The latest on BEPS and beyond – 2021 in review

A review of OECD developments and country actions in 2021

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Our EY team has been reporting on the BEPS project from its outset. Since 2014, we have been tracking BEPS-related developments at the global and country level. A summary of each of these BEPS-related developments has been included in our newsletter "The latest on BEPS and beyond" and an annual special edition that highlights and recapitulates the months in review. This latest edition of "BEPS in review" covers the period from 1 January 2021 to 31 December 2021.

Introduction

Transformed BEPS project rewrites international tax framework

2021 marks the year in which the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on BEPS reached an agreement on the fundamental adoption of the principles underlying the international tax system.

At its inception in 2013, the BEPS project aimed to ensure that the existing international tax rules would be applied in a fashion that is in line with what policymakers perceived to be their original intent and to create alignment between profit allocation and where the real economic activity and value creation are taking place. The BEPS package, presented in October 2015, covered the 15 areas identified in the 2013 BEPS Action Plan. It contained minimum standards and other measures that required BEPS participating jurisdictions to make surgical changes to their tax systems.

Following the adoption of the BEPS package, the OECD/G20 Inclusive Framework on BEPS was established to ensure all interested jurisdictions could participate on an equal footing in the efforts for ensuring the effective implementation of the BEPS package by reviewing and monitoring the implementation of the OECD/G20 BEPS project. Since 2016, its membership has grown to its current footprint comprising 141 jurisdictions.

While the Inclusive Framework members are still in the process of implementing the 15 measures presented in 2015 (the BEPS 1.0 package), global tax policymaking moved on to examine the fundamental adoptions of the international tax system by introducing revised profit allocation and nexus rules (Pillar One) and global minimum tax rules (Pillar Two). In October 2021, 136 Inclusive Framework members reached an agreement on the key design features of the two-pillar solution to address the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project). In November, Mauritania further endorsed the October statement, raising the total number of the supporting Inclusive Framework members to 137, out of the total 141 members. The agreement took the form of a political statement, reflecting the consensus among most of the members on the core design features of the two-pillar solution.

In the October statement, it was stated that the Pillar Two Model Rules (the Model Rules), containing the model-legislation for jurisdictions to use when introducing Pillar Two, were to be released by the end of November 2021. Nevertheless, the OECD was not able to meet this ambitious deadline, and the Model Rules, together with an overview summary and factsheets, became available only by late December 2021. The implementation of these new rules is envisaged by 2023.

The other emerging trend of 2021: tax transparency and tax data

In addition to the high-level agreement on the redesign of the international tax system through the BEPS 2.0 project, tax transparency was also on the top of the agenda in 2021. While the BEPS 1.0 project already contributed significantly to a more transparent tax environment in which information is shared with tax authorities, including country-by-country data on taxes paid and other economic indicators, the EU took country-by-country reporting (CbCR) to the next level. In 2021, the EU agreed to make public tax reporting mandatory for a large group of multinationals. As a result, public disclosure of tax-related information regarding each member state will become a reality as early as 2024 and will impact both EU-based and non-EU-based large multinational corporations doing business in the EU. The developments relating to mandatory tax reporting should also be seen in the context of the evolution of the standards and practices in relation to public sustainability reporting. This evolution includes the revisions made by the Commission in 2021 to the existing rules introduced by the Non-Financial Reporting Directive that require assurance of sustainability information and require undertakings are reported against mandatory EU sustainability reporting standards. Details on what needs to be reported are currently being developed. It is likely that the EU will follow the example of voluntary Non-Financial Reporting Standards such as the Global Reporting Initiative (GRI) by also introducing mandatory reporting of tax-related information.

A trend emerging from BEPS 2.0 and the tax transparency initiatives is the new use of tax data. Businesses have now begun to realize, especially after the release of the Model Rules, that it will be necessary to comply with a completely new international tax system which is built on totally different requirements compared to the existing international tax system. The new GloBE filing obligations, once implemented in national laws, are expected to raise the demand for the reporting of vast amounts of data to the tax authorities. The need for collecting information is anticipated to arise both at an entity and at a jurisdictional level. Moreover, the data within the group will have to be consistent, requiring a reconciliation of the financial information of an entity or a jurisdiction to the parent's accounting standard. Businesses will have to provide this data by complying with the GloBE Information Return and additional procedures expected to be set under the GloBE Implementation Framework. Such compliance is foreseen to introduce complexity since businesses currently lack part of the data necessary for reporting purposes. This type of data will need to be identified, developed and monitored, especially for Pillar Two purposes. Also, it is important for businesses to recognize that the effective tax rate (ETR) calculation under Pillar Two will likely have to be provided not only to governments but also publicly. The European Commission has announced the intention of developing an EU directive in 2022 requiring in-scope multinational enterprises (MNEs) to publish their ETRs calculated on the basis of the Pillar Two methodology.

A glimpse of 2022

For policymakers, 2022 will be a crucial year for finalizing the design details of the new international tax rules. Their ambitions are high, with entry into force being anticipated as of January 2023. This year, businesses and investors will therefore need to analyze these new rules and prepare for compliance while the regulatory environment remains in flux. Interested businesses should also seize the opportunity to liaise with policymakers before all the new rules are set in stone.

More specifically, the next steps in the BEPS 2.0 process will require continued attention. It also requires closely following the relevant discussions on international taxation in the US Congress. Additionally, the continued negotiations at the EU level and responses by other economic blocks will have a significant influence on the next decision-making stages of BEPS 2.0.

Besides BEPS 2.0 further evolving, the trend toward increased tax transparency will also continue. For businesses and investors, tax is not merely a compliance or cost issue anymore. Tax is now seen by stakeholders as a key contribution to the societies in which multinational companies operate. With that, companies are expected to be transparent about their approach to tax. Besides the significance already attributed to reporting and publishing the monetary outcomes of the approach to tax in the form of country-by-country tax and economic data on particular corporate income tax payments (Country-by-Country Reporting), the interest of standard setters and the practices of companies on voluntary tax reporting are also moving to transparency on approaches to tax (tax strategies) and the design of the tax governance framework of the company. Moreover, in the context of illustrating their contribution to the societies in which they operate, many multinational groups are also reporting on their tax footprint beyond corporate income tax only (total tax paid). Thus, in addition to tax data becoming relevant for reporting in the context of the new minimum tax rules, tax data will also play a major role for businesses when it comes to deciding what they need and want to report on to other stakeholders than governments in the coming years. Furthermore, expected new initiatives, such as the announced EU Directive on ETR publication, will raise the bar for businesses and investors.

