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Global Tax Alert

The Latest on BEPS and Beyond

May 2023

EY Tax News Update: Global Edition

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Highlights

The introduction of Pillar Two has shown that the protection against double taxation based on treaty provisions can change without any changes being made to the treaty itself. This trend, and the underlying perceptions, can have a significant impact on the tax certainty that businesses are experiencing.

Consider the example of transfer pricing. When the Organisation for Economic Co-operation and Development (OECD) introduced the Transfer Pricing Guidelines in 1992, only a few countries had incorporated the arm's-length principle in their domestic legislation. In the 10 years that followed, the arm's-length principle became a global norm. Initially, the political drive toward worldwide economic growth led to a focus on preventing double taxation. In the context of targeting harmful tax competition, the arm's-length principle also became a tool to protect governments against "less than single" taxation. The mechanisms established in the guidelines ensure that the prices established on one side of the border are the same as the prices for the same transaction on the other side of the border. This is only possible if the transfer pricing provisions of tax treaties are restrictive, reflecting the treaty partners' commitment that they, on the one hand, do not tax more than follows from arm's-length pricing and, on the other hand, allow for a deduction for the same amount if they are on the other side of the transaction.

Building a better working world

Transfer pricing does not imply that the taxable bases of countries are aligned. For example, some countries disallow or limit the deduction of representation costs. Regarding what constitutes representation costs, it typically should not matter if the qualifying goods or services are provided by an independent or an associated party. The arm's-length principle is applied to determine the amount charged for the transaction. Whether the costs qualify is based on the substance of the transaction.

If a country's domestic limitation-of-deduction rules are targeted at associated enterprises only, the rules are actually transfer pricing adjustments in disguise. Under a restrictive interpretation of the arm's-length principle, the treaty would, in this case, limit the application of the domestic legislation.

In the context of developing the minimum tax rules under the Global Anti-Base Erosion (GloBE) rules of Pillar Two, the restrictive interpretation described above got in the way of implementing Pillar Two without treaty changes. In a consultation paper, the OECD Secretariat suggested that a permissive interpretation of Article 9 of the OECD Model Tax Convention would also be in line with treaty interpretation. According to this interpretation, countries can disallow deductions based on domestic legislation or if the limitation only applies to transactions between associated enterprises. While this triggered a wave of criticism from commentators and was the source of in-depth papers by academics, it seems that the reasoning appealed to some governments.

Consider, for example, the limitation-of-deduction rule proposed by Australia on 31 March 2023, which was discussed in our previous LOBB edition. In essence, the rule will disallow deductions for intellectual-property-related payments to associated parties if the payments are taxed at a rate below 15%. This is not in line with the Pillar Two GloBE rules, as the rule is not an Undertaxed Profits Rule (UTPR) that is switched off if an Income Inclusion Rule (IIR) applies. As the Pillar Two rules reflect a common approach, other countries may object to this. For taxpayers, the key question is whether this provision is treaty-compatible. Reportedly, the debate over whether deductions of intra-group payments can be denied if no specific subject-to-tax rule is included in the tax treaty resulted in the Undertaxed Payments Rule ultimately becoming the UTPR.

Given the above, the Australian draft legislation raises two questions. First, what will the reaction of other countries be? Will similar approaches be adopted by countries in favor of less complex rules than the Pillar Two GloBE rules? Will countries object to the rule because it isn't in line with the common approach? Will countries believe that this is a subject-to-tax provision for which treaty changes are required? Will there be countries in each of these categories? Second, what steps taxpayers can take to ensure an independent assessment of whether the rule as proposed is treaty-compatible? While these questions are pending, businesses could be confronted with growing uncertainty and double taxation.

On 28 April, the consultation period on the Australian legislation ended. One would expect public comments to be equally critical to those voiced in response to the OECD's Article 9 and Pillar Two consultations. The reaction by the Australian authorities is something to watch for, as it may answer some of the questions posed above. We will keep you informed in one of the next versions of our monthly LOBB publication.

