

## The Latest on BEPS and Beyond

September 2023

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### EY Tax News Update: Global Edition

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### Highlights

On 12 September 2023, the European Commission (the Commission) published two new legislative proposals: a Directive "Business in Europe: Framework for Income Taxation" (BEFIT) and a Directive on Transfer Pricing (Directive on TP).

While some expected that the BEFIT proposal would build on the earlier work on the Common Consolidated tax base, the Commission released a very different proposal. The proposal aims to achieve uniformity in the corporate income tax base of individual European Union (EU) Member States, cross-border loss compensation and taking a first step in allocating the aggregated tax base of all entities in the group to the various Member States.

The tax base determination begins with the financial accounts of an entity by making a limited number of adaptations to the financial accounting profits. As a next step, the profits from all entities of the group are aggregated into the BEFIT tax base. This is an important difference compared to the set-up of the Common Consolidated Corporate Tax Base (CCCTB) proposal. After all, for the CCCTB, the starting point was to determine the tax base on a group level by looking at the consolidated accounts. In the aggregation process foreseen by BEFIT, losses are automatically offset against profits within the same group, resulting in cross-border loss compensation. Once the BEFIT tax base is determined, it is allocated back to the Member States based on the historic

share of the total profits. Using a historic share of the total profits instead of a formula based on asset, labor or sales factors is proposed to prevent a shock to the budgets of the Member States. In time, the expectation is that sufficient data will be available to replace the allocation mechanism with a formula that provides predictable outcomes for Member States. Once a Member State receives its allocation of the profits, it can add and deduct elements based on its own domestic legislation. For example, while there is no room for tax incentives at EU level in the proposal, individual Member States are free to apply tax incentives to the BEFIT base allocated to them. As a consequence, subsidies are taken out of the BEFIT tax base. These may be added back at a Member State level, where it will be decided in what way these subsidies will be taxed. Once the domestic tax base is determined, the domestic tax rate will apply. Also, Pillar Two will remain applicable at the level of the individual Member States, including the Pillar Two treatment of tax credits and other subsidies.

All of this means a couple of things. First, while a mechanism based on consolidation would eliminate transfer pricing obligations, the current proposal will retain transfer pricing obligations per entity as these are part of the Pillar Two rules. Second, if a full form of a consolidated tax base were introduced, one could also imagine cross-border tax incentives and application of Pillar One and Two at the level of the consolidated group instead of per Member State. As a consequence, corporate taxation would move toward a form of supranational EU-wide taxation, taking away the burden of having to comply with 27 different tax systems. While the current proposal provides a first step into creating uniformity in the tax systems between Member States, it will only do so in a limited fashion. With that, the two proposals are not comparable, reflecting a very different philosophy of the benefits to be achieved by the drafters. The CCCTB was based on the ambition of creating an EU-wide tax system. BEFIT reflects the much more moderate ambition of creating more uniformity in the European Union without the ambition to move to one single level of taxation for big multinational groups.

While a consolidated form of taxation has some features that are appealing from the perspective of competitiveness of the EU as a whole, it does not seem very realistic that EU Member States would agree to cede such sovereignty to the

EU. That sense of reality seems to have fed into the BEFIT proposal by the EU. However, that proposal raises its own questions, in particular, whether this proposal will indeed lead to the simplification and lowering of administrative burdens as foreseen. Or is the proposal only going to benefit those who would like to get access to cross-border loss compensation? The proposal will lead to tax reporting obligations at global (Pillar Two), regional (BEFIT) and local levels.

A totally different approach to creating more uniformity, clarity and predictability can be found in the proposed Transfer Pricing Directive. Besides codifying the arm's-length principle and Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines into the domestic legislation of all Member States, the proposal also aims to achieve more uniformity in how transfer pricing is applied in practice by EU Member States. This is, for example, done by creating a common definition of associated enterprises, designing a process whereby primary adjustments need to be made to a specified point in the interquartile range, and corresponding adjustments need to be made within 180 days. The rules also provide guidance on when year-end adjustments (compensating adjustments) should be allowed. With that, the proposal first of all confirms the commitment of the Commission to the arm's-length principle, to the OECD guidance in this respect and to the assumption that what is included in the profits of one Member State should also be deductible in the other Member State. Also, it provides clarity on some issues that have the potential of generating differences in views between Member States and, thus, double taxation. With transfer pricing having been criticized heavily by certain policymakers, academia and the media as a means for profit shifting in the past years, which has led to a growing risk of double taxation for businesses, the proposed directive is a welcome confirmation by the Commission that transfer pricing will remain relevant and in need for refinement in the coming years.

All in all, both proposals would contribute to more uniformity. The key question is how EU Member States will receive these proposals, as they will need to come to a unanimous agreement to turn these proposals into directives.

## BEPS 2.0

### Country developments

#### **Canada releases Pillar Two draft legislation**

On 4 August 2023, Canada published [draft legislation](#) to implement Pillar Two into domestic law. This draft legislation includes the Income Inclusion Rule (IIR) and a Qualified Domestic Minimum Top-up Tax (QDMTT) applicable from 31 December 2023. The Undertaxed Profits Rule (UTPR) is not part of this draft legislation.

The draft legislation incorporates a transitional Country-by-Country Reporting (CbCR) safe harbor and a QDMTT Safe harbor in line with the guidance of the OECD. Additionally, it includes elements from the OECD's Commentary and Administrative Guidance issued in February 2023.

See EY Global Tax Alert, [Canada's Department of Finance releases draft legislation for 2023 budget and other measures](#), dated 10 August 2023.

#### **Czech Republic submits Pillar Two bill to Parliament**

On 16 August 2023, the Czech government approved the [draft legislation](#) to implement Pillar Two in its domestic legislation. This draft legislation has been sent to Parliament for approval. It is consistent with the consultation document on Pillar Two released in May 2023 and is generally aligned with the EU Directive on Minimum Taxation. The draft legislation includes the IIR and a Domestic Minimum Top-up Tax (DMTT) for periods starting on or after 31 December 2023. Furthermore, the UTPR will generally be applicable for periods starting on or after 31 December 2024.

