

16 July 2024

Global Tax Alert

The Latest on BEPS and Beyond

July 2024

EY Tax News Update

EY's Tax News Update is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax.

Access information about the US tool and registration [here](#).

Access information about the Global tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Highlights

With levels of controversy high and still rising across the world, both tax controversy and the waves of global tax reforms that have flooded the international tax environment since 2016 are demanding the attention of tax directors worldwide. The [2024 EY International Tax and Transfer Pricing Survey: Driving transfer pricing certainty in uncertain times](#) illustrates the link between the two areas, as it shows that 84% of the more than 1,000 transfer pricing professionals who responded to the survey indicate that their company faces moderate or significant risk of double taxation due to global tax reforms.

While tax policy and tax controversy mark two moments in the lifecycle of tax legislation, being the birth of legislation and the end-phase of implementation, there is also a close interaction between these two areas of tax practice. Controversy can be the canary in the coal mine, potentially warning of areas where international tax policies created by the Organisation for Economic Co-operation and Development (OECD) and the European Union (EU) might not be as efficient or effective as intended. The high risk of controversy for companies shows that they are experiencing relevant tax uncertainty, and therefore there is a need and desire for policies that will enhance tax certainty by ensuring effective and efficient prevention of double taxation.

One EU policy, the [EU Dispute Resolution Directive](#), may contribute to this certainty and is gaining strength as more disputes arise relating to tax years as of 2018 - the years in scope. This Directive provides an option to appeal denial of access to Mutual Agreement Procedures (MAPs) and to mandatory and binding arbitration for all tax issues covered by bilateral tax treaties and similar instruments in place between EU Member States. The mechanism has the potential to significantly enhance the likelihood of MAPs leading to principled and effective solutions. Although this will be an important first step in a positive direction, it is not all that is needed to ensure a certain tax environment, as illustrated by the European Commission's [summary](#) of the responses to their recent public consultation on the first experiences with the Dispute Resolution Directive. As business awareness increases around the strengths of the Dispute Resolution Directive and policymakers recognize that additional steps will be needed to enhance tax certainty for business, predictability in the international tax environment should improve. We will keep monitoring these developments, asking you for your experiences through surveys and responding to public consultations with the aim of contributing to "a better working world."

BEPS 2.0

OECD

OECD releases draft user guide for GloBE Information Return XML schema

On 10 July 2024, the OECD released a draft version of the Global Anti-Base Erosion (GloBE) Information Return (GIR) XML schema and the GloBE Information Return (GIR) [User Guide](#) for public consultation. The GIR User Guide is organized into sections, each providing comprehensive information on the schema's data elements and their attributes. The main sections of the GIR User Guide are:

- ▶ **Message Header:** This section includes specifics about the sender, recipient, message type, and the Reporting Fiscal Year.
- ▶ **ID and Tax Identification Number (TIN) Types:** It outlines identification and TIN details for Constituent Entities, Joint Ventures (JV), JV subsidiaries, and the Ultimate Parent Entity.
- ▶ **GloBE Body:** The main body of the schema is described here, encompassing the corporate structure of the group, information on relevant safe harbors, computations for the effective tax rate, and the allocation of Top-up Tax.

The GIR XML Schema is instrumental to the exchange of information reported under the GIR, whether through the Multilateral Competent Authority Agreement on the Exchange of GloBE Information Returns (GIR MCAA) or another Qualifying Competent Authority Agreement. Additionally, jurisdictions can adopt the schema for domestic purposes to gather necessary information from their Filing Constituent Entities.

The public consultation is open until 19 August 2024.

OECD/G20 Inclusive Framework releases fourth tranche of Administrative Guidance on Pillar Two

On 17 June 2024, the OECD/G20 Inclusive Framework (the Inclusive Framework) released a [fourth tranche](#) of Administrative Guidance on the Pillar Two GloBE Model Rules. This Administrative Guidance provides additional information on a series of technical issues under the GloBE Rules. Namely, it covers guidance on Deferred Tax Liability (DTL) recapture, divergence between GloBE and accounting carrying values, allocation of cross-border current and deferred taxes, allocation of profits and taxes involving Flow-through Entities and treatment of securitization vehicles.

As with the prior tranches of Administrative Guidance, the June 2024 Administrative Guidance will be incorporated into the Commentary to the GloBE Model Rules.

See EY Global Tax Alert, [OECD/G20 Inclusive Framework releases fourth tranche of Administrative Guidance on Pillar Two GloBE Rules](#), dated 28 June 2024.

OECD releases document on Pillar Two qualified status

On 17 June 2024, the OECD also released a brief [Question & Answer document](#) that provides information on plans for peer review to assess the qualified status of a jurisdiction's Income Inclusion Rule (IIR), Under-Taxed Profits Rule (UTPR) and Qualified Domestic Minimum Top-up Tax (QDMTT), and determine the eligibility for the QDMTT Safe Harbor. The peer review will certify the domestic implementation of the GloBE Model Rules, ensuring uniform application and administration, and will include legislative review and ongoing monitoring by the Inclusive Framework.

The document outlines a transitional qualification mechanism for swift recognition of qualified status through a self-certification process by implementing jurisdictions. If no questions arise from Inclusive Framework members, or if all questions raised are resolved, the jurisdiction's legislation is recorded as having "transitional qualified status" from its effective date until a full review, which must start no later than two years after the effective date of the legislation.

Loss of transitional qualified status, due to non-qualification or failure to initiate review within the timeframe, is not retroactive. The Inclusive Framework will publish a list of jurisdictions with transitional qualified status on the OECD website, including applicable dates. Implementing jurisdictions must recognize this status based on the published list.

See EY Global Tax Alert, [OECD/G20 Inclusive Framework releases documents on Pillar One Amount B and Pillar Two](#), dated 20 June 2024.

OECD/G20 Inclusive Framework releases documents on Pillar One Amount B

On 17 June 2024, the OECD/G20 Inclusive Framework released two new documents providing additional guidance on the Pillar One Amount B approach for transfer pricing for certain baseline marketing and distribution transactions.

The [first document](#) includes the current lists of jurisdictions that qualify for specific adjustments in the calculations under the Amount B approach, providing the definitions of qualifying jurisdictions within the meaning of the relevant sections, i.e., 5.2 and 5.3, of the Amount B report released in February 2024. For purposes of section 5.2, "qualifying jurisdictions" refer to jurisdictions that are classified by the World Bank Group as low income, lower-middle income, and upper-middle income based on the latest available "World Bank Group country classifications by income level." For purposes of section 5.3, "qualifying jurisdictions" are jurisdictions with (i) a publicly available long-term sovereign credit rating of BBB+ (or equivalent) or lower from a recognized independent credit rating agency, and (ii) fewer than five comparables in the global dataset.

The [second document](#) provides the definition of covered jurisdictions within scope of the political commitment on Amount B. According to the document, the criteria for covered jurisdictions are:

- ▶ Low- and middle-income Inclusive Framework jurisdictions using the World Bank Group country classifications by income level, excluding EU, OECD and G20 member countries
- ▶ Under an extension approved by the Inclusive Framework, low- and middle-income Inclusive Framework jurisdictions that are OECD and G20 member countries, that satisfy the first criterion and, by March 2024, expressed to the Inclusive Framework their willingness to apply Amount B (i.e., Argentina, Brazil, Costa Rica, Mexico, South Africa)
- ▶ Any non-Inclusive Framework member that meets the first criterion and expresses to the Inclusive Framework the willingness to apply Amount B, upon request and approval by the Inclusive Framework

See EY Global Tax Alert, [OECD/G20 Inclusive Framework releases documents on Pillar One Amount B and Pillar Two](#), dated 20 June 2024.

Country developments

Australia submits Pillar Two legislation to Parliament

On 4 July 2024, the Australian government [introduced](#) three Bills in Parliament to implement Pillar Two into domestic law. The Pillar Two Bills include a Domestic Minimum Top-up Tax (DMTT) and an IIR to apply for fiscal years starting on or after 1 January 2024, as well as a UTPR to apply for fiscal years starting on or after 1 January 2025.

The Pillar Two Bills were referred to the Senate Economics Committee for reporting by 14 August 2024.

See EY Global Tax Alert, [Australian 15% global and domestic minimum taxes law introduced into Parliament](#), dated 11 July 2024.

Belgium extends deadline for Pillar Two notification form

On 2 July 2024, the Belgian Tax Authorities [announced](#) on their website an extension to the deadline for submitting the Pillar Two notification form. Initially, the submission deadline was 13 July 2024, but it has now been extended to 16 September 2024.

