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Global Tax Alert

The Latest on BEPS and Beyond

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EY Tax News Update: Global Edition

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Highlights

In mid-February 2024, Pillar One has been at the forefront of discussions on international tax. To begin with, Austria, France, Italy, Spain, the United Kingdom (UK) and the United States (US) renewed their Digital Services Tax (DST) standstill commitment until 30 June 2024. This extension does not include India and Turkey, which were part of the DST standstill but did not join this renewal. It remains unclear whether the US will extend the DST standstill with the two countries or impose further trade actions against them with respect to their existing DSTs.

Furthermore, the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) (the Inclusive Framework) recently released the report on Amount B of Pillar One. The report introduces two options for jurisdictions to simplify and streamline transfer pricing outcomes for baseline marketing and distribution activities; taxpayers may choose the elective option and or adopt the other (mandatory) approach. This simplified and streamlined approach aims not only to reduce administrative burdens and costs, but also to create a more predictable and equitable international tax environment.

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Building a better working world

Despite these advances, uncertainties remain. Most importantly, the report indicates that the simplified and streamlined approach is unlikely to be adopted globally, as jurisdictions can choose whether to adopt the approach. Jurisdictions that opt out will continue to use their existing transfer pricing methods and will not be bound to follow the new guidance, even in the context of dispute resolution procedures. Footnotes in the report also indicate that India has several fundamental concerns and reservations on Amount B. Additionally, the report indicates that the Inclusive Framework is working on an additional optional qualitative scoping criterion that jurisdictions may choose to apply as an additional step to identify distributors performing non-baseline activities for the purpose of the simplified and streamlined approach. The Inclusive Framework aims to conclude this work by 31 March 2024.

The report on Amount B will be incorporated into the OECD Transfer Pricing Guidelines (TPG) as of 2025. However, as the adoption of Amount B by jurisdictions remains elective, the monitoring of Amount B implementation becomes critical. If an associated enterprise that is a party to a controlled transaction is located in a jurisdiction that has not adopted the simplified and streamlined approach, the framework of Amount B is not binding on the counterparty jurisdiction. As an exception to this rule, according to the Amount B report, members of the Inclusive Framework commit to respect the outcome determined under Amount B where the simplified and streamlined approach is applied by a low-capacity jurisdiction. The list of low-capacity jurisdictions considered for these purposes will be made available on the OECD website.

This commitment introduces complexities, particularly for transactions between jurisdictions not considered to be low-capacity, potentially raising further questions about its application and impact.

Additionally, the momentum toward tax transparency continues to build. Inspired by the European Union's (EU's) public Country-by-Country Reporting (CbCR) Directive, other jurisdictions, are taking steps in this direction. For example, Moldova recently enacted rules on public CbCR and Australia released for consultation a revised exposure draft (ED) law for the proposed public CbCR measures. This revision, following the public consultation on the April 2023 ED, includes welcome refinements responding, in part, to concerns raised by stakeholders, intended to more closely align the Australian requirements with the EU's public CbCR Directive.

The EU has also taken steps to promote and strengthen tax good-governance mechanisms, fair taxation and global tax transparency by updating the EU list of noncooperative jurisdictions. The revised list now includes 12 jurisdictions in Annex I that are identified as noncooperative or as not meeting their obligations to the EU, and 10 jurisdictions in Annex II that are cooperating with the EU but have yet to fulfill certain commitments. This strategic update serves as a powerful tool, spotlighting jurisdictions that fall short of the EU's tax governance standards and urging non-EU jurisdictions to increase transparency and tackle tax evasion. Jurisdictions that do not comply with the EU's requirements risk facing defensive actions, both tax related and non-tax related, from EU Member States.

BEPS 2.0

OECD

OECD releases report on Amount B

On 19 February 2024, the OECD released the report on Amount B of Pillar One. Amount B provides for fixed returns for in-scope, in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries. Unlike for Amount A of Pillar One and the global minimum tax rules under Pillar Two, there are no monetary thresholds (e.g., minimum global revenue) that Multinational Enterprise (MNE) Groups must meet to fall within the scope of Amount B.

The simplified and streamlined approach as reflected in the report will be added to the OECD TPG for MNEs and Tax Administrations 2022 as an Annex to Chapter IV. Jurisdictions can elect to apply the approach but are not obliged to do so. For jurisdictions that choose not to apply the simplified and streamlined approach, the remainder of the OECD TPG will be guiding and the approach would not be decisive in dispute resolution procedures, even if the other involved jurisdiction applies the approach.

The approach provides a pricing framework whereby a three-step process determines a return on sales for in-scope distributors. It also introduces two implementation options for jurisdictions adopting the approach for fiscal years starting on or after 1 January 2025.

Under the first option, a jurisdiction allows tested parties resident within their jurisdiction to elect to apply the simplified and streamlined approach. Under the second option, a jurisdiction can require the use of the simplified and streamlined approach in a prescriptive manner by its tax administration and tested parties resident in the jurisdiction. Thus, the tax administration (i) may specify that taxpayers should apply the simplified and streamlined approach if the scoping criteria are met and (ii) would be bound to apply it under similar circumstances. The report also describes activities that may exclude a distributor from the scope of the simplified and streamlined approach, such as the distribution of commodities or digital goods.

