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Global Tax Alert

The Latest on BEPS and Beyond

March 2023

EY Tax News Update: Global Edition

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Highlights

While it seemed a long way off when the public Country-by-Country reporting (CbCR) directive was adopted with a qualified majority of European Union (EU) Member States in 2021, now the date at which EU Member States need to have introduced their domestic legislation to implement public CbCR is approaching fast. On 22 June 2023, all EU Member States need to have transposed the Directive into domestic legislation. And while the governments of the EU Member States are contemplating how best to make this translation, businesses are starting to monitor and track the divergences from what was included in the Directive. Even though directives create EU-wide obligations, they are only considered minimum standards and with that they leave room for elections and additions when translated into the domestic legislation by a specific Member State. And this is exactly what is giving companies headaches, as divergences mean complications and additional administrative burdens.

With only a few countries having adopted the legislation at this moment, the issue of divergences is already starting to become apparent. Romania has for example adopted legislation requiring reporting for fiscal years starting on or after 1 January 2023. The Directive requires reporting for fiscal years starting on or after 22 June 2024. For multinational enterprise (MNE) groups with a

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medium or large undertaking in Romania and a fiscal year that equals a calendar year, this means that reporting will have to take place two years earlier than anticipated. While the rules as drafted currently would mean that both EU and non-EU headquartered groups would have to report as of January 2023, it could be that the rules for EU-groups will be adapted to align these rules with the Directive. According to the Directive, for EU-groups the country where the ultimate parent entity (UPE) is a resident is nominated as the country where reporting and filing would have to take place. If the UPE country aligns its legislation with the Directive, then reporting will only have to take place for fiscal years starting on or after 22 June 2024. Besides Romania, Spain has also adopted a deviation, requiring reporting in 6 months instead of 12 months from the date of the balance sheet of the fiscal year. Also adding to the complexity, Hungary has already indicated it will not use the option given in the Directive to allow MNE-groups to defer publication of commercially sensitive information. Hence, we can already see that relevant differences between the Directive and the domestic legislation of the EU Member States will result after the transposition has taken place. This will make it difficult for companies to design a centralized EU-wide governance system for public CbCR.

To add reputational sensitivity to the complications raised by Romania's early entry into force date, Russia was placed on the list of non-cooperative tax jurisdictions recently. Consequently, reporting on Russia needs to take place on a country level, instead of on an aggregated level in combination with all other non-EU jurisdictions in which the group has operations.

Besides the EU, the Financial Accounting Standards Board (FASB) on 15 March issued proposals based on which more disaggregated reporting of income taxes (including jurisdictional information) would also be required in the United States (US). The proposals are open for comment until the end of May.

All in all, MNE groups must pay attention to the public CbCR landscape. In the coming months, all remaining EU Member States will introduce their legislation. Identifying and understanding the commonalities and deviations between the domestic legislation and the Directive will be crucially important for businesses in scope.

BEPS 2.0

OECD

OECD holds public consultation meeting on compliance and tax certainty aspects of Pillar Two global minimum tax

On 16 March 2023, the OECD held a public consultation meeting on the consultation documents on the Pillar Two Global Anti-Base Erosion (GloBE) Information Return (see EY Global Tax Alert) and on tax certainty for the Pillar Two GloBE rules (see EY Global Tax Alert), which the OECD Secretariat released on 20 December 2022.

During the public consultation, there were three panels where key questions related to the proposed rules on tax certainty were discussed. These include why tax certainty is important for the implementation of the GloBE Rules, how differences/issues in applying the rules can be prevented, and how potential differences/issues can be resolved. On the GloBE information return, there were two panels covering the simplification of data points and return as well as standardization of administration.

OECD Secretariat provides update on Pillar Two during the OECD Tax Talks

On 27 February 2023, the OECD held a Tax Talks webcast during which members of the OECD Secretariat provided an overview of the latest international tax developments, including updates on the Two-Pillar solution to address the tax challenges arising from the digitalization of the economy (the so-called BEPS 2.0 project). The event also provided an update on G20 developments, ongoing efforts to enhance tax certainty, recent developments regarding the international aspects of Value Added Tax/Goods and Services Tax, ongoing tax and development work and capacity-building efforts, and the launch of the Inclusive Forum on Carbon Mitigation Approaches.