#### **Finland releases draft legislation on Pillar Two**

On 15 August 2023, Finland released draft legislation for public consultation to introduce Pillar Two into domestic law. The draft legislation is generally in line with the EU Directive on Minimum Taxation and includes the IIR and the UTPR. The IIR is set to take effect for financial years starting on or after 31 December 2023, while the UTPR will apply to financial years starting on or after 31 December 2024. In this consultation document, Finland notes its intention to introduce a QDMTT to apply for financial years starting on or after 31 December 2023, but the QDMTT is not included in the draft legislation. Finland expects to release further details on the QDMTT in the coming months.

Additionally, the draft legislation includes a transitional CbCR safe harbor in line with the OECD guidance. Practical elements, such as filing requirements, penalties and tax procedures, are also part of the draft legislation.

#### **Germany sends Pillar Two draft legislation to Parliament**

On 16 August 2023, the German government sent to Parliament a [draft bill](#) to implement Pillar Two into domestic law. The draft bill is primarily based on public consultation documents released in March and July 2023, with a few minor changes to include some elements of the OECD Administrative Guidance released in February 2023 (e.g., asymmetric treatment of dividends and distributions).

As a next step, the draft bill will undergo the legislative process for approval and should be approved by 15 December 2023 at the latest.

#### **Ireland releases second feedback statement on Pillar Two**

On 27 July 2023, Ireland's Department of Finance released its [Second Feedback Statement](#) for public consultation on the implementation of the Pillar Two Directive in Ireland. This document complements the earlier Pillar Two Feedback Statement issued by Ireland in March 2023.

The consultation document presents proposed legislative approaches for the Transitional CbCR safe harbor, Transitional UTPR safe harbor, and a Qualified Domestic Top-up Tax (QDTT). For the QDTT, Ireland opted to prepare concise provisions that refer to the detailed provisions of the IIR with any necessary modifications. The Irish QDTT will be designed to comply with the requirements of the QDTT safe harbor under both the EU Directive on Minimum Taxation and the OECD administrative guidance released in July 2023. The document notes that further legislation will be required to permit taxpayers in Ireland to respect the QDTT/QDMTT safe harbor status of other jurisdictions.

Currently, Ireland is exploring options to ensure, to the extent possible, alignment between its domestic legislation and the OECD Model Rules and future guidance. Additionally, the consultation document addresses Administration and Globe Information Return matters.

The consultation period ran until 21 August 2023.

See EY Tax Alert, [Ireland launches second Feedback Statement on EU Minimum Tax Directive and proposed legislative approach](#), dated 28 July 2023.

## Italy announces implementation of Pillar Two

On 11 September 2023, the Italian Government released a [draft Legislative Decree](#) to implement Pillar Two in its domestic legislation (Draft Law). The Draft Law is currently subject to a public consultation process with comments to be submitted through the Ministry of Economy and Finance website by 1 October 2023.

Based on the Government's explanatory statement, the Draft Law closely reflects the EU Minimum Taxation Directive aimed at implementing the OECD Pillar Two rules within the EU. In addition, the Draft Law incorporates a QDMTT and includes clarifications from the OECD Commentary and recent OECD guidance.

The new rules should become effective starting 1 January 2024.

See EY Global Tax Alert, [Italy launches BEPS 2.0 Pillar Two draft law for public consultation](#), dated 13 September 2023.

## Lithuania announces postponement of Pillar Two

On 8 September 2023, Lithuania made an [announcement](#) on the implementation of Pillar Two into domestic law. According to the announcement, Lithuania expects to delay the introduction of Pillar Two for six years, until 31 December 2029, as allowed by the EU Minimum Taxation Directive. In addition, Lithuania intends to introduce a domestic minimum top-up tax for fiscal years starting on or after 1 January 2025.

Before submitting any legislation on Pillar Two to the Parliament for approval, Lithuania intends to conduct a public consultation to gather input from relevant stakeholders.

## Luxembourg submits Pillar Two legislation to Parliament

On 4 August 2023, the Luxembourg government submitted [draft legislation](#) to Parliament, outlining the incorporation of Pillar Two into domestic legislation. The draft legislation is generally in line with the EU Directive on Minimum Taxation. The draft legislation includes the IIR and a QDMTT, both set to take effect from 31 December 2023. Additionally, the draft legislation includes a UTPR applicable from 31 December 2024. To provide clarity, the explanatory commentary accompanying the draft legislation specifies that corporate income tax, municipal business tax and net wealth tax in Luxembourg are covered taxes for Pillar Two purposes.

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

## New Zealand Accounting Standards Board endorses IAS 12

On 13 July 2023, the New Zealand Accounting Standards Board [amended](#) NZ IAS 12 Income Taxes. The amendments give entities a temporary exception to the requirements to recognize and disclose information about deferred tax assets and liabilities related to Pillar Two income taxes.

This exception applies to annual reporting periods that have not ended or do not end before 10 August 2023. Also, an entity is not required to disclose the information for any interim period ending on or before 31 December 2023.

In addition, in periods in which Pillar Two legislation is enacted or substantively enacted but not yet in effect, an entity shall disclose known or reasonably estimable information to understand the entity's exposure to Pillar Two income taxes arising from that legislation.

## Slovakia releases draft legislation on Pillar Two

On 3 August 2023, Slovakia published [draft legislation](#) for public consultation to implement Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on Minimum Taxation. This draft legislation includes a QDMTT applicable from 31 December 2023. Currently, the draft legislation does not include an IIR and a UTPR, the application of which will be deferred until 31 December 2029 at the latest.

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

The consultation period ran until 23 August 2023.

## Slovenia releases Pillar Two draft legislation

On 23 June 2023, the Ministry of Finance of Slovenia published a [draft legislation](#) to implement Pillar Two into domestic legislation. The draft legislation is generally in line with the EU Directive on Minimum Taxation. The draft legislation includes the IIR and a QDMTT, both set to take effect from 31 December 2023. Additionally, the draft legislation includes a UTPR applicable from 31 December 2024.