BEPS 2.0

OECD

G7 Finance Ministers acknowledge progress made in Pillar One and emphasize the need for further administrative guidance on Pillar Two

On 11-13 May 2023, the G7 Finance Ministers and Central Bank Governors met in Japan. After the meeting, the G7 Presidency issued a joint communiqué (the communiqué) summarizing the key topics discussed. Concerning international taxation, the Finance Ministers reaffirmed their strong political commitment to the swift implementation of the ongoing G20/OECD project on addressing the tax challenges arising from the digitalization of the economy. The communiqué acknowledges significant progress in the negotiation of the Pillar One Multilateral Convention (MLC) and emphasizes the determination to promptly conclude the negotiations, ensuring the MLC's readiness for signature within the agreed timeline.

The communiqué also welcomes the progress in implementing Pillar Two into domestic legislation and urges the Inclusive Framework to develop additional administrative guidance for consistent global implementation. Moreover, the communiqué affirms the commitment to support developing nations in strengthening their tax capacities to establish sustainable revenue sources, recognizing the importance of assistance for implementing the two-pillar solution.

European Union

Action for annulment of the Minimum Tax Directive launched

On 15 March 2023, a case was brought before the European Union (EU) General Court against the Council of the EU for annulment of the Minimum Tax Directive (the Directive). The annulment case comes up against the Directive's interaction with shipping and shipping-related activities, as well existing tonnage regimes.

The pleas in law and the main arguments of the procedure are that the Directive infringes the principles of equal treatment, proportionality, protection of legitimate expectations and legal certainty, and Articles 115 and 107 of the Treaty on the Functioning of the EU.

Other developments

IASB proposes amendments to IFRS for SMEs Accounting Standard in light of Pillar Two

On 3 May 2023, the International Accounting Standards Board (IASB) held a supplementary meeting to discuss proposed narrow-scope amendments to the International Financial Reporting Standards (IFRS) for Small and Medium Enterprises (SMEs) Accounting Standard. During the meeting, the IASB tentatively decided to propose amendments to the IFRS for SMEs Standard. These amendments include a temporary exemption for accounting and information disclosures on deferred taxes under Pillar Two rules, without a specified sunset period. The IASB also agreed not to introduce new disclosure requirements for SMEs during periods when Pillar Two legislation is enacted or substantively enacted but not yet in effect.

This supplementary meeting comes after the IASB decided in late April that the Pillar Two Model Rules (and the proposed amendments to IAS 12) are relevant to entities applying the IFRS for SMEs Accounting Standard.

The IASB plans to publish an exposure draft in the second quarter of 2023, which will be open for public consultation for 45 days.

Country developments

Australia announces Pillar Two implementation

On 9 May 2023, the Australian Treasurer confirmed that Australia will implement the key aspects of Pillar Two (i.e., IIR and UTPR) including a new 15% domestic minimum tax for large multinational enterprises (MNEs). These measures will be based on the OECD GloBE Model Rules and will apply to MNEs with annual global revenue of at least EUR 750 million (approximately AUD 1.2 billion).

The proposals to introduce an IIR and domestic minimum tax will apply for income years commencing on or after 1 January 2024, whereas the UTPR will take effect for income years commencing on or after 1 January 2025.

The Australian Treasurer estimates that implementing the global and domestic minimum tax will lead to an increase in Australian tax receipts by AUD 370 million over the next five years, starting from 2022-23.

Nigeria met with the OECD to explore advantages that BEPS 2.0 could offer

On 13 April 2023, the Federal Inland Revenue Service (FIRS) published through a press release on its official LinkedIn Page, an Outcome Statement from the OECD-Nigeria workshop on maximizing the benefits of the two-pillar solution for Nigeria. Nigeria did not endorse the Pillar Two solution but participated in the workshop to familiarize relevant government officials with the rules and the potential benefits for the country.

The Outcome Statement noted the need for Nigeria's continued participation in the rule development and the potential impact of implementing the two-pillar solution, particularly Pillar Two. The stakeholders at the meeting resolved that Nigeria should implement fiscal policy measures to address these potential impacts.

UK releases amendments to Multinational Top-up Tax draft legislation

On 14 April 2023, the United Kingdom (UK) released a series of amendments to the Spring Finance Bill 2023, including amendments to the Multinational Top-up Tax proposal. Six of the amendments involve Schedule 16 (transitional provisions) and focus on applying anti-avoidance provisions for intragroup transfers (in particular, noting that the transitional rule applies to all transfers from transferors until they are fully subject to Pillar Two rules).