Furthermore, the report provides guidance on documentation, transitional issues and tax-certainty considerations.

European Union

European Commission opens infringement procedures against nine Member States failing to timely communicate transposition of the Minimum Tax Directive

On 25 January 2024, the European Commission (the Commission) announced that it initiated infringement procedures against nine Member States – Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal and Spain – that had not communicated national measures transposing the Minimum Tax Directive by the 31 December 2023 deadline.

Estonia, Latvia, Lithuania and Malta had communicated their intent to use the delay option granted by Article 50 of the Minimum Tax Directive, but the Commission opened the infringement procedures because the countries were late in implementing legislation on administrative provisions relating to the Minimum Tax Directive that are required despite opting for the delayed introduction of the charging provisions of the Directive. Cyprus, Greece, Poland, Portugal and Spain have not opted for this delay and are required to transpose the Directive in full and have yet to enact the necessary rules under domestic law.

The applicable Member States have two months to reply to the letters of formal notice and complete their transposition, or the Commission may decide to issue a reasoned opinion and provide two additional months to comply. If the reply to the reasoned opinion is not satisfactory, the Commission may refer the case to the Court of Justice of the EU.

Country developments

Croatia enacts Pillar Two legislation

On 22 December 2023, Croatia published the legislation implementing Pillar Two into domestic law. The legislation is aligned with the EU Minimum Tax Directive and introduces a qualified domestic minimum top-up tax (QDMTT) and an income inclusion rule (IIR) for fiscal years starting on or after 31 December 2023. The legislation also introduces an undertaxed profits rule (UTPR) for fiscal years starting on or after 31 December 2024.

The legislation includes a provision in relation to safe harbor rules, which apply when included in a qualifying international agreement on safe harbors. Accordingly, this provision specifies that the qualifying international agreement includes the transitional CbCR safe harbor, the QDMTT safe harbor and the UTPR safe harbor, making them applicable.

Estonia submits Pillar Two legislation to Parliament

On 8 February 2024, the Ministry of Finance of Estonia announced the government's approval of the Pillar Two legislation. Although Estonia has opted to defer the implementation of the Minimum Tax Directive until 2030, the approved legislation specifically addresses reporting obligations.

The next step is for the legislation to undergo review in the Estonian Parliament. If passed by Parliament, the legislation will then be sent to the President of Estonia. The president can choose to sign the bill into law or return it to the parliament for further consideration. Once signed by the president, the Pillar Two reporting obligations would become law on the date specified in the legislation.

Latvia submits Pillar Two legislation to Parliament

On 30 January 2024, the Cabinet of Ministers of Latvia approved the Pillar Two legislation. Although Latvia has opted to defer the implementation of Pillar Two as allowed under the EU Minimum Tax Directive, this legislation relates to reporting obligations.

Next, the legislation will be reviewed in the Saeima, the Latvian Parliament. If passed by the Saeima, the legislation will be sent to the President of Latvia, who will either sign it into law or return it to the Saeima for further consideration. Once signed by the president, the Pillar Two reporting obligations would become law upon publication in Latvia's *Official Gazette*.

Update on the joint statement from the US and five European countries on DSTs

On 15 February 2024, Austria, France, Italy, Spain, the UK and the US released an update to their joint statement on a transitional approach to the treatment of existing DSTs and other relevant similar measures during the interim period before new Pillar One rules come into effect.

In an October 2021 joint statement, the European countries agreed to allow a portion of the tax under their existing DSTs (or any other existing unilateral measures) that is accrued by an MNE to be credited against tax liability associated with Amount A when Pillar One rules are in effect. In return, the US agreed to terminate all trade actions against the European countries with respect to their existing DSTs and also committed not to impose further trade actions during the interim period before Pillar One took effect. This interim period was defined as the period beginning on 1 January 2022, and ending on the earlier of the date the Pillar One multilateral convention (MLC) came into force or 31 December 2023.

In light of the revised timeline for adoption and signature of Pillar One, the participants in the updated joint statement have agreed to extend the interim period set forth in the October 2021 joint statement until 30 June 2024.

BEPS and other developments

OECD

OECD releases 2024 update on peer review of preferential tax regimes and 'no or only nominal tax jurisdictions'

On 6 February 2024, 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 Inclusive Framework on BEPS had approved the results on 5 February 2024.

The updated results cover new decisions on four preferential tax regimes. According to the press release, a total of 322 tax regimes have been reviewed by the Forum on Harmful Tax Practices (FHTP), and more than 40% of those are either abolished or in the process of being abolished. This latest review reflects that the regimes in Hong Kong (China) and the United Arab Emirates (UAE) have been amended to align with the standard and are now considered non-harmful, and two regimes in Albania and Armenia have been abolished.

Additionally, the OECD released updated conclusions on the review of the substantial activities factor for "no or only nominal tax jurisdictions" in connection with the domestic laws of the 12 jurisdictions that have been identified by the FHTP as being a "no or only nominal tax jurisdiction." For eight out of the 12 no issues were identified, while for the remaining four (Anguilla, the Bahamas, Barbados and the Turks and Caicos Islands) the FHTP identified areas for focused monitoring. Additionally, for Anguilla recommendations for substantial improvement were made.

See EY Global Tax Alert, *OECD releases 2024 update on peer review under BEPS Action 5 on harmful tax practices*, dated 15 February 2024.