Finally, the drive for a green transition will be another key focus area in 2022 as taxes and incentives will play a central role in designing measures to address climate change and other environmental, social and governance (ESG) issues. This means that the international tax landscape is due for further change, and businesses are encouraged to anticipate and closely monitor these game-changing developments.

The 2021 review

The report is divided into topics and is structured in the following way. Each topic is split into three parts. The first part provides some background information on the topic. The second discusses the OECD developments during the period under review and the guidance and work of the OECD around the implementation of the relevant measures. The third part includes a selection of specific country developments during 2021 with respect to each topic.

Due to the increased activity at the EU level, a dedicated section includes the EU tax-related activity.

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BEPS 2.0: The new era of taxation addressing the digitalization of the economy and global minimum taxation

Following years of work and discussions, 2021 marked the year the Inclusive Framework agreed on a solution to address the tax challenges arising from the digitalization of the economy. Originally, the BEPS 2.0 project was designed to address the challenges of how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries. These challenges, according to the Inclusive Framework, also included risks remaining after BEPS 1.0 for highly mobile, income-producing factors that still can be shifted into low-tax environments. This project ultimately resulted in a two-pillar solution comprising of Pillar One and Pillar Two:

- Pillar One on development of new nexus and profit allocation rules to assign more taxing rights to market countries
- Pillar Two on development of new global minimum tax rules

Developments at the OECD level

The incoming US administration of President Biden gave new life to the BEPS 2.0 negotiations. In April 2021, the US Treasury made a proposal on Pillar One to the Inclusive Framework that helped resolve a deadlock in the negotiations on the scope. Until that moment, the Inclusive Framework considered bringing automated digital services and consumer-facing businesses in-scope of Amount A of Pillar One. According to the US Treasury proposal, two quantitative criteria would be used to determine whether an MNE is in scope: i) total revenue threshold and ii) profit margin threshold. According to the US Treasury, no more than 100 MNEs should be in scope of Pillar One. As for Pillar Two, the US Treasury proposed a 21% global minimum tax percentage.

Following the launch of this proposal, the G7 issued a communiqué at the close of the meeting of the G7 Finance Ministers and Central Bank Governors in June 2021, including a statement on the global tax changes being developed under Pillar One and Pillar Two. The G7 committed to reach an equitable solution on the allocation of taxing rights, with market countries awarding taxing rights on at least 20% of profit exceeding a 10% margin for the largest and most profitable MNEs. This meant that the other G7 members had embraced the US proposal. The G7 also committed to a global minimum tax of at least 15% on a country-by-country basis.

For more details, see EY Tax Alert, G7 Finance Ministers express strong support for global tax changes under BEPS 2.0, dated 6 June 2021.

The following month, the OECD released a statement on a *Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy*, reflecting a conceptual agreement of 130 of the member jurisdictions of the Inclusive Framework on how to address the issues from the BEPS 2.0 project. Its contents built on the agreement that was reached at G7 level. However, at that time, nine members of the Inclusive Framework (Barbados, Estonia, Hungary, Ireland, Kenya, Nigeria, Peru, Saint Vincent and the Grenadines, and Sri Lanka) did not join the statement. Barbados, Peru, Saint Vincent and the Grenadines subsequently joined the agreement. At the end of August 2021, Togo also joined the July statement.

Finally, on 8 October 2021, the OECD published a Statement indicating that the Inclusive Framework had agreed on a *Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy*. The October statement reflected the *final political agreement* of 136 out of 140 jurisdictions of the Inclusive Framework. Estonia, Hungary and Ireland, which did not join the July statement, joined the October statement. Pakistan, which joined the July statement, did not join the October statement. Kenya, Nigeria and Sri Lanka did not join either statement. By November 2021, Mauritania also joined the Inclusive Framework and the two-pillar solution, bringing to 137 the total number of jurisdictions participating in the agreement and the number of Inclusive Framework jurisdictions rose to 141.

The October statement builds on the one released in July 2021, providing further specificity on several key parameters, including the following:

Pillar One

- The scope of Amount A includes MNEs with a global turnover above €20 billion and profitability above 10%.
- Amount A will allocate 25% of "residual profits," which is defined as profit in excess of 10% of revenue, to market jurisdictions with nexus using a revenue-based allocation key.
- The removal of all Digital Services Taxes (DST) and other relevant similar measures with respect to all companies will be required by the Multilateral Convention

(MLC) through which Amount A is to be implemented.

Pillar Two

- The design of Pillar Two comprises the Global Anti-Base Erosion (GloBE) rules, consisting of the Income Inclusion Rule (IIR) and the undertaxed payment rule (UTPR), and the Subject to Tax Rule.
- The minimum tax rate for purposes of the IIR and UTPR will be 15%, calculated on a jurisdictional basis.
- There is a substance-based carve-out based on tangible assets and payroll expenditure.
- A "de minimis" exclusion is provided for those jurisdictions where the MNE has revenues of less than €10 million and profits of less than €1 million.

The October statement also includes an annex with information regarding the implementation plan, covering target dates. Also, in the annex of this publication, you can find a detailed timeline of the BEPS 2.0 project and the path forward.

For more details, see EY Tax Alert, OECD releases Statement updating July conceptual agreement on BEPS 2.0 project, dated 11 October 2021.

On 20 December 2021, the OECD released the Pillar Two Model Rules as approved by the OECD/G20 Inclusive Framework. The Model Rules define the scope and key mechanics for the Pillar Two system of global minimum tax rules, which includes the IIR and the UTPR. Together with the Model Rules, the OECD also released a summary of the rules (The Pillar Two Model Rules in a Nutshell), an overview of the key operating provisions of the GloBE rules (Fact Sheets) and a Frequently Asked Questions document.

According to the timeline released in October with agreement of member jurisdictions of the Inclusive Framework, the Pillar Two rules should be brought into domestic law in 2022 to be effective in 2023, with the exception of the UTPR which is to enter into effect in 2024. The GloBE rules are designed as a common approach, which means that Inclusive Framework members are not required to adopt the GloBE rules, but if they choose to do so, they should implement and administer the rules in a way that is consistent with the Model Rules. Inclusive Framework members are also required to accept the application of the GloBE rules by other Inclusive Framework members.

