

The Latest on BEPS and Beyond

September 2021

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

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

Highlights

International organizations like the OECD are using three key instruments to drive international tax changes, in particular since the BEPS project was finalized in 2015. These instruments include:

- ▶ Presentation of model tax rules that are to be implemented in a coordinated fashion
- ▶ Tax transparency obligations for businesses
- ▶ Peer pressure to ensure a level playing field between countries

Country-by-Country (CbC) reporting (CbCR) has been the most visible measure in the transparency area. Developed as a tool for high-level risk assessment, it was intended to give governments numeric information on corporate income taxes accrued and paid in countries, together with data on key economic parameters. Also, countries could assess whether this numeric information supported the information already available in the country on a certain taxpayer. Months of negotiations took place to stipulate what high-level risk assessment meant. This was one of the most politically sensitive issues at the time of the negotiations on the BEPS project. It was stipulated explicitly that the information by itself should not be used to make (re) assessments.

However, for two reasons this role of high-level risk assessment is about to change in the near future when it comes to CbCR. The agreement in the European Union (EU) to introduce public CbCR is the first reason for this change. This agreement is up for formal approval by the Member States and the European Parliament in the coming weeks. It is expected that the directive will enter into force before the end of the year, giving EU countries a maximum of 18 months to transpose the directive into their domestic legislation. The second reason is that the Pillar Two rules are expected to be presented by the OECD/G20 Inclusive Framework on BEPS in October. These rules will require key data to make effective tax rate calculations, and the most likely means to obtain such information will be from CbCR.

Both of these developments will make CbCR a strategic exercise for businesses going forward. Consistency and quality of the data and information available on the company will be key. In addition, the public release of the information will have to be supported with qualitative explanations on the tax affairs of the business, as otherwise journalists, academics or other interested parties may misinterpret the information. Even before the public CbCR directive is finalized, companies are beginning to re-visit their public tax reporting procedures, setting in motion the process of ensuring data quality, consistency between different forms of reporting and development and execution of a public transparency approach on taxation.

So the two key events to monitor in the coming fall period in Paris and Brussels are the presentation by the OECD/G20 Inclusive Framework on BEPS of their Pillar One and Pillar Two package to the G20 in October, and the approval process for public CbCR in the EU. These events will have a key impact on the tax environment of multinational companies going forward.

OECD

Togo becomes member of the Inclusive Framework on BEPS and also joins the agreement on BEPS 2.0

On 31 August 2021, Togo [joined](#) the Inclusive Framework on BEPS, bringing the total number of members to 140. As a new Inclusive Framework member, Togo committed to comply with the BEPS minimum standards, which are contained in the final reports on Action 5 (Countering Harmful Tax Practices), Action 6 (Preventing Treaty Abuse),

Action 13 (Transfer Pricing Documentation) and Action 14 (Enhancing Dispute Resolution). Togo will also participate on an equal footing with the members of the Inclusive Framework in the remaining standard setting activities, as well as the review and monitoring of the implementation of the BEPS package.

Further, Togo also joined the statement to address the tax challenges arising from the digitalization of the economy, bringing to 134 the total number of jurisdictions participating in the agreement.

Barbados joins the agreement on BEPS 2.0

On 12 August 2021, Barbados [joined](#) the agreement to address the tax challenges arising from the digitalization of the economy. Currently, 134 jurisdictions in total participate in the agreement.

Singapore updates its MLI positions

On 11 August 2021, Singapore made a [notification](#) to add the entry into force of its covered tax agreements (CTAs) with Ghana and Tunisia and update its *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI) position accordingly. The MLI entered into force for Singapore on 1 April 2019 while Ghana and Tunisia have not yet deposited their respective instrument of ratification of the MLI with the OECD. The MLI will therefore only modify the Singapore-Ghana and Singapore-Tunisia treaty after the completion of the relevant procedures in those countries.

Update on the results of the peer review of BEPS Action 5

On 5 August 2021, the OECD released an [update](#) on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (harmful tax practices) of the OECD/G20 BEPS Project.