OECD publishes ICAP statistics

On 29 January 2024, the OECD published the first statistics on the International Compliance Assurance Programme (ICAP) since the start of the program in 2018, covering all 20 cases completed by October 2023. ICAP is a voluntary risk assessment and assurance program under which multiple tax administrations collaboratively risk-assess an MNE group. In return, the program offers MNEs a level of tax assurance that participating tax administrations will not open new tax audits regarding the low-risk covered transactions for a specified period.

The statistics provide information on the tax administrations that participated in the completed ICAP risk assessments, the average time taken to complete a risk assessment, the core risk areas covered and aggregated data on the risk-assessment outcomes. The program covers five areas: tangible goods, intangibles, services, financing and permanent establishments (PEs). The statistics also include information on the relationship between ICAP and other routes to tax certainty, such as advance pricing agreements (APAs) and mutual agreement procedures (MAPs).

See EY Global Tax Alert, *OECD publishes ICAP statistics*, dated 31 January 2024.

Zambia joins Global Forum on Transparency and Exchange of Information for Tax Purposes

On 17 of January 2024, Zambia became the 39th African participant and the 171st global member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum). With the inclusion in the Global Forum, Zambia commits to combatting offshore tax evasion through implementation of the internationally agreed standards of Exchange of Information on Request and automatic exchange of financial account information. Zambia will also join the Africa Initiative, a program of work launched in 2014 to support domestic revenue mobilization and the fight against illicit financial flows in Africa through enhanced transparency and exchange of information for tax purposes. The latest progress report "Tax Transparency in Africa 2023" highlights the Africa Initiative's relevance and major successes to date.

OECD releases assessment schedule for the full peer review process under Action 14

In November 2023, the OECD released the assessment schedule for the full peer review process under Action 14 (the Schedule). This follows the agreement and release of the New Assessment Methodology for the Action 14 peer reviews in 2023 (see EY Global Tax Alert, *OECD releases revised methodology for BEPS Action 14 peer reviews and updates on reporting of MAP and APA statistics*, dated 17 February 2023). The New Assessment Methodology sets out how monitoring of the Action 14 minimum standard is to be conducted from 2023 onward (the Continued Monitoring Process). While the original Assessment Methodology allowed for the deferral of the peer review of certain jurisdictions, deferral is not provided for under the Continued Monitoring Process. Therefore, all Inclusive Framework member jurisdictions (whether previously peer reviewed or not) will be subject to monitoring, under a full or simplified peer review process.

The Schedule shows that the full peer review process will be conducted in nine batches, covering a total of 55 jurisdictions. The first batch is scheduled to be launched in April 2024 and comprises the review of Belgium, Canada, Croatia, Estonia, Liechtenstein and the UK.

United Nations

UN Committee of Experts on International Cooperation in Tax Matters publishes Report on the 27th session

On 26 January 2024, the United Nations (UN) published the report on the 27th session of the Committee of Experts on International Cooperation in Tax Matters (the Committee) held on 17-20 October 2023 providing a summary of the items discussed and decisions taken during the session. The session covered a wide array of topics including transfer pricing, dispute avoidance and resolution, tax transparency, wealth and solidarity taxes, taxation of crypto assets, digitalization and other opportunities to improve tax administration.

In terms of dispute avoidance and resolution, the report stresses the ongoing collaboration with the Subcommittee on Transfer Pricing to improve guidance on transfer pricing. This effort included a review of a paper by the Subcommittee on APAs. The Working Group is also actively observing discussions in other forums, particularly developments related to certainty elements of Pillars One and Two of the Inclusive Framework. The need for updates to the Handbook on Dispute Avoidance and Resolution would be assessed based on these developments, with updates presented at future sessions.

As for taxation issues related to the digitalized and globalized economy, the report presents the progress on the three workstreams: multilateral implementation of certain UN Model Convention provisions (workstream A); the function and relevance of physical presence tests (workstream B); and cross-border taxation concerning remote workers (workstream C). Subcommittee will continue to consider those issues and report back to the Committee at the 28th session. Moreover, in the sphere of taxation of crypto assets, the ad hoc group on taxation of crypto assets presented its report including a suggestion for the development of a toolkit to evaluate the tax risks posed by crypto assets. The first part of this toolkit will be introduced during the next session of the Committee, with approval to be sought at the 29th session. The second part of the toolkit will be presented for approval during the same session, and an updated version of the toolkit will be targeted for approval at the 30th session.

Regarding increasing tax transparency, the Subcommittee presented a report outlining the areas of priority for drafting guidance on enhancing tax transparency, including an overview of information exchange; guidance for nations new to information exchange; limitations in addressing tax transparency; non-tax use of exchanged data; and assistance in collection. Committee members supported the priority areas, but suggested that capacity should be considered, including technical assistance, due to the challenges many developing countries face in implementing existing information-exchange standards. Other areas highlighted for potential future work included reviewing Article 26, addressing issues on real estate information exchange, and considering residence by investment and citizenship by investment schemes. The Committee approved these priority issues, with further discussion to follow in the 28th session, which will be held on 19-22 March 2024.

