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Global Tax Alert

The Latest on BEPS and Beyond

June 2022

EY Tax News Update: Global Edition

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Highlights

For months now, all eyes have been on the European Union (EU) to see whether the EU Member States will be the first in adopting the GloBE (Global Anti-Base Erosion) minimum tax rules. On 17 June 2022, there was another Economic and Financial Affairs Council (ECOFIN) meeting bringing together the Ministers of Finance of all Member States. And while the news had come out that Poland would be giving up its veto of the Pillar Two Directive, rumors had also started to spread that Hungary would be changing its position and vote against the Directive. And that is exactly how the ECOFIN meeting turned out, again leaving the EU with one Member State blocking the Directive. This saw the French Chair, Bruno Le Maire, once again expressing France's support for a qualified majority, instead of unanimity voting in the tax area.

A need for certainty

It's an interesting and frustrating process for policy-watchers like us. It's a bit like watching a new season of one's favorite series and then finding out at the end of the last episode that it is "to be continued." It also raises the question of how many more seasons will follow. On the one hand, there is the desire to see more seasons to get deeper into the story. On the other hand, one really wants to know how the story finishes. This is a good analogy for how many businesses are feeling about the negotiations of the EU Pillar Two Directive. Businesses have started their Pillar Two implementation planning and processes, and the level of complexity and uncertainty is clear.

Building a better working world

There's a clear need for more time: both to prepare for implementation and for governments to carefully consider meaningful simplifications and clarifications. In summary, certainty for businesses is needed so they can assess the full potential impact and plan for an efficient implementation.

Looking to the future

As tax policy-watchers, we are already looking ahead. We are trying to assess how likely it is that Hungary will reverse its veto. Are the ingredients there for a compromise to be reached, similar to what was achieved with Poland? And if not, what will be the consequence if Hungary continues to block the consensus? On that question, some members of the European Parliament have already provided a suggestion, moving forward with the 26 supporting Member States under a procedure called Enhanced Cooperation. This procedure allows EU Member States to take joint legislative action in smaller groups. We are keenly waiting to see whether the European Commission and Member States may consider this procedure for the first time in the tax area.

As a policy group we will continue to monitor the situation and as of 1 June, we are even better positioned to do so! We are proud to announce that the EY EMEIA Tax Policy Group has opened the EU Tax Policy Hub in Brussels, led by Maikel Evers. From now on, we will no longer be following EU developments remotely, but will be where the important EU developments are taking place. We believe that this will allow us to be able to provide even better insights and services to businesses going forward.

OECD

Update of transfer pricing country profiles

On 9 June 2022, the OECD published updated transfer pricing (TP) country profiles reflecting the current TP legislation and practices of certain jurisdictions. In this update, four new jurisdictions were added (Egypt, Liberia, Saudi Arabia, and Sri Lanka). The information in these profiles intends to reflect the current state of the respective countries' legislation and to what extent their rules follow the OECD TP Guidelines.

Currently, the TP country profiles cover 73 jurisdictions, and the OECD expects to release additional updates as changes in legislation or practice are submitted to the OECD Secretariat.

Estonia and Spain make notifications of the MLI to the OECD

On 1 June 2022, both Estonia and Spain made a notification confirming the completion of their internal procedures for the entry into effect of the provisions of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) with respect to 14 and 50 of their covered tax agreements (CTAs), respectively. In accordance with Article 35(7)(a), both jurisdictions had reserved the right to delay the entry into effect of the provisions of the MLI until they completed their internal procedures for this purpose. Now that both jurisdictions have notified the completion of their internal procedures with respect to the covered CTAs, the rule on entry into effect set out in Article 35(1) and (5) of the MLI would apply as of 1 July 2022, 30 days after the Depositary has received the notification from Estonia and Spain that they have completed their internal procedures.

Public consultation on Tax Certainty under Amount A for Pillar One

On 27 May 2022, the OECD Secretariat released two public consultation documents regarding the Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A for Pillar One of the OECD/G20 project on *Addressing the Tax Challenges Arising from the Digitalisation of the Economy* (the BEPS 2.0 project).

The Tax Certainty Framework for Amount A provides a new approach to resolving disputes under Amount A. It combines elements of dispute prevention and dispute resolution in a structured, binding process that provides certainty to Groups in a timely manner. For this, the document describes three mechanisms to provide certainty over aspects of Amount A, each of which is voluntary for the Groups. In each of these, the Lead Tax Administration, typically the tax administration of the Group's Ultimate Parent Entity, plays a key role in coordinating the process and engaging with the group. These mechanisms are: (i) Scope Certainty Review; (ii) Advance Certainty Review; and (iii) Comprehensive Certainty Review.

The second consultation document on Tax Certainty for Issues Related to Amount A contains draft provisions setting out a mandatory binding mechanism to resolve TP and permanent establishment profit attribution disputes that Competent Authorities are unable to resolve through the Mutual Agreement Procedure (MAP) within two years of the presentation of the MAP case to these Competent Authorities.

See EY Global Tax Alert, *OECD releases public consultation documents on tax certainty under Amount A for Pillar One*, dated 7 June 2022.

China and Hong Kong deposit their instrument of ratification of the MLI

On 25 May 2022, China and Hong Kong deposited their instrument of ratification of the MLI with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, both jurisdictions confirmed their preliminary MLI positions. China removed its agreements with New Zealand and Spain from the list of its CTAs and added its agreement with Gabon to the list of CTAs. Likewise, Hong Kong added its agreements with Cambodia, India, and Saudi Arabia to its list of CTAs. The MLI will enter into force for both jurisdictions on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of their instrument of ratification, i.e., on 1 September 2022.