An additional amendment also clarifies that figures used for the Multinational Top-up Tax transitional safe harbor must come from a qualifying country-by-country report. If this information was not included in the report, it must be adjusted as if it were. The amendment ensures that revenue and profit figures used in the transitional safe harbor provisions align with those included in a qualifying country-by-country report.

Swiss Federal Council and Parliament recommend voting in favor of Pillar Two domestic implementation

On 24 April 2023, a press conference was held in Switzerland to launch the political campaign for the public vote taking place on 18 June 2023 on a constitutional amendment to create a legal basis to implement the minimum taxation in Switzerland. The Swiss Federal Council and Parliament recommend that voters accept the constitutional amendment to implement minimum taxation.

The announcement also included a general question and answer (Q&A) document on the implementation of Pillar Two in Switzerland. The Q&A document highlights that the positive impact of this supplementary tax is estimated to be between CHF 1b and CHF 2.5b (approximately USD 1.1b – 2.8b) in the first year, with the tax receipts going to both the cantons and the Federation to invest in improving the attractiveness of Switzerland as a business location.

BEPS and other developments

OECD

OECD issues 2023 Progress Report on Tax Co-operation for the 21st Century

On 11 May 2023, the OECD published a Progress Report (the Report) for the G7 Finance Ministers and Central Bank Governors' May 2023 meeting. The Report reflects on the shifting landscape of international tax policy and its impact on international tax cooperation and presents an update on the May 2022 report, "Tax Co-operation for the 21st Century." The Report contains three main sections. First, it analyses how the principles set out in the 2022 Report are being incorporated by the members of the OECD/G20 Inclusive Framework on BEPS into the design of the "Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," focusing on Amount A and the GloBE Rules. Second, it shows that the principles of the 2022 Report, beyond corporate income tax, are being translated into action, such as with technology-based solutions for effectively collecting and using information for personal income tax purposes. Finally, it notes some recent developments in capacity building, as called for by the 2022 Report, and identifies some of the work that remains to be done. The Report concludes by identifying potential areas for consideration and the next steps to further boost international cooperation in the context of coordinated international rules.

European Union

EU finance ministers provisionally agree on updated compromise text for Directive introducing tax transparency rules for crypto assets

On 16 May 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting at which Finance Ministers provisionally agreed on an updated compromise text for the Directive on administrative cooperation implementing the OECD rules on reporting for crypto assets (DAC8). The compromise text represents the outcome of negotiations by the Member States that amended the European Commission's proposal published on 8 December 2022.

DAC8 introduces reporting requirements for crypto assets related to transactions of clients residing in the EU. DAC8 also extends the scope of exchange of advance cross-border rulings concerning natural persons and introduces the possibility of exchanging information received under the DAC framework for non-tax-related purposes.

Once the Directive is formally adopted by the Council, following completion of the parliamentary consultation process, the Member States will have until 31 December 2025 to transpose the main rules into national law, and the new provisions will apply as of 1 January 2026.

Member States formally adopt carbon tax legislation and 'Social Climate Fund'

On 25 April 2023, the Member States formally adopted two key proposals of the "Fit for 55 in 2030 package."

The Carbon Border Adjustment Mechanism (CBAM)

CBAM is essentially a levy applied on imports of certain product categories, such as iron and steel, into the EU. The primary objective of CBAM is to prevent carbon leakage, which refers to the risk of emission-intensive production relocating from the EU to third countries. This measure is intended to safeguard against the potential negative impact on climate goals when such production moves to regions with less stringent environmental regulations. CBAM will be implemented in phases, starting from 1 October 2023.

On 10 May 2023, following Council's adoption, the European Parliament and the Council signed, as co-legislators, the final CBAM Regulation, which will enter into force 20 days after its publication to the *Official Journal of the EU*.