The OECD press release indicates that it expects to release the Commentary relating to the Model Rules and to address the interaction with the US Global Intangible Low-Taxed Income (GILTI) rules in early 2022. In addition, the Inclusive Framework is developing the model treaty provision for the subject to tax rul (STTR) and an MLI for its implementation, which the OECD expects to release in the early part of 2022 with a public consultation event on it to be held in March 2022. Finally, the OECD's press release announces that a public consultation event on the implementation framework will be held in February 2022.

For more details, see EY Tax Alert, OECD releases Model Rules on the Pillar Two Global Minimum Tax: First impressions, dated 20

December 2021, and OECD releases Model Rules on the Pillar Two Global Minimum Tax: Detailed review, dated 22 December 2021.

Country-specific developments: amendments in the national tax systems triggered by the BEPS 2.0 initiative

While negotiations on Pillar One were ongoing in 2021, some jurisdictions moved ahead by introducing unilateral DST. On the other hand, such unilateral DSTs were disputed, in particular by the US. As part of the October statement, an agreement was reached on an immediate standstill of the introduction of new DSTs and the rollback of existing DSTs and similar measures after the implementation of Pillar One. Subsequently, agreements were reached between jurisdictions on how to address the disputes on the existing DSTs during the transition period before the Pillar One rules come into effect. For example, Canada proposed its Budget 2021 in April, confirming the intention to enact a 3% DST that would apply to large businesses with gross revenues of €750 million or more by 1 January 2022. After the October statement on BEPS 2.0, the Canadian government issued a statement confirming that Canada intends to move ahead with legislation finalizing the enactment of a DST that would only be imposed as of 1 January 2024, rather than on 1 January 2022 (as originally announced), and only if the convention implementing Pillar One had not come into force by 31 December 2023 (in the event the implementing convention does not come into force by that date, the DST would be payable as of 2024 in respect of revenues earned as of 1 January 2022). A draft legislative proposal to implement Canada's DST was released for consultation on 14 December 2021. In October, Austria, France, Italy, Spain, the UK and the US released a joint statement describing a compromise reached by the countries on a transitional approach to the treatment of existing DSTs and other similar measures during the interim period before new Pillar One rules come into effect. Thereafter, Turkey and India also announced a joint statement with the US on a transitional approach to existing DST and other relevant measures before Pillar One comes into effect.

Several jurisdictions proposed the introduction of minimum tax rules in their domestic law during 2021. For example, Spain included on its Budget Bill for 2022 an amendment to the Corporate Income Tax (CIT) Law to introduce a minimum tax, applicable from 1 January 2022 and generally set at 15% of the taxable base for taxpayers with turnover in excess of €20 million during the prior fiscal year or which are taxed in a tax unity regardless of their turnover. Also, the US Senate Finance Committee announced a proposal for a 15% corporate alternative minimum tax applicable to some corporations whose average annual adjusted financial statement income exceeds US$1 billion over any consecutive three-tax-year period preceding the tax year. Poland also submitted draft legislation on a minimum tax applicable to taxpayers who incurred tax losses within an operating income basket or reported a tax profitability ratio below 1%. The tax rate would be 0.4% of the company's revenues and 10% of in-scope expenses exceeding particular thresholds. In addition, the Polish legislative proposal includes an undertaxed payment rule (so-called "shifting profit tax"), imposing a 19% tax on certain qualified payments made directly or indirectly to related entities if effective taxation is lower than 75% of the CIT rate of 19% (i.e., lower than 14.25% of CIT). Lastly, effective as of 1 January 2021, the Netherlands imposes a conditional withholding tax at the (at that time) headline Dutch CIT rate (25.8% for FY22) on the gross amount of royalty and interest payments from Dutch tax resident entities to affiliated entities that (i) are tax resident in low-tax jurisdictions, (ii) have a PE in a low-tax jurisdiction to which the interest/royalty is allocated, (iii) have an intermediate in certain abusive situations or (iv) are considered hybrid entities.

Implementation progress and updates made to BEPS minimum standards

The BEPS 1.0 Package agreed in 2015 includes four BEPS minimum standards, i.e., Action 5 on Harmful Tax Practices, Action 6 on the Prevention of Tax Treaty Abuse, Action 13 on Transfer Pricing Documentation and Action 14 on the Mutual Agreement Procedure (MAP). Minimum standards are the BEPS recommendations that all countries participating in the Inclusive Framework on BEPS have committed to implement. Each of the BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level-playing field.

In 2021, three jurisdictions (Mauritania, Togo, Samoa and Belarus) joined the Inclusive Framework committing to consistently implement the BEPS package, increasing the Inclusive Framework members' total number to 141.

Action 5: Developments at Inclusive Framework level: transparency framework updated as review continued

At the beginning of 2021, the OECD published the new peer review transparency framework on BEPS Action 5, setting a new timeframe for 2021 to 2025. The transparency framework contains the terms of reference and the methodology for the conduct of peer reviews. Nonetheless, the transparency framework overall remains similar to the initial transparency framework covering the years from 2017 to 2020.

For more details, see the EY global tax alert, OECD releases new transparency framework for Action 5 for 2021 through 2025, dated 26 February 2021.

Another important development in relation to BEPS Action 5 took place on 31 March 2021, when the OECD published a press release announcing the first annual tax information exchange for 12 jurisdictions with no or only nominal taxation under the global standard on substantial activities of the Forum of Harmful Tax Practices (Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, and the UAE).

As every year, the OECD also published an update on the results of the peer reviews of the jurisdictions' domestic laws under Action 5. With this update, the Inclusive Framework counts 309 regimes as either reviewed or under review. Out of the 18 regimes that were subject to review, only Trinidad and Tobago was found to be harmful since it did not abolish its special economic zone. The rest of the assessed regimes were not considered harmful, or they were abolished or amended, or they are still under review.

For more details, see EY Global Tax Alert, OECD releases 2021 update on peer review of preferential tax regimes, dated 10 August 2021.