Regarding Pillar Two, the speakers mentioned that the peer review would start in 2023, and it will examine domestic rules implementing Pillar Two to ensure compatibility with qualified Income Inclusion Rules (IIRs). The outcome of the peer review will be published on the OECD website to be used as a basis by taxpayers and tax administrations. Furthermore, it was mentioned that the multilateral instrument on the subject-to-tax rule (STTR) has been almost finalized and also that there is a process to identify the tax treaties in which the STTR needs to be inserted.

With respect to timing, the release of outstanding items of the two pillars (Multilateral Convention on Amount A, finalization of Amount B, GloBE Information Return, tax certainty aspects, additional administrative guidance, and the STTR) is still expected in summer 2023.

Regarding deliverables to be released in 2023, the OECD's Director, Grace Perez-Navarro, mentioned, among others, the following:

- Two Pillar Solution Implementation aspects
- Capacity building to implement the Two-Pillar international tax package effectively
- Update on the 2022 G20/OECD Roadmap on Developing Countries and International Taxation
- New Report on voluntary exchange of information regarding immovable property transactions undertaken by nonresidents
- New Global Forum Report to assist interested jurisdictions in streamlining processes to obtain consent to use of information received via tax treaties for non-tax purposes

OECD Secretary-General Report and G20 Chair's summary

On 24 February 2023, the OECD Secretary-General delivered a tax report to the G20 Finance Ministers and Central Bank Governors ahead of their 24-25 February meeting under the 2023 Indian G20 Presidency. The report summarizes the latest developments around the BEPS 2.0 project, Tax and Development, the Global Forum on Transparency and Exchange of Information for Tax Purposes, tax and crime, BEPS Project Implementation, and the Inclusive Forum on Carbon Mitigation Approaches. With respect to the BEPS 2.0 project, the report indicates the Inclusive Framework will continue to release further agreed administrative guidance on an ongoing basis to ensure the GloBE Rules continue to be implemented and applied in a coordinated manner. It also mentions that work on STTR and its commentary is well advanced, and the signature of the STTR multilateral instrument is still expected by mid-2023. On Pillar One, the OECD Secretary-General states that he counts on the G20 countries' support and willingness to compromise so that the Multilateral Convention can be agreed upon in time for signature by mid-2023.

On 25 February 2023, at the conclusion of the G20 Finance Ministers and Central Bank Governors meeting, the G20 Chair released a Summary and Outcome Document, where G20's commitment to swiftly implement the two-pillar solution and continue the cooperation in developing an international tax system fit for purpose for the 21st century was reiterated. More specifically, the G20 Chair urges the Inclusive Framework to finalize work on Pillar One and negotiations on the STTR so that the multilateral instruments in relation to these issues can be signed by mid-2023.

In addition, the G20 calls the Global Forum on Transparency and Exchange of Information (EOI) for Tax Purposes to update the G20 on the implementation of the roadmap relevant for automatic EOI in developing countries. Furthermore, The G20 asks the OECD to finalize its work on the implementation packages concerning the Crypto Asset Reporting Framework and amendments to the CRS.

Other developments

International Monetary Fund releases policy paper on International Corporate Tax Reform

On 6 February 2023, the International Monetary Fund (IMF) released Policy Paper No. 2023/001 on International Corporate Tax Reform (policy paper). According to the policy paper conclusions, the BEPS 2.0 project assists in shaping an international tax system more robust to tax spillovers and better qualified to adapt to the challenges of digitalization and moderately increasing global tax revenues. The policy paper also indicates that the international tax system should be further amended, once the Inclusive Framework agreement on Pillar Two is finalized, to ensure revenue mobilization for developing countries.

