign financial contributions in public procurement procedures. The Implementing Regulation details the reporting obligations of notifying parties, specifying the information that needs to be included in the notification forms for concentrations and public procurement procedures.

The FSR is directly applicable as of 12 July 2023, and the notification requirements commence on 12 October 2023.

Commission issues annual taxation report 2023

On 3 July 2023, the Commission released the "Annual report on taxation 2023" assessing the recent trends in EU tax systems, and identifying how tax policy, implementation and compliance could be improved.

The Report mentions a number of tax initiatives, including:

- The EU Minimum Tax Directive, Faster and Safer Tax Excess Relief (FASTER) (i.e., proposal for a Directive on Faster and Safer Relief of Excess Withholding Taxes), and Business in Europe: Framework for Income Taxation (BEFIT) (i.e., single corporate tax rulebook for the EU), highlighting EU's effort towards a simplified EU tax environment
- Unshell (prevent the use of shell companies for tax abuse) and the work of the Code of Conduct, indicating the fight against aggressive tax planning continues
- The political agreement on DAC8 in June 2023, witnessing the Commission's endeavor to foster higher administrative cooperation within the EU

The report highlights that there is still scope for Member States' tax systems to be fairer and more.

EU Spanish Council Presidency presents tax program

On 1 July 2023, Spain took over the EU Council presidency from Sweden. During its six-month presidency, negotiations on tax initiatives will be continued, including Pillar One, BEFIT and Unshell.

According to the presidency program, in the tax area, the Spanish Presidency will aim to:

- Ensure tax justice in Europe, combat tax evasion, and establish minimum EU-wide taxation standards
- Streamline tax processes to reduce burdens and promote renewable energy, energy efficiency, and sustainable transportation
- Support revising decision-making procedures to improve efficiency and expanding qualified majority voting
- Design a competitive and autonomous EU strategy, including regulatory reforms, strategic projects, and territorial development

ECON Committee of the European Parliament adopts Opinion on DAC8

On 28 June 2023, the ECON Committee of the European Parliament (Parliament) voted on its opinion on DAC8 (Directive introducing tax transparency rules for crypto assets).

According to the rapporteur of the opinion, Rasmus Andresen, the text that was politically agreed by the Council on 16 May 2023, does not include important aspects of the Commission's proposal, such as the minimum penalties and a definition of high-net-worth individuals. In contrast, the Parliament has voted in favor of minimum penalties for nonreporting, for example under DAC2 and DAC4, and has suggested the introduction of a definition for high-net-worth individuals.

The Parliament also supports the exchange of information on income and capital gains from financial assets and luxurious assets and suggests to the Commission to set up a European Taxpayer Identification Number.

As for next steps, the Parliament is expected to adopt the opinion in Plenary on 11 September 2023. Once the Parliament's position has been adopted, the Council can formally adopt the Directive.

European Commission sets forward proposal for an adjusted package of next generation EU own resources

On 20 June 2023, the European Commission (Commission) published an adjusted package for the next generation of own resources, including a new temporary statistical-based own resource on company profits.

The new statistical-based own resource will be a national contribution by Member States which will apply temporarily, until there is an agreement for a contribution from BEFIT (expected on 12 September 2023). The new own resource will be calculated as 0.5% of the notional EU company profit base, which will be defined using a harmonized indicator that roughly approximates company profits: gross operating surplus.

Under the adjusted package, the Commission indicates that the implementation of the Pillar One agreement remains an essential priority for the EU since it is expected that 15% of the residual profits under Pillar One (Amount A) will contribute to the EU budget.

The proposal has now moved to the negotiation phase, with initial discussions already taking place in Council.

Country developments

Australia releases update for Intangibles Integrity Measure

On 23 June 2023, the Australian Government released an updated Exposure Draft bill (ED) and exposure draft Explanatory Materials (EM) for the Intangibles Integrity Measure. This revision brings about some clarifications and changes compared to the previous ED.

The updated ED clarifies the definition of a low corporate tax jurisdiction. The ED now explicitly specifies that the relevant rate of corporate income tax refers to the national headline corporate income tax rate, being the rate that applies to income derived in the ordinary course of carrying on a business. Deductions, offsets, tax credits, tax losses, tax treaties, concessions for intra-group dividends, exemptions for particular industries, exemptions for particular types of income, and rates that apply only to foreign residents are disregarded.