In December 2021, the OECD released the fifth annual peer review report, which covers the assessment of 131 jurisdictions for the 2020 calendar-year period. This is the first report under the renewed peer-review process. As indicated in the OECD's press release, 95 jurisdictions are now fully in line with Action 5, while the remaining 36 jurisdictions received one or more recommendations to improve their legal or operational framework for identifying and exchanging tax rulings.

See EY Tax Alert, OECD releases 2020 peer review report on BEPS Action 5 on the Exchange of Information of Tax Rulings, dated 17 December 2021.

Action 6: Developments at Inclusive Framework level: terms of reference revised as review continued

In April 2021, two important developments in relation to Action 6 took place. First, the third annual peer review report on the implementation of Action 6 was released. The report includes information available as of 30 June 2020 and covers 137 members of the Inclusive Framework by that date. The outcome of the peer review is mainly positive since most members seem to comply with the standards modifying their tax treaties, with the majority of them opting for the principal purpose test out of the three suggested methods to address potential treaty shopping under Action 6.

Second, the OECD released the revised peer review documents on Action 6. These documents consist of two sections: i) the terms of reference which constitute the assessment criteria for countries' implementation, and ii) the methodology to conduct the peer review. While the former remained unchanged, the changes observed under the latter mainly relate to the introduction of an assistance framework, where the members will be able to request assistance from the Secretariat with respect to their non-compliant agreements that could result in treaty-shopping opportunities.

For more details, see EY Tax Alert, OECD releases third annual peer review report and revised peer review documents on BEPS Action 6 relating to prevention of treaty abuse, dated 16 April 2021.

Country-specific developments: slow but steady treaty revisions

The implementation of Action 6 has been mainly progressing through the MLC to Implement Tax Treaty-Related Measures to Prevent BEPS (MLI). Some jurisdictions have also elected to implement Action 6 through bilateral tax treaties. In this respect, the Netherlands has concluded tax treaties with Cyprus (June 2021) and Chile (January 2021), which contain the treaty-based recommendations under Action 6. In 2021, Germany and various countries (for example, Cyprus, Denmark, Estonia, Ireland, Liechtenstein, Mexico, Netherlands and the UK) signed amending protocols of their existing tax treaties, introducing the "preamble language" suggested under Action 6 and the principal purpose test. That said, apart from Estonia, the amendments will not enter into force as of 1 January 2022. Also, in February 2021, France published guidelines to clarify certain provisions in its tax treaty with Luxembourg, including the treaty-based recommendations under Action 6 and, more specifically, guidance on how to apply the principal purpose test.

Action 13: Developments at the Inclusive Framework level: minimum standard still under revision

In October 2021, the OECD published the compilation of the outcomes of the fourth phase of peer reviews of Action 13. According to this publication, over 100 jurisdictions have now introduced a CbCR filing obligation. In most cases, where legislation is in place, the implementation is consistent with the minimum standard set under Action 13. Nonetheless, the report states that there are still some jurisdictions that need to either introduce, amend or finalize their domestic legal framework. In addition, the exchange relationships between the Inclusive Framework members keep increasing since over 80 jurisdictions have bilateral or multilateral competent authority agreements in place. Most of the assessed jurisdictions have also provided detailed information on the use of country-by-country reports.

Finally, the review of the BEPS Action 13 minimum standard which started in 2020 is still ongoing. Through the review, the Inclusive Framework will assess whether modifications will be made to the content and requirements contained in BEPS Action 13. The outcomes of this review are expected to be released in the coming months.

For more details, see EY Global Tax Alert, OECD releases outcomes of fourth phase of peer reviews on BEPS Action 13, dated 25 October 2021.

In 2021, the OECD also updated the transfer pricing (TP) country profiles of several jurisdictions, six of which (Albania, Angola, Kenya, Maldives, Romania and Tunisia) have been newly added to the list, leading the TP country profiles to 63 in total. The profiles, prepared by means of questionnaires filled out by the countries, focus on the domestic legislative measures based on major TP issues, including TP documentation. A new batch of country transfer-pricing profiles is expected to be released in the first half of 2022.

Country-specific developments: more jurisdictions implementing CbCR requirements

In 2021, the implementation of Action 13 continued in a considerable number of countries. Some countries (for example, Dominican Republic, Ukraine and Jordan) introduced for the first time legislation in line with the requirements set under Action 13. At the same time, countries like Kenya published a draft proposal for such implementation, which is still pending adoption.

Argentina, Denmark, India, Malaysia and Poland proceeded to modifications of their existing documentation obligations. Malta and the UK also altered their legislative documentation framework by implementing provisions with respect to penalties. Some other jurisdictions provided further guidance on their existing legislation by issuing public consultations (the UK), interpretation guidelines (Austria and Germany) or Frequently Asked Questions (Luxembourg and Qatar). Many countries also extended the deadline for the obligation of filing the documentation reports due to the delays caused by the coronavirus crisis or other unexpected conditions (for example, British Virgin Islands, Gabon, India, Nigeria, Oman, Poland, Qatar, South Africa, Turkey and Uruguay).

Action 14: Developments at Inclusive Framework level: peer review results show progress in implementing the minimum standard

In 2021, the Inclusive Framework also continued its review of the Action 14 minimum standard. This peer review is divided into two stages: Stage 1 reviews the implementation of Action 14 by the Inclusive Framework members, and Stage 2 examines how the Inclusive Framework members responded to the recommendations provided in relation to shortcomings identified in Stage 1. The Inclusive Framework members are divided into 10 batches, and a review for each batch is published in accordance with the assessment schedule. In 2021, the OECD released the tenth and last batch for Stage 1 and the fourth, fifth, sixth and seventh batch for Stage 2.

For more details, see EY global tax alerts:

- OECD releases 10th batch of peer review reports on BEPS Action 14 related to improving dispute resolution, dated 17 February 2021.
- OECD releases fourth batch of Stage 2 peer review reports on dispute resolution, dated 20 April 2021.
- OECD releases fifth batch of Stage 2 peer review reports on dispute resolution, dated 3 June 2021.
- OECD releases sixth batch of Stage 2 peer review reports on dispute resolution, dated 28 July 2021.
- OECD releases seventh batch of Stage 2 peer review reports on dispute resolution, dated 25 October 2021.