European Union

Commission considers Canadian legislation on reporting by platforms equivalent to DAC7

On 5 February 2024, the Commission adopted an Implementing Regulation. The implementing regulation grants equivalence between the information required to be automatically exchanged between Canada and EU Member States that have signed the Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms (DPI-MCAA) and that under Section III of DAC7 (reporting rules for digital platforms). The DPI-MCAA is signed by the competent authorities of Belgium, Bulgaria, Canada, Croatia, Cyprus, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Under DAC7, reporting by non-EU platform operators in a Member State is waived if the information reported in the third country of the platform operator is equivalent to that required under the reporting rules set under DAC7. The Commission determines this equivalence through implemented acts (for background, see EY Global Tax Alert, *EU adopts tax transparency rules for digital platforms (DAC7)*, dated 23 March 2021).

For the equivalence to take effect, the Implementing Regulation introduces two conditions: (i) the Canadian legislation must come into force; and (ii) the exchange relationships between Canada and the Member States must be activated.

The Implementing Regulation will enter into force on 25 February 2024, the 20th day following its publication on the *Official Journal* of the EU, and equivalence applies as of 1 January 2024.

Commission opens State aid investigation into Swedish tax-exemption schemes

On 30 January 2024, the Commission initiated an in-depth State aid investigation to assess whether two Swedish schemes exempting non-food-based biogas and bio-propane used for heating or as motor fuel from energy and CO2 taxation, comply with the EU State aid rules and, in particular, the 2014 and 2022 guidelines on State aid for climate, environmental protection and energy.

The Commission considered the schemes, originally introduced by Sweden to curtail fossil fuel usage and associated greenhouse emissions while encouraging the consumption of biogas and bio-propane, to be compliant with State aid rules in 2020, permitting their continuation until 31 December 2030. However, the General Court of the EU (the Court) annulled the Commission decisions in December 2022. According to the Court, the Commission should have opened a formal investigation to examine whether these regimes could lead to the overcompensation of biogas producers when combined with support from other Member States.

As for next steps, the Commission's decision to initiate a formal investigation will be sent to Sweden and, once confidential aspects are eliminated, will be made publicly available in the State aid registry and published in the *Official Journal* of the EU, providing interested parties a one-month window to submit comments. Sweden will be called to comment on any observations submitted by interested parties.

Commission opens infringement procedures against Germany and Poland over failure to communicate transposition of joint audits provisions under DAC7

On 25 January 2024, the Commission announced that it had initiated infringement procedures against Germany and Poland for failing to communicate transposition of the provisions related to joint audits under DAC7. Germany and Poland have two months to reply to the letters of formal notice and complete their transposition, or the Commission may decide to issue a reasoned opinion and provide two additional months to comply. If the reply to the reasoned opinion is not satisfactory, the Commission may refer the case to the Court of Justice of the EU.

Country developments

Armenia's President authorizes accession to the CbC MCAA

On 30 January 2024, the President of the Republic of Armenia signed the law approving the accession of the country to the MCAA for the exchange of country-by-country (CbC) reports. The CbC MCAA is one of the model agreements designed to facilitate the implementation and operationalization of the automatic exchange of information pursuant to Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters. In this regard, it establishes the necessary rules and procedures that enable competent authorities in different jurisdictions to exchange information automatically and periodically on CbC reports (BEPS Action 13) that reporting entities of MNE groups submit to their residential tax authority. This automatic exchange of information can be conducted with all signatory jurisdictions of the CbC MCAA (100 jurisdictions as of 5 September 2023) with which there is an active relationship.

Australia revises draft legislation for public CbCR

On 12 February 2024, Australia's Treasury released for consultation a revised ED law for the proposed Australian public (CbCR) measures. These additional tax transparency measures were announced in the 2022-23 Federal Budget. This revision follows consultation on the April 2023 ED and includes some refinements intended to align the Australian requirements more closely with the EU's public CbCR Directive.

Australia's pubic CbCR requires large MNEs to prepare certain information on a CbC basis for public release by the Australian Taxation Office (ATO). The measures will affect both Australian MNEs and foreign-owned MNEs for 2024, 2025 and later financial years.

Key changes in the revised ED, compared to the previous draft, include:

- The measures apply to financial reporting periods commencing on or after 1 July 2024.
- An additional threshold provides that an entity is only subject to reporting if at least AU$10m of their aggregated turnover for the income year is Australian-sourced.
- Information required to be disclosed is reduced compared to the previous draft.
- Aggregation of information is allowed for countries, unless the selected tax information relates to Australia and 41 other jurisdictions specified by the Minister on a CbC basis.
- An updated penalty section introduces significant penalties for not timely providing the required information.

Stakeholders are invited to provide feedback by 5 March 2024.

See EY Global Tax Alert, *Australia revises draft legislation for public country-by-country reporting*, dated 13 February 2024.

Belgium introduces bill implementing EU public CbCR Directive

On 26 January 2024, the law from 8 January 2024 amending the Belgian Code of Companies and Associations with respect to the disclosure of income tax information by certain undertakings and branches, commonly referred to as public CbCR, was published in the *Official Gazette* (available in French and Dutch). The new law implements the EU public CbCR Directive (the Directive). In line with the Directive, the Report should be published within 12 months following the closing date of the financial year for which the Report is drawn up. The King will determine the format and content of the Report through a Royal Decree. The content is however expected to be in line with the Directive.

Belgium has made use of the exemption from the publication of the Report on the undertaking's website, provided that (i) the website refers to the exemption; and (ii) the website refers to the Report as submitted to and published by the National Bank of Belgium.