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

## South Korea delays application of the UTPR

On 27 July 2023, South Korea's Ministry of Economy and Finance announced its 2023 tax reform plans. The announcement includes some amendments to the enacted Pillar Two rules in Korea. One of the key amendments is the delay of the application of the UTPR. As such, the UTPR will be effective starting from the fiscal year beginning on or after 1 January 2025.

The announcement confirms that the IIR will be effective from 2024, as initially enacted. Additionally, it introduces specific Decrees to align South Korea's Pillar Two rules with the OECD Model Rules/Commentary and Administrative Guidance.

## Sweden releases draft legislation on Pillar Two

On 31 August 2023, the Swedish Ministry of Finance released [draft legislation](#) to introduce Pillar Two into domestic legislation. The draft legislation is generally in line with the EU Directive on Minimum Taxation and includes the IIR, a QDMTT and the UTPR. The IIR and the QDMTT are set to take effect for financial years starting on or after 31 December 2023, while the UTPR will apply to financial years starting on or after 31 December 2024.

Furthermore, the draft legislation incorporates the Transitional Safe harbor rules in line with the OECD Guidance and also includes aspects of the Commentary and Administrative Guidance released in February 2023.

## Taiwan examines domestic implementation of Pillar Two

Regarding the implementation of Pillar Two in Taiwan, the Taiwanese Government [announced](#) on 30 August 2023 that, in the short term, Taiwan will review its tax incentives to take into account Pillar Two. In the medium term, Taiwan will consider introducing a QDMTT compliant with international standards. However, there is no specified timeline for introducing Pillar Two in Taiwan.

## United Kingdom releases draft legislation on UTPR

On 18 July 2023, the United Kingdom (UK) released draft legislation making amendments to introduce (i) the UTPR as one of the two charging mechanisms within the multinational top-up tax regime (the other being the IIR, which was introduced in Finance (No.2) Act 2023); and (ii) other amendments to ensure that the UK legislation is consistent with the agreed model rules, commentary and administrative guidance that have been agreed by the OECD/G20 Inclusive Framework.

According to the draft legislation, the multinational top-up tax will be extended to cover taxes under the UTPR rules (i.e., the UTPR will be collected via a top-up tax similar to the IIR rather than denial of a deduction) to ensure that any amounts of multinational top-up tax that are not collected under an IIR or domestic minimum top-up tax rule will still be collected. The rules ensure that IIR takes precedence over UTPR.

The Government also notes that further amendments may be introduced in the future to reflect subsequent administrative guidance released by the Inclusive Framework.

## Vietnam releases draft legislation on Pillar Two

On 24 July 2023, the Ministry of Justice, as the regulatory appraisal agency, released draft legislation prepared by the Vietnamese Ministry of Finance, proposing the introduction of Pillar Two rules in Vietnam. The draft legislation includes the IIR and a QDMTT. These rules are set to take effect for financial years starting on or after 1 January 2024. However, the draft legislation does not include the UTPR.

Furthermore, the draft legislation requires the submission of a QDMTT return within 12 months after the end of the reporting year, while the IIR return should be submitted within 15 months after the end of the reporting year.

Additionally, Vietnam is working on updating its investment regulations to align them with the Pillar Two rules by implementing Qualified Refundable Tax Credits.

## BEPS and other developments

### OECD

#### **G20 Leaders endorse revised G20/OECD Principles of Corporate Governance**

On 11 September 2023, the OECD published the revised [G20/OECD Principles of Corporate Governance](#). The G20/OECD Principles of Corporate Governance, established in 1999, serve as a global standard for assessing and enhancing the legal and regulatory structure governing corporate governance. They aim to promote economic efficiency, sustainable growth, and financial stability. These principles are widely recognized internationally by policymakers, investors, corporations and other stakeholders.

The review had two major objectives: (i) to support national efforts to improve the conditions for companies' access to finance from capital markets; and (ii) to promote corporate



governance policies that support the sustainability and resilience of corporations, which, in turn, may contribute to the sustainability and resilience of the broader economy.

In the context of taxation, there is a new addition to the revised G20/OECD Principles of Corporate Governance. The document now includes that the board should fulfill certain key functions, including developing a tax risk management policy. Accordingly, comprehensive risk management strategies and systems adopted by boards should include tax management and tax compliance risks. This ensures that all the risks associated with taxation, whether financial, regulatory or reputational, are identified and assessed.

In addition to this document, the OECD has also released the [Corporate Governance Factbook](#), which provides up-to-date information about the institutional, legal and regulatory frameworks for corporate governance worldwide and can be used as a resource to compare different frameworks and to find information on practices in specific jurisdictions.

### **G20 Leaders welcome progress made on BEPS 2.0 project and other initiatives**

On 9 and 10 September 2023, the G20 Summit took place in New Delhi, India. The G20 Leaders reached an agreement by consensus of all parties and issued a [declaration](#) at the conclusion of the meeting, reaffirming the G20 Leaders' commitment to continued cooperation toward a globally fair, sustainable and modern international tax system appropriate to the needs of the 21st century.

The G20 Leader's declaration welcomes the progress made on Pillar One, including the delivery of a text of a Multilateral Convention (MLC) and work on Amount B as well as the completion of the work on the development of the Subject to Tax Rule (STTR) under Pillar Two. The G20 Leaders also called on the Inclusive Framework to swiftly resolve the few pending issues relating to the MLC with a view to preparing the MLC for signature within the second half of 2023 and completing the work on Amount B by the end of 2023. Furthermore, the declaration also calls for the implementation of other initiatives, including the Crypto Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS). In addition, the declaration highlights the G20's call to strengthen multilateralism and international cooperation. It underscores the necessity of embracing a more inclusive and revitalized approach to multilateralism, coupled with reforms aimed at advancing the implementation of the United Nations (UN) 2030 agenda.

### **OECD releases Secretary-General Report and report on carbon mitigation approaches to the G20 Leaders**

On 8 September 2023, in advance of the G20 Summit, the OECD released the OECD [Secretary-General's Tax Report to the G20 Leaders](#), which provides an update on activities with respect to the G20's international tax agenda, including ongoing work on the OECD's Base Erosion and Profit Shifting (BEPS) 2.0 project, tax transparency, exchange of information, tax policy and climate change. The report also includes an update on developing countries and international taxation.