In addition, the policy paper indicates that in the process of implementing the BEPS 2.0 project, countries will need to proceed with introducing amendments to their corporate income tax systems (i.e., review tax incentives and anti-avoidance rules) and domestic policies in general and be strategic in the way they will adopt the rules. In that respect, the policy paper lays out guidance on the implementation of the rules – including a qualified domestic minimum top-up tax (QDMTT).

The Policy Paper also focuses on the interests of developing countries, stressing the importance of the subject to tax rule's introduction in tax treaties and the need for expanded international guidance and simplification rules to allow lower capacity administrations to cope with the new regime and procedures. Nevertheless, regarding safe harbors as means of simplification, the policy paper emphasizes the need to ensure profits are allocated to low-income countries when designing them.

World Bank releases Report on the Global Minimum Tax

On 25 January 2023, the World Bank released a Report on the Global Minimum Tax: from agreement to implementation (the Report), including the policy considerations, implementation options and next steps with respect to Pillar Two.

The aim of the Report is to provide an analysis of the core elements and practical impact of Pillar Two on jurisdictions, with a specific focus on developing countries. This includes information on the corporate tax policy and tax incentives, the potential policy options for jurisdictions willing to implement Pillar Two, as well as several recommendations with respect to implementation.

The Report refers to the potential impact of the international tax agreement on developing countries, highlighting that the reallocation of taxing rights and Amount B under Pillar One are expected to benefit them. While Pillar Two implementation is expected to increase revenues via the introduction of a QDMTT or due to the less intensive use of tax incentives as a means of profit shifting.

In addition, the Report indicates that developing countries need to take into account a number of policy considerations while implementing Pillar Two, such as the consequences of non-adoption and the interaction of Pillar Two with the United States (US) global intangible low-taxed income (GILTI) rules.

Regarding the available policy options, the Report indicates that a country might: (i) proceed without amending its tax system; (ii) protect its tax base by introducing a QDMTT and/or reform its tax incentives regime; (iii) introduce the IIR and the undertaxed profits rule (UTPR); or (iv) consider broader reforms of its corporate income tax system such as proceeding with broader corporate income tax rate reforms or optimizing the tax incentives to the Pillar Two Rules.

In addition, the Report provides an overview of the current state of play as regards Pillar Two implementation, stressing the importance of progress recorded in the EU and G20 countries. While it also makes reference to the current corporate income tax rates in tax systems worldwide.

Country developments

Belgian Finance Minister launches proposal for tax reform

On 2 March 2023, the Belgian Finance Minister announced a tax reform allowing for a significant tax shift in Belgium. This proposal is only the first phase of a broader tax strategy for the next 10 years and is currently subject to debate within the Belgian federal Government. Even though the entry into force is foreseen for 1 January 2024, the specifics of this plan can still change during the political and legislative process.

The Finance Minister stated that the tax burden on labor income and capital income is disproportionate. To compensate for the reduced tax burden on labor income, among others, the implementation of a global minimum tax (15%) for multinational enterprises operating in Belgium is proposed. Such minimum taxation is foreseen in the Pillar Two Directive, which needs to be implemented at the domestic level by the end of 2023. This legislation will ensure a minimum effective tax rate of 15% (to be assessed at a Belgian group level, not necessarily for each Belgian group entity as such – based on the "jurisdictional blending" principle).

See EY Global Tax Alert, *Belgian Finance Minister launches proposal for tax reform*, 7 March 2023.

Spain opens public consultation on the implementation of the EU Minimum Tax Directive

On 6 March 2023, the Spanish Ministry of Finance released a public consultation document regarding the transposition of the EU Directive implementing Pillar Two Global Minimum Tax rules (Minimum Tax Directive) into the Spanish tax law.

This document is not a draft tax law but rather a description of the structure of the EU Minimum Tax Directive provisions; it is subject to public consultation until 24 March 2023.

There is no indication whether Spain will opt to approve a qualified domestic minimum top-up tax or any other tax policy position available to implementing jurisdictions. In addition, the document acknowledges that the Spanish rules transposing the Minimum Tax Directive should be implemented before 31 December 2023 (31 December 2024 in the case of the UTPR), and the provisions implementing the Minimum Tax Directive into the Spanish tax law will be applicable in 2024.