The Revisions of the Emissions Trading System (ETS)

ETS is a cap-and-trade carbon market for energy-intensive industries and the power generation sector in place since 2005. The revised ETS framework extends the scope to the aviation and maritime sectors and introduces EU ETS II (carbon market), covering fuels for transportation and heating. According to the new system, free allowances granted to EU manufacturers will fade on a progressive curve from 2026 to 2034.

See EY Global Tax Alert, *European Parliament approves EU Emission Trading System reform and new EU Carbon Border Adjustment Mechanism*, dated 20 April 2023.

Parliament starts discussions on new 'own resources'

On 17 April 2023, the Parliament's Committee on Budgets expressed its concerns in a report, calling for proposals on additional EU own resources to be made available no later than Q3 2023, rather than in 2024 as initially planned.

The report includes the following suggestions for new resources:

- Business in Europe: Framework for Income Taxation (BEFIT) (Commission proposal expected Q3)
- A Financial Transaction Tax to be presented before the end of June 2023
- An EU fair border tax (requiring importers to pay a levy for low-wage labor in the global supply chain)
- An EU cryptocurrencies tax
- An EU digital levy to be presented in case there is no progress on Pillar One - Amount A by the end of 2023
- Statistics-based national contributions

Commission adopts implementing regulation on DAC7

On 13 April 2023, the Commission adopted an implementing regulation setting criteria to determine whether the information automatically exchanged under an agreement between Member States and a non-EU country is equivalent to that specified in DAC7.

DAC7 extends EU rules for tax transparency and reporting to digital platforms in relation to information on their sellers. DAC7 contains a provision that would switch off the reporting obligation if the rules of a third country are equivalent to those of DAC7 and the jurisdiction automatically exchanges information with member states.

The implementing regulation binds the Member States as of 13 April 2023 and entered into force on 8 May 2023 (20 days following its publication in the *EU Official Journal*).

Country developments

Danish Supreme Court rules on beneficial ownership cases

On 4 May 2023, the Danish Supreme Court issued rulings on two beneficial owner cases that had been referred back from the Court of Justice of the European Union (CJEU). The cases concerned the exemption from Danish withholding tax on interest payments made by Danish companies to EU-resident companies, which then fully or partially paid the interest to an ultimate parent company residing in a third country.

The Danish Supreme Court determined that the financing transactions constituted a predetermined arrangement, and found that the holding companies did not qualify as beneficial owners under the EU Interest and Royalty Directive and the relevant tax treaties. The Danish Supreme Court concluded that the holding companies lacked the power to dispose of the income they received, and therefore were not entitled to the tax benefits claimed. As a result, the Danish Supreme Court upheld the decisions of the high court and the tax authorities that the holding companies were not eligible for the tax benefits sought, and consequently Danish interest withholding tax should have been withheld.

See EY Global Tax Alert, *Danish Supreme Court issues rulings on beneficial ownership of interest and abuse of EU law*, dated 8 May 2023.

Finnish Tax Administration issues guidance on DAC7

On 21 April 2023, the Tax Administration of the Republic of Finland issued guidance on the application and interpretation of domestic rules implementing DAC7.

In part, the guidance provides clarifications on the information that platform operators need to collect and report to the Tax Administration annually. In addition, it lays down the due diligence procedures that a reporting platform operator should follow to ensure the reported information is correct.

Finally, the guidance also covers topics such as definitions of key terms, and specific obligations for reporting platform operations.

French Supreme Administrative Court, following CJEU judgment, rules DAC6 notification obligation on intermediaries subject to legal professional privilege infringes right to privacy

On 14 April 2023, the French Supreme Administrative Court issued a decision 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. However, intermediaries subject to the legal professional privilege must nonetheless comply with DAC 6 reporting requirements if the client agrees to waive attorney-client confidentiality for this purpose.

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 and infringes the right to confidentiality between lawyers and their clients, as granted by the Charter of Fundamental Rights of the European Union.

Germany supports the dynamic interpretation of tax treaties

On 19 April 2023, the German Ministry of Finance (MOF) issued a Decree that provides guidance on interpreting German tax treaties using the Commentary of the OECD Model. The Decree specifies that any updates to the Commentary of the OECD Model should be considered while interpreting tax treaties, even if the tax treaty was concluded prior to such updates. However, if an MOF decree or other circular provides a contrary interpretation, its binding effect is not affected by the Commentary of the OECD Model.