Likewise, in advance of the G-20 Summit, the OECD released the [OECD Secretary-General Report to G20 Leaders on the work of the Inclusive Forum on Carbon Mitigation Approaches](#). The Inclusive Forum on Carbon Mitigation Approaches (IFCMA) is an initiative to help optimize the global impact of emissions reduction efforts around the world through better data and information sharing, evidence-based mutual learning, better mutual understanding and inclusive multilateral dialogue.

The report notes the developments since the official launch in February 2023 of the IFCMA. These developments include: (i) stocktaking and mapping of policies; (ii) estimating the effect of policies on emissions; and (iii) exploring methodologies for computing carbon intensity of goods and sectors. According to the report, the first session of the IFCMA's inclusive multilateral dialogue will take place on 14-15 November in Paris.

### **Denmark updates arbitration profile under the MLI**

On 7 September 2023, Denmark deposited a [notification](#) subsequent to its ratification of the Multilateral Instrument (MLI). In this notification, Denmark notes that it continues to attach great importance to the principles of independence and transparency associated with arbitration processes as a means of ensuring legal certainty.

Therefore, when negotiating competent authority mutual agreements to facilitate the application of Part VI (arbitration) of the MLI, Denmark will seek to provide that both:

- a. The chair of the arbitration panel will be a judge.
- b. Denmark may publish abstracts of the arbitration panel's decisions.

## Austria and Romania make MLI notifications

On 28 August 2023, Austria made an [MLI notification](#) to the OECD. In this notification, Austria added 34 tax treaties to its list of Covered Tax Agreements (CTAs), bringing the total number to 72 of Austria's CTAs. Regarding the newly listed tax treaties into Austria's CTAs, the MLI shall have effect for taxes withheld at source on 1 January 2024, provided the other party to the CTA has signed and ratified the MLI. With respect to all other taxes, the MLI shall have effect for Austria, for taxable periods beginning on or after 1 January 2025.

Likewise, on 5 September 2023, Romania made an [MLI notification](#) to the OECD. In this notification, Romania confirmed the completion of its internal procedures for the entry into effect of the provisions of the MLI with respect to the CTA with Vietnam. Following Romania's notification, the MLI will take effect for taxes withheld at source for this CTA on 1 January 2024. With respect to all other taxes for this CTA, the MLI shall have effect for taxable periods beginning on or after 1 January 2025.

## Papua New Guinea and Tunisia deposit instrument of ratification of the MLI

On 24 July 2023 and 31 August 2023, [Tunisia and Papua New Guinea](#) deposited their instrument of ratification of the MLI with the OECD, respectively. Upon depositing the instrument of ratification, jurisdictions are required to confirm their MLI positions.

Tunisia confirmed its preliminary positions and added 28 tax treaties to its list of CTAs. Papua New Guinea confirmed its preliminary positions and added a reservation with respect to Article 5 (methods for eliminating double taxation). Furthermore, Papua New Guinea added a list of reservations for arbitration. In these reservations, Papua New Guinea lists the scope of issues eligible for arbitration and also excludes from the scope of arbitration those cases related to anti-abuse provisions, whether contained in the MLI, a Covered Tax Agreement, or domestic law.

The MLI will enter into force for Tunisia and Papua New Guinea 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 its instrument of ratification, i.e., on 1 November 2023 for Tunisia and 1 December 2023 for Papua New Guinea.

## European Union

### European Parliament adopts nonbinding opinion on DAC8 proposal: Formal adoption in Council expected soon

On 13 September 2023, the European Parliament adopted its nonbinding [opinion](#) on the Commission's proposal Directive introducing tax transparency rules for crypto assets (DAC8).

The adoption of the nonbinding opinion is the last step required before the Council of the EU proceeds with the adoption of the Directive, which requires unanimous agreement among the 27 Member States. Adoption can take place during the next Ecofin meeting of 17 October 2023 or sooner through written procedure.

During the May Ecofin meeting, EU Finance Ministers reached [political agreement](#) ("general approach") on an [updated compromise text](#) of DAC8, which differs from the initial Commission proposal and is expected to be the final text.

Following the formal adoption of DAC8 by the Council, the new provisions will apply as of 1 January 2026 (exceptions apply).

### European Commission proposes BEFIT, Transfer Pricing and Head Office Tax Directives

On 12 September 2023, the European Commission published three new legislative proposals: a Directive "Business in Europe: Framework for Income Taxation" ([BEFIT](#)), a Directive on Transfer Pricing ([TP Directive](#)) and a Directive "Establishing a Head Office Tax system for micro, small and medium-sized enterprises (SMEs)" ([Head Office Tax Directive](#)).

#### BEFIT Directive

The BEFIT proposal sets forth rules introducing a common framework for corporate income taxation in the EU, with the aim of replacing the current Member States' various ways for determining the taxable base for groups of companies that have annual combined revenues exceeding €750 million. The BEFIT proposal would also apply to non-EU-headquartered groups exceeding specific thresholds.

#### Transfer Pricing Directive

The TP Directive aims to introduce a common framework in the EU for applying the arm's-length principle. In particular, the TP Directive codifies the arm's-length principle and the OECD Transfer Pricing Guidelines as a means of interpreting EU law and introduces processes for relieving double taxation for multinational entities.

## Head Office Tax Directive

The proposal sets out rules introducing the possibility for SMEs operating cross-border within the EU to continue applying the tax rules of their Member State of residence to calculate the taxable result of their permanent establishments (PEs) in other Member States. The rules introduce a one-stop-shop regime where tax filing, tax assessments and the collection of the PE's tax liability will be dealt with by the tax authority of the Member State of the head office residence. Nevertheless, audits, appeals and dispute resolution procedures will be kept at Member State level. The Directive will also amend the Directive on Administrative Cooperation ([DAC](#)) to enable the exchange of information between Member States on the subject matter of the Head Office Tax Directive.

All three draft Directives will now move to the negotiation phase among Member States. Adoption requires unanimous agreement by all 17 Member States.