On 22 November 2021, the OECD held its Tax Certainty Day event, which provided an opportunity for tax policymakers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move toward further improvements in both dispute prevention and dispute resolution. During the event, the OECD also published the 2020 MAP statistics covering 118 jurisdictions and practically all MAP cases worldwide.

For more details, see EY Tax Alert, OECD releases 2020 mutual agreement procedure statistics and 2020 mutual agreement procedure awards, dated 30 November 2021.

Country-specific developments: different actions toward implementing the minimum standard

During the year under review, Spain adopted amendments on its MAP regulations which apply to MAP cases submitted from July 2019 and onwards. According to the new provisions, access is granted to an advisory committee to resolve double taxation disputes, while for specific situations, an alternative dispute resolution committee may be created following a call by the Spanish competent authority.

Some countries with existing MAP legislation issued guidance on applying the relevant provisions during 2021 (for example, Canada, Luxembourg, Morocco, Singapore and the UAE). At the same time, some jurisdictions preferred to introduce changes bilaterally, either by amending their existing tax treaties (Sweden-UK tax treaty) or by signing new ones in line with the treaty-based recommendations of Action 14 (Netherlands' tax treaties with Chile and Cyprus).

Furthermore, the UK signed a Memorandum of Understanding (MOU) to establish the mode of application of the arbitration process provided in the tax treaties with Australia and Switzerland. The MOU is comprehensive and reflects the mutual understanding between competent authorities on all aspects and stages of the arbitration process, from request to final decision and implementation thereof.

Multilateral Instrument (MLI) activity in 2021: the impact on tax treaties

In November 2016, the MLI was adopted by approximately 100 jurisdictions, including OECD member countries, G20 countries and other developed and developing countries. The purpose of the MLI is to implement all treaty-related measures in the BEPS plan by providing a flexible instrument to jurisdictions for implementing (parts of) the MLI in their existing bilateral tax treaties based on their needs.

Developments during 2021

As of 31 December 2021, 96 jurisdictions have signed the MLI and 67 jurisdictions have deposited their instrument of ratification with the OECD. Under standard rules, entry into effect for a specific Covered Tax Agreement is triggered by the latest ratification date. Nevertheless, this can differ in situations where a country has made a reservation. Reservations made by some countries have resulted in the delay of the ratification date. However, in 2021, some countries informed the Depositary that their internal processes have now been completed.

Under the MLI, the parties to the MLI may convene a Conference of the Parties to make any decisions or exercise any functions as may be required or appropriate under the provisions of the MLI. Any question arising as to the interpretation or implementation of the MLI may be addressed by a Conference of the Parties. In March 2021, the Conference of the Parties issued its first opinion regarding the entry into effect of the MLI with respect to taxes withheld at source in specific cases. Following this, in May 2021, the OECD published another opinion of the Conference of the Parties to the MLI, setting out six principles for interpretation and implementation of the MLI. Lastly, in September 2021, the OECD published two opinions of the Conference of the Parties to the MLI. One opinion addresses the application of the MLI provisions on the MAP, where questions were raised on the compatibility of existing treaty rules with those provisions. The other opinion addresses the application of the entry into effect of Part VI (Arbitration) and seeks to clarify when the provisions of Part VI will apply to existing cases in specific situations.

For more details, see EY Tax Alerts:

- OECD publishes Arbitration Profiles of 30 countries under the MLI and a clarification regarding entry into effect, dated 1 April 2021.
- OECD: Conference of the Parties of the MLI approve opinion for MLI interpretation and implementation, dated 26 May 2021.
- OECD: Conference of the Parties of the MLI issues two opinions with respect to MAP implementation and the entry into effect of arbitration rules, dated 7 October 2021.

Country-specific developments: progress is made while key players are missing

Namibia signed the MLI on 30 September 2021. Also, the following jurisdictions deposited the instrument of ratification of the MLI with the OECD Secretary-General, the Depositary of the MLI, during 2021:

Country	Date of deposit
Andorra	29 September 2021
Croatia	18 February 2021
Estonia	15 January 2021
Greece	30 March 2021
Hungary	25 March 2021
Malaysia	18 February 2021
Seychelles	14 December 2021
Spain	29 September 2021

Despite these developments, there are still ratifications missing from key countries. According to the Signatories and Parties (MLI Positions) of the OECD, an important number of members of G20 have not yet proceeded to the ratification of the MLI. This is the case for Argentina, China, Italy, Mexico, South Africa and Turkey. At the same time, there are still G20 members (Brazil and the US) that have not signed the MLI, as they have indicated that they are going to implement the minimum standard through bilateral negotiations.

Despite the fact that for the moment Romania forms part of the above list, it has taken action domestically for the ratification process of the MLI and is expected to deposit its instrument of ratification in 2022.

The MLI entered into force for 16 additional jurisdictions during 2021, as shown below:

Country	Entry into force
Albania	1 January 2021
Barbados	1 April 2021
Bosnia and Herzegovina	1 January 2021
Burkina Faso	1 February 2021
Chile	1 March 2021
Costa Rica	1 January 2021
Croatia	1 June 2021
Egypt	1 January 2021
Estonia	1 May 2021
Germany	1 April 2021
Greece	1 July 2021
Hungary	1 July 2021
Jordan	1 January 2021
Malaysia	1 June 2021
Pakistan	1 April 2021
Panama	1 March 2021

In 2021, the Arbitration Profiles of 30 jurisdictions were published, providing additional information on the application of Part VI (mandatory binding arbitration) of the MLI for each of those jurisdictions.

For more details, see EY Tax Alert, OECD publishes Arbitration Profiles of 30 countries under the MLI and a clarification regarding entry into effect, dated 1 April 2021.

EU sub-report: EU's objectives underlying tax policy initiatives

The EU Commission (the Commission) sees the tax system as a powerful instrument for facilitating transformation in society, including the investment climate.

a. To address environmental concerns and to deliver on commitments to the Paris Agreement, the EU Green Deal has set out policies to make Europe climate-neutral by 2050, with taxation playing a key role in building a low-carbon and resource-efficient European economy.

b. Globalization and digitalization prompt the EU to consider digital and minimum tax policies to balance the need for government funding and ensure competitiveness of EU businesses.

c. The increasing need for tax revenues in the EU is rooted in a European social model and government intervention prompted by demographic developments and, most recently, by the COVID-19 pandemic.

d. EU policymakers seek to make taxation in the EU fairer and simpler. Technological advancements can help tax authorities to become more efficient and provide more tax certainty to businesses.