The Directive stipulates that Member States may — subject to conditions — allow for one or more specific items of information otherwise required to be disclosed to be temporarily omitted from the Report if their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the Report relates. Information regarding tax havens, however, can never be omitted. Belgium has opted not to implement this option. Consequently, if a Report must be filed in Belgium, all information will have to be disclosed.

In line with the Directive, the new provisions concerning public CbCR as implemented in Belgian domestic law will be applicable for financial years starting on or after 22 June 2024. For most Belgian entities/branches, this implies the new requirements will apply for the financial year starting 1 January 2025.

See EY Global Tax Alert, *Belgium introduces Public CbCR*, dated 7 February 2024.

Belgian Constitutional Court rules DAC6 notification obligation on intermediaries subject to legal professional privilege infringes right to privacy following CJEU judgment

On 11 January 2024, Belgium's Constitutional Court issued four decisions (see press release in French/Dutch) indicating that intermediaries subject to the legal professional privilege (lawyers in particular) must be exempt from the requirement to notify other intermediaries of their obligation to report cross-border arrangements per DAC6 (mandatory disclosure rules). This follows a judgment of the Court of Justice of the European Union (CJEU, 8 December 2022 C-694/20), ruling that the DAC6 notification obligation breaches the legal professional privilege requirement and infringes the right to confidentiality between lawyers and their clients, as granted by the Charter of Fundamental Rights of the EU. The Constitutional Court will address other key questions upon receipt of the CJEU's conclusions.

Belgium adopts entity-approach CFC rules

On 29 December 2023, the law from 22 December 2023, introducing among others new rules governing the taxation of the non-distributed profits of a controlled foreign company (CFC), was published in the *Official Gazette* (French/Dutch). The reform represents a shift from Model B (transactional approach) to Model A (entity approach) of the EU Anti-Tax Avoidance Directive (ATAD).

The previous CFC regime, in effect since assessment year 2020, aimed to tax undistributed profits from controlled low-taxed subsidiaries or branches resulting from an artificial arrangement or a series of arrangements set up with the essential purpose to obtain a tax benefit. For this approach to apply, the significant people functions generating the CFC's income had to be based in Belgium. The new rules mainly focus on taxing the passive profits of a CFC that is directly owned by the Belgian controlling company and is subject to low taxation abroad, unless the CFC has sufficient economic substance.

To assess whether a portion of the profit of a foreign company should be included in the taxable basis of the Belgian controlling company, one must first determine whether the foreign company qualifies as a CFC. A foreign company qualifies as a CFC if both the participation and taxation conditions are met. The participation condition is met when a Belgian company, either alone or together with its associated companies, has the majority of voting rights on all shares, holds at least 50% of the capital, or is entitled to at least 50% of the profits of a foreign company. The taxation condition is met if a foreign company or PE is either not subject to income tax or is subject to income tax that amounts to less than half of the Belgian corporate income tax that would have been due if it had been established in Belgium.

Subsequently, one must assess whether the CFC is eligible for an applicable safe harbor. A safe harbor applies if: (i) the Belgian controlling company provides evidence that the CFC is carrying out a substantial economic activity; (ii) less than one-third of the CFC's total income originates from passive income; and (iii) the CFC is a regulated financial institution to which the earnings before interest, taxes, depreciation and amortization (EBITDA) interest deduction limitation does not apply and for which one-third or less of total income is derived from transactions with the Belgian controlling company or entities associated with it.

If a safe harbor applies, the CFC's profits are not to be included in the taxable basis of the Belgian controlling company. If no safe harbor applies, the amount of the CFC's undistributed profit to be included in the taxable basis of the Belgian controlling company should be computed.

The new rules are applicable as from assessment year 2024, applying to financial years ending on or after 31 December 2023.

See EY Global Tax Alert, *Belgium adopts entity-approach CFC rules*, dated 22 January 2024.

Bermuda updates list of reportable jurisdictions for CbCR purposes

On 31 January 2024, the Ministry of Finance of Bermuda published an updated list of reportable jurisdictions for the 2022 and 2023 reporting periods (starting on or after 1 January 2020) for purposes of the CbCR standard. Bermuda will provide the jurisdictions included on this list CbC information related to fiscal years 2022 and 2023. The list currently comprises 76 jurisdictions. The newly added jurisdictions are Aruba, Costa Rica, Kenya, Saint Kitts and Nevis and Thailand.

Bermuda Ministry of Finance issues FAQs on newly introduced Corporate Income Tax Act

On 29 January 2024, the Ministry of Finance of Bermuda issued Frequently Asked Questions (FAQs) on the Corporate Income Tax Act 2023 (the Act), which will be effective from 1January 2025, with some exceptions. The aim of the FAQs is to help taxpayers determine whether they are in scope of the Act and interpret specific provisions. Despite the Act's similarities with the OECD's Global Anti-Base Erosion (GloBE) Rules, the FAQs do not form part of the Act or any related regulations or guidance unless explicitly stated.

The FAQs are divided into two sections, covering general matters and specific chapters of the Act involving interpretation, charging provisions, scope, tax credits (foreign/qualified refundable), and taxable adjustments.