Input is requested on: (i) problems that this initiative seeks to solve; (ii) the need and opportunity for its approval; (iii) the purpose of the rule; and (iv) the potential alternatives from a regulatory or non-regulatory perspective.

Taxpayers and stakeholders may submit observations by 24 March 2023.

See EY Global Tax Alert, *Spain opens public consultation on implementation of the EU Minimum Tax Directive*, 10 March 2023.

South Africa's Budget indicates domestic position implementing Pillar Two will be released in 2023

On 22 February 2023, South Africa's Treasury released the 2023 Budget Review.

Among others, the Budget announces that amendments to domestic legislation will be released with the view of implementing rules related to the two-pillar solution. Since there is no final agreement on Pillar One, South Africa will, for the moment, only publish a draft position for public consultation on the implementation of Pillar Two. The draft position will be published in 2023. In addition, draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.

Thailand plans to implement global minimum tax rules under OECD BEPS 2.0 Pillar Two

On 7 March 2023, the Thai Cabinet approved in principle to collect a global minimum tax in Thailand to align with the OECD BEPS 2.0 Pillar Two.

The Revenue Department is assigned to draft the associated legislation and set the guidelines to:

- Collect top-up taxes in accordance with the OECD's Pillar Two (the Revenue Department is in the process of drafting the legislation, of which the first draft should be ready for consideration by 2023 with an effective date in 2025)
- Allocate 50% to 70% of top-up taxes collected under Pillar Two to the Competitiveness Enhancement Fund of the Board of Investment of Thailand (BOI) (details will be further discussed between the Revenue Department and the BOI)
- Share the details of top-up taxpayers with the BOI

The BOI should consider providing cash grants to qualifying investors, subject to the investment/spending amount that would promote Thailand's competitiveness and long-term investment.

See EY Global Tax Alert, *Thailand plans to implement global minimum tax rules under OECD BEPS 2.0 Pillar Two*, 10 March 2023.

US President releases the 2024 Budget

On 9 March 2023, US President Joe Biden released the Administration's FY 2024 Budget (the Budget) and accompanying Treasury Greenbook.

In the Budget, the President also announced a number of international tax proposals. The Budget would make several changes to the GILTI regime, including replacing "global averaging" for calculating a US shareholder's GILTI with a jurisdiction-by-jurisdiction calculation and creating a separate foreign tax credit (FTC) limitation for each jurisdiction.

Since GILTI would be deemed to be a compliant global minimum tax due to other proposals in the Budget, taxes paid under an IIR by a foreign parented group would be creditable against any GILTI tax paid by a US domestic corporation that is a member of that group.

Another proposed international tax change would repeal the base erosion and anti-avoidance tax (BEAT) and replace it with a UTPR that is consistent with the UTPR described in the OECD Pillar Two Model Rules, including a global annual revenue threshold, de minimis exclusions and allocation among jurisdictions. A US domestic minimum top-up tax would be part of the UTPR proposal to protect the US Treasury from the imposition of UTPR by other countries.

BEPS and other developments

OECD

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

On 8 March 2023, Angola joined the Global Forum on Transparency and Exchange of Information for Tax Purposes. According to the Press Release, Angola will also participate on an equal footing and is committed to combatting offshore tax evasion through the implementation of the internationally agreed standards of exchange of information on request and automatic exchange of financial account information.

OECD releases country updates on the Multilateral Instrument (MLI)

On 15 March 2023, Mexico deposited its instrument of ratification of the MLI with the OECD. When depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Mexico updated its preliminary positions by adding a reservation to article 3 (transparent entities), opting to apply article 9 (4) (capital gains from immovable property), and withdrawing a reservation on article 16 (Mutual Agreement Procedure). The MLI will enter into force for Mexico on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of their instrument of ratification, i.e., on 1 July 2023.