This extension only applies to in-scope groups that will not make advance payments in 2024 for the purposes of the QDMTT and the IIR.

Canada enacts Pillar Two legislation

On 20 June 2024, Canada enacted the Pillar Two legislation, known as the *Global Minimum Tax Act* (GMTA). This legislation includes the IIR referred to as the “Global Minimum Tax,” and the QDMTT, called the “Domestic Minimum Tax,” both of which apply for fiscal years starting on or after 31 December 2023. The UTPR legislation is expected to be released at a later date.

The GMTA is largely in line with the OECD GloBE Model Rules and incorporates certain provisions from the three Administrative Guidance documents released by the OECD in 2023. Notable inclusions are the Transitional Country-by-Country Reporting (CbCR) Safe Harbor (TCSH) and associated anti-arbitrage rules.

See EY Global Tax Alert, [Canada’s Global Minimum Tax Act substantively enacted as part of Bill C-69](#), dated 21 June 2024.

Gibraltar announces implementation of Pillar Two

On 3 July 2024, the government of Gibraltar announced in the Budget 2024 that it is currently working on introducing a QDMTT. The draft legislation for the QDMTT is expected by September 2024, with the aim of implementing it by the end of the year.

Additionally, the Budget 2024 notes that work on Pillar Two will continue, with implementation of the IIR during 2025.

Italy releases Decree on QDMTT

On 3 July 2024, Italy issued a [Decree](#) providing detailed rules for calculating the QDMTT in accordance with the OECD GloBE Model Rules. The new Decree incorporates certain provisions from the Administrative Guidance released in 2023, including the QDMTT Safe Harbor.

Additionally, the Decree clarifies the criteria for determining which Constituent Entity of a Multinational Enterprise (MNE) Group is responsible for paying the tax, as well as their joint and several liability. The Decree also addresses compliance requirements and payment procedures for the QDMTT.

Norway releases UTPR draft legislation

On 19 June 2024, the Norwegian Ministry of Finance released [draft legislation](#) for public consultation regarding the implementation of the UTPR into domestic law. It is proposed that the UTPR would be effective for fiscal years starting on or after 31 December 2024.

According to the draft legislation, Norway has chosen to adopt the UTPR in the form of an additional top-up tax charge, rather than as a denial of a deduction.

The consultation is open until 2 September 2024.

Spanish Council of Ministers approves Pillar Two legislation

On 4 June 2024, the Spanish Council of Ministers approved the final Bill to implement Pillar Two and sent it to the Spanish Parliament for approval. The Bill is based on the original wording released in December 2023 during a public consultation and incorporates feedback from various stakeholders. The most relevant amendments included in the final Bill include: (i) removal of a broad reference to the OECD Commentary and Administrative Guidance for interpretative purposes, (ii) introduction of a new penalty regime, and (iii) revision of the QDMTT to ensure its calculation is consistent with the OECD Administrative Guidance.

This draft legislation introduces a DMTT and an IIR, both effective for fiscal years starting on or after 31 December 2023. Additionally, it includes a UTPR, which will take effect for fiscal years starting on or after 31 December 2024.

BEPS and other developments

OECD

OECD releases sixth edition of Corporate Tax Statistics publication

On 11 July 2024, the OECD released the sixth edition of its annual Corporate Tax Statistics publication (the [Corporate Tax Statistics](#) report), along with an updated [database](#). The report provides an overview of corporate tax data across 160 countries and jurisdictions, detailing statutory and effective tax rates, withholding taxes, tax treaties, corporate tax revenues, MNE international activities and aggregated CbCR data. The publication is accompanied by an updated list of Frequently Asked Questions ([FAQs](#)) on the anonymized and aggregated CbCR data.

The report characterizes the stabilization of average statutory corporate income tax rates at 21.1% over the past three years as having potentially been influenced by the global minimum tax agreement. The report notes that more than 35 jurisdictions are either implementing or planning to implement the 15% minimum corporate effective tax rate from 2024. It also discusses new CbC data aimed at uncovering low-taxed profits in high-tax jurisdictions. Although this is seen as an indicator of revenue potential for the global minimum tax and an illustration of a downward trend in Base Erosion and Profit Shifting (BEPS) activities, these trends may be partly due to the COVID-19 crisis. However, the report points out that BEPS indicators are still significantly higher in investment hubs, suggesting persistent BEPS activity.