In 2021, the Commission presented an ambitious tax policy agenda and intended to become a global tax policy trendsetter. The following analysis serves to summarize the latest EU initiatives.

Business tax developments in 2021

The EU has been a strong supporter of a global consensus-based solution within the framework of the OECD and has embraced the course of direction of BEPS 2.0 through its participation in the G20. In May 2021, the Commission presented a Communication on Business Taxation for the 21st Century. In this communication, the Commission presented its medium and long-term plan on business taxation and reflected on the European take on BEPS 2.0 going forward by announcing that the principal method for implementing Pillar One and Pillar Two in the EU would be through EU Directives that reflect the global agreement with the necessary adjustments to guarantee EU law compliance.

For more details, see EY Tax Alert, European Commission publishes Communication on Business Taxation for the 21st Century, dated 18 May 2021.

Pillar Two directive

On 22 December 2021, the Commission published a legislative proposal for a directive setting forth rules to ensure a global minimum level of taxation for multinational groups (the draft directive). The draft directive provides a common framework for implementing the Model Rules published by the OECD on 20 December into Member States' national laws in a coordinated manner, adjusted for EU law requirements, and taking into account specifics of the Single Market.

The draft directive generally follows the content of the Model Rules, with some key differences. Among others, it extends its scope to large-scale purely domestic groups to ensure compliance with the fundamental freedoms. In addition, the draft directive makes use of an option contemplated by the Inclusive Framework whereby the Member State of a constituent entity applying the IIR is required to ensure effective taxation at the minimum agreed level not only for foreign subsidiaries but also for all constituent entities resident in that Member State.

A day after the proposal's release, the Commission also launched a public consultation on the draft directive with a deadline in March 2022.

The proposal will now move to the negotiation phase among the Member States with the aim of reaching a final agreement. In the EU, the adoption of tax legislation requires unanimity between all 27 Member States. The Commission proposes that the Member States shall transpose the directive into their national laws by 31 December 2022 for the rules to come into effect as of 1 January 2023, with the exception of the UTPR, for which the application will be deferred to 1 January 2024.

For more details, see EY Global Tax Alert, European Commission proposes tax Directive for implementing BEPS 2.0 Pillar Two Model Rules in the EU, dated 22 December 2021.

UNSHELL

On 22 December 2021, the Commission published a legislative proposal for a directive laying down rules to prevent the misuse of shell entities for tax purposes (the draft directive, UNSHELL, and also referred to as ATAD 3). This initiative was earlier announced by the Commission in its Communication on Business Taxation for the 21st Century. The draft directive aims at introducing an EU-wide "substance test" to assist Member States in identifying undertakings that are engaged in an economic activity but which do not have minimal substance and, in the view of the Commission, are misused for the purpose of obtaining tax advantages ("shell companies"). The Commission proposes to attach consequences to the qualification of a company as a shell company for tax purposes, including denial of tax benefits and automatic exchange of information.

A day after the proposal's release, the Commission also launched a public consultation on the draft directive with a deadline in March 2022.

The Commission proposes that the Member States shall bring UNSHELL into force by 30 June 2023 and proposes that the Member States shall apply the rules from 1 January 2024. Adoption of this directive would require unanimity among the 27 Member States, while the European Parliament only has an advisory role. As for previous directives with respect to direct taxation, it is expected that many changes will be made to the proposal during the negotiation process. The final directive, if adopted at all, could differ significantly from the current proposal.

For more details, see EY Tax Alert, European Commission publishes draft Directive for preventing the misuse of shell entities (UNSHELL), dated 22 December 2021.

Forthcoming

The Commission has announced that, in the first quarter of 2022, it will issue a legislative proposal to introduce a Debt Equity Bias Reduction Allowance (referred to as DEBRA). The proposal will aim to encourage companies to finance their activities through equity rather than turning to debt, for example, through a "notional interest deduction." It will also incorporate anti-abuse measures to ensure that the allowance is not used for unintended purposes. It is expected that the proposal will take the form of a directive that requires unanimity among all Member States to be adopted.

In the longer term, the Commission will table in 2023 a proposal named BEFIT (Business in Europe: Framework for Income Taxation), which will replace the Common Consolidated Corporate Tax Base (CCCTB) proposal of 2011. BEFIT will consolidate the profits of the EU members of a multinational group into a single tax base, which will then be allocated to the Member States using a formula to be taxed at national corporate income tax rates. The use of a formula to allocate profits could remove the need for the application of complex transfer pricing rules within the EU for the companies within scope.

Transparency and tax reporting developments in 2021

In recent years, tax policymakers and administrators expect businesses and investors to be more and more transparent on their tax affairs. Achieving greater transparency is key to the EU's tax strategy too. The Commission is thus planning to expand public and administrative reporting obligations in the coming years.

Public CbCR

In 2021, EU negotiations on public CbCR, which were stuck for almost five years, were unlocked as a qualified majority of Member States was reached in support of the proposal. Negotiations among the Parliament, the Council and the Commission started in March and were concluded with a provisional legislative compromise on 1 June 2021. The proposal was formally adopted in late 2021, and the public CbCR directive entered into force on 21 December. Member States will have to transpose the directive into national legislation by 22 June 2023, and reporting will be required for reporting fiscal years starting on or after 22 June 2024 at the latest.

The rules set forth in the directive will require both EU-based MNEs and non-EU-based MNEs doing business in the EU through a branch or subsidiary with total consolidated revenue of more than €750 million in each of the last two consecutive financial years to disclose publicly the income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees per country. Such information needs to be disclosed for all 27 EU Member States and all jurisdictions included in Annex I and Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes (so-called EU blacklist and gray list). For all other jurisdictions, it is sufficient for aggregated data to be disclosed.

For more details, see EY Tax Alert, EU Public CbCR Directive enters into force on 21 December 2021, dated 2 December 2021.

Forthcoming

The Commission has announced its plans to table a legislative proposal for the publication of ETRs paid by large companies, based on the methodology under discussion in BEPS Pillar Two. Publication of the proposal is expected in the first quarter of 2022.