The Commission proposes that the Member States transpose into their national laws:

- ▶ The BEFIT Directive by 1 January 2028 for the rules to come into effect as of 1 July 2028
- ▶ The TP Directive by 31 December 2025 for the rules to come into effect as of 1 January 2026
- ▶ The Head Office Tax Directive by 31 December 2025 for the rules to come into effect as of 1 January 2026

See EY Global Tax Alert, [European Commission proposes BEFIT and Transfer Pricing Directives](#), dated 15 September 2023.

## European Commission adopts final Implementing Regulation for transitional phase of CBAM

On 17 August 2023, in advance of the 1 October 2023 CBAM implementation, the European Commission adopted the [Implementing Regulation](#) for the Carbon Border Adjustment Mechanism (CBAM). The regulation sets out rules governing the transitional phase of CBAM, which runs from 1 October 2023 to 31 December 2025.

A public consultation on the draft version of the regulation was launched on 13 June 2023 and ran until 11 July 2023, collecting the views of stakeholders on the design of the requirements during the transitional phase. The final regulation contains some key clarifications and differences from the draft version.

Additional documentation has been published covering the transitional methodology for calculating embedded emissions released during the production process of CBAM goods. [Guidance](#) has also been published for EU importers and non-EU installations on the practical implementation of the new rules.

See EY Global Tax Alert, [European Commission adopts final Implementing Regulation for transitional phase of CBAM](#), dated 18 August 2023.

## Polish Government seeks annulment of CBAM regulation in European Court of Justice

On 9 August 2023, the Polish Ministry of Climate [announced](#) that Poland filed a request to annul the CBAM Regulation with the General Court of the Court of Justice of the EU (CJEU).

The Polish Government is arguing that the CBAM provisions are primarily fiscal in nature and, therefore, require the application of the special legislative procedure under a unanimous vote from all Council members (i.e., all 27 EU Member States) to pass. This is a different voting procedure than was applied for the CBAM Regulation, which was adopted on 25 April 2023 and required a qualified majority vote from both the Council and the European Parliament.

The action lodged by Poland has not resulted in the suspension of the CBAM Regulation. Therefore, businesses need to prepare the first CBAM report covering Q4 2023 by 31 January 2024.

See EY Global Tax Alert, [Polish Government seeks annulment of CBAM regulation in European Court of Justice](#), dated 15 August 2023.

## United Nations (UN)

### UN releases report on the promotion of inclusive and effective international tax cooperation

In late August 2023, the UN issued a report titled "[Promotion of Inclusive and Effective International Tax Cooperation](#)."

This report provides an analysis of existing international tax cooperation arrangements, presents potential options to enhance inclusivity and effectiveness, and outlines prospective actions. In addition to providing a descriptive analysis of the two major institutions contributing to international tax cooperation, the UN and the OECD, the report presents findings from the standpoint of inclusivity and effectiveness in promoting tax and development. The results presented in the report suggest that the OECD's numerous programs are not representative (or inclusive) of the developing countries and their specific needs.



The report's findings underscore the importance of strengthening the UN's role in shaping tax norms and rules, taking into account established multilateral and international frameworks. To achieve this goal, the report proposes three options for consideration, each of which needs development and agreement through a United Nations-led process involving Member States. These options include a: (i) multilateral convention on tax; (ii) framework convention on international tax cooperation; and (iii) framework for international tax cooperation. The report further outlines the subsequent steps associated with each of these options. Next steps are to vet the proposals with the General Assembly.

### **Financial Accounting Standards Board (FASB)**

#### **FASB proposal moves forward with requiring annual disclosure of income taxes paid on a country-by-country basis**

On 30 August 2023, the Financial Accounting Standards Board (FASB or the Board) voted to proceed with a [tentative board decision](#) on the proposed Accounting Standards Update, Income Taxes (Topic 740): Improvements to Income Tax Disclosures. Among other items, the Board affirmed its decision to require that all entities disclose the amount of income taxes paid disaggregated by federal (national), state, and foreign jurisdictions.

The FASB proposal will include CbCR of taxes paid if the taxes paid to a jurisdiction comprise 5% or more of a company's total tax payments.

The amendments are proposed to be effective for public business entities for fiscal years beginning after 15 December 2024 and interim periods within fiscal years beginning after 15 December 2025. For entities other than public business entities, the amendments are proposed to be effective for fiscal years beginning after 15 December 2025 and interim periods within fiscal years beginning after 15 December 2026. In addition, the FASB board voted to allow early adoption once the ASU is issued. The Board directed its staff to rewrite certain sections of the proposal for a future vote, preferably by year-end. However, drafting could extend into the first quarter of 2024, which would delay the effective dates.

### **Country developments**

#### **Council of Ministers of Belgium adopts rules implementing Public CbCR Directive into domestic law**

On 20 July 2023, the Council of Ministers of Belgium [adopted](#) the draft bill implementing the Public CbCR Directive into domestic law. According to the draft bill, companies with a consolidated turnover exceeding €750 million, as well as non-European ultimate parent companies that are economically active in Belgium with one or more large subsidiaries or large branches, must prepare and publish a report on income tax information. The rules include an exception for undertakings operating exclusively in Belgium.

The draft bill will now pass to the Council of State for review and the Council of Ministers of Belgium for a second read before it will be submitted to the Parliament.

#### **Bermuda releases consultation document to introduce a corporate income tax**

On 8 August 2023, the Government of Bermuda [announced](#) that it has opened a series of consultations on proposals to introduce a corporate income tax (CIT) that would be imposed at a rate ranging from 9% to 15% and would only apply to Bermuda businesses that are part of Multinational Enterprise (MNE) Groups with annual revenue of €750m or more. A CIT, if enacted, is intended to be effective for tax years beginning on or after 1 January 2025.

The period for public comment on this first [consultation](#) was open until 8 September 2023.

See EY Global Tax Alert, [Bermuda's consideration of adopting a corporate income tax has significant implications for insurance industry](#), dated 17 August 2023.