Also, on 6 March 2023, Romania notified the OECD Depositary of the MLI the completion of its internal procedures for the entry into effect of the MLI provisions concerning certain Covered Tax Agreements (CTAs). This notification is required for the MLI to have effect on CTAs when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI. In addition, on the same date, Portugal notified that its tax treaty with Timor-Leste entered into force on 12 October 2022.

Lastly, on 21 February 2023, the OECD published an update to the Arbitration Profiles of four jurisdictions applying Part VI (mandatory binding arbitration) of the MLI, namely, Belgium, Luxembourg, Netherlands, and the United Kingdom. On the same date, Hong Kong notified the OECD Depositary of the MLI the completion of its internal procedures for the entry into effect of the MLI provisions concerning certain Covered Tax Agreements (CTAs).

European Union

Commission adopts updated State aid framework and puts forward proposals as part of the Green Deal Industrial Plan

On 9 March 2023, the European Commission (the Commission) announced the adoption of the Temporary Crisis and Transition State Aid Framework (the Framework). The Framework is part of the Green Deal Industrial Plan that the Commission is developing at the request of EU leaders to boost competitiveness and support the green transition of the EU. The Framework temporarily relaxes the State aid rules, allowing Member States to grant aid in defined areas and simplifying the calculations and conditions for granting of aid, including via tax advantages.

On 16 March 2023, the Commission proposed the *Net Zero Industry Act* and the *Critical Raw Materials Act* to also support the Green Industrial Plan. The *Net Zero Industry Act* aims to scale up the manufacturing of clean technologies in the EU and ensure the Union is well-equipped for the clean-energy transition. The objective of the *Critical Raw Materials Act* is to ensure sufficient access to materials, like rare earths, that are vital for manufacturing key technologies and reform the electricity market design to make consumers benefit from the lower costs of renewables. The proposals should be discussed and agreed upon by the European Parliament and the Council of the EU before their adoption and entry into force.

EU leaders plan to discuss EU competitiveness further during their European Council meeting on 23-24 March.

Other developments

IMF releases policy paper on Elements of Effective Policies for Crypto Assets

On 23 February 2023, the IMF released Policy Paper No. 2023/004 on Elements of Effective Policies for Crypto Assets (policy paper). The objective of the policy paper is to address questions of Fund Members on the response to the growth of crypto assets and the accompanied risks.

The policy paper starts by providing definitions and classifications relevant to crypto assets and continues by outlining the main benefits and risks connected to crypto assets. Subsequently, the policy paper gives an overview of a policy framework for crypto assets that has as its main goal to achieve a number of policies aims, including financial stability. To make sure these objectives are fulfilled, the policy paper refers to nine required key elements of an Effective Crypto Policy Framework. The policy framework aims to address micro-financial or legal, regulatory and supervisory considerations and achieve global coordination. With respect to global coordination, the policy paper suggests that the recently released OECD Crypto Asset Reporting Framework (CARF) can be used in developing a consistent global framework for regulating crypto assets and achieving unambiguous tax treatment. In addition, the policy paper highlights the need for international cooperation as regards the supervision and enforcement of legislation related to crypto assets through a joint monitoring framework across different domestic agencies and authorities.

UN Committee of Experts on International Cooperation in Tax Matters publishes Report on the 25th session

Recently, the United Nations (UN) published the report on the 25th session of the Committee of Experts on International Cooperation in Tax Matters held on 18-21 October 2022.

Among other items, the report indicates that a new proposal to provide guidance for developing countries on remote worker/nomad issues was proposed in view of changing work patterns. A paper would be developed by the Subcommittee and presented at the 26th session for consideration by the Committee.

The topic of taxation of crypto assets was also discussed during the meeting. According to the report, work on a paper that would provide an overview of taxation issues for crypto assets with a particular focus on developing countries has started, and it is expected to be presented at the 26th session.

Lastly, there was also a discussion on whether the Subcommittee would provide model legislation for a net wealth tax. It was decided that, as a first step, the Subcommittee would summarize the necessary legislative elements of a net wealth tax in an appendix to a future paper.