The FAQs clarify the available elections as per the Act and address questions related to tax attributes. Regarding interpretation, the Ministry provides guidance on the treatment of permit companies, issues that have an impact on determining whether an MNE group is in scope of the Act, and various definitions. Questions on the charging provisions relate to the treatment of tax loss carryforward deductions, while questions on the scope explain how MNE Groups with a limited international footprint are treated. Lastly, FAQs on taxable adjustments highlight issues related to prior period errors, changes in accounting principles, adjustments due to International Financial Reporting Standard (IFRS) 17 and long-duration targeted improvements, and economic transition and transfer pricing adjustments.

According to the Ministry, FAQs will be released on an ongoing basis.

Chilean government proposes amendments to the general anti-abuse rule

On 29 January 2024, the President of Chile submitted to the Chamber of Deputies a bill including amendments to the domestic general anti-abuse rule (GAAR).

The amendments, in part, changed the scope of the terms "abuse" and "simulation." The bill also provides details on how the GAAR and specific anti-abuse rules interact. Further, the updated bill introduces a new administrative procedure for the Tax Administration to determine tax avoidance cases and an Anti-Tax Avoidance Committee that will intervene in the decision-making process.

The Chamber of Deputies will discuss and vote on the bill and, if approved, forward it to the Senate.

Cyprus tax authorities issue revised thresholds for transfer pricing documentation

On 1 February 2024, the Cypriot Tax Department issued revised thresholds relating to the taxpayers' obligation to prepare a Cyprus Local File for transactions in scope of Section 33 of the Income Tax Law (ITL) (i.e., intercompany transactions).

In accordance with the provisions of the ITL, the Cyprus Local File obligation arises for connected persons that are tax residents in Cyprus or PEs in Cyprus of non-tax-resident persons (Liable Taxpayers) if their transactions with connected persons either exceed (or should have exceeded, based on the arm's-length principle) €750k in aggregate per category of transaction, per tax year.

Discussions that took place with interested parties, including the Ministry of Finance, led to increases in the above-mentioned thresholds as follows:

- From €750k to €5m for connected transactions falling under the category "Financing"
- From €750k to €1m for all other categories of connected transactions (i.e., "Goods," "Services," "Royalties and Other Intangibles" and "Other")

The increase of the thresholds is effective for the 2022 tax year and the relevant amendment of the ITL is expected to be completed at a later date.

See EY Global Tax Alert, *Cyprus tax authorities issue revised thresholds for transfer pricing documentation*, dated 2 February 2024.

Denmark adopts law aligning defensive measures with EU list of noncooperative tax jurisdictions

On 31 January 2024, Denmark published in its *Official Gazette* Law No. 107 introducing amendments to the Tax Assessment Act including the alignment of its defensive measures with the EU list of noncooperative tax jurisdictions (EU blacklist) as updated on 17 October 2023.

In Denmark, defensive measures were introduced by law no.788 of 4 May 2021 against countries on the EU blacklist, with effect from 1 July 2021. The defensive measures result in the non-deductibility in Denmark for payments to related entities that are resident (or registered) for tax purposes in a blacklisted jurisdiction and increased withholding tax rates on dividends distributed to recipients that are resident (or registered) for tax purposes in such jurisdictions (44% dividend withholding tax).

The law entered into force on 1 February 2024. The defensive measures will also apply to tax residents (or otherwise registered) recipients in Antigua and Barbuda, Belize and the Seychelles, but Costa Rica, the British Virgin Islands and the Marshall Islands have been removed from the list of covered jurisdictions, with Costa Rica and the British Virgin Islands moving to the so-called "Observation list."

Germany and Luxembourg announce transitional rules for digital platform reporting obligations under DAC7

On 5 January 2024, the German Federal Tax Office announced transitional rules for the reporting obligations under DAC7 for the 2023 reporting period, extending the original deadline to 31 March 2024. Therefore, the Federal Tax Office will not object if reporting platform operators fulfill their reporting and documentation obligations (as stipulated in the German implementation law) by 1 April 2024.

In the same vein, Luxembourg announced that the deadline for filing the first report was postponed to 19 February 2024 (instead of 31 January 2024). Further, the Luxembourg tax authorities have announced that the pre-validation procedure and the assistant that enables platform operators to report the information concerning "reportable sellers" according to the DAC7 law are available as of 19 January 2024.

See EY Global Tax Alert, *Germany and Luxembourg announce transitional rules for digital platform reporting obligations under DAC7; other countries retain 31 January 2024 reporting deadline*, dated 19 January 2024.

Hungary issues guidance on rules implementing DAC7 into national law

On 24 January 2024, Hungary's National Tax and Customs Administration issued guidance outlining the implementation of domestic rules under DAC7, effective from 1 January 2023. Platform operators are expected to meet notification, registration and reporting obligations.

The guidance clarifies the definition of "platform," emphasizing that it refers to software or applications fostering a relationship between a seller and a user for a relevant activity. However, the term excludes software that only streamlines payment management, enables user-specific activity advertising or display, or guides users to a different platform.

Further, the guide defines "seller" as any registered platform user, either an individual or an organization, that is registered on the platform during the data provision period and performs the relevant activity. Reportable activities include real estate rentals, provision of personal services, merchandise sales and transport rentals.