The ED also introduces two new concessions:

1. Where income derived in a low corporate tax jurisdiction that may nonetheless be subject to a tax rate of at least 15% can be identified, it will be treated as derived other than in a low corporate tax jurisdiction for purposes of the measure and thus a deduction will not be denied.

2. Where the taxpayer has already remitted withholding tax in respect of an amount where a deduction would typically be disallowed, the denied deduction amount will be proportionately reduced by the remitted withholding tax amount. For instance, if the full non-treaty withholding rate of 30% is applicable, no deduction will be denied.

Furthermore, the Statement of Outcomes resulting from the consultation process highlights that the Government is actively considering the interactions between the intangibles measure and Pillar Two. This indicates that further analysis is being conducted to understand the potential impact and interaction between these initiatives.

Lastly, the ED also incorporates additional penalties for noncompliance with this measure which apply in addition to existing shortfall penalties, resulting in a quadrupled penalty for shortfalls.

The proposed effective date for the measure's application remains on or after July 1, 2023, for payments or credits made or liabilities incurred.

See EY Global Tax Alert, *Australian Treasury releases updated Exposure Bill and Explanatory Materials for Intangibles Integrity Measure*, dated 26 June 2023.

Australia delays implementation of Public CbCR

On 22 June 2023, Australia introduced legislation to Parliament on some of the tax integrity measures that underwent consultation in April 2023, accompanied by an Explanatory Memorandum. This legislation did not include the Public CbCR measures, however, the Memorandum indicates that certain elements of the Public CbCR proposal have been amended based on feedback from interested parties during the consultation process and the impact analysis conducted for the Bill.

As part of these changes, the Treasury proposed the removal of certain specific CbC reporting data disclosures, such as related party expenses, effective tax rate disclosure, and the listing and valuing of intangible assets. Furthermore, the Treasury proposed to postpone the implementation of Public CbCR by 12 months, with the to apply from 1 July 2024. Additionally, the Memorandum acknowledges the potential for further consultation on disaggregated CbC reporting (reporting information on a country-by-country basis).

Australia introduces thin capitalization and subsidiary disclosure measures into Parliament

On 22 June 2023, Australia introduced a Bill into Parliament including new thin capitalization rules, as well as tax transparency disclosure of subsidiaries.

The Bill seeks to align the existing debt limitation rules with BEPS Action 4 (interest limitation rules), limiting an entity's interest expense deductions to a benchmark earnings ratio (30% of its tax EBITDA) while offering flexibility by allowing access to two alternative tests (provided certain conditions are met), being the Group Ratio Test and the Third-Party Debt Test (for general class investors and financial entities that are not authorized deposit-taking institutions).

The Bill introduced a debt creation rule that would deny a deduction for interest on borrowings to either acquire assets from related parties, or to fund dividends or other distributions to related parties.

The changes will apply to income years commencing on or after 1 July 2023.

The Bill introduces new requirements for Australian public companies (listed and unlisted) to disclose information about their subsidiaries in their annual financial reports, for financial years commencing on or after 1 July 2023. The company's annual financial reports must provide certain information in relation to the consolidated entities.

See EY Global Tax Alert, *Australian thin capitalization and subsidiary disclosure measures introduced into Parliament*, dated 22 June 2023.

France implements Public CbCR

On 22 June 2023, France published in the *Official Gazette* Ordinance No. 2023-483, implementing Public CbCR into domestic law. The overall content of the Ordinance aligns with the EU Directive on Public CbCR.

The Ordinance includes a safeguard that allows for the withholding of certain information from the report. This withholding can occur for a period of five years, if disclosing such information would be detrimental to the commercial position of the MNE group. In addition, the information of the report should be broken down by each EU Member State, all States of the European Economic Area (i.e., Iceland, Liechtenstein and Norway) as well as jurisdictions listed in the EU list of noncooperative jurisdictions.

This Ordinance will apply to financial years starting on or after 22 June 2024.

Germany enacts Bill implementing EU Public CbCR Directive into domestic law

On 21 June 2023, Germany published in its *Official Gazette* the Bill implementing the EU Public CbCR Directive into national law. This follows the Federal Council's approval which took place on 16 June 2023.

The Bill entered into force the day after its publication in the *Official Gazette* (i.e., 22 June 2023) and it will apply for financial years beginning on or after 21 June 2024.

Ireland releases public consultation on new taxation measures for outbound payments

On 7 July 2023, the Irish Department of Finance released a public consultation on possible draft legislative approaches to new taxation measures to apply to certain outbound payments to prevent double nontaxation. It is intended that new legislative provisions will apply to certain payments of

interest or royalties or the making of a distribution on or after 1 January 2024. The implementation of these proposals represents the final commitment made by Ireland to secure funding under the Recovery and Resilience Facility (RRF).