The next session of the Committee of Experts on International Cooperation in Tax Matters will be held on 27-30 March 2023. According to the meeting's agenda, the workplan for this session sets out 13 workstreams related to international cooperation in tax matters, including crypto taxation and digitalization and other opportunities to improve tax administration.

UN Secretariat launches public consultation on the Promotion of inclusive and effective tax cooperation at the United Nations

In February 2023, the UN Secretariat launched a public consultation requesting input for his report to be discussed during the General Assembly's 28th session in the third quarter of 2023. This follows a request from the Member States after the adoption of the resolution on "Promotion of inclusive and effective tax cooperation at the United Nations" by the General Assembly on 30 December 2022. Following adoption, the UN also published a roadmap of implementation.

Member States and relevant stakeholders were invited to provide their input to the UN Secretariat by 17 March 2023.

Country developments

Brazil's Federal Revenue Office publishes Normative Instruction on early adoption of new Brazilian transfer pricing rules

On 24 February 2023, the Brazilian Federal Revenue Office (RFB) published Normative Instruction (NI) nº 2.132/23 providing guidance on the taxpayers' option for early adoption of the transfer pricing rules set forth in Provisional Measure (PM) nº 1.152, from 28 December 2022, related to controlled transactions carried out during the calendar year 2023.

The NI establishes that the option for applying the provisions of the PM to the controlled transactions that occurred in 2023 shall be digitally formalized by taxpayers during the period between 1 September 2023 and 30 September 2023. Once the election is made, it will be irrevocable and will apply to all transactions carried out during the calendar year.

Among other provisions, the NI establishes criteria for carrying out transfer pricing adjustments throughout the year and ratifies certain regulations set forth by the PM with respect to the deductibility of royalties.

See EY Global Tax Alert, *Brazil's Federal Revenue Office publishes Normative Instruction on early adoption of new Brazilian transfer pricing rules*, 8 March 2023.

Croatia proceeds to fully transpose DAC7

On 14 March 2023, Croatia completed its transposition of DAC7 (EU Directive on Administrative Cooperation in the Field of Taxation to extend its scope to reporting obligations of digital platform operators) by publishing in its Official Gazette the Bylaw implementing Annex V. Annex V sets forth due diligence procedures, reporting requirements and other rules that shall be applied by the Reporting Platform Operators.

This follows Croatia's adoption of Law No. 2338, amending rules on the mandatory automatic exchange of information implementing DAC7 on 22 December 2022.

Cyprus Tax Authority issues FAQs on new transfer pricing legislation

On 10 February 2023, the Cyprus Tax Authority released a set of Frequently Asked Questions (FAQs) which addresses a number of aspects relating to the application of the new transfer pricing (TP) legislation that is effective as of 1 January 2022.

The Cyprus Tax Authority addressed 11 questions in total. One of the main points addressed relates to the revocation of the Interpretive Circular 3 (dated 30 June 2017) on back-to-back financing arrangements. The revocation is effective as of 1 January 2022, as announced in the Circular issued on 5 January 2023.

The FAQs also include clarifications related to the categories of controlled transactions to be included in the Local File, the threshold in the context of rental income and loan financing activities, the use of the tax or the accounting year of the company for the purposes of the Local File and the Summary Information Table. Another question relates to the person responsible for completing and submitting the Summary Information Table.

Finally, the FAQs indicate that a benchmarking study should be prepared when an intra-group loan is initiated, and such study should be updated only in specific cases. However, the list provided in the FAQs is not exhaustive, and taxpayers should also follow the guidance provided in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Estonian tax measures are triggered after new countries including Russia are added to EU list of non-cooperative jurisdictions

On 21 February 2023, the following tax measures were automatically introduced in Estonia following the publication of the revised list of non-cooperative jurisdictions (EU List) in the Official Journal of the EU.

Estonia applies an immediate withholding tax of 20% on services purchased from jurisdictions on the EU List of non-cooperative jurisdictions (Annex I). Estonia also imposes corporate income tax at the rate of 25% on the acquisition of securities, holdings or a right of claim against entities located in these jurisdictions. Corporate income tax is also imposed on fines, contractual penalties, compensations, loans and advance payments to such jurisdictions. Dividends redistributed in Estonia that were received from companies who are tax residents or registered in jurisdictions included on the list are excluded from the tax exemption that only applies to non-listed jurisdictions if certain conditions regarding shareholding and taxation are met.