In addition, the guidance defines the three categories of platform operators that are subject to the reporting obligations: (i) platform operators tax resident in Hungary (Type 1); (ii) non-EU platform operators either registered or having their place of management or a PE in Hungary (Type 2); (iii) non-EU platform operators that enable the seller's performance of a relevant activity to be reported, or perform the relevant activity involving the rental of real estate in a Member State and choose Hungary to report (Type 3). Although Type 2 platform operators may opt to report in another EU Member State, they must also register with the National Tax and Customs Administration of Hungary (NAV).

Platform operators should register with NAV within 15 days of becoming subject to the reporting obligations; due diligence procedures must be fulfilled by 31 December of the reporting year and retained for 10 years. The first DAC7 data report for 2023 activities was due by 31 January 2024, with quarterly reports required subsequently.

Indonesia issues new transfer pricing regulation

On 29 December 2023, the Indonesian Ministry of Finance issued Minister of Finance Regulation number 172 of 2023. regarding the Implementation of the arm's-length principle in transactions affected by a Special Relationship (PMK 172). PMK 172 addresses the application of the arm's-length principle in Indonesia, transfer pricing documentation requirements, APAs and MAPs. PMK 172 entered into force on 29 December 2023 and revokes the prior Indonesian Ministry of Finance Regulations relating to transfer pricing documentation, APAs and MAPs. The new regulation can be regarded as a refinement of the prior regulations rather than a new transfer pricing framework. Nonetheless, the new rules include key items for taxpayers to consider, such as how: the arm's-length principle should be applied; transfer pricing documentation for 2023 and 2024 (and later years) should be prepared; the MAP process can help resolve domestic controversy; and the arm's-length principle applies to PEs.

Irish Revenue issues manual on the definition of entity under anti-hybrid mismatches rule

On 15 January 2024, Irish tax authorities released the updated Tax and Duty Manual (TDM) Part 35C-00-01 on general anti-hybrid rules to reflect amendments made by Finance (No.2) Act 2023.

The TDM was updated to reflect the expansion of the definition of "entity" to include "any other legal arrangement, of whatever nature or form, that is within the charge to any of the taxes covered by this Part" in line with Finance (No.2) Act 2023.

Additionally, the TDM includes several technical updates regarding the treatment of "collective investment schemes" for the purposes of the reverse-hybrid rules. If an investment vehicle breaches these conditions, remedies are available in some circumstances; rules around these remedies were reworked in the *Finance (No.2) Act 2023*.

Malta extends the application of transfer pricing rules and issues relevant guidance

On 19 January 2024, Malta published in its *Official Gazette* Legal Notice 9 of 2024, extending the application of the transfer pricing rules (TPR) to transactions entered into force before 1 January 2024 (the effective date of Maltese TPR) that have not been materially altered on or after that date. This applies for tax years starting on or after 1 January 2027. Consequently, the grandfathering rule introduced under the Maltese TPR, which exempted arrangements that took place prior to 1 January 2024 and remained unaltered from the Maltese TPR, is now subject to a time limit.

On the same date, the Malta Tax and Customs Administration (MTCA) issued guidelines in relation to the Maltese TPR. According to the guidelines, whether an arrangement has been materially altered is determined on a case-by-case basis. For example, material alterations do not include company re-domiciliation in/out of Malta, but encompass changes in consideration, modifications to rights and obligations, and changes in the agreement's duration. In addition, the guidelines clarify that the application of the TPR takes precedence over the application of the notional interest deduction rules.

Regarding transfer pricing methods, the guidelines indicate that, preferably, Malta's TPR should adhere to the methodology outlined in Chapter II of the OECD TPG. Further, the guidelines state that the taxpayer would be required to disclose its transfer pricing documentation (TPD) to the MTCA only upon specific request. However, the TPD that taxpayers are required to hold shall be in line with Chapter V of the OECD TPG, including a Master and a Local file.

Although TPD are designed for all cross-border arrangements, they will not apply to transactions occurring in a financial period for which the aggregate arm's-length amount of revenue transactions does not exceed €6m and capital transactions does not exceed €20m.

Finally, the MTCA will only consider requests for Unilateral Transfer Pricing Rulings for a downward adjustment if the downward adjustment (i) adheres to the arm's-length principle; and (ii) prevents potential double taxation, and the ruling is spontaneously exchanged with the tax administration of the relevant jurisdiction.

The guidelines will be reviewed on an ongoing basis.

Moldova adopted the secondary legislation on transfer pricing implementation rules

On 9 February 2024, Moldova published in its *Official Gazette* Order No.9 of 26 January 2024 on transfer pricing implementation rules. The Order includes measures on the introduction of procedures for determining transfer prices in line with the arm's-length principle. In addition, it outlines the conditions for a comparability analysis in controlled and uncontrolled transactions, which are deemed comparable if there are no significant differences in their conditions that could influence contractual terms or if such differences can be adjusted.

Furthermore, the Order specifies the transfer pricing methods to be used (the comparable uncontrolled price method; resale price method; cost-plus method; transactional net-margin method; profit-split method; and any other method recognized under the OECD transfer pricing guidelines) and explains how to determine the most suitable one.

Moreover, according to the Order, related persons can voluntarily correct transfer prices in controlled transactions and adjust prices between the minimum and maximum values of the comparable price range, unless a party is under tax audit examining the transaction's compliance with the arm's-length principle. Nevertheless, the related persons are not allowed to adjust the transfer prices in controlled transactions if the adjustment will reduce the corporate income tax declared to the tax authorities.