In addition, in 2022, the Commission will propose a further expansion of reporting requirements and exchange of information under the Directive on Administrative Cooperation (DAC) through the adoption of crypto-asset reporting (DAC8). A new reporting obligation for online platforms (DAC7) was already adopted in 2020 and will apply as of 1 January 2023, with the first reporting of data by 31 January 2024.

Other proposals in 2021 linked to recovery

In July 2020, the leaders of the 27 EU Member States agreed on a recovery plan in response to the COVID-19 economy crisis, including the establishment of NextGenerationEU. The agreement also included the introduction of EU-wide taxes and levies to complement the own existing resources, including an EU-wide digital levy.

For more details, see EY tax alert, European Council adopts conclusions on recovery plan and EU budget for 2021-2027, including agreement on introduction of new taxes, dated 22 July 2020.

New EU-own resources

The Commission issued on 22 December 2021 a communication on the next generation of the EU-own resources for the EU budget. The communication outlines the Commission's plans to use part of the revenue generated by three new legislative proposals to finance the EU budget.

The three new own resources are:

- 25% of the revenues generated by EU emissions trading (Revenues for the EU budget are estimated at around €9 billion per year over the period 2023-30.)
- 75% of the revenues generated by a carbon border adjustment mechanism (Revenues for the EU budget are estimated at around EUR 0.5 billion per year over the period 2023-30.)
- 15% of a share of the residual profits of the largest and most profitable multinational enterprises that are reallocated to EU Member States under the global agreement (According to the Commission's own resources proposal, Member States would provide a national contribution to the EU budget based on the share of the taxable profits of multinational enterprises reallocated to each Member State under Pillar One. Revenues for the EU budget could amount to up to €2.5-€4 billion per year.)

The latter would replace earlier plans to introduce an EU Digital Levy. Following the high-level agreement on Pillar One in the Inclusive Framework this summer, the development of such levy was formally put "on hold." However, if the Inclusive Framework fails to implement Pillar One, the EU may reconsider introducing an EU Digital Levy to close the EU's revenue gap.

Together with the Communication, the Commission also published the proposal for amendments to the decision to reflect the three new EU own resources and the proposal for revisions of the regulation establishing the 2021 to 2027 multinational financial framework (MFF).

Furthermore, the Commission will present a proposal for a second basket of new own resources by the end of 2023 that will include a Financial Transaction Tax and an own resource linked to the corporate sector.

For more details, see EY Tax Alert, European Commission proposes that green levies and Pillar One help finance EU recovery fund, dated 22 December 2021.

Code of Conduct Group and EU list

The Code of Conduct on Business Taxation (CoC) was adopted in 1997, reflecting a political commitment by the Member States to curb harmful tax competition. The original focus of the Code of Conduct was on EU Member States. However, they also committed to promoting the adoption of good tax governance principles by third countries and in territories to which EU treaties do not apply.

One of the Code of Conduct group's main tasks is the preparation of the revision of the EU list of non-cooperative jurisdictions for tax purposes (EU list). On 5 December 2017, the Council published the first EU list comprised of two annexes. Annex I (the so-called "black" list) includes jurisdictions that fail to meet the EU's criteria by the required deadline, and Annex II (the so-called "gray" list) includes jurisdictions that have undertaken sufficient commitments to reform their tax policies, but also remain subject to close monitoring. The listing criteria are focused on three main categories: tax transparency, fair taxation and implementation of anti-BEPS measures. The list is updated on a regular basis.

Updates to the EU list

The EU list was updated twice in 2021, on 22 February and on 5 October. Currently, the list is as follows:

- Annex I includes American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, and Vanuatu.
- Annex II includes Anguilla, Barbados, Botswana, Costa Rica, Dominica, Hong Kong, Jamaica, Jordan, Malaysia, North Macedonia, Qatar, Seychelles, Thailand, Turkey and Uruguay.

At the February update of the list, Barbados was removed from Annex I and Dominica was added as it received a "partially compliant" rating from the Global Forum and has not yet resolved this issue. Even though the EU ministers mention in the conclusions that they regret that Turkey has not made material progress in the effective implementation of the automatic exchange of information with all EU Member States, Turkey was finally not included in the blacklist. The EU ministers warned that Turkey will be added to the blacklist in one of the next updates if it does not fulfill its commitments by the agreed deadlines.

For more details, see EY Tax Alert, EU Member States adopt revised list of non-cooperative jurisdictions for tax purposes, dated 24 February 2021.

In October, the Council decided to remove Anguilla, Seychelles and Dominica from Annex I. Changes were also made to Annex II of the EU list that reflects the state of play of pending commitments:

- Costa Rica, Hong Kong, Malaysia and Uruguay were added following the review of their foreign-source income exemption regimes and their commitments to abolish these regimes by 2022.
- North Macedonia and Qatar also newly committed to abolish harmful regimes by 2022.
- Australia, Eswatini and Maldives were removed.

Turkey continues to be mentioned in Annex II even though further steps need to be taken for its commitment to automatic information exchange with all Member States.

For more details, see EY Tax Alert, Member States adopt revised list of non-cooperative jurisdictions for tax purposes, dated 6 October 2021.

The Member States will continue to review and update the EU List biannually, with the next update due in February 2022.

Also, as of 1 January 2021, Member States should apply at least one of the below legislative defensive measures against jurisdictions listed on the EU list:

- Non-deductibility of costs incurred in a listed jurisdiction (for example, in Belgium, France and Luxembourg)

- CFC rules to limit artificial deferral of tax to offshore and low-taxed entities (for example, in Belgium, France, Ireland, Lithuania, Netherlands, Poland and Portugal)
- Withholding tax measures (WHT) to tackle improper exemptions or refunds (for example, in Croatia, France, Netherlands and Portugal)
- Limitation of the participation exemption on shareholder dividends (for example, in Belgium, France, Lithuania and Portugal)