According to the updated results, of the 18 regimes reviewed, only Trinidad and Tobago has a harmful regime because it was not able to fulfil its commitment to abolish its "Special economic zone" regime within the agreed timelines. The total number of tax regimes that have been reviewed, or are under review, is 309.

See EY Global Tax Alert, [OECD releases 2021 update on peer review of preferential tax regimes](#), dated 10 August 2021.

Updated transfer pricing country profiles published

On 3 August 2021, the OECD published updated [transfer pricing \(TP\) country profiles](#) reflecting the current TP legislation and practices of 20 jurisdictions. In this update, 3 new jurisdictions were added (Angola, Romania, Tunisia) and 17 jurisdictions were updated (Argentina, Australia, Colombia, Costa Rica, Czech Republic, Denmark, India, Japan, Netherlands, New Zealand, Nigeria, Norway, Russia, Slovak Republic, Spain, Switzerland, Turkey). The TP country profiles include information on the TP treatment of financial transactions and the application of the Authorized OECD Approach (AOA) to attribute profits to permanent establishments (PEs).

Currently, the TP country profiles cover 60 jurisdictions and the OECD expects to conduct updates in batches during the second half of 2021 and the first half of 2022.

Third edition of the Corporate Tax Statistics published

On 29 July 2021, the OECD released the third edition of its annual [Corporate Tax Statistics publication](#) together with an updated [database](#). The third edition of the publication and database compile new data items and statistics in various existing data sets held by the OECD, such as: corporate tax revenues, corporate effective tax rates, BEPS Action 13 implementation, and anonymized and aggregated statistics collected via CbC reports, among others. According to the OECD, evidence of continuing BEPS behaviors and a persistent downward trend in statutory corporate income tax rates reinforce the need to finalize agreement on the BEPS 2.0 project and begin implementation of the new Pillar One and Pillar Two rules.

See EY Global Tax Alert, [OECD releases corporate tax statistics publication \(third edition\), including anonymized and aggregated country-by-country report statistics](#), dated 11 August 2021.

Sixth batch of Stage 2 peer review reports on BEPS Action 14

On 26 July 2021, the OECD released the [sixth batch of Stage 2 peer review reports](#) relating to the outcome of the peer monitoring of the implementation of BEPS Action 14 (dispute resolution). The report covers Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania, and South Africa. As for the outcome of the peer review process, overall positive changes were found in all the assessed jurisdictions.

However, several new issues were identified for India, in particular in relation to the implementation of Mutual Agreement Procedure (MAP) agreements. Chile addressed some of the identified deficiencies, whereas, Argentina and Croatia have addressed none of the identified deficiencies.

See EY Global Tax Alert, [OECD releases sixth batch of Stage 2 peer review reports on dispute resolution](#), dated 28 July 2021.

European Union: Finance Ministers discuss BEPS 2.0

On 10-11 September 2021, the Slovenian Presidency of the Council organized an informal meeting of Ministers for Economic and Financial Affairs. Such meetings take place twice a year and allow for an exchange of views among the Ministers. Part of the second day of the meeting was also devoted to a discussion on the future of taxation and the fine print underneath July's agreement on BEPS 2.0 in advance of the forthcoming G20 meeting in October. Mathias Cormann, the Secretary-General of the OECD, also attended the meeting and gave a presentation.

Dominican Republic: Public consultation on CbCR

On 3 August 2021, the tax authorities from the Dominican Republic requested public [comments](#) on the draft rules for CbCR. The rules would apply to multinational enterprises (MNEs) with consolidated annual revenue of DOP38.8 billion (approximately US\$683 million). Ultimate parent entities should submit the report within 12 months following the end of the reporting fiscal year. The draft rules also include filing instructions and penalties for non-compliance.

The consultation period ran until 7 September 2021.