#### **Brazil proposes to eliminate interest on net equity deduction**

On 31 August 2023, the Brazilian Government proposed a bill that would change the corporate income tax system by eliminating the deductibility of Interest on Net Equity (INE) as of 1 January 2024.

The INE is an instrument that allows an additional repatriation alternative to shareholders based on the net equity of their Brazilian investment. The INE is a payment to the shareholder, which, differently from a dividend payment, can be deducted from the Brazilian Corporate Income Tax base.

Both chambers of the National Congress (i.e., the Chamber of Deputies and Senate) still need to discuss and approve the bill in different voting rounds.

See EY Global Tax Alert, [Brazilian Government proposes the elimination of interest on net equity deduction](#), dated 6 September 2023.

### **Canada releases a revised proposal for a Digital Services Tax and revised legislation on interest limitation rules**

On 4 August 2023, the Department of Finance released for public comment several packages of [draft legislative proposals and accompanying explanatory notes](#), including a general package of draft income tax legislative proposals relating to most of the remaining 2023 federal budget measures.

Among other items, the legislative package includes a revised draft of the Digital Services Tax (DST) Act for public consultation. The proposed rules may result in a filing obligation and tax liability for any entity – Canadian or otherwise – whose corporate group has global consolidated revenues of €750 million or more and who earns Canadian digital services revenue from providing online marketplace services, online advertising, social media services or the monetizing of user data in excess of CA\$20 million. It is anticipated that Canada's DST will be enacted by 1 January 2024, with effect back to 1 January 2022.

In addition, Canada released for public comment revised legislative proposals on the proposed excessive interest and financing expenses limitation rules (the EIFEL rules) to take into account various comments received since their initial release in 2022. In this update, the EIFEL rules include changes to their application to a controlled foreign affiliate, new filing requirements, broadening exemptions, as well as some other administrative changes. If enacted, the rules will be effective for tax years starting on or after 1 October 2023.

See EY Global Tax Alert, [Canada releases further revisions to EIFEL proposals](#), dated 18 August 2023.

### **Croatia implements EU Public CbCR Directive**

On 20 July 2023, Croatia published law [NN 82/2023](#) to implement the EU Public CbCR Directive. This law is generally in line with the EU Public CbCR Directive and adopts the safeguard clause (i.e. option of temporarily withholding information from the report where its disclosure would be prejudicial to the commercial position of the MNE group to which the report refers) for a period of up to five years after the publication of the report.

The report should be published within 12 months of the balance sheet date of the financial year for which the report is drawn up. Additionally, Croatia has chosen to grant an exemption to entities for publishing the report on their website, provided that the report is made available to any third party located within the EU free of charge on the website of the Register of Annual Financial Statements (RAFS). The website of the relevant entity would have to provide information on the exemption and refer to the website of the RAFS.

The Public CbCR legislation will be effective for financial years starting on or after 1 January 2024.

### **German government issues revised draft Growth Opportunities Act bill on corporate tax reform**

On 30 August 2023, the German Government issued a revised Growth Opportunities Act, a draft bill that the German Ministry of Finance (MoF) had initially issued in mid-July.

Among other things, the draft bill proposes changes to the interest deduction limitation rule. According to the revised draft, the group and equity “escapes” for the interest deduction limitation rule will remain available. However, the group escape will be tightened and not apply if the taxpayer has any affiliated party or a foreign permanent establishment. In addition, the €3 million net interest threshold can only be claimed once per group of similar businesses that are related parties and would have to be allocated proportionally to each entity of a group based on net interest expenses.

The revised draft maintains the proposed interest-rate limitation rule applicable for all interest expenses arising after 31 December 2023, as proposed under the initial draft in July. This rule would deny deductions of interest expenses paid to related parties to the extent the interest rate exceeds a maximum interest rate defined by law. The maximum interest rate is the base interest rate according to the German Civil Code (currently 3.12%, updated every six months) plus 200 basis points. The proposed rule offers two alternative “escape clauses,” namely the group and the substance escape, that would allow the application of a higher (arm’s-length) interest rate. Based on the draft bill, the proposed rule does not grandfather existing financing arrangements.

See EY Global Tax Alert, [German government issues revised draft Growth Opportunities Act bill on corporate tax reform](#), dated 6 September 2023.

### **German Federal Ministry of Finance publishes draft decree regarding the application of anti-hybrid rules**

On 14 July 2023, the Ministry of Finance of Germany published a [draft decree](#) providing clarifications on the application of German anti-hybrid rules, which were enacted in 2021 and generally apply to expenses accruing after 31 December 2019. Together with the draft decree, the Ministry launched a public consultation requesting feedback on the draft guidance by 10 August 2023.

The decree indicates that rule on the non-deduction of business expenses does not apply to expenses legally incurred before 1 January 2020 but accruing thereafter. In addition, the decree clarifies that the rules apply to transactions between (i) related parties, (ii) an undertaking and its PE situated in another jurisdiction and (iii) unrelated parties if there is a structured arrangement that results in a hybrid mismatch that was considered for the terms and conditions of the arrangement.

Furthermore, the decree clarifies what is considered “non- and lower taxation” for the purposes of disallowing deductibility of expenses when the income is subject to a relevant non- or lower taxation at the recipient level. Although the decree acknowledges that the tax authorities bear the burden of proof, it also states that the taxpayer is obliged to provide detailed information and documentation regarding the foreign entities and tax law to unequivocally exclude the applicability of the anti-hybrid rules. The

guidance further allocates the (full) burden of proof to the taxpayer wherever he seeks to apply an exception. Hence, this effectively shifts the burden of proof to the taxpayer in any case.

Lastly, the guidance confirms that the anti-hybrid rules do not generally take priority over other rules denying the deduction of expenses, but they are to be applied with priority over treaties, the German interest deduction limitation rules, as well as the German dual consolidated loss rules. On the other hand, the rules around constructive dividends take priority over the anti-hybrid rules.

Once issued, the final decree will apply to all open cases.

See EY Global Tax Alert, [German Federal Ministry of Finance publishes draft decree regarding the application of anti-hybrid rules](#), dated 18 July 2023.