This consultation document builds on the November 2021 public consultation and presents possible draft legislative approaches to these measures while leveraging the existing Irish withholding tax legislation provisions.

The proposed measures would apply to outbound payments between "associated entities" resident in "specified territories" (which broadly refer to jurisdictions on the EU list of non-cooperative jurisdictions, non-tax and zero tax jurisdictions).

The intention is for these new measures not to apply to:

- Jurisdictions with a participation exemption if the relevant conditions for availing of that exemption are satisfied
- Amounts taken into account in calculating a CFC charge or a top-up-tax under OECD GloBE rules.

Furthermore, anti-avoidance rules will be introduced to ensure the effectiveness of the proposed measures.

One of the key objectives of the consultation is to ensure that the proposed changes do not have unintended effect. The possible legislative approach set down in the consultation may change substantially through the consultation process. The consultation period will run until 8 August 2023.

See EY Global Tax Alert, *Ireland launches consultation on new taxation measures to apply to certain outbound payments – comment period closes on 8 August*, dated 17 July 2023.

Ireland issues guidelines on the operation of reporting obligations under DAC7

On 5 July 2023, the Irish Revenue issued a Tax and Duty Manual (TDM) providing general guidance on the operation of the reporting obligations placed on platform operators with respect to certain sellers along with the automatic exchange of that information under DAC7 effective as of 1 January 2023. DAC7 expands reporting obligations and exchange of information on certain sellers using digital platforms to earn consideration.

The platform operators are required to comply with information collection and due diligence obligations by 31 December of a reportable period and file a return relating to the previous calendar year with the Irish Revenue by 31 January each year.

Ireland brings Public CbCR requirements into effect

On 21 June 2023, the Minister for Enterprise, Trade and Employment (the Department) signed the Irish statutory instrument implementing the EU Public CbCR Directive into Irish law.

The amendment to the Irish legislation aligns with the EU Directive introducing a reporting requirement for undertakings with consolidated turnover exceeding €750 million in each of the preceding two consecutive financial years. The rules also include exemptions for undertakings operating exclusively in a single EU Member State, foreign-parented groups with an Irish subsidiary that is not a medium-sized or large undertaking, and foreign-parented groups with an Irish branch that had a net turnover in the preceding two consecutive financial years below €12 million.

In addition, Ireland made use of the option for a five-year deferral to omit information from the report that could be seriously prejudicial to the commercial position of the MNE group (with the exception of information regarding companies located in a country included in the EU black or grey list).

As for penalties, in case of noncompliance, the rules provide for a summary offense which may involve a term of imprisonment of up to six months or a "Class A fine" not exceeding €5,000.

Public CbCR will apply to the first financial year commencing on or after 22 June 2024, and a report will be required to be published within 12 months of the date of the balance sheet for the relevant financial year.

See EY Global Tax Alert, *Ireland brings public country-by-country reporting requirements into effect*, dated 28 June 2023.

Lithuania transposes rules implementing Public CbCR into domestic law

On 14 and 15 June 2023, Lithuania published in its *Official Gazette* the rules implementing the EU Public CbCR Directive into domestic law. The rules are introduced as amendments to the Law on Company Financial Statements and via an Order on the approval of the description of the procedure for the preparation of the profit tax information report.

The national legislation aligns with the EU Directive introducing a reporting requirement for undertakings with consolidated turnover and for undertakings with separate turnover exceeding €750 million in each of the preceding two consecutive financial years. In-scope entities are required to prepare a report on income tax information for the second of those two consecutive financial years and submit it to the administrator of the Register of Legal Entities and publish it on their website. However, entities subject to reporting under the Directive on Banking Prudential Requirements are out of scope, if these entities have already published the required information accordingly.

In addition, according to amendments introduced to the Law on the Audit of Financial Statements, auditors should assess whether the report on income tax information was prepared.

The bill was enacted on 22 June 2023 and the rules will apply to the first financial year commencing on or after 22 June 2024 and a report will be required to be published within 12 months of the relevant financial year.

Lithuania fully transposes anti-hybrid rules by amending the definition of hybrid entity

On 22 June 2023, Lithuania published in its *Official Gazette* amendments to the definition of hybrid entity with the aim to fully transpose ATAD2 (anti-hybrid rules in relation to non-EU countries) and, in particular, article 9a paragraph 1.