Finland: Public consultation on TP adjustments

On 23 August 2021, the Finnish Ministry of Finance launched a [public consultation](#) to revise the TP adjustment provision in Finland's domestic tax law. The proposed rules intend to bring the TP adjustment provision in line with the OECD TP Guidelines as well as Article 9 of the OECD Model Tax Convention. The proposed rules would also allow tax authorities to delineate the actual underlying transaction and ignore the legal form in order to characterize intra-group transactions based on their economic substance. In addition, the new rules would allow tax authorities to disregard irrational transactions.

The consultation period ran until 17 September 2021. The proposed regulations would apply from 1 January 2022.

Germany

MAP guidelines published

On 27 August 2021, the German Ministry of Finance (MoF) published a [letter](#) commenting on dispute settlement procedures under tax treaties, the EU Arbitration convention, and the EU Directive on Tax Dispute Resolution.

The letter first describes procedural aspects that are generally the same for all three dispute resolution procedures, however, existing regulations and long-standing procedural practice are now more restrictive to a certain extent (e.g., with regard to language, submission date, content, etc.).

The letter further contains clarification on the relationship between the various dispute resolution procedures and domestic appeal proceedings as well as comments on the relationship between MAP and withholding tax refund procedures.

See EY Global Tax Alert, [German Ministry of Finance issues guidance on dispute resolutions for income and property taxes](#), dated 8 September 2021.

Spontaneous exchange of CbC reports by Germany and United States

On 10 August 2021, the German MoF published a [joint statement](#) by the competent authorities of Germany and the United States (US) on the implementation of the spontaneous exchange of CbC reports for financial years starting in 2020. The joint statement confirms that CbC reports for financial years starting on or after 1 January 2020 and before 1 January 2021 will be spontaneously exchanged pursuant to article 26 of the German-US tax treaty. Consequently, if a US parent company submits a CbC report to the US federal tax authority (Internal Revenue Service), the obligation to submit the CbC report as an alternative for subsidiaries and PEs of US corporations in Germany for the relevant financial years does not apply. Moreover, the joint statement states that Germany and the US are negotiating an intergovernmental agreement and a competent authority agreement for the automatic exchange of CbC reports.

Technical interpretation on CbCR from the German Ministry of Finance

On 9 August 2021, the German MoF published a [technical interpretation note](#) on CbCR. One of these interpretations is based on the 2020 Annual Tax Act since this Act deleted the words “based on the consolidated financial statements” from the Tax Code. The MoF clarifies that other data sources (e.g., internal accounting) may also be used to prepare the CbC report. This also implies that all business units must be included in the CbC report. The amendments to the Tax Code apply to all cases submitted from 29 December 2020 onwards.

Further, the note provides certain clarifications with respect to the following aspects:

- ▶ **Income tax paid:** income tax payments should be reported as a positive value while income tax refunds should be reported as negative value.
- ▶ **Treatment of dividends:** for financial years beginning on or after 1 January 2020, dividends from other group entities must not be taken into account for determining the profit (loss) before income tax.
- ▶ **Treatment of partnerships:** clarification that values of partnership are only to be considered as stateless if they cannot be assigned to a PE. In case of partners that are also considered group entities, their share in the partnership is to be included under the state of their tax residence.

Administrative Principles on Transfer Pricing

On 14 July 2021, the MoF issued the [Administrative Principles Transfer Pricing](#) (AP TP). Administrative principles - although not binding for taxpayers and courts - serve as important guidance for the interpretation and illustration of tax laws and executive orders. The AP TP replaces several previously issued administrative principles and is the central reference for all administrative TP matters.

The AP TP aims to align the German interpretation of the arm’s-length principle with international standards, in particular the OECD TP Guidelines including Chapter X. The AP TP confirms that the arm’s-length principle (ALP) should be consistently applied irrespective of whether it concerns an inbound or an outbound situation. Among others, the AP TP emphasizes that the application of the arm’s-length principle not only refers to the transfer price itself, but also to the accurate delineation of the underlying conditions of a transaction (e.g., prices, discounts, terms), but also provides

guidance on the interpretation of the ALP for a broad range of transaction types from a German TP perspective (such as point in time of arm's-length analyses, treatment of losses, valuation of intangibles, financial transactions, etc.).