### **Georgia releases Mutual Agreement Procedure regulations**

On 4 July 2023, the Georgian Minister of Finance approved [Order No. 258](#), detailing regulations governing the mutual agreement procedure (MAP) under International Agreements on the Avoidance of Double Taxation (DTAs) and Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. Consistent with global standards, the MAP regulations provide guidelines covering initiation procedures, definition of the role of Georgia’s competent authority, and establish obligations for the taxpayer. Furthermore, the MAP regulations specify that the procedure’s completion should not exceed 24 months from the date of the application receipt. The MAP regulations also include the forms relevant to MAP application.

### **Greece adopts DAC7**

On 7 September 2023, Greek Law 5047/2023 was published in the Government Gazette, adopting DAC7. Under DAC7, digital platforms are obliged to collect, verify and report information on sellers who use their platform to sell defined goods or to provide services. DAC7 also aims to enforce the exchange of information and cooperation between the EU Member States’ tax authorities, for example, through a joint audit framework or data breach procedures.

The Law includes significant penalties for non-compliance up to €500,000, as well as blocking access to the platform.

## Hong Kong releases public consultation on patent-box tax incentive

On 1 September 2023, Hong Kong issued a consultation document for the introduction of a patent-box tax incentive. The consultation document proposes that eligible income derived from eligible intellectual property (IP) assets that are patents or patent-like will be taxed at a concessionary tax rate in Hong Kong. The exact concessionary rate to be offered is one of the features of the proposals that views are sought.

The extent of the eligible IP income that will be taxed at the concessionary rate is to be determined by the “nexus approach” based on BEPS Action 5.

The consultation will run until 30 September 2023. It is expected that the proposals will be codified by the first half of 2024.

See EY Global Tax Alert, [Hong Kong introduces new patent-box tax incentive; accepting comments until 30 September](#), dated 12 September 2023.

## Ireland increases effective tax rate under the Knowledge Development Box regime

On 31 August 2023, the Irish Minister for Finance, Minister McGrath, [signed](#) the Commencement Order to implement Finance Act 2022 amendments to the Knowledge Development Box (KDB). Minister McGrath noted that “this development is an important step towards the implementation of the OECD Pillar Two Agreement.”

The Irish KDB regime is an OECD-compliant intellectual property regime that provides a reduced rate of corporation tax on income directly arising from qualifying intellectual property. The introduction of the STTR was expected to have an impact on the KDB regime since it provides for additional tax to be levied on connected party payments not subject to an adjusted nominal tax rate of at least 9% in the residence country of the recipient. The Commencement Order provides for an increase of the effective tax rate for the KDB from 6.25% to 10% to avoid such impact.

The amendments will apply as of 1 October 2023.

See EY Local Tax Alert, [Effective tax rate for the Knowledge Development Box \(KDB\) increases from 6.25% to 10%](#), dated 11 September 2023.

## Irish Revenue releases guidelines on tax dispute resolution mechanisms

On 17 July 2023, the Irish Revenue issued a Tax and Duty manual (TDM) entitled [Guidelines on the EU \(Tax Dispute Resolution Mechanisms\) Regulations 2019](#), with the aim to provide guidelines on dispute resolution procedures between Ireland and one or more EU Member States arising from the interpretation or application of double taxation agreements and the EU Arbitration Convention. The TDM provides additional commentary regarding the EU’s Directive on tax dispute resolution mechanisms ((EU) 2017/1852 of 10 October 2017) (the Directive), which was transposed into Irish legislation in 2019 and 2020. The Directive expands on existing dispute resolution mechanisms contained within the EU Arbitration Convention and double taxation agreements in place.

The manual provides an overview of the dispute resolution framework and sets out the process across four phases: (i) making the complaint about a question in dispute; (ii) resolving a tax dispute by Mutual Agreement Procedure; (iii) resolving a dispute by an Advisory Commission and (iv) making a final decision on the resolution of a question of dispute. The manual also provides detailed answers to frequently asked questions (FAQs) section along with other relevant information required for a resolution of such a tax dispute.

## Israeli tax authority issues updated guidance on Mutual Agreement Procedures in line with BEPS principles

On 17 August 2023, the Israeli Tax Authority (ITA) issued a [circular](#) on the subject of Mutual Agreement Procedures in Double-Tax Treaties – Application and Processing Protocol (the Circular), replacing a 2001 circular as part of the ITA’s effort to make the Mutual Agreement Procedure (MAP) more accessible, clear and efficient. The updated guidance follows principles provided in Action 14 of the OECD BEPS project.

The Circular elaborates on the different types of MAP, which include bilateral procedures, multilateral procedures and procedures initiated by the ITA or by a competent authority of a treaty country. The Circular further expands the level of documentation required to file a request for MAP and provides clarifications aimed at streamlining the process and making it more efficient. In addition, it elaborates extensively on the timing for filing a MAP request.

According to the Circular's guidance on processing a MAP request, treaty interpretation issues shall be examined based on the relevant treaty provisions and treaty interpretation principles, OECD commentary and Israeli domestic law. Income allocation issues shall be examined based on market-value terms (i.e., arm's length) so that the allocation would be determined as if the parties to an agreement are unrelated, taking into account the treaty's objective to avoid double taxation and the overall circumstances in each case.

See EY Global Tax Alert, [Israeli tax authority issues updated guidance on Mutual Agreement Procedures, in line with BEPS principles](#), dated 5 September 2023.

### Lithuania introduces amendments to DAC7 rules

On 10 August 2023, the Ministry of Finance of the Republic of Lithuania issued a [press release](#) on the [amendments](#) Lithuania introduced to DAC7 following a request of the European Commission.

According to the press release, the amendments stipulate that the platform operator providing the data must provide the account number of the seller's bank or other payment service provider only if this information is available to the platform operator and the competent authority of the residence state of the seller has announced it does not intend to use this data. In addition, according to the new rules (third-party) platform operators should register in the Register of Taxpayers within five working days from the start of their activities.

The rules came into force on 11 August 2023, i.e., the day after their publication in the *Official Gazette*.

### Luxembourg enacts legislation introducing public CbCR for MNEs

On 19 July 2023, the Luxembourg Parliament adopted the law (Law) transposing the EU public CbCR Directive.