Report for the G7: Tax Co-operation for the 21st Century

On 20 May 2022, the OECD published a report on the discussions at the May 2022 meeting of G7 Finance Ministers and Central Bank Governors at the request of the G7 German Presidency. The Report considers the implications of international tax developments over the last years, including the adoption of the BEPS 2.0 project for tax administrations.

The Report is divided into three sections, and each section contains a set of recommendations. The first section addresses the corporate tax landscape and the need for simple, collaborative, and digital administration of common rules. The second section includes topics beyond corporate tax, such as how the international information exchange architecture could evolve, with a view to improving timeliness through real-time data availability and incorporating compliance by design. Lastly, the third section describes how the G7 could assist developing countries in the implementation of the BEPS 2.0 project.

United Nations

UNCTD releases World Investment Report 2022

On 9 June 2022, the United Nations (UN) Conference on Trade and Development (UNCTD) released the World Investment Report 2022: International Tax Reforms and Sustainable Investment, together with an Overview document.

The Report is divided into four Chapters. Chapter three of the Report examines the impact of the global minimum tax under the OECD Pillar Two on Foreign Direct investment (FDI) using a new metric based on the income reported in the host country and the income generated in the host country but shifted to low tax jurisdictions (FDI-level ETR).

Based on the FDI-level ETR, the Report concludes that the introduction of a global minimum tax will increase the Effective Tax Rate (ETR) by 2%. Although the tax revenues of both developed and developing countries are expected to rise due to the ETR increase, the latter is also expected to result in a decrease in FDI activities. However, this reduction is expected to be balanced in high tax jurisdictions because the global minimum tax will result in a reduction in tax rate differentials and, subsequently, a diversion of investment from low to high tax jurisdictions.

The Report also advises that the interest of developing countries should not be disregarded, and cooperation and technical assistance are key in that respect. In addition, according to the Report, "no country can afford to ignore Pillar Two," while national policies like the provision of tax incentives will be severely impacted.

The Report also emphasizes the need for investment promotion agencies to reconsider how they use tax incentives and special economic zones to attract investment in light of the new constraints that a global minimum tax would impose.

UN sends letter to the OECD, G20 Presidency, G24, G77 and delegation of the EU to the UN on BEPS 2.0

On 30 March 2022, a group of independent human rights experts, appointed and mandated by the United Nations Human Rights Council, sent letters to the OECD, G20 Presidency, G24, G77, and the delegation of the EU to the UN regarding the connection between BEPS 2.0 and human rights. The letters were recently published and are similar in content. The letters complain about the substance and process of the BEPS 2.0 project. In particular, the UN independent experts challenge the OECD to explain why the project is not a human rights violation.

The main concerns on the two-pillar solution include the following: (i) it would significantly undermine the revenue collection and taxing rights of low and middle-income countries; (ii) Pillar One is likely to reduce the tax base and decrease tax revenues; (iii) other alternatives were not given serious analysis and consideration, such as the G-24-proposal on "Significant Economic Presence"; and (iv) division in residual profits (subject to re-allocation) and other profits (subject to the existing TP system) provided under Pillar One results will facilitate aggressive tax planning and tax evasion.

To seek clarification on the issues contained in the letters, a number of questions were included (e.g., grounds to reject alternative proposals; if any compensation for the lost revenue is intended, for example, through a supplementary tax; next steps for the implementation of the agreement and how these would allow for the participation of all countries on equal footing).

Recipients were invited to send their comments and observations. The OECD has replied to the letter by rejecting that the Two-Pillar Solution could be considered to be an actual or potential violation of human rights. The OECD concludes the letter by mentioning that the place for discussion of any substantive issues concerning the Two-Pillar Solution is among the members of the BEPS Inclusive Framework.

European Union

EU Finance Ministers are unable to adopt Pillar Two Directive as Hungary changes position

On 17 June 2022, the Council of the EU (the Council) held an ECOFIN meeting where Finance Ministers publicly discussed the Proposal for a Directive on ensuring a global minimum level of taxation for multinational groups in the EU (the Pillar Two Directive). The discussion took place following the ECOFIN meeting of 5 April, where EU Finance Ministers were unable to reach agreement as Poland did not support the Directive.

During the public debate, Poland dropped its reservation and expressed support for the Directive. Poland mentioned that it has now received the relevant assurances on the link between the introduction of both Pillar One and Pillar Two.

However, Hungary, who supported the Directive in the ECOFIN meeting of 5 April changed its position and objected to the adoption. Hungary expressed concerns about the Directive, referring to undesirable delays of Pillar One and mentioning the Ukraine war as a new circumstance.

The draft Directive requires a unanimous decision for adoption. French Minister Bruno Le Maire said that he remains optimistic, and he still hopes to reach agreement during the French Presidency. On 1 July 2022, the Czech Republic takes over the EU Council Presidency from France.

See EY Global Tax Alert, *EU Finance Ministers are unable to adopt Pillar Two Directive as Hungary changes position*, dated 17 June 2022.

European Commission announces new initiative to tackle the role of enablers in aggressive tax planning

On 14 June 2022, the European Commission (the Commission) announced a new initiative named "Tackling the role of enablers involved in facilitating tax evasion and aggressive tax planning in the European Union." The objective of the Commission is to develop a set of rules that will limit the possibilities of enablers (e.g., tax advisers, lawyers, accountants) to create structures that result in tax evasion or aggressive tax planning by taking advantage of loopholes and differences existing in and between the various national tax systems and double tax treaties.

The status of the Directive is "upcoming." A public consultation is planned for the second quