

The Latest on BEPS and Beyond | October 2023 edition

Highlights

Two important initiatives for a multilateral convention for business taxation are currently under consideration globally — the draft Multilateral Convention for Amount A (Pillar One), being developed by the G20/Organisation for Economic Co-operation and Development (OECD) Inclusive Framework, and a potential United Nations (UN) Multilateral Convention on Tax.

Last week, the Inclusive Framework provided an update on the negotiations by publishing the latest draft Convention and hundreds of pages of explanatory notes. This release gives businesses and others who commented on earlier drafts an opportunity to see if their concerns have been addressed, although, at this time, only individual countries, like the [United States](#), may initiate consultations. The Inclusive Framework is not consulting the public, but focusing on finalizing negotiations. Outstanding issues in the drafts are highlighted in the footnotes for each draft. Although the footnotes indicate which countries have expressed concerns, it is not clear how close the 130+ Inclusive Framework membership is to reaching consensus.

It seems that differences will need to be resolved quickly if Inclusive Framework members are to sign the agreement by December this year. This [deadline](#) is important, as it is linked to the members' commitment to refrain from instituting unilateral measures. But to achieve effective implementation of Amount A and abolition of jurisdictional digital services taxes, legislators and addressees of the rules will need to comprehend and support them. This could be challenging, as the rules are not only detailed and complex, but also untested in that they are not rooted in existing country practices. It therefore will be crucial to see whether this multilateral convention will gain the required support in the coming months. Meanwhile, in comments to reporters on 16 October, United States Treasury Secretary Yellen [reportedly indicated](#)¹ that the United States will not be ready to sign this year.

A recent [report](#) by the United Nations' (UN) Secretary General² proposes three options for achieving the UN's goal of shaping tax norms and rules — developing a UN Multilateral Convention on Tax, establishing a framework convention, and a establishing a framework for international tax cooperation. Although it is expected that many developing countries will favor the development of a UN convention, the EU has already decided that it prefers the softer approach to tax cooperation at the UN level of by merely establishing a cooperation framework.³

The coming months should provide some insight into the chances of success for both the Amount A Convention and the development of a UN tax convention.

BEPS 2.0

OECD

OECD releases Multilateral Convention to implement Amount A of Pillar One

On 11 October 2023, the Inclusive Framework's Task Force on the Digital Economy (TFDE) released the [text](#) of the Multilateral Convention (MLC) to implement Amount A of Pillar One. The objective of the MLC is to create a coordinated agreement to reallocate taxing rights to market jurisdictions with respect to a portion of the profits of multinational enterprises in excess of 10% of revenues — often referred to as "excess profits" or "residual profits."

According to TEDE, the text of the MLC, which is not yet open to signature, represents the consensus reached by members to date. Jurisdictions have divergent opinions on a number of specific matters.

¹ See, Paola Tamma and Bjarke Smith-Meyer, "[Yellen says US is not ready to sign global tax treaty just yet](#)," Politico.eu. 16 October 2023.

² See, UN General Assembly 2022--2023, "[Promotion of inclusive and effective international tax cooperation at the United Nations : resolution/adopted by the General Assembly](#)," United Nations, 2022.

³ See, Council on the European Union, "[Position on behalf of the European Union and its Member States on tax cooperation at the United Nations](#)," 22 September 2023.

These variations are acknowledged in footnotes. While the consensus views relate to the text of the MLC, such a consensus does not necessarily reflect the intention of jurisdictions to sign the MLC once it is open for signature.

Like the MLC, the TFDE also released an [explanatory statement](#) to clarify how each provision is intended to apply. In addition, the MLC is accompanied by an [Understanding on the Application of Certainty for Amount A of Pillar One](#), which contains further details on how aspects of the Amount A tax certainty framework will operate in practice. An additional [overview document](#) provides a brief summary of the MLC, its layout and some other selected issues.

An [update](#) to the economic impact assessment of Pillar One was also released, together with an [overview](#) of this economic impact assessment. This economic impact assessment shows an increase in the additional revenue expected to be raised under Amount A compared to the OECD's previous estimates. While the previous analysis estimated revenue gains of US\$5b to US\$12b in the baseline scenario, the revised estimates involve gains of US\$17.4b to US\$31.7b in 2021 or in the range of US\$9.8b to US\$22.6b on average from 2017 to 2021.

In addition, the update to the economic impact assessment notes that Amount A delivers a reallocation of taxing rights from low-tax investment hubs to market jurisdictions. It is estimated that approximately 70% of all taxing rights reallocated under Amount A come from investment hubs.

OECD releases Pillar Two implementation handbook

On 11 October 2023, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) released the "[Minimum Tax Implementation Handbook](#)." This handbook provides an overview of the key provisions of the global minimum tax and considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing their implementation options. It is limited to the Global Anti-Base Erosion (GloBE) rules and does not address the Subject to Tax Rule (STTR).

Divided into two chapters, (i) overview of the global minimum tax and (ii) implementation considerations, the handbook was released in response to the request from the Indian G20 Presidency and was developed for their Finance Ministers and Central Bank Governors meeting in October 2023. The handbook supplements a variety of other resources and programs that have been developed to assist jurisdictions with the implementation of the GloBE rules and could undergo occasional updates.

OECD releases Subject to Tax Rule Multilateral Instrument

On 3 October 2023, the OECD [announced](#) that the Inclusive Framework on BEPS had concluded negotiations on a Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI).

The STTR applies to intragroup payments from source jurisdictions (i.e., the jurisdiction in which the income arises) that are subject to tax rates below 9% in the payee's jurisdiction of residence. The STTR allocates to the source country a limited and conditional taxing right to ensure a minimum level of taxation.

Unlike the BEPS MLI, the STTR MLI will implement the STTR in all treaties covered and will amend those treaties by including annexes containing the STTR and accompanying provisions. The operational provisions of the STTR MLI are included in five annexes.

The STTR MLI will enter into force on the first day of the month following the expiration of a three-month period from the date of deposit of the second instrument of ratification, acceptance, or approval.

See EY Global Tax Alert, [OECD/G20 Inclusive Framework launches Multilateral Convention to implement the Subject to Tax Rule](#), dated 12 October 2023.

Other

ATAF

African Tax Administration Forum releases revised approach for domestic minimum top-up tax legislation

On 4 October 2023, the African Tax Administration Forum (ATAF) released a [revised approach](#) for domestic minimum top-up tax (DMTT) legislation. The revised approach provides three different alternative models, and a country can select the one that aligns best with its legislative framework.

- Approach 1 involves incorporating essential provisions for implementing a DMTT in primary legislation, enacted through the parliamentary process. Detailed supplementary regulations, including calculation provisions and definitions related to DMTT, are delegated to the relevant Minister. This approach streamlines the primary legislation, making the parliamentary process more efficient, as most details are addressed through regulations.
- Approach 2 adopts a "reference model," incorporating the GloBE rules by reference with necessary modifications to suit the DMTT context. This ensures maximum consistency with GloBE rules and keeps local country rules concise.
- Approach 3 entails a detailed DMTT version based on the GloBE rules, with all rules contained within primary legislation enacted through the parliamentary process. This approach provides extensive parliamentary oversight.

These suggested approaches include material from the Pillar Two Administrative Guidance released in February and July of 2023. As discussions continue in the Inclusive Framework, additional provisions may be added to the suggested approaches.

IASB

IASB releases amendments for SMEs for Pillar Two

On 29 September 2023, the International Accounting Standards Board (IASB) [amended](#) the International Financial Reporting Standards (IFRS) for small to medium-sized entities (SMEs) Accounting 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.

Country developments

Austria published draft legislation on the EU Minimum Taxation Directive

On 3 October 2023, Austria's Ministry of Finance published [draft legislation](#), for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This includes an Income Inclusion Rule (IIR) and a Qualified Domestic Minimum Top-up Tax (QDMTT) applicable from 31 December 2023, as well as an Undertaxed Profits Rule (UTPR) applicable from 31 December 2024.

Furthermore, the draft legislation incorporates transitional country-by-country reporting (CbCR) safe harbor in line with the OECD guidance and includes elements from the OECD Administrative Guidance published in February and July 2023. The draft legislation also addresses Administration and GloBE Information Returns matters.

The consultation period will be open until 20 October 2023.

Argentine Government proposes to evaluate a 15% corporate minimum tax

On 15 September 2023, the Argentine Government sent the draft Budget Law 2024 to the Congress. In the message to the Congress, the Government recommended evaluating the possibility of enacting a 15% corporate minimum tax applicable to multinational groups in order to increase tax revenues.

To date, no specific project or further details have been disclosed.

See EY Global Tax Alert, [Argentine Government proposes to evaluate a 15% corporate minimum tax](#), dated 20 September 2023.

Bulgaria releases public consultation on Pillar Two draft legislation

On 26 September 2023, Bulgaria's Ministry of Finance published draft legislation, for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This draft legislation includes an IIR and a QDMTT applicable from 31 December 2023. The draft legislation also includes a UTPR applicable from 31 December 2024.

Furthermore, the draft legislation incorporates a transitional CbCR safe harbor in line with the OECD guidance.

The consultation period will be open until 26 October 2023.

Denmark submits Pillar Two legislation to Parliament

On 3 October 2023, the Danish government sent to Parliament a series of tax legislative proposals for the parliamentary year 2023--2024, including the draft legislation to implement Pillar Two into domestic law. The Danish Parliament will now discuss the bill presented. It is expected that the Danish Parliament will pass the bill and that the law will be effective as of 31 December 2023. However, at least 30 days must pass between when a bill is presented and when it is fully processed and becomes law.

France releases Pillar Two draft legislation

On 27 September 2023, the French Government presented the draft Finance Bill for 2024, which includes the draft legislation on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This draft legislation includes an IIR and a QDMTT applicable to fiscal years starting on or after 31 December 2023. The draft legislation also includes an UTPR applicable to fiscal years starting on or after 31 December 2024.

Furthermore, the draft legislation incorporates a transitional CbCR safe harbor in line with the OECD guidance.

The French Parliament will discuss and potentially amend the draft Bill over the coming weeks and vote on the final version by the end of December 2023.

Japan releases interpretative guidance on Pillar Two

On 29 September 2023, the Japanese National Tax Agency (NTA) published [interpretative guidance](#) in relation to the Pillar Two regulations introduced into domestic law. The interpretative guidance includes explanations on the de minimis exclusion and the transitional CbCR safe harbor.

Romania releases Pillar Two draft legislation

On 4 October 2023, Romania's Ministry of Public Finance published [draft legislation](#), for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This includes an IIR and a QDMTT applicable from 31 December 2023, as well as a UTPR applicable from 31 December 2024.

Furthermore, the draft legislation incorporates the transitional CbCR safe harbor in line with the OECD guidance. The consultation period will be open until 14 October 2023.

UK releases additional draft legislation on Pillar Two

On 27 September 2023, the UK government published, for public consultation, additional draft legislation, with further amendments on the UK Pillar Two rules. The draft legislation reflects stakeholder observations regarding the legislation obtained through the consultation process, it includes updates to the draft legislation published in July 2023 following the Administrative Guidance issued by the OECD. His Majesty's Revenue and Customs (HMRC) released draft legislation that includes a proposed approach to adopt the UTPR transitional and QDMTT permanent safe harbors, together with a number of updates to the already-enacted IIR and QDMTT legislation included in Finance (No. 2) Act 2023.

The consultation period will be open until 25 October 2023.

BEPS and other developments

OECD

OECD Secretary-General releases tax report to G20 Finance Ministers and Central Bank governors

On 11 October 2023, the OECD Secretary-General delivered a [tax report](#) to the G20 Finance Ministers and Central Bank Governors ahead of their 11-13 October meeting under the 2023 Indian G20 Presidency. The report summarizes the latest developments around the BEPS 2.0 project, BEPS project implementation, tax transparency, tax crime, tax and inequality as well as global mobility.

Regarding the BEPS 2.0 project, the report acknowledges the release of the MLC for implementing Amount A of Pillar One, as well as the ongoing progress on Amount B of Pillar One. Concerning Pillar Two, the report mentions the release of the Pillar Two implementation handbook and the STTR Multilateral Instrument. Additionally, the report notes that the Inclusive Framework has approved the seventh annual Progress Report of the OECD/G20 Inclusive Framework on BEPS, which outlines the key progress made over the past year.

The [Progress Report](#) describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from September 2022 to September 2023. According to the report, notable progress has been achieved under Actions 5, 6, 13 and 14, which comprise the four BEPS minimum standards. Among other things, the Progress Report mentions that 319 preferential tax regimes have been reviewed under Action 5 and almost 50,000 tax rulings have been exchanged among members of the Inclusive Framework. As of 1 September 2023, the MLI has been signed by 100 jurisdictions and effectively modified approximately 1,200 treaties concluded among the 83 jurisdictions, which have ratified, accepted or approved it. As for Action 13, more than 110 jurisdictions have already introduced CbCR legislation. Finally, the work on the 2020 Action 14 review of the Assessment Methodology and the Mutual Agreement Procedure (MAP) Statistics Reporting Framework is now progressing.

In the context of tax transparency, the report references a series of documents that were released throughout the year. On the subject of Tax Crime, the OECD and the Indian G20 Presidency have launched a new pilot program for the OECD Academy for Tax and Financial Crime Investigation, aimed at training individuals from the South Asian region who will be investigating tax crime.

On Tax and Inequality, the report refers to the first "Latin American and Caribbean Summit for an Inclusive, Sustainable and Equitable Global Tax Order" where the participants agreed to work together on key tax priorities for the region, including the progressivity of the international tax system and on the design of instruments relating to income and wealth. The report also mentions the working paper "The taxation of labor vs. capital income: A focus on high earners," highlighting the impact of how labor and capital income are treated on the efficiency and equity of tax systems.

Additionally, the report acknowledges the international tax challenges associated with the increased mobility of individuals. As a result, the Inclusive Framework and Working Party 1 may consider further work in this area.

OECD releases outcomes of sixth peer review on BEPS Action 13

On 25 September 2023, the OECD published the compilation of the outcomes of the sixth annual peer review (the [Compilation](#)) of the minimum standard on Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) of the BEPS project.

The Compilation covers 136 jurisdictions and reflects that implementation of CbCR has been found to be largely consistent with the Action 13 minimum standard. The individual section on each jurisdiction generally reflects the implementation status as of 31 March 2022, except for the information on the exchange of CbC reports, which reflects the status as of 31 December 2022.

According to the executive summary accompanying the Compilation, the sixth annual peer review covers 136 jurisdictions that provided legislation and/or information relating to their implementation of CbCR, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbCR has been found to be largely consistent with the Action 13 minimum standard.

However, 22 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework, and 30 jurisdictions received one or more recommendations for improvements to specific areas of their framework. The Compilation further reports that 89 jurisdictions have multilateral or bilateral competent authority agreements in place, resulting in more than 3,000 exchange-of-information relationships. In addition, 73 jurisdictions have provided detailed information about the appropriate use of CbC reports, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use.

Work will continue to monitor the implementation and operation of CbCR by members of the Inclusive Framework and the progress that jurisdictions make in addressing the recommendations.

See EY Global Tax Alert, [OECD releases outcomes of sixth peer review on BEPS Action 13](#), dated 6 October 2023.

Eswatini signs Multilateral Convention

On 27 September 2023, the OECD [announced](#) that Eswatini [signed](#) the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). At the time of signature, Eswatini submitted a list of (six) tax treaties that it would like to designate as covered tax agreements (CTAs) and submitted a preliminary list of reservations and notifications in relation to the CTAs (MLI positions). The definitive MLI positions for Eswatini will be provided when its respective instrument of ratification, acceptance or approval of the MLI are deposited.

As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of Base Erosion and Profit Shifting (BEPS) Action 14 on dispute resolution. Eswatini did not opt in for mandatory binding arbitration.

Armenia and Côte d'Ivoire deposit their instrument of ratification of the MLI

On 25 September 2023, [Armenia](#) and [Côte d'Ivoire](#) deposited their instrument of ratification of the MLI with the OECD. Upon depositing the instrument of ratification, jurisdictions are required to confirm their MLI positions.

Armenia amended some of its preliminary positions and added five tax treaties (namely, Denmark, Israel, Kyrgyz, Malta, Singapore) to its list of CTAs. Armenia added a reservation to Article 5 (elimination of double taxation) and to Article 8 (dividend transfer transactions) not to apply to any of its CTAs. Under Article 7, Armenia updated its position so that paragraph 4 (principal purpose test) applies instead of paragraph 6 (simplified limitation on benefits). Furthermore, Côte d'Ivoire confirmed its preliminary position and did not make any additional reservations or notifications.

The MLI will enter into force for Armenia and Côte d'Ivoire 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 January 2024.

European Union

ECOFIN adopts revised list of non-cooperative jurisdictions for tax purposes

On 17 October 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where Finance Ministers approved the [Council Conclusions](#) on the revised EU List. During the meeting, the Council decided to add Antigua and Barbuda, Belize, and the Seychelles and remove the British Virgin Islands, Costa Rica, and the Marshall Islands from the EU list of non-cooperative jurisdictions for tax purposes (Annex I). Changes were also made to the Annex II of the EU list that reflects the state of play of pending commitment. Four jurisdictions (Jordan, Qatar, Montserrat and Thailand) were removed from Annex II.

The updated EU List now includes 16 jurisdictions in Annex I (American Samoa, Anguilla, Antigua and Barbuda, the Bahamas, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, the Turks and Caicos Islands, the US Virgin Islands, and Vanuatu.) and 14 jurisdictions in Annex II (Albania, Armenia, Aruba, Botswana, British Virgin Islands, Costa Rica, Curaçao, Dominica, Eswatini, Hong Kong, Israel, Malaysia, Turkey, and Vietnam.). The Council plans to review and revise the list biannually and the next update is scheduled for February 2024.

Recently, the Code of Conduct Group also published its multiannual [work package](#) (2023--2028). The document mentions that the group could explore how to facilitate the proper functioning of the Pillar Two rules by making use of the EU listing process. The Code of Conduct Group will also continue to discuss the new beneficial ownership criterion (criterion 1.4) and the extension of the geographical scope of its EU list screening process, which now encompasses about 95 non-EU jurisdictions.

Member States formally adopt transparency rules for crypto-assets (DAC8)

During the 17 October ECOFIN meeting, the Finance Ministers also [formally adopted](#) the Directive on Administrative Cooperation implementing the OECD rules on reporting for crypto assets (DAC8). DAC8 introduces reporting requirements for crypto assets related to transactions of clients residing in the EU. DAC8 also extends the scope of exchange of advance cross-border rulings concerning natural persons and introduces the possibility of exchanging information received under the DAC framework for non-tax-related purposes. Member States have until 31 December 2025 to transpose the main rules into national law, and the new provisions will generally apply as of 1 January 2026 (exceptions apply).

Country developments

Austria updates guidelines on DAC6

On 12 September 2023, the Ministry of Finance of Austria issued [updated guidelines](#) on the application of the national law implementing the EU Directive on the mandatory disclosure rules (MDR) and exchange of cross-border tax arrangements (DAC6). The guidelines were drafted on the basis of feedback received by the Ministry of Finance, and cover key areas as the initial guidelines, such as scope, definitions, reportable arrangements, hallmarks, deadlines and exemptions.

The updated guidance also offers new content, including: (i) additional examples concerning the definition of an intermediary, (ii) further elaboration on the meaning of tax advantage and the circumstances under which the main benefit test is met, (iii) clarifications and illustrative explanations on the concept of unilateral safe harbours and the transfer of hard-to-value intangibles, (iv) examples and clarifications on the evaluation of whether the earnings before interest and taxes (EBIT) decline test has been met, (v) clarifications with regard to the term of converting income, and (vi) clarifications on cross-border payments.

Additionally, the guidelines have been modified to reflect the removal of the obligation of an intermediary invoking the exemption for professional privilege in notifying other intermediaries of the reporting obligation for DAC6. Finally, the updated guidance refers to the content of the notification itself and provides clarifications to the indication of the value of the arrangement.

Bulgaria launches public consultation on draft bill implementing Public CbCR

On 19 September 2023, the Ministry of Finance of Bulgaria issued a [draft bill](#) amending the Accounting Bill, implementing the EU Public CbCR Directive into domestic law. The draft bill has been submitted for public consultation and stakeholders can submit their feedback through 18 October 2023.

According to the draft bill, companies with a consolidated turnover exceeding 1.5 million Bulgarian lev (BGN 1.5m), as well as stand-alone companies with individual financial statements over BGN 1.5m operating in Bulgaria, must prepare and publish a report on income tax information.

The law is generally in line with the EU Directive and Bulgaria has opted for the safeguard clause (i.e., option of temporarily withholding information from the report where its disclosure would be prejudicial to the commercial position of the MNE group to which the report refers) for a period of up to five years after the publication of the report.

The report should be published within 12 months after the end of the financial year for which the report is drawn up. Bulgaria has chosen to grant an exemption to entities for publishing the report on their website, provided that the report is made available to any third party located within the EU free of charge and the website of the relevant entity provide information on the exemption.

Once adopted, the bill will be effective for financial years starting on or after 1 January 2024.

Costa Rica enacts law making reforms to achieve exclusion from EU's list of non-cooperative jurisdictions in tax matters

On 2 October 2023, [Law No. 10.381](#), which aims to incorporate amendments to the Income Tax Law necessary to achieve Costa Rica's removal from the EU list of non-cooperative jurisdictions in tax matters, was published in the Official Gazette. This follows its adoption by the Congress on 26 September 2023, which overturned the partial veto on the bill announced by the President of the Republic. Among other amendments, Law No. 10.381 includes an amendment which seeks to address the elements that the EU had identified as "harmful" in its review of the foreign-source income exemption regime. The law addresses the harmful elements related to the lack of transparency in the legal provisions and administrative discretion that flows from the disparity between the territoriality principle under the Income Tax Law and administrative and judicial interpretations that deem passive foreign-source income as taxable in Costa Rica to the extent it is linked to an economic structure in Costa Rica or the capital that generated the income originated in Costa Rica.

See EY Global Tax Alert, [Costa Rica enacts law making reforms to achieve exclusion from EU's list of non-cooperative jurisdictions in tax matters](#), dated 2 October 2023.

Ecuador Internal Revenue Service releases amendments on Transfer Pricing legislation

On 13 September 2023, the Internal Revenue Service (IRS) of Ecuador issued amendments to Transfer Pricing (TP) domestic legislation ([Resolucion Nro. NAC-DGERCGC23-00000025](#)) (the Resolution).

According to the Resolution, taxpayers who have entered into transactions with related parties exceeding cumulatively US\$3m must report the annex of operations with related parties. In case the cumulative amount exceeds US\$10m (previously US\$15m), taxpayers should present, in addition to the annex, a comprehensive transfer pricing report. The provisions regulating the excluded operations from the determination of the total amount of related party operations have also been clarified.

In addition, the Resolution indicates that the comprehensive transfer pricing report should be submitted through the IRS online portal in digital and PDF format. Furthermore, the Resolution introduced amendment to the provision relevant TP method used during the comparability analysis. The new rules allow taxpayers to apply the prior year's financial information if the concerned year's information is unavailable during the comparability analysis, as long as there have been no significant changes impacting relevant conditions between the two periods.

The amendments will enter into effect once published on the Official Gazette.

Egypt issues transfer pricing explanatory instructions

On 19 September 2023, the Egyptian Tax Authority issued Transfer Pricing Explanatory Instructions No. 78 of 2023 (Instructions). The Instructions clarify the transfer pricing provisions in the *Unified Tax Procedures Law No. 206 of 2020* (UTPL) and aim to address several common transfer pricing queries regarding.

Among other things, the instructions specify that if the taxpayer revises or amends the corporate income tax return within 30 days of filing the original, the local file submission timeline will start from the revised/amended CITR submission date. As for the master file, the instructions clarify that if the ultimate parent entity (UPE) of the group is registered in an Egyptian free trade zone, all other group entities must create the master file, excluding the ones registered within the Egyptian free trade zone.

See EY Global Tax Alert, [Egypt issues transfer pricing Explanatory Instructions](#), dated 3 October 2023.

Finland launched public consultations on BEFIT, Transfer Pricing and Head Office Taxes Directives

On 15 September 2023, Ministry of Finance of Finland launched [public consultations](#) on the draft BEFIT, Transfer Pricing and Head Office Taxes Directives issued by the European Commission on the same day. Stakeholders were invited to provide their input by 29 September 2023. Feedback was provided by 22 parties.

Latvia adopts rules implementing Public CbCR Directive

On 14 September 2023, Latvia adopted the [bill](#) introducing the Public CbCR Directive into Latvian domestic law.

Latvia has opted for the safeguard clause (i.e. option of temporarily withholding information from the report where its disclosure would be prejudicial to the commercial position of the MNE group to which the report refers) for a period of up to five years after the publication of the report.

The bill also provides for a "website exemption" to entities for that publish the report on their website, provided that the report is made available to any third party located within the EU free of charge and the website of the relevant entity provide information on the exemption.

The deadline for publishing the report is 12 months after the balance sheet date of the reporting year for which this report on income taxes is prepared.

The bill was published in the *Official Gazette* on 27 September 2023 and entered into force on 11 October 2023. The rules will apply for accounting years beginning on or after 22 June 2024.

Malta's Commissioner for Revenue issues updated guidelines on DAC7

On 31 August 2023, Malta's Commissioner for Revenue issued updated [guidelines](#) in relation to the DAC 7 reporting obligations of platform operators.

Under the updated guidelines, a platform operator that meets the requirements specified in section 2.4.1 of the guidelines should register as a reporting Malta platform operator with the Maltese competent authority by 31 October 2023, and complete any changes to the registration by 31 December 2023. As for excluded platform operators, registrations with the competent authority in Malta and proof of classification should be provided by 31 October 2023. Finally, platform operators who started their activities after 31 October 2023, should register by 31 December 2023 and, in any case, within two weeks of the start of their activities.

Moldova launches public consultation on proposed transfer pricing rules

On 5 October 2023, the Ministry of Finance launched a public consultation the draft of application norms (instructions) on new transfer pricing legislation that will enter into force on 1 January 2024.

The application of transfer pricing rules will be mandatory for companies carrying out transactions with related parties whose aggregate annual value of transactions is equal to or greater than 20 million Moldovan Leu (MDL 20m). For companies below this threshold, the transfer pricing rules will be applied upon request of the State Tax Service, as part of a tax audit. The draft also proposes the transfer pricing methods to be used including all methods recognized in the OECD Transfer Pricing Guidelines.

Moldova publishes draft public CbCR legislation

On 20 September 2023, the Government of Moldova submitted to the Parliament a draft law implementing public CbCR rules. The draft law follows partially the EU public CbCR Directive and requires entities with presence in Moldova (that meet certain criteria) to disclose publicly the income taxes paid and other tax-related information. If adopted, the rules will enter into force on 1 January 2025.

Dutch budget proposals include amendments to anti-dividend-stripping rules

On 19 September 2023, the Dutch Government published its budget proposals. Among others, the proposals include amendments to the anti-dividend-stripping rules.

To tackle anti-dividend-stripping transactions, the budget suggests shifting the burden of proof to the taxpayer/withholding agent, to demonstrate that the recipient is entitled to the dividend and considered the beneficial owner. Besides this, a legal registration will be introduced for publicly traded shares to document who the beneficial owner of the dividend is at a certain date (record date) and thus the entitled party to any relief from dividend withholding tax. As a final item, an amendment is proposed to tackle dividend stripping within the group.

The proposal is subject to review and discussions by Parliament and may be subject to change. If adopted, the rules will enter into effect on 1 January 2024.

See EY Global Tax Alert, [Netherlands budget proposals: Key legislative developments for 2024 and 2025, including Pillar Two minimum tax](#), dated 19 September 2023.

Nigeria Tax Appeal Tribunal judgment partially voids Income Tax CbCR Regulations 2018

On 17 August 2023, the Lagos zone of the Tax Appeal Tribunal (TAT) of Nigeria ruled on a tax dispute centered on the legality of the Income Tax Country-by-Country Reporting Regulations, 2018 (the Regulations) and the subsequent notices of administrative penalties issued by the Federal Inland Revenue Service (FIRS) based on the provisions of the Regulations.

Section 61 of the FIRS Establishment Act gives the Board of the FIRS the power to make subsidiary legislations. However, this delegated power can only be exercised by a legally and properly constituted Board as stipulated by the FIRS Establishment Act, and where this is not so, any step, process or action done in the name of the Board will be null and void to the extent of its inconsistencies.

In view of the above, the TAT ruled that the Regulations were not drafted by a Board of the FIRS that was legally constituted and properly composed, as it had been dissolved and had not been reconstituted at the time the Regulations was promulgated. Also, in accordance with the provisions of Section 12 of the 1999 Constitution of the Federal Republic of Nigeria, every international instrument must first be domesticated after ratification before it can take on legal significance.

Furthermore, the TAT ruled that the notices of the administrative penalties served on the appellant by the enforcement of the Regulations are unconstitutional and void.

See EY Global Tax Alert, [Nigeria Tax Appeal Tribunal judgment partially voids Income Tax Country-by-Country Reporting Regulations 2018](#), dated 12 September 2023.

Poland launches public consultation on guidelines to withholding tax provisions

On 27 September 2023, the Ministry of Finance of Poland launched a public consultation on the [draft guidelines](#) on withholding tax provisions regarding, among other things, the beneficial owner clause. The guidelines encompass the interpretation and application of the provisions on the beneficial owner clause, and address, in part, the concept of beneficial owner for withholding tax purposes, as well as the application of the look-through approach concept.

Moreover, the draft also includes clarifications on the criteria of receiving payments for personal benefit, conducting genuine business activities, and effective taxation.

Stakeholders were invited to provide their input by 24 October 2023 (extended deadline).

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