The rules set forth in the 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 revenue exceeding €750 million in each of the last two financial years to publicly disclose the income taxes paid and certain other information, such as a breakdown of profits, revenues and employees per country.

The obligation of drawing up, publishing and making accessible the public CbCR applies to financial years starting on or after 22 June 2024. For undertakings with a calendar

financial year, the reporting obligation will apply for the first time to the financial year 2025. The report must be lodged in the Luxembourg Trade and Companies Register, and information about this filing must be published in the Luxembourg Electronic Compendium of Companies and Associations and on the website of the undertaking during the calendar year 2026.

The rules also provide that the members of administrative, management and supervisory bodies are held responsible for noncompliance, which can result in fines of between €500 and €25,000.

See EY Global Tax Alert, [Luxembourg enacts legislation introducing public country-by-country reporting for multinational enterprises](#), dated 9 August 2023.

### Morocco releases guidance on CbCR

Recently, the Moroccan Tax Authority released [guidelines](#) for the CbCR for 2023. The guidelines provide clarifications regarding the reporting procedures, the content of the CbC report, the use and confidentiality of information contained in the CbC report, the penalties for non-compliance, and miscellaneous or transitional measures. In addition, the guidance contains several annexes, including a CbC model declaration form.

### New Zealand announces introduction of a Digital Services Tax

On 30 August 2023, a [Bill](#) regarding the introduction of a DST was introduced to the New Zealand Parliament. This Bill would allow the Government to implement, at an appropriate time, a digital services tax (DST) to be administered by Inland Revenue. Once enacted, the DST would come into force on 1 January 2025. However, the Bill allows the Government to defer this commencement date for up to five years via an Order in Council. This is to allow the Government to defer imposing the DST if it sees sufficient progress towards implementation of Pillar One of the OECD's Two-Pillar multilateral solution.

The proposed DST is intended for MNEs generating annual revenues exceeding €750 million from global digital services and surpassing NZD\$3.5 million (approximately US\$2 million) from digital services offered to New Zealand users. The tax rate proposed is 3%, applicable to gross taxable New Zealand digital services revenue.

See EY Global Tax Alert, [New Zealand introduces draft Digital Services Tax legislation](#), dated 7 September 2023.



## Portugal implements Public CbCR into domestic law

On 23 August 2023, Portugal published [Decree-law 73/2023](#), implementing Public CbCR into domestic law. This Decree-law is generally in line with the EU Public CbCR Directive and adopts the safeguard clause (i.e., option of temporarily withholding information from the report where its disclosure would be prejudicial to the commercial position of the MNE group) for a period of up to five years after the publication of the report.

According to the Decree-law, the report should be published within 12 months of the balance sheet date of the financial year for which the report is drawn up. Portugal has chosen not to grant an exemption from publication of the report on the website of a subsidiary or a branch. Furthermore, the decree-law requires to explain in the report any significant material discrepancies between the amount of income tax accrued and the amount of income tax paid.

Failure to prepare, publish, or make the report publicly accessible can result in fines ranging from €1,500 to €30,000.

The Public CbCR legislation entered into force on 24 August 2023 and will be effective for financial years starting on or after 22 June 2024.

## Portugal transposes DAC7 into domestic law

On 26 July 2023, Portugal published [Law 36/2023](#), implementing DAC7 into domestic law. The law is generally in line with the DAC7 Directive.

The law entered into force on 27 July 2023 and will be applicable as of 1 January 2023.

## Senegal releases guidance on transfer pricing documentation

On 1 August 2023, the Minister of Finance and Budget of Senegal issued an order describing the content of documentation for transfer pricing purposes. Documentation is in line with Action 13 under the OECD BEPS Project. The order indicates that the following documents should be provided for the Master and the Local Files:

- ▶ Master File: a diagram of the legal and capital structure of the group, a description of the types of the group's activities and the intercompany financial activities, intangible assets of the group, and the financial and tax position of the group.

- ▶ Local File: details of the organizational structure and types of activity, details of transactions with related parties, and certain financial information of the audited company.

This information should be provided to the tax authorities at the starting date of the tax audit, and confidentiality cannot be invoked as a reason for non-compliance. The information may be provided in paper and electronic format. The electronic format must allow the documents to be exchanged, viewed and analyzed regardless of the environment in which they were generated.

Furthermore, this documentation should be submitted in the French language, which is used by the Senegalese Tax Authorities.

## South Africa proposes an Advance Pricing Agreement (APA) program

On 31 July 2023, the Republic of South Africa released the [Draft Tax Administration Laws Amendment Bill, 2023](#) (Draft TALAB), setting out South Africa's proposed legislation concerning an APA program. An APA program will provide taxpayers with a greater level of certainty when embarking on large-scale international transactions that have transfer pricing implications.

The APA framework, currently contained in Clause 10 of the Draft TALAB, deals with matters such as clarifying who is eligible to apply for APAs, how applications are processed, finalization, extension, and termination of APAs, record keeping, and the SARS Commissioner's power to prescribe procedures and guidelines for implementing the program. Importantly, it provides for consultation with affected treaty partners at key points of the process.

It is anticipated that the APA program will commence with a pilot, only accepting bilateral APA applications, to allow for learning from other jurisdictions and the managed expansion of capacity before SARS extends the program to cater to, for example, multilateral APA applications.

The Draft TALAB will enter into force once approved by the Parliament and signed by the President.

See EY Global Tax Alert, [South Africa proposes an Advance Pricing Agreement \(APA\) program](#), dated 1 August 2023.

## South Korea proposes to shorten transfer pricing documentation deadlines

On 27 July 2023, the Korean Ministry of Economy and Finance announced the 2023 tax reform proposals. Among other items, the tax reform includes the proposal to shorten the deadlines to submit the Local File and Master File. Currently, both files should be submitted to the tax authorities 12 months after the end of the relevant fiscal year.

If the proposal is approved, both files should be submitted to the tax authorities within six months after the end of the relevant fiscal year.

The amendments would be effective for fiscal years starting on or after 1 January 2024.

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