Complementing the report, the updated database incorporates anonymized and aggregated CbCR statistics with the latest 2021 data. It covers 52 headquarters jurisdictions and as many as 217 affiliate jurisdictions from 2016 to 2021. The database is further enhanced with a new dataset on income-based tax incentives for research and development and innovation, as well as updated information on interest limitation and controlled foreign company rules. Additionally, it offers insights into 61 intellectual property regimes across 46 jurisdictions and provides withholding tax rate statistics for 144 jurisdictions.

Algeria signs OECD Multilateral Convention

On 27 June 2023, the OECD announced that Algeria [signed](#) the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), bringing the total number of jurisdictions to 103. At the time of signature, Algeria submitted a list of its tax treaties in force that it would like to designate as covered tax agreements (CTAs). Together with the list of CTAs, Algeria also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI positions) with respect to the various provisions of the MLI. The definitive MLI positions for Algeria will be provided upon the deposit of its respective instrument of ratification, acceptance or approval of the MLI. As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Algeria did not opt in for mandatory binding arbitration.

European Union

ECOFIN adopts Belgian Presidency and Code of Conduct Group progress reports

On 21 June 2024, the Council of the EU (the Council) held an Economic and Financial Affairs Council (ECOFIN) [meeting](#) where Finance Ministers adopted the [progress report](#) on tax matters under the Belgian Council Presidency and the Code of Conduct Group (COCG) [progress report](#).

The presidency progress report summarizes the state of play of key tax files, including Unshell, Faster and Safer Relief of Excess Withholding Taxes (FASTER), Business in Europe: Framework for Income Taxation (BEFIT), Transfer Pricing (TP) and Head Office Tax (HOT).

- ▶ On FASTER, the report highlights the [political agreement](#) reached in May, pending re-consultation with the Parliament and legal-linguistic revision before final adoption.
- ▶ The report indicates that Unshell still requires technical work on issues like tax consequences, links with domestic anti-abuse legislation, exclusions, tax residency certificate and information exchange. A “possible way forward” discussed by country officials at the end of the Belgian Presidency did not lead to a breakthrough, and further negotiations will be required.

- ▶ For BEFIT, although there is broad support among Member States to simplify EU corporate tax rules and reduce the administrative burden for businesses and tax authorities, multiple concerns were expressed on whether the proposed Directive would successfully achieve these goals. Therefore further reflection and more technical work is needed to determine the next steps in the negotiations under Hungarian Presidency.
- ▶ Finally, according to the report, Member States initially expressed support for the goals of the TP proposal but voiced concerns about creating a new EU TP standard and its impact on flexibility in negotiating and applying the OECD TP Guidelines, and the applicability in relation to non-EU countries. An “EU Transfer Pricing Platform,” bringing together business representatives and EU policymakers, was proposed as a potential soft-law forum. Discussions on that proposal will likely continue under the new Presidency.
- ▶ The report also indicated ongoing technical work on the HOT. As of 1 July 2024, Hungary succeeded Belgium in the EU Presidency.

Code of Conduct Group report to the Council

The Member States also approved the ECOFIN report on the progress achieved by the COCG during the Belgian Presidency, including the update of the EU list of noncooperative jurisdictions for tax purposes (EU list) on 20 February 2024. The report also provides updated instructions for notifying the COCG of any existing or proposed preferential tax measures, and a questionnaire designed to assist in the systematic monitoring of tax defensive measures that Member States may apply towards third countries. The inaugural review of these measures, focusing on the year 2021, is scheduled for 2025. Additionally, the report noted ongoing negotiations to establish a new criterion on beneficial ownership information (criterion 1.4) and active but inconclusive discussions on broadening the review's geographic scope, which could lead to an expanded EU list.

Draft agenda for Council meetings

A [tentative schedule](#) of EU Council meetings published on 24 June 2024 provides an indication of which tax files the Hungarian Presidency may want to bring to the EU's Finance Ministers. On 5 November, the Presidency intends to provide Ministers with an update on the negotiations on

BEFIT, the TP Directive and HOT and to ask for guidance for further work on the files. On 10 December, the Presidency anticipates holding a similar discussion on the Directive on exchange of information to ensure global minimum level of taxation for multinational groups (DAC9). The Commission has yet to issue this proposal, which is expected to facilitate the reporting and exchange of GIRs.