Irish Revenue updates guidance on CFC

On 16 March 2023, the Irish Revenue updated the Irish Tax & Duty Manual (TDM) Part 35b-01-01 on Controlled Foreign Company (CFC) Rules to reflect an amendment introduced by *Finance Act 2022*.

The updates account for the October 2022 update to the listed jurisdictions included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes (the Annex). These are relevant to the Irish defensive measures that were introduced into Section 835YA under the *Finance Act 2020* and removed exemptions from CFC taxes where the CFC is resident in a jurisdiction included in the Annex.

The updates to Chapter 11 of the TDM include details of the three jurisdictions added to the Annex (i.e., Anguilla, the Bahamas, and Turks and Caicos Islands) and are in line with the amendment to Section 835YA of the Irish tax legislation

Italy announces draft legislative framework for major tax reform

On 16 March 2023 the Italian Council of Ministers announced a draft legislative framework (Draft Framework) for a tax reform. In part, the Draft Framework notes that all Italian tax incentive regimes will be revised and simplified and would also take into account the EU Directive 2022/2523 on Pillar Two. Also, the Draft Framework intends to introduce a de minimis threshold and possibly further amend the general interest deduction limitation rule in compliance with the Anti-Tax Avoidance Directive (ATAD).

Under current Italian tax rules, nonresident companies are always seen as corporations (i.e., as tax opaque), irrespective of their local jurisdictions' qualification. The Draft Framework calls for this principle to be revised and for a provision to be introduced that takes into consideration the local tax characterization of the foreign entity.

It is expected that the Italian government will pass the final legislative framework before Summer 2023 and the government will have approximately 24 months to execute the actual reform through one or more Legislative Decrees.

See EY Global Tax Alert, *Italy announces draft legislative framework for major tax reform*, dated 14 April 2023.

Kenya releases Finance Bill 2023 including a Digital Asset Tax and an interest limitation rule

On 28 April 2023, the National Treasury of the Republic of Kenya submitted the *Finance Bill 2023* (the Bill) for consideration to the National Assembly. In part, the Bill proposes imposing a 3% Digital Asset Tax on income from the transfer or exchange of digital assets. Digital assets are intangible items of value, such as cryptocurrencies, digital tokens, and codes generated through cryptographic means or other methods, that provide a digital representation of value exchanged with or without consideration and can be electronically transferred, stored or exchanged.

In addition, the Bill includes a proposal to limit the application of the interest limitation rule to interest payable on loans from lenders that are not resident in Kenya. Thus, any interest expenses that exceed 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA) can be deducted in the following three years of income, but only if the amount claimed in each year does not exceed 30% of the EBITDA.

Lithuania publishes amendments to domestic legislation implementing DAC7

On 4 April 2023, Lithuania amended domestic legislation (rules) implementing DAC7. The amendments relate to the submission of information to the tax authorities for activities performed by platforms.

The amended rules introduce new definitions for terms such as "reporting period," "data breach," "main address," "VAT code" and modify definitions of terms such as "Subject" and "Effective qualified agreement between competent authorities."

Furthermore, the amendments state that where a platform's business model has no reportable sellers, the platform operator should submit an Extensible Markup Language to the tax authorities annually without identifying the sellers and provide the tax authorities with written supporting documents. In the case of multiple platform operators, an operator who provides information on behalf of another must indicate in the XML (Extensible Markup Language) data file that the information is being provided on behalf of another platform operator, and provide his identification data; the operator on whose behalf the information was provided must also submit the XML data file (without information about reportable sellers) and indicate that its information was provided by another platform operator.

The amendments also clarify that any kind of payment made to the seller for the relevant activity constitutes remuneration and tax authorities shall be notified of the remuneration in the local currency, which is converted in the manner determined by the operator of the platform providing the data.

Luxembourg submits draft legislation amending procedural rules for APAs

On 28 March 2023, Luxembourg submitted to the Parliament draft Bill No. 8186, together with an explanatory memorandum (the Draft Law), amending certain procedural aspects of the General Tax Law and various other laws. Among other things, the Draft Law introduces a procedural framework for bilateral or multilateral Advance Pricing Arrangements (APAs) and the obligation for related enterprises to document their transfer pricing policy.