The redistribution of dividends received from jurisdictions on the list is subject to corporate income tax in Estonia. Transactions with related parties situated in countries on the EU list are subject to obligatory transfer pricing documentation and Mandatory Disclosure Rules (DAC6).

In addition, resident natural persons should report and pay tax on the income of a controlled legal person located in a non-cooperative jurisdiction, irrespective of whether the legal person has distributed any profits to taxpayers or not.

See EY Global Tax Alert, *Estonian tax measures triggered after new countries including Russia are added to EU list of non-cooperative jurisdictions*, 13 March 2023.

Germany releases Fifth Regulation introducing amendments to the list of jurisdictions under Country-by-Country Reporting

On 27 February 2023, Germany published in its *Official Gazette* the updated list of jurisdictions participating under the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). The list was updated to include Barbados and now contains 42 jurisdictions in total.

The bill entered into force on 28 February 2023.

Italy approves decree implementing DAC7

On 23 February 2023, Italy's Council of Ministers approved the legislative decree implementing DAC7 into national law. DAC7 expands the automatic exchange of information and reporting obligations to cover certain transactions through digital platforms. The bill is, in general, in line with DAC7. However, Italy has exceeded the transposition deadline that was set for 31 January 2022, which led the European Commission to send a letter of formal notice on 27 January 2023.

The law will now be published in the *Official Gazette*, and the first report is expected to be submitted by 31 January 2024.

Luxembourg submits Draft Law implementing Public CbCR Directive to Parliament

On 24 February 2023, Luxembourg's Government submitted to the Parliament a draft law to transpose Directive (EU) 2021/2101 on Public CbCR Directive (the Draft Law). The rules set forth in the Public CbCR Directive require both MNEs based in the EU and non-EU based MNEs doing business in the EU through a branch or subsidiary with total consolidated revenues of more than €750 million in each of the last two consecutive financial years to disclose publicly the income taxes paid and other tax-related information such as breakdown of profits, revenues and employees per country.

The EU Directive provides two options to the Member States. First, Member States may allow for one or more specific items of information to be omitted for a maximum of five years when its disclosure would be seriously prejudicial to the commercial position of the group. Second, Member States may exempt companies from publishing on their websites if access to the report in the public registry is free of charge to any third party located in the EU. Luxembourg has made use of both options.

The Draft Law does not deviate from the Public CbCR Directive, and once adopted and published in the national *Official Gazette*, it will enter into effect as of 22 June 2024.

Malaysia releases FAQS on Mutual Agreement Procedure

On 1 February 2023, the Inland Revenue Board of Malaysia released FAQs on the mutual agreement procedure (MAP) with the aim of providing clarification to its MAP Guidelines issued on 19 December 2017.

The FAQs address general issues, such as the due date for a MAP request and circumstances in which taxpayers can request a MAP. As for the due date of the MAP request, the FAQs indicate that the timeframe depends on the period mentioned in the MAP article under the relevant tax treaty.

The FAQs also clarify that a MAP request should be submitted in writing and specify the relevant tax treaty article under which the request is made. What is more, the taxpayer submitting the request should show that double taxation is probable and not only possible to arise.

In addition, the FAQs provide examples of issues that can emerge during a MAP and provides clarifications regarding MAP documentation and implementation.

Malta issues clarification on DAC6 filing requirement waiver

On 7 March 2023, Malta's Commissioner for Revenue issued guidelines in relation to the waiver from filing information in respect of a reportable cross-border arrangement under the Directive on Administrative Cooperation on cross-border tax arrangements (DAC6 or MDR).