United Nations

UN Ad Hoc Committee releases Zero Draft Terms of Reference for UN Framework Convention on International Tax Cooperation

On 7 June 2024, the Bureau of the Ad Hoc Committee published the [Zero Draft](#) Terms of Reference (ToR) for the United Nations (UN) Framework Convention on International Tax Cooperation (the Framework Convention). This document outlines the objectives, guiding principles, and substantive elements and commitments of the Framework Convention. The document sets out the scope of the Framework Convention and the issues that will be addressed in the TOR. It highlights the importance of including capacity-building measures to enhance effective participation in international tax cooperation, particularly for developing countries.

The ToR stipulate that the Framework Convention should encompass structural elements such as definitions and specify how it will interact with existing agreements. Furthermore, the ToR suggest developing specific protocols for certain tax issues, such as the assignment of taxing rights and the taxation of the digitalized and globalized economy, concurrently with the Framework Convention negotiations.

The ToR detail the procedural steps, including meetings of the negotiation committee in New York planned for 2025 and 2026, with the goal of finalizing the Framework Convention by the 81st General Assembly Session (i.e., by September 2026) and the initial protocols within the following six months. The document also calls for the allocation of necessary resources to support the negotiation process.

Interested parties were invited to submit feedback on the Zero Draft by 21 June 2024. The UN received more than 100 contributions, which can be accessed [here](#). The input will shape the updated version of the ToR, to be released soon. The revised text will provide the basis for discussions and negotiations during the Second Session, scheduled from 29 July to 16 August 2024.

Country developments

Angola extends deadline for submitting 2023 transfer pricing documentation to 31 July 2024

On 26 June 2024, the General Tax Administration (AGT) of Angola [issued](#) a notice informing taxpayers of an extension to the deadline for submitting transfer pricing documentation for fiscal year 2023. The notice also covers new rules for electronic submission and the detailed form that must accompany the documentation.

Under Angolan law, taxpayers required to submit transfer pricing documentation to the AGT must do so by 30 June of the year following the one to which the income relates, under penalty of fines. However, the AGT has decided to extend the deadline for the submission of transfer pricing documentation for fiscal year 2023 to 31 July 2024, as an exceptional measure.

The AGT's notice mandates the electronic submission of transfer pricing documentation via the Taxpayer Portal. In addition to the transfer pricing documentation, taxpayers must also submit a detailed form that describes the taxpayer's transfer pricing policy, according to the information contained in the transfer pricing documentation file.

See EY Global Tax Alert, [Angola extends deadline for submitting 2023 transfer pricing documentation to 31 July 2024](#), dated 9 July 2024.

Australian Full Federal Court reverses finding of embedded royalty in arm's-length contract

On 25 June 2024, the Full Court of the Federal Court of Australia delivered a decision in [PepsiCo, Inc. v Commissioner of Taxation \[2024\] FCAFC 86](#), overturning the first-instance decision in the Federal Court.

The case involved Exclusive Bottling Agreements (EBAs) entered into by PepsiCo/SvC and Schweppes Australia Pty Ltd (SAPL) (a third party). Under the EBA, PepsiCo/SvC agreed to sell (or cause a related entity to sell) beverage concentrate to SAPL, which SAPL then mixed with other ingredients in accordance with formulas, specifications and other information provided, to produce finished beverages for retail sale in Australia, applying Pepsi branded packaging and under the Pepsi brand name. Importantly, the EBA provided for SAPL to pay only for the concentrate; there was no express provision for the payment of a royalty for the right to use the relevant intellectual property (IP).

The Commissioner of Taxation contended that PepsiCo/SvC was liable for royalty withholding tax (RWHT) under Australian law (subject to the double-tax agreement between Australia and the United States (US DTA)) and, alternatively, the Commissioner issued a diverted profits tax (DPT) assessment to PepsiCo/SvC, imposing a 40% punitive tax on the challenged royalties. At first instance, the Federal Court agreed with the Commissioner.

On appeal, the Full Court, by majority, determined that no portion of the payment made by SAPL was a royalty and therefore RWHT did not apply. Rather the contract was a "distribution arrangement" and the parties were not centrally seeking to achieve a contract for the licensing of IP. Further, the majority concluded that the payments were not income derived by PepsiCo/SvC.