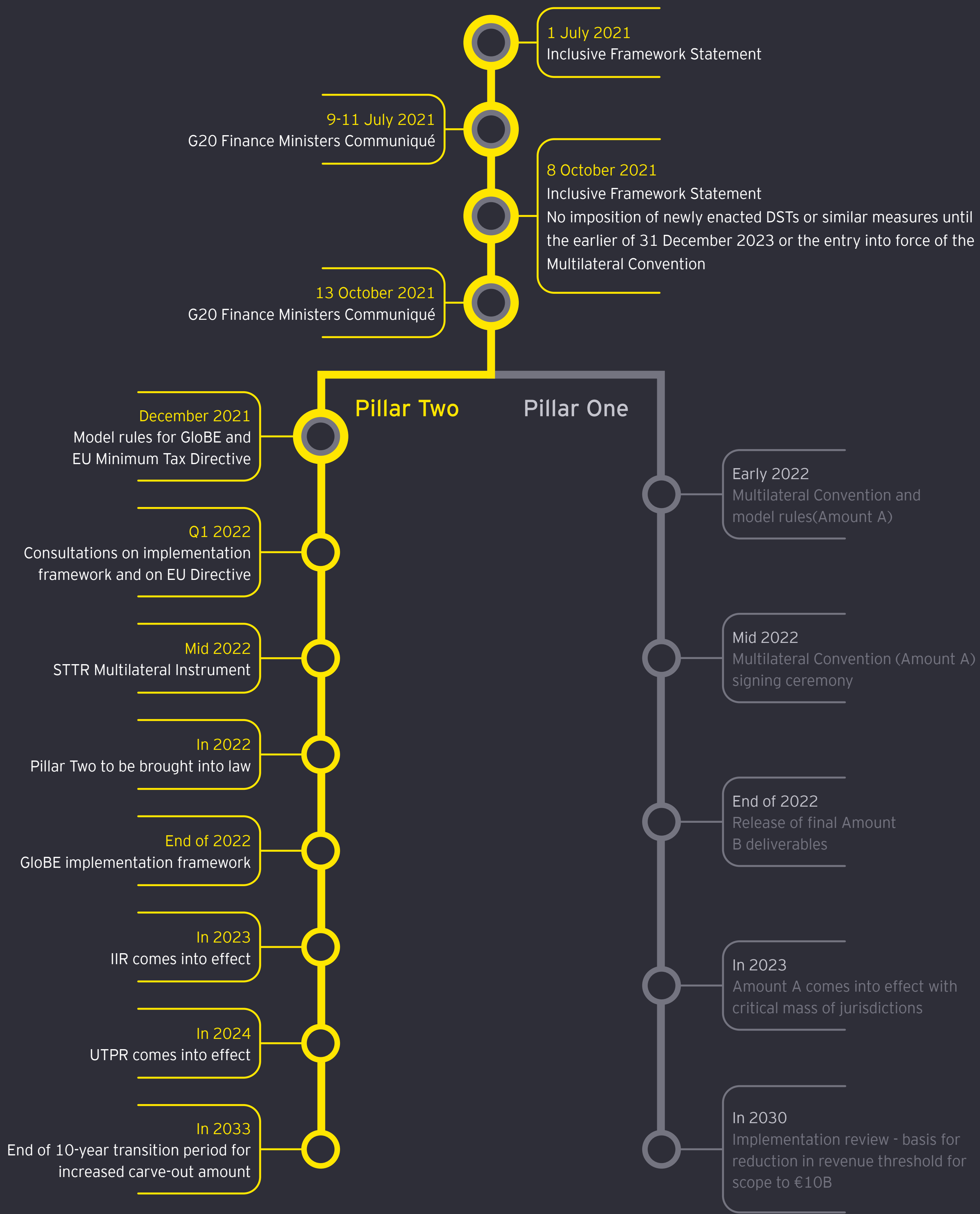
Revision of CoC mandate

In its communication of 15 July, the Commission suggested that the Member States make the Code of Conduct an important instrument to implement minimum tax policies and to effectively tackle all forms of harmful tax competition in a more transparent manner.

For more details, see EY Tax Alert, European Commission publishes communication on intensifying the work on tax transparency and harmful tax competition by means of advocating tax good governance in the EU and beyond, dated 20 July 2020.

In light of the Commission's recommendations, the Member States held negotiations on the revision of the mandate in 2021 and published a draft proposal in November. The proposal would, among others, expand the scope of the code to tax features of general application that create opportunities for double non-taxation or that can lead to the double or multiple use of tax benefits for the same amount of income. The draft proposal for the revised mandate was discussed during the finance ministers' meeting on 7 December, however, no agreement was reached as two Member States were against the proposal. Negotiations will continue in the next months with a possible adoption of a revised mandate next year.

Annex I: BEPS 2.0 – the path forward



Annex II: Timeline of key EU tax proposals in 2021 and beyond

Timeline EU Development		Pillar Two Directive	UNSHELL	ETR publication	Public CbCR	DEBRA
2021	Q1					
	Q2					
	Q3					
	Q4	22 December	22 December		21 December	
2022	Q1			Expected in 2022		
	Q2					11 May
	Q3	Expected in Q3	Expected in Q3			
	Q4					
2023	Q1	1 January (IIR)				
	Q2		30 June		22 June	
	Q3					
	Q4					
2024	Q1	1 January (UTPR)	1 January	Expected in 2024		
	Q2				22 June	
	Q3					
	Q4					

Proposal | Transposition | Entry into Effect

Annex III: Timeline of Commission's Communication on Business Taxation for the 21st century (May 2021)

Action #	Action	Means	Timing
A1	Publication of effective tax rates paid by large companies	Legislative initiative – Proposal for Directive	2022
A2	ATAD3/UNSHELL	Legislative initiative – Proposal for Directive. A n initial consultation was launched in Q2 2021.	22 December 2021
A3	Recommendation on the domestic treatment of losses	No hard law but recommendation for the Member states	Adopted on 18 May 2021
A4	Debt Equity Bias Reduction Allowance (DEBRA)	Legislative initiative – Proposal for Directive	Q1 2022
A5	Business in Europe: Framework for Income Taxation" (BEFIT)	Legislative initiative – Proposal for Directive that would replace CCCTB proposal.	2023

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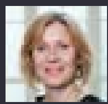

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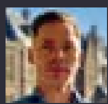

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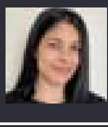

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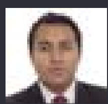

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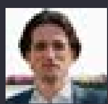

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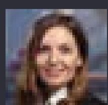

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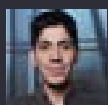

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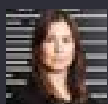

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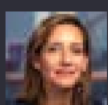

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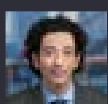

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