While the goal of the AP TP is to align with the OECD Guidelines, German tax authorities deemed it necessary to further clarify certain aspects of the OECD Guidelines to ensure equal taxation. In particular, the AP TP introduces a business purpose and debt equity test for the analysis of intercompany financial transactions and include a rebuttable assumption that an arm's-length loan transaction needs to be secured. Additionally, the AP TP stipulates that a financing entity, that does not satisfy certain substance criteria, is only entitled to a routine remuneration based on a cost plus methodology, where refinancing costs are explicitly excluded from the cost base; these can only be considered with a risk-free return. As a consequence, the German borrower would only be allowed to deduct for tax purposes a risk-free market return unless the foreign financing company has the capability and authority to control or capacity to bear the related risks.

The AP TP is effective immediately for all pending cases and does not include a grandfathering provision.

See EY Global Tax Alert, [German Ministry of Finance issues new Administrative Principles regarding transfer pricing](#), dated 23 July 2021.

Greece: Statement on revised Two-Pillar solution to taxing digital economy

On 1 July 2021, the Greek Ministry of Finance issued a [statement](#) about Greece being among the 130 countries and jurisdictions that joined the new Two-Pillar plan to reform international taxation rules and ensure that MNEs pay a fair share of tax wherever they operate. Greece embraces this new agreement on the global tax system and is committed to make every effort to safeguard its taxing rights under the new tax architecture and strengthen the competitiveness of the Greek tax system and economy.

India: Extension of CbCR deadlines

On 29 August 2021, India published [Circular No.16/2021](#) extending the timelines for electronic filing of various forms. Among other items, the CbC report notification (i.e., Form 3CEAC) may be filed on or before 31 December 2021 instead of 30 November 2021. Another extension was also made to cases where a constituent entity of a group

nonresident in India has been notified of a failure preventing the exchange of CbC reports. In this case, the report (i.e., Form 3CEAD) can also be filed on or before 31 December 2021 instead of 30 November 2021.

Ireland: Public consultation on BEPS 2.0

On 20 July 2021, the Irish Department of Finance released a [public consultation](#) on the OECD International Tax Proposals, i.e. the two-pillar proposal commonly referred to as "BEPS 2.0." The consultation invited interested parties to make submissions on the BEPS 2.0 and US tax measures being proposed to ensure that Ireland's tax policy can continue to support economic growth and prosperity.

In the consultation document, Ireland reiterated that it believes that it is in the interest of all countries to achieve an equitable, ambitious and sustainable agreement at the OECD on the international tax architecture and noted that Ireland is committed to playing its part in reaching any agreement. The consultation concisely summarizes Ireland's position with regard to Pillar One and Pillar Two. Although fully supportive of the Pillar One proposal, with respect to Pillar Two, Ireland has expressed its broad support but not with regards the proposed global minimum effective tax rate of at least 15%.

The consultation period closed on 10 September 2021.

See EY Global Tax Alert, [Ireland launches public consultation on OECD International Tax Proposals](#), dated 21 July 2021.

Isle of Man: Clarifies application of tax registration requirement for partnerships subject to economic substance requirements

On 1 July 2021, Isle of Man issued [Practice Note](#) 217/21 explaining the new tax registration requirement applicable for all Partnerships and Limited Liability Companies. With effect from 17 June 2021, it is now a legal requirement for Partnerships and Limited Liability Companies, subject to possible exemptions, to register with the Assessor and to provide specific information as part of that registration.

Registration with the Assessor must be done within 90 days from the later of the date that:

1. The Partnership or Limited Liability Company was formed.
2. The Partnership or Limited Liability Company moves its place of effective management to the Isle of Man.
3. The Partnership or Limited Liability Company commenced business activity in the Isle of Man.

There is a transitional arrangement for partnerships that were formed and/or commenced business activity on the Isle of Man prior to 17 June 2021. These partnerships subject to possible exemptions, have until 15 September 2021 to register with the Assessor.

Jersey: Extension of economic substance requirements to partnerships

On 29 June 2021, the States Assembly of Jersey adopted the extension of the economic substance requirements to partnerships. The new requirements are applicable to resident partnerships comprised of incorporated limited partnerships, limited liability partnerships, limited partnerships, separate limited partnerships, foreign limited partnerships (provided that their place of effective management is in Jersey) and general partnerships.

A partnership meets the economic substance test when: (i) it is managed in Jersey; (ii) with respect to the level of the relevant activity carried on in Jersey, it has the adequate number of employees, the adequate expenditure and physical assets in Jersey; (iii) it has all of its core-income generating activity carried out in Jersey; and (iv) its governing body is able to monitor and control the carrying on of such activities in Jersey.

The economic substance test would not apply to resident partnerships when: (i) all the partners are individuals subject to income tax in Jersey; or (ii) if in the relevant fiscal year the resident partnership is not part of a multinational group and no business activity is performed outside of Jersey.

The new requirements are applicable from 1 July 2021 to partnerships established on or after that date but before 1 January 2022, or 1 January 2022 for existing partnerships. Failure to comply with the economic substance test will be subject to penalties.

Korea: 2021 tax reform proposal

On 26 July 2021, Korea's Ministry of Economy and Finance announced the 2021 tax reform proposals. Among other items, the proposals include a revision of the interest limitation rule. Currently, the interest limitation rules apply on the 30% of Earning Before Interest, Tax, Depreciation and Amortization (EBITDA) with an ordering rule for the calculation of the non-deductible interest. If

there are different interest rates, the interest deduction denial applies starting with the highest interest rate. The proposals introduce an additional ordering rule for the non-deductible interest: i) if the same interest rate is applied, the most recent borrowing date takes precedence; and ii) if the interest and borrowing date are the same, the non-deductible portion is split based on the ratio of the borrowed amounts.

Furthermore, the proposals introduce a new rule for interest limitation. If the amount of EBITDA is negative, the deductible amount of interest is deemed to be nil.

This rule will be effective for fiscal years beginning on or after 1 January 2022.

See EY Global Tax Alert, [Korea announces 2021 tax reform proposals](#), dated 10 August 2021.

Luxembourg: Updated FAQs on CbCR

On 18 August 2021, the Luxembourg Tax Authorities (LTA) published [updated FAQs](#) to clarify the interpretation of certain terms and definitions on CbCR. Among other items, the updated Frequently Asked Questions (FAQs) clarify the CbCR treatment in the case of mergers/demergers/acquisitions applicable from January 2021 onwards. The updated FAQs also confirm the requirement to identify the constituent entities by a tax identification number (TIN) or "NOTIN" code only if the entity is in the process of obtaining a TIN or if the entity is located in a jurisdiction that does not provide a TIN.

The FAQs were initially published in 2017 and addressed various aspects such as: i) voluntary filing of CbC reports; ii) consequence of the absence of a qualifying competent authority agreement; iii) guidance on which entities are considered related parties; and iv) treatment of dividends. These have been amended from time to time over the past years in order to bring certain clarifications on certain aspects of the guidance included in these FAQs. The FAQs also confirm that the OECD Guidance on the implementation of CbCR (as updated in December 2019) is the source of reference for the LTA and applies taking into account certain national specifications as listed in the FAQs.

Poland: Proposal to introduce a minimum tax and an undertaxed payment rule

On 8 September 2021, representatives of the Polish Government submitted [draft legislation](#) to the Polish Parliament on a major tax reform. Among other items, the draft legislation introduces a minimum tax, an undertaxed payment rule (so-called "shifting profit tax"), and also include changes to the controlled foreign company (CFC) rules and TP regulations.

The minimum tax would be applicable to taxpayers who incurred tax losses within an operating income basket or reported a tax profitability ratio (in an operating income basket) below 1%. The tax rate would be 0.4% of company's revenues and 10% of in-scope expenses (e.g., costs of certain services, royalties, debt-financing costs incurred towards related entities) exceeding particular thresholds. The minimum tax could be deducted from the Corporate Income Tax (CIT) to be paid in Poland. In relation to the tax so-called "shifting profit tax," it would impose a tax of 19% in Poland on certain qualified payments made directly or indirectly to related entities, if effective taxation is lower than the 75% of the CIT rate of 19% (i.e., lower than 14.25% CIT). Additional tests and exceptions could apply. Further, the draft legislation extends the in-scope passive revenue and in-scope entities of the CFC rules. With regards to the TP regulations, the draft legislation extends the deadline to prepare TP documentation and changes the definition of related entities.

The majority of the provisions are expected to come into force as of 1 January 2022.

See EY Global Tax Alert, [Poland: Major tax reform proposal moves to Parliament](#), dated 17 September 2021.

Romania

Government approves ratification of MLI

On 19 August 2021, the Romanian Government approved a draft bill for the ratification of the MLI. Romania submitted its MLI position at the time of the signature, listing its reservations and notifications as well as the 91 CTAs it wishes to be covered by the MLI. A definitive list of reservations and notifications will also need to be provided upon the depositing of the instrument of ratification.

Updated list of jurisdictions exchanging information under Multilateral Competent Authority Agreement

On 23 August 2021, Romania published in the *Official Gazette* No. 808/2021 an updated list of the jurisdictions exchanging information under the Multilateral Competent Authority Agreement to add 10 new jurisdictions (Albania, Aruba, Lebanon, Nigeria, Oman, Peru, Qatar, Samoa, United Kingdom, and Vanuatu).

Singapore: Revised version of the TP guidelines

On 10 August 2021, the Inland Revenue Authority of Singapore (IRAS) released the [sixth edition](#) of its TP guidelines. This version includes a new section on cost contribution arrangements and expands guidance on TP aspects of financial transactions, among other updates. On the cost contribution arrangements section, the guidance provides among others, a four-step framework on how to apply the arm's-length principle to such arrangements and the determination of the participants' share of expected benefits and contributions. As for the update to the financial transactions section, the expanded guidance is largely aligned with key principles in similar TP guidance from the OECD and includes guidance on cash pooling, hedging, financial guarantees and captive insurance.

See EY Global Tax Alert, [Singapore expands transfer pricing guidance](#), dated 20 September 2021.

Spain: Implementation of ATAD's Exit Tax and CFC Rules

On 10 July 2021, Spain published [Law 11/2021](#) in the *Official Gazette* approving, among other measures, certain amendments to the existing Spanish exit tax and CFC rules to align them with the EU Anti-Tax Avoidance Directive (ATAD I).

The Law broadens the scope of the Spanish CFC rules to include income obtained by foreign PEs and not only subsidiaries and includes new sources of CFC income. Further, the Law abolishes the current applicable safe-harbor clause for holding companies.

The Law also amends the current wording of the Spanish provisions on exit tax introducing a maximum five-year deferral with equal annual installments instead of the previous indefinite deferral when the migration takes place to another EU Member State.

The Law entered into force on 11 July 2021.

United Arab Emirates: Statement on the BEPS 2.0 project

On 26 July 2021, the Ministry of Finance of the United Arab Emirates (UAE) published a [statement](#) related to the OECD Inclusive Framework on BEPS statement agreed on 1 July 2021. The UAE's statement provides that the UAE's policies have been carefully designed to support the UAE's fiscal needs and meet international requirements. Moreover, the UAE supports a global consensus approach to combat aggressive tax avoidance and profit shifting and stress the importance of designing rules that contain allowance for businesses with real economic activities. Hence, the UAE is fully committed to collaborate with the OECD and Inclusive Framework on BEPS members to further advance the technical discussions to ensure a fair and sustainable outcome can be achieved.

United Kingdom: Draft legislation for Finance Bill 2022

Amendments to the hybrid and other mismatches rules

On 20 July 2021, the United Kingdom (UK) Government published draft legislation intended for Finance Bill 2022. Among other items, the draft Finance Bill legislation contains proposed changes to the rules for hybrid and other mismatches to prevent disproportionate outcomes where payments are made to a fiscally transparent entity such as a US LLC. It was originally intended that a change would be made in Finance Act 2021 to achieve the same policy outcome, however following engagement with stakeholders, the UK Government decided to withdraw the change from the Finance Bill due to possible unintended consequences. Under the latest proposal, certain fiscally transparent entities would be treated as partnerships specifically for the "hybrid payee" rules, which may prevent counteraction of amounts attributable to members who regard the payee as fiscally transparent. If enacted, these changes will have retroactive effect to 1 January 2017 without it being required to submit for an election to Her Majesty Revenue and Customs (HMRC).

Notification of uncertain tax treatments for large businesses

The UK Government also published draft legislation on 20 July 2021 in respect of the proposed requirement for large businesses (companies and partnerships) to notify HMRC of "uncertain tax treatments" in respect of corporation tax, value added tax, and income tax. The uncertain tax treatments apply when one of the three criterion is met:

- ▶ Trigger 1 -an accounting provision is required under GAAP in respect of the treatment
- ▶ Trigger 2 - the treatment is contrary to HMRC's "known" position
- ▶ Trigger 3 - there is a "substantial possibility" that the treatment would be found to be incorrect if it were considered by a court or tribunal

The uncertain tax treatment requirement applies separately for each of the relevant taxes where the tax advantage exceeds £5 million, with substantially similar treatments being aggregated. The draft proposal intends that the legislation will apply to returns to be submitted on or after 1 April 2022.

This requirement is applicable to a "qualifying company" in any financial year if, in the previous financial year, the company had either or both of the following: (i) UK turnover of more than £200 million; (ii) UK balance sheet total of more than £2 billion.

HMRC has also published [guidance](#) in relation to the legislation. The guidance provides further explanation on how the three criterion operate in practice, including examples.

A consultation period on the Finance Bill measures ran until 14 September 2021 during which HMRC continued to engage with stakeholders on the specific drafting of the legislation. Therefore the legislation is subject to change prior to being included in the final Finance Bill 2022.

See EY Global Tax Alert, [UK publishes draft legislation for Finance Bill 2022](#), dated 22 July 2021.

United States: Proposal for changes and additions to US international tax rules

On 13 September 2021, Chairman Neal of the House Ways and Means Committee proposed significant changes and additions to US international tax rules ([the HW&M Proposal](#)). Provisions potentially affected by the HW&M Proposal include the foreign tax credit, the global low-tax intangible income (GILTI) regime, the base erosion and anti-abuse tax (BEAT), and the interest expense limitation under Internal Revenue Code Section 163, among others. With important exceptions, most of these changes would be effective for tax years beginning after 31 December 2021.

To supplement the HW&M Proposal, the House Ways and Means Committee also released a [section-by-section summary](#), and the Joint Committee on Taxation released a [description](#) of the proposed changes.

See EY Tax Alert, [House Ways and Means Committee Chair proposes comprehensive international tax changes for reconciliation bill](#), dated 17 September 2021.

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
- ▶ Deirdre Fenton deirdre.fenton1@ey.com
- ▶ Nadine K Redford nadine.k.redford@ey.com

Ernst & Young Belastingadviseurs LLP, Rotterdam

- ▶ Marlies de Rooter marlies.de.ruiter@nl.ey.com
- ▶ Maikel Evers maikel.evers@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- ▶ David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- ▶ Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com
- ▶ Roberto Aviles Gutierrez roberto.aviles.gutierrez@nl.ey.com

About EY

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

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

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

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

© 2021 EYGM Limited.
All Rights Reserved.

EYG no. 007916-21Gbl

1508-1600216 NY
ED None

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

ey.com