The Full Court was split on the application of the DPT, with the majority finding that there was no reasonable alternative to the scheme and therefore the DPT did not apply.

The Commissioner is expected to lodge a special leave application to appeal to the High Court of Australia.

See EY Global Tax Alert, [Australian Full Federal Court reverses finding of embedded royalty in arm's-length contract](#), dated 3 July 2024.

Azerbaijan ratifies Convention to implement MLI

On 31 May 2024, the Law of the Republic of Azerbaijan "On the approval of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the BEPS Convention)" (Law) was adopted.

The Law stipulates the ratification of the BEPS Convention, which was signed in Paris on 24 November 2016, including the reservations and notifications made by Azerbaijan.

The Law entered into force on 24 June 2024.

Chile extends deadline for submitting transfer pricing documentation

On 7 June 2024, the Chilean Tax Administration issued [Resolution Ex. SII N. 64](#) announcing the extension of the deadline to submit certain transfer pricing documentation, from 30 June 2024 to 30 September 2024.

Extension has been granted for the submission of the (i) master file; (ii) local file; (iii) annual transfer pricing form; and (iv) CbC report.

Colombian tax authority issues ruling on tax treatment of SAFE instruments and application of GAAR

On 30 May 2024, the Colombian Tax Authority issued [Tax Ruling 410](#) (TR 410) providing guidance on the tax implications of using simple agreements for future equity (SAFE) as hybrid instruments.

TR 410 addresses the lack of a legal definition for SAFE, emphasizing the need to analyze each agreement's specific conditions and characteristics for tax classification as either debt or equity. The ruling outlined factors to consider, such as the potential for conversion to shares, refundability, related party transactions, and whether the investment entails payments like interest or bonuses.

The tax authority also highlighted the importance of assessing whether the agreement results in a tax benefit due to mismatches in tax results or characterization between the investor and the recipient. In cases where a tax advantage is identified, the general anti-avoidance rule may be applied to recharacterize the transaction.

Czech Republic updates list of reporting jurisdictions under DAC2 and CRS

On 24 June 2024, the Ministry of Finance of the Czech Republic issued [Financial Bulletin No. 5/2024](#), updating the list of participating jurisdictions under DAC2, the Common Reporting Standard (CRS) MCAA, and bilateral automatic exchange agreements.

According to the Financial Bulletin, the list was updated on the basis of information available as of 6 June 2024. The list now includes a total of 157 jurisdictions.

France updates list of jurisdictions for CbCR

On 28 June 2024, France published an update of the jurisdictions considered as "compliant" for French CbCR purposes. French entities ultimately held by a foreign entity established in a compliant jurisdiction are exempted from local CbCR filing in France.

The French list of compliant States includes jurisdictions (i) with similar CbCR requirements with those provided under French law; and (ii) that have concluded agreements on the automatic exchange of CbC reports with France and comply with such exchange agreements.

In this update, three jurisdictions (Aruba, Kenya, and Papua New Guinea) have been added to the list which now comprises a total of 89 jurisdictions.

The updated list applies for financial years starting on or after 1 January 2022. The relevant Ministerial Order was published in the [Official Journal No. 0151](#) of 28 June 2024.

Georgia Ministry of Finance releases CbCR rules

On 6 June 2024 the Minister of Finance of Georgia issued [Order No. 188 of the Minister of Finance of Georgia](#) effective from 1 January 2025.

CbCR mandates large MNEs with consolidated revenue exceeding €750m to submit comprehensive CbC reports. These reports must encompass financial data and identification details for each entity within all jurisdictions where the MNE operates.

The ultimate parent entity of an MNE group in Georgia is responsible for filing the CbC report, but a local constituent entity may file instead if the ultimate parent entity's jurisdiction does not require submission, lacks an agreement for automatic exchange of CbC reports with Georgia, or has been flagged for systematic noncompliance.

Germany issues guidance on advance pricing agreements

On 26 June 2024, the German Ministry of Finance released [guidance](#) on the procedures for advance pricing agreements (APAs) as outlined in section 89a of the General Tax Code. This guidance provides detailed instructions on initiating the APA process, including the necessary information and documentation that taxpayers must submit with their applications.