Currently, bilateral and multilateral APAs are covered by the general procedure for advance tax clearances. According to the new provision, a written request for a bilateral or multilateral APA based on the provisions of one or more double-taxation treaties must be filed with the Director of the Direct Tax Administration or his/her delegate. In addition, the Draft Law provides for the payment of a specific fee amounting to between €10,000 and €20,000, depending on the complexity of the request and the workload associated with it.

The Draft Law also introduces a specific obligation for taxpayers with related enterprises to provide, upon request and presumably within a deadline, specific documentation on their transfer pricing policy. The scope, content and extent of the documentation is intended to correspond to the international standards resulting from the work of the OECD on Action 13 of the BEPS Action Plan.

See EY Global Tax Alert, *Luxembourg amends some procedural tax rules*, dated 7 April 2023.

Luxembourg Chamber of Deputies adopts DAC7 Bill

On 3 May 2023, the Chamber of Deputies of Luxembourg adopted the bill implementing DAC7 into domestic law. DAC7 expands reporting obligations and exchange of information to cover sales through digital platforms.

The bill will be applicable as of 1 January 2023. An exception is provided for joint audits for which implementation and application are expected to be delayed for one year.

The bill will enter into force once promulgated by the Grand Duke.

Maltese Commissioner for Revenue updates FAQs on MDR implementation

On 13 April 2023, the Office of the Commissioner for Revenue of the Republic of Malta updated the Frequently Asked Questions (FAQs) on the Mandatory Exchange of Information in Relation to Cross-Border Arrangements (DAC6 or MDR).

The updated FAQs address inquiries concerning reporting deadlines, obligations and other general questions. Notably, a determination made by an EU intermediary regarding the reportability of a transaction, based on foreign laws, does not necessarily impose a reporting obligation on the Maltese professional or advisor in Malta. Additionally, if an intermediary provides tax advice to another intermediary, the former intermediary is obliged to report such information if it relates to a reportable cross-border arrangement, unless he/she chooses to waive this obligation.

Netherlands updates Decree on the Avoidance of Double Taxation under Tax Treaties and Other Regulations

On 2 May 2023, the Dutch State Secretary for Finance issued a Decree (Decree No. 2023-2897 – dated 18 April 2023) updating the Decree on the Avoidance of Double Taxation under Tax Treaties and Other Regulations. In part, the updated Decree: (i) further clarifies the used methodology and applied sequence of available tax credits; (ii) provides information in relation to income of foreign sportsmen and artists; and (iii) contains policy around avoidance of double taxation in tax treaties that do not mention a type of income explicitly (i.e., domestic rules could be relied on instead).

The updated Decree applies as of 3 May 2023 (replacing Decree No. CPP2007/664M of 18 July 2008 and No. IFZ2002/357 of 16 April 2002).

Netherlands updates guidance on mandatory disclosure regime (MDR)

On 28 April 2023, the Dutch State Secretary for Finance issued an updated Decree (Decree No. 2023-6233 – dated 14 April 2023) regarding the application of Dutch legislation implementing EU Directive 2018/822 on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or MDR Directive).

The updated Decree provides further clarity on the interpretation of the Dutch MDR legislation. The Decree reconfirms that the Dutch MDR legislation is broadly aligned with the Directive. Some key highlights of the updated Decree follow:

- More specific examples are given for each hallmark.
- The modification of a preexisting arrangement can result in a new reportable cross-border arrangement.
- A person who merely performs descriptive or compliance activities in relation to an existing arrangement is not an intermediary and is therefore not required to report on whether this existing arrangement constitutes a reportable cross-border arrangement.
- If a reportable cross-border arrangement is "made available" but ultimately not implemented, a reporting obligation still exists and the deadline commences when the arrangement is made available.
- The Dutch Government has confirmed that preventing a tax disadvantage also qualifies as a tax benefit for purposes of the Main Benefit Test.

The updated Decree replaces the guidance included in the Decree of 24 June 2020, No. 2020-11382.