Before the amendments, the domestic legislation in Lithuania provided that for an entity to be considered hybrid, more than 50% of the shares (or parts), voting rights or rights to a share of the distributable profit, or exclusive rights to acquire them are directly or indirectly owned by a foreign resident for tax purposes, which is considered a separate entity according to the legislation of a foreign country. The new definition is in line with ATAD2 and provides that a hybrid entity is "an entity in which 50% or more of the shares (or parts), voting rights or rights to a share of the distributable profit, or exclusive rights to acquire them are directly or indirectly owned by a foreign resident for tax purposes, which is considered a separate entity according to the legislation of a foreign country."

The amendments entered into force on 23 June 2023.

Luxembourg Tax Authority issues updated version of MDR guidance

On 30 June 2023, the Luxembourg Tax Authority issued an updated version of guidance (the updated Guidance) on the application of the Luxembourg law implementing the EU Directive on the mandatory disclosure rules (MDR) and exchange of cross-border tax arrangements (DAC6). The guidance is presented in the form of Frequently Asked Questions and the latest update clarifies the application of hallmarks C1 and E3.

In that respect, it examines hallmark "C1 (a)" on the determination of tax residency and the criterion of "liable to tax" from article 4 of the OECD Model Tax Convention (MTC). The updated Guidance also determines which incomes are covered under hallmark "C1 (d)."

Regarding hallmark E3, the definition of "EBIT" (earnings before interest and taxes) was slightly amended to clarify that EBIT is the result of the financial year increased by interest and tax expenses and reduced by interest and tax income. The updated Guidance also explains how the EBIT variation should be calculated.

Additionally, cross-border mergers or liquidations that involve a cross-border transfer of functions and/or risks and/or assets within the same group (with the exception of cross-border mergers between intra-European companies, where all assets and liabilities remain attached to a permanent establishment of the absorbing company in the tax jurisdiction of the acquired company) are to be analyzed from a legal, not tax, point of view.

Lastly, the updated Guidance offers an explanation concerning migrations and administrative transfers of the statutory seat under hallmark E3. As a matter of fact, a migration with continuity of legal personality or an administrative transfer of the statutory seat, does not qualify as a reportable cross-border arrangement under E3.

See EY Global Tax Alert, *Luxembourg Tax Authority issues updated version of MDR guidance*, dated 12 July 2023.

Malta releases guidelines on DAC7

On 23 June 2023, the Commissioner for Revenue published a set of guidelines in relation to the reporting obligations of Digital Platform Operators (DAC 7). According to the guidelines, Malta platform operators must register with the Commissioner for Revenue by 31 August 2023 and any changes in registration, or where they commence their activities after this date, must be completed by 31 December 2023.

In addition, an excluded platform operator (i.e., platform operator with no reportable sellers) must also register with the Commissioner for Revenue in Malta and provide proof of such classification by 31 August 2023. Furthermore, an entity must generally register with the Commissioner for Revenue within two weeks of the commencement of its activities as a platform operator.

Netherlands issues new explanatory Decree on international tax matters

On 28 June 2023, the Dutch State Secretary of Finance published a new Decree on Dutch corporate income tax, personal income tax, dividend withholding tax and international tax law (Decree). The Decree explains and clarifies situations that have been presented in the practical implementation of international tax matters. More specifically, the guidance relates to the application of double tax treaties concluded by the Netherlands, provisions for preventing double taxation within the Kingdom of the Netherlands and relevant provisions included in Dutch legislation, including the Decree for the Avoidance of Double Taxation 2001. These items cover, among other items, hybrid entities, corporate tax residency, permanent establishments, dividends, interest, royalties, capital gains and entitlement to tax treaty benefits.

The Decree came into effect on 29 June 2023. Note that the Decree provides the formal position of the Dutch tax authorities but in principle is not legally binding on taxpayers.

See EY Global Tax Alert, *Netherlands issues new explanatory Decree on international tax matters*, dated 30 June 2023.

Belgium and the Netherlands sign new double tax treaty

On 21 June 2023, the Belgian and Dutch Finance Ministers signed a new tax treaty and protocol, published on 22 June 2023. This new agreement will replace the current Belgium-Netherlands tax treaty, which was concluded in 2001 and modified by the 2009 protocol. Awaiting this new tax treaty, the Belgian and Dutch tax authorities already notified the 2001 tax treaty in November 2021 as a covered tax agreement for the purposes of applying the MLI. Hence, certain treaty-related anti-abuse measures already applied to the 2001 tax treaty as of 1 January 2022 (e.g., a principal purpose test and anti-abuse measures with respect to withholding tax relief and the permanent establishment concept). In addition to including these MLI provisions in the new treaty text, Belgium and the Netherlands agreed to include various non-MLI provisions. Note that the protocol to the new tax treaty explicitly stipulates that the OECD Commentary should be applied as it reads at the time that treaty protection and/or tax treaty benefits are claimed (so-called "dynamic treaty interpretation").

Despite that discussions are ongoing between Belgium and the Netherlands regarding the situation of cross-border workers who are working from home, both countries decided to sign the tax treaty without waiting for the outcome of these discussions. The signed text still needs to be ratified by the parliaments of both states. As soon as these ratification procedures are completed in Belgium and the Netherlands, the tax treaty can enter into force. More specifically, the new tax treaty will be applicable for fiscal years starting on 1 January of the year that follows the year in which the treaty is ratified. Assuming that the ratification procedures will not be completed in 2023, the new Belgium-Netherlands tax treaty is not expected to become applicable before 1 January 2025.

See EY Global Tax Alert, *Belgium-Netherlands tax treaty recently signed; ratification to follow*, dated 29 June 2023.

Romania amends Public CbCR legislation

On 21 June 2023, Romania published in the *Official Gazette* Order 1730/2023, amending the regulations related to Public CbCR in Romania. While most of the rules remain unchanged, the Order includes a few provisions clarifying some concerns raised by stakeholders since the introduction of Public CbCR in Romania. For example, the initial legislation on Public CbCR in Romania required that MNE groups with a medium-sized or large subsidiary in Romania were subject to public CbCR, irrespective whether these are non-EU- or EU-headquartered groups. The Order clarifies that this requirement only applies to non-EU headquartered groups.

The Order also notes that in the event that an entity chooses to defer the disclosure of commercially sensitive information (the so-called "safeguard clause"), the report that resumes the disclosure should contain information corresponding to the current and previous financial years for which the information has not been published. Furthermore, the Order highlights that if a reporting subsidiary has a different financial year than the ultimate parent entity (UPE), the CbC report should align with the UPE's financial year.

Additionally, the Order requires the inclusion of disaggregated data for entities registered in the European Economic Area (EEA) (i.e. Iceland, Liechtenstein, and Norway) in the CbC report. Moreover, EU headquartered entities shall refer to entities headquartered in the EEA.

Finally, no specific noncompliance penalties have been introduced to date in the Romanian legislation. It is expected that penalties will be introduced at a later stage.

See EY Global Tax Alert, *Romania issues further guidance clarifying implementation of EU Public CbCR Directive through Romanian Ministry of Finances Order 1730/2023*, dated 13 July 2023.

South African Revenue Service issues clarifications on the place of effective management for treaty purposes

On 30 June 2023, the South African Revenue Service issued Interpretation Note 6 (Issue 3) on the subject of residence (the Note). More specifically, the Note provides clarifications as regards the interpretation and application of the term "place of effective management" in determining the tax residence of a company when applying the tie-breaker rule in a tax treaty.

Domestic legislation in South Africa stipulates that a company bears the burden of proof as regards its place of effective management and should provide the necessary evidence to support its views. According to the Note's conclusions, in line with the OECD commentary, the place of effective management of a company is where the key management and commercial decisions – necessary for the conduct of its business – are made.

Since no definitive rule can be established, when determining the place of effective management, all relevant facts and circumstances must be examined on a case-by-case basis. There are normally multiple facts that need to be taken into account, often involving multiple locations, however, a company has only one place of effective management at any one time.

The place of effective management test is one of substance over form where the real intention or substance has to be determined. Among the key factors that assist in determining a company's place of effective management are the (i) head office, (ii) delegation of authority, and (iii) location where the board meets and makes decisions. Nevertheless, modernization and global travel have altered the importance of some of these factors.

The Note also provides a list of factors that are not considered dominant when determining the place of effective management, such as (i) the place where operational management decisions are made, (ii) legal factors such as a company's place of incorporation, (iii) the economic nexus of a company with a country, and (iv) the place where support functions are located.

Spain confirms application of the dividend withholding tax exemption under the Parent Subsidiary Directive

On 8 June 2023, the Spanish Supreme Court ruled on the application of the dividend withholding tax (DWHT) exemption under the European Union Parent Subsidiary Directive (PSD) and the special anti-abuse rule. The judgment confirms a favorable decision by the National High Court overturning the criteria of the Spanish tax authorities, which had rejected the DWHT exemption on the basis that the dividend recipient is not incorporated for valid business reasons.

Spanish implementation of the EU PSD at the time when the dividend payment was made included a special anti-abuse rule with certain safe harbors, one of them being that the EU parent entity had to prove that it had been set up

with a sound business purpose and not to unfairly benefit from the DWHT exemption. Following a European Court of Justice (ECJ) ruling on the burden of proof, the Spanish National Court overturned the decisions of the Spanish tax authorities, rejecting the existence of a general presumption of abuse and stating that the Spanish tax authorities should determine the existence of objective and subjective elements constituting an allegedly abusive practice.

See EY Global Tax Alert, *Spanish Supreme Court affirms judgment holding domestic withholding tax exemption applies to EU shareholder dividends*, dated 30 June 2023.

UK launched a public consultation on reform in transfer pricing, permanent establishment and Diverted Profits Tax

On 19 June 2023, the HM Revenue & Customs released a public consultation on how to reform transfer pricing, permanent establishments and Diverted Profits Tax legislation to make it clearer and easier to use, and ensure that the outcome of the application of these rules remains consistent with the underlying policy intention, international standards, and the UK's bilateral treaties.

In particular, the consultation asks for views on their proposals to reform the following UK laws:

- Transfer pricing rules: among others, changes are considered to ensure consistency of the UK legislation with the OECD Model Tax Convention.
- Permanent establishment rules: amendments are considered with the aim of ensuring the UK domestic legislation remains aligned with the developing international framework around the prevention of double taxation. The potential options suggested are to define a UK PE and the profits attributable by direct reference to (i) Articles 5 and 7 of the relevant tax treaty (subject to certain restrictions), or (ii) the OECD Model (subject to the relevant tax treaty).
- Diverted Profits Tax: consideration of the integration of the Diverted Profits Tax within UK corporation tax to help clarify the relationship with transfer pricing and provide access to treaty benefits. In addition, a wider review of the diverted profits regime to ensure it continues to achieve the Government's wider aims.

Feedback can be provided via email by the 14 August 2023 deadline for submitting input.

UK HM Treasury & Customs removes ancillary notification requirement under CbCR regulations

On 5 July 2023, the HM Treasury & Customs issued Statutory Instrument 2023 No. 752 (*The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2023*) amending the CbCR Regulations 2016. The amendments remove certain requirements for UK companies to make notification of which legal entity with the MNE is the ultimate parent company and will be filing the CbC report (regulation 3C "Notification by United Kingdom Entities" requirement and the regulation 3A "Notification by Ultimate Parent Entities") as it not considered to provide useful information. There are also minor consequential amendments to remove the now redundant cross-references to the revoked notification requirements.

The amendments enter into force on 26 July 2023.

US-Chile tax treaty approved by US Senate

On 22 June 2023, the United States (US) Senate gave its advice and consent to the 2010 US-Chile Income Tax Treaty in a 95-2 vote. Now that the U.S. Senate has approved the treaty, the US President must sign an instrument of ratification to complete the approval and ratification process in the United States. Once the Treaty enters into force, the withholding provisions would become effective for amounts paid or credited on or after the first day of the second month following the date of entry into force. For all other taxes, the provisions will take effect for tax periods beginning on or after the first day of January following the date the treaty enters into force.

The Treaty includes two reservations and two declarations; the reservations concern the Base Erosion and Anti-abuse Tax (BEAT) and Article 23 (Relief from Double Taxation).

The government of Chile undertook all the steps necessary to approve the Treaty in 2015. It is anticipated that the reservations added since then would need to be reviewed and ratified by Chile's Senate so the Treaty could take effect in Chile.

The Treaty's significant provisions include the following:

- Reduced withholding rates on dividends, interest, and royalties
- A permanent establishment (PE) provision that deems a PE to exist from the provision of services under certain circumstances
- A limitation on benefits article that includes a "headquarters company test" and a triangular provision
- Provisions on the sale of shares or other rights in Chilean resident companies
- Provisions on the exchange of information between the tax authorities of the US and Chile

See EY Global Tax Alert, *U.S. Senate approval of U.S.- Chile tax treaty brings treaty closer to entering into force*, dated 25 June 2023.

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EYG no. 007022-23Gbl

1508-1600216 NY
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