The guidance outlines the steps for successfully completing the APA process, which is achieved when an agreement is reached between the Federal Central Tax Office, and the tax authorities of the other involved contracting state(s). It also describes various scenarios in which the APA procedure may be terminated, such as the taxpayer's failure to provide requested information within a given deadline, the refusal of another contracting state to initiate the procedure, or the discovery of a reason that would have precluded the initiation of the procedure.

Furthermore, the guidance specifies the conditions under which the binding effect of an APA is nullified, as per paragraph 4 of section 89a. It also provides information on the circumstances that may lead to the revocation of an APA, its validity period, and the potential for retroactive application. Lastly, the guidance addresses the fees associated with APAs.

Germany issues guidelines on bill combatting tax avoidance and unfair tax competition

On 14 June 2024, the Ministry of Finance of Germany published [Guidance](#) on applying the bill combatting tax avoidance and unfair tax competition which entered into force on 1 July 2021 (the Bill). The Bill applies to jurisdictions on the EU list of noncooperative jurisdictions for tax purposes.

The Guidance provides clarifications as regards the determination of residency in a noncooperative jurisdiction for tax purposes, clarifies who is affected by the Bill and the extent of its application, both in terms of the taxes covered and the time frame it encompasses.

Furthermore, the Guidance also delves into the specifics of identifying business transactions that are affected by the legislation, also offering examples. Additionally, it illustrates through examples the application of defensive measures included in the Bill.

Finally, the Guidance addresses the Bill's relationship with other measures, such as the interest deduction limitation regime and double tax treaties.

German Federal Council approves law on the application of the MLI

On 14 June 2024, the German Bundesrat (one of the two chambers of German Parliament) approved the law for the application of the MLI and further measures. The act applies the BEPS MLI to Germany's treaties with Croatia, Czech Republic, France, Greece, Hungary, Japan, Malta, Slovakia, and Spain, specifies the amendments to the covered tax agreements as a result of the MLI and details the application and precedence of the MLI rules regarding the respective tax treaties.

The law entered into effect on 20 June 2024, a day after it was published in the [Official Gazette](#).

Italy issues draft Public CbCR Decree

On 10 June 2024, the Italian Council of Ministers [approved](#) the Draft Decree transposing the EU Public CbCR Directive into domestic law. EU Public CbCR Directive requires large MNEs to publicly divulge income tax-related information for each Member State jurisdiction, as well as for jurisdictions included in the EU list of noncooperative jurisdictions. Data regarding other jurisdictions may also be included.

Information required under the newly introduced rules is already part of the existing CbCR legislation but shared only between tax administrations. The new obligation will not replace the existing CbCR but will additionally require in-scope multinationals to separately share selected information with the public. To simplify the compliance with the new obligation, the Draft Decree allows MNEs to alternatively opt for directly disclosing the entire CbCR to the public.

The Draft Decree is now subject to parliamentary opinion, and once it becomes effective will apply for financial years starting on or after 22 June 2024.

See EY Global Tax Alert, [Italy issues draft Public CbCR decree](#), dated 17 June 2024.

Malaysia issues guidance on tax treatment of hybrid instruments

On 19 June 2024, the Inland Revenue Board of Malaysia (IRBM) issued [guidelines](#) on the tax treatment of hybrid instruments, detailing the identification of their key features and the criteria for their classification as debt or equity, in addition to outlining the specific tax treatment applicable to the distributions or profits.

The Guidelines stress the importance of assessing the instrument's substance - not just its legal form - and the need for a holistic consideration of various factors and their priority, including the source of principal repayment and the instrument's maturity date. The Guidelines also specifically address the nuances of Islamic hybrid instruments.

Finally, the Guidelines clarify the tax treatment of payments arising from equity and debt for holders and issuers of these instruments. Payments arising from a hybrid instrument will be treated as profit distributions if the instrument is categorized as equity for income tax purposes; conversely, if the instrument is categorized as debt, the payments will be treated as interest. The Guidelines include case studies.

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

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

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

Ernst & Young Belastingadviseurs LLP, Rotterdam

- ▶ Marlies de Ruiters marlies.de.ruiters@nl.ey.com
- ▶ Maikel Evers maikel.evers@nl.ey.com
- ▶ Mahi Anastasiou mahi.anastasiou@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

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

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2024 EYGM Limited.
All Rights Reserved.

EYG no. 006076-24Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com