The guidelines are released in view of the judgment in Case C-694/20, where the Court of Justice of the EU ruled that article 8ab(5) of DAC6 is invalid in the light of Article 7 of the Charter of Fundamental Rights of the EU, when national law transposing DAC6 requires a lawyer acting as an intermediary, where he or she is exempt from the reporting obligation laid down in article 8ab of DAC6, on account of the legal professional privilege by which he or she is bound, to notify without delay any other intermediary who is not his or her client of that intermediary's reporting obligations under Article 8ab.

According to the guidelines, the article transposing article 8ab of DAC6 into Malta's national law should be interpreted as not applying in the cases covered by the abovementioned judgment.

Dutch Minister of Finance submits letter to Parliament on Tax Treaty Negotiations

On 21 February 2023, the Dutch Minister of Finance submitted a letter to the Parliament on Tax Treaty Negotiations (this is an annual update). In his letter, the Dutch Minister of Finance sets forth the tax treaties negotiated and signed in 2022, the negotiation plan of the Netherlands for 2023 and the status of current negotiations regarding tax treaties.

In 2022, the Netherlands negotiated a limited number of tax treaties due to COVID-19 but succeeded in signing tax treaties with Chile and Colombia. In addition, an agreement has been reached with officials of Belgium and Kyrgyzstan.

In 2023, the Netherlands remains open to signing a tax treaty with any country, but in view of prioritization, the Netherlands will focus on continuing negotiations with Belgium, Brazil, Moldova, Morocco, Mozambique, Uganda, Portugal, Rwanda and Suriname. Furthermore, the Netherlands will continue to push for initiating discussions with Bahrain, Barbados and envisages to start new negotiations with Germany, Kenya and Romania.

The Netherlands also stipulates the desire to align the tax arrangements with Aruba, Curaçao and Sint Maarten to the BEPS minimum standards. That said, the Netherlands acknowledges that the country's capacity may be limited in 2023 due to the intensive negotiations around Pillar One and Two.

As indicated in its 2020 Memorandum on Tax Treaty Policy, the Netherlands is also working on establishing minimum standards for effective dispute resolution mechanisms and against treaty abuse. In this regard, the Netherlands has included most of its tax treaties as covered tax agreements under the Multilateral Instrument (MLI).

In the Press Release, the Ministry of Finance invites companies and citizens who possess tax information that may be relevant for the current or future negotiations to contact the Ministry.

Spain approves guidelines on the 2023 annual tax plan

On 27 February, the Spanish Minister of Finance released the 2023 Annual Tax and Customs Plan (the Plan). The Plan sets forth the focus points and actions to be carried out by the Spanish tax authorities in the year 2023.

The Plan makes reference to initiatives that stand out, mentioning, among others, the endeavor for an agreement related to Pillar One or the proposal Directive for preventing the misuse of shell entities in the EU (Unshell).

However, remarkably, no reference is found to Pillar Two implementation, even though Spain has already released a public consultation document regarding the transposition of the EU Pillar Two Directive.

Sweden presents draft bill for the implementation of the Public Country-by-Country Reporting (CbCR) Directive

On 9 February 2023, Sweden published draft legislation in a new law implementing the EU Public CbCR Directive. The draft legislation is, in general, in line with the EU Directive and according to the draft bill, the law will enter into force on 22 June 2023, and will be applied for the first time for financial years beginning after 31 May 2024. Following the Directive reference that Member States that have not adopted the Euro may convert the Directive threshold of €750 million into their national currency, Sweden has set the threshold for reporting at SEK8 billion. The publication should be filed to the Swedish Companies Registration Office and also be made available on the website of the company. In addition, the publication deadline is proposed to be within one year from the balance sheet date of the financial year for which the report has been drawn up.

US Senator submits draft bill to the Senate introducing disclosure of public country-by-country information

On 2 March 2023, US Senator Chris Van Hollen introduced to the Senate the *Disclosure of Tax Havens and Offshoring draft Act* (the draft bill), amending the *Securities Act of 1934* and introducing public CbCR.

The first section of the draft bill lays out the definitions of constituent entity, covered issuer, and tax jurisdiction, while the second section addresses issues related to the disclosure, according to which taxpayers in scope need to submit a report with the relevant information to the Commission, which shall be made available to the public online.

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