EY Global Tax Alert, *Netherlands updates guidance on mandatory disclosure regime*, dated 5 May 2023.

Netherlands proposes changes to Tax Arrangement with Curaçao

On 28 April 2023, the Dutch Ministry of Finance published proposed changes to the Tax Arrangement between the Netherlands and Curaçao (see attachment to the official publication).

Curaçao, being an autonomous country within the Kingdom of the Netherlands, has a Tax Arrangement in place with the Netherlands to avoid the double taxation of income. However, the current Tax Arrangement, dating back to December 2015, does not comply with the minimum standard suggested by the OECD, which both countries have committed to as Inclusive Framework Members. Therefore, in May 2019, the Netherlands and Curaçao agreed to review and update the Tax Arrangement. The conclusion of this review is now being made available to the parliaments in both the Netherlands and Curaçao.

The most important suggest changes can be summarized as follows:

- The preamble is expanded to state that the common intention of both countries is to eliminate double taxation without creating opportunities for nontaxation or reduced taxation (minimum standard).
- Curaçao Investment Companies (CICs, subject to 0% taxation) are acknowledged as tax residents but are excluded from the benefits of the dividend article to the extent that dividend income results from passive investment.
- A Principal Purpose Test (PPT) has been introduced, in addition to the Limitation of Benefits Test (LOB) that was already included in the dividend article of the Tax Arrangement (minimum standard).
- The mutual agreement procedure (minimum standard) is slightly amended to allow taxpayers to approach both tax authorities and to require taxpayers to request arbitration in writing.

The expected entry-intro-force date of the updated Tax Arrangement is set at 1 January 2024.

EY Global Tax Alert, *Dutch Finance Ministry proposes changes to Tax Arrangement between the Netherlands and Curaçao*, dated 4 May 2023.

Norway launches public consultation on amendments to the interest limitation rule

On 12 April 2023, the Ministry of Finance of Norway launched a public consultation on a proposal suggesting amendments to the interest limitation rule. The rule typically restricts the deduction of related party interest expenses that exceed 25% of EBITDA if the annual net interest expense goes beyond NOK 5 million (approximately USD 473,000).

The proposal suggests that when applying the interest limitation rule, the term interest should be expanded to also include the costs of financial leasing agreements. In addition, the proposal suggests that group contributions are not taken into account when calculating the limit of deduction. Finally, the proposal also included a special anti-avoidance measure for certain loans from related parties.

The consultation is public, and anyone can provide input to the Ministry of Finance until 12 July 2023. If adopted, the amendments should enter into force in 2024.

Minister of Finance of Poland issues draft bill implementing amendments to the Regulation on Transfer Pricing Documentation Requirements

On 14 March 2023, the Minister of Finance of Poland released a draft decree introducing amendments to the Regulation on Transfer Pricing Documentation Requirements with regard to the Corporate Income Tax and Personal Income Tax.

In part, the draft bill proposes to abolish the requirement to include certain information, such as the registered office of the beneficial owner, in the transfer pricing information that taxpayers must report when conducting indirect transactions with entities located in low-tax jurisdictions. Furthermore, the draft bill would amend the content of the statement that taxpayers must attach to the Local File when conducting controlled and noncontrolled transactions with entities located in low-tax jurisdictions.

Once adopted, the amendments will apply to transfer pricing documentation for tax years beginning on or after 2022.

Minister of Finance of Poland releases guidelines on transfer pricing methods

On 29 and 30 March 2023, the Minister of Finance of Poland released guidelines on the Resale Price and the Transactional Net Margin transfer pricing methods. The release of the guidelines follows the public consultations on these methods launched in April 2022.

The clarifications are aimed at providing tax certainty for taxpayers and explaining some practical aspects regarding the methods application, and apply to controlled transactions that were carried out after 31 December 2018.

In part, the guidelines clarify the methods' scope of application, the procedure that needs to be followed in choosing the tested entity, the methods for determining the relevant margins, and the criteria considered in the comparability analysis.

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 Ruiter marlies.de.ruiter@nl.ey.com
- Maikel Evers maikel.evers@nl.ey.com
- Andromachi Anastasiou andromachi.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

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