Rules are also provided on verifying compliance with the arm's-length principle, including a preliminary verification and tax audit by the tax authorities. Once discrepancies have been identified under the preliminary verification, the taxpayer may adjust the transfer prices related to the verified controlled transactions. If the taxpayer does not make these adjustments voluntarily, the authorities will initiate a tax audit in accordance with the general rules provided by the Moldovan Tax Code. It is also stated that compliance with the arm's-length principle will not be verified for the taxpayers engaged in transactions with related persons if the total value during a fiscal period does not exceed the amount of one million Moldovan Leu (MDL1m) (calculated by adding the value of transactions performed with all affiliated persons, excluding value-added tax).

Additionally, the Order: mentions that the OECD TPG need to be considered when applying Moldova's domestic transfer pricing rules; dictates the content of the local file; and provides a template and instructions for the transfer pricing information that local taxpayers are required to prepare and submit to the tax authorities.

The rules apply to legal entities registered in Moldova and foreign legal entities with branches or PEs in Moldova. Th Order entered into effect on 9 February 2024 and the rules apply as of 1 January 2024.

Spanish Ministry of Finance approves Ministerial Order implementing DAC7 reporting obligations

On 5 February 2024, Spain published on its *Official Gazette* Ministerial Order regarding the registration and reporting forms, and the filing conditions and procedures under DAC7. In particular, the draft bill includes Form 040 on the registration of nonqualifying foreign platform operators and other reporting platform operators, and Form 238 on the reporting of information by platform operators.

Form 040 is to be used by nonqualifying foreign platform operators and other reporting platform operators for the registration, subsequent modifications and withdrawal from the registry of foreign platform operators and the registry of platform operators that are tax residents or have a PE in Spain. For registration, the form must be submitted when the activity as a platform operator begins; however, for modification or withdrawal, the form must be submitted within a month following any modification or upon meeting the conditions for withdrawal, respectively.

Platform operators that have no reportable sellers, and platform operators that are tax residents or have a PE in Spain and are not qualified non-EU platform operators, use Form 238 to report this information to the tax authorities. Form 238 must be presented annually during January of the year following the year to which the information being communicated refers.

The submission of both forms must be done electronically, and their content is indicated in Annexes I and II of the Ministerial Order.

The Ministerial Order entered into force on 6 February 2024; the deadline for the first submission of Form 238 for fiscal year 2023 is two months from its entry into force.

Swiss Federal Tax Administration issues guidelines on transfer pricing rules

On 23 January 2024, the Swiss Federal Tax Administration (FTA) issued guidance on the application of transfer pricing rules. The guidance is specifically tailored to transfer pricing in a global setting, focusing on the pricing involved in transactions between related parties operating across multiple jurisdictions.

The guidelines provide a definition of the arm's-length principle and indicate that the Swiss tax authorities and courts increasingly refer to OECD guidelines in interpreting the principle. In addition, the document outlines how the arm's-length principle is applied in the context of profit tax and withholding tax in Switzerland and includes an overview of its existing legal basis and interpretation.

In assessing whether a transaction is at arm's length, the Swiss tax authorities and courts often refer to OECD's comparability analysis process, although applying this process is not mandatory. In addition, according to the guidance, the OECD-approved transfer pricing methods should take precedence, with other methods used only for specific cases.

In Switzerland, the only obligation relating to transfer pricing documentation concerns CbCR by groups that have a parent company that is tax resident in Switzerland and have a turnover exceeding 900 million Swiss Francs (CHF900m). However, taxpayers must provide, upon request, documentation supporting compliance with the arm's-length principle.

In Switzerland, there is no single authority responsible for all cases involving transfer pricing. Questions in this area are therefore dealt with by different authorities depending on the context in which they arise. For example, the cantonal tax authorities are responsible for transfer pricing in the context of the collection of corporate income tax, while the FTA is responsible for collecting withholding taxes, and the State Secretariat for International Financial Matters is solely responsible for negotiating transfer pricing matters in the context of APAs or MAPs with foreign countries.

UK releases new operational guidance on transfer pricing and role of risk in accurate delineation of actual transactions

On 26 January 2024 His Majesty's Revenue & Customs (HMRC) published new operational guidance (INTM485025) on the role of risk in the accurate delineation of the actual transaction as part of a transfer pricing analysis.

The guidance sets out HMRC's interpretation of the six-step process for analyzing risk contained within Chapter I of the OECD TPG and its application to transfer pricing analyses.

HMRC considers the analysis of economically significant risks and their management to be an important component of a comprehensive transfer pricing analysis and will expect taxpayers to submit suitable documentation evidencing this.

Importantly, HMRC's guidance emphasizes that a complete analysis of contributions to the control of economically significant risks should not be limited to parties that are contractually assuming, or being allocated, those risks in the controlled transaction that is being analyzed. The guidance provides extensive insight into HMRC's views on how contributions to the control of risk should be remunerated in an MNE group, and in particular provides considerations for when the transactional profit-split method may be the most appropriate method to reward contributions to risk control.

See EY Global Tax Alert, *UK releases new operational guidance on transfer pricing and role of risk in the accurate delineation of actual transactions*, dated 8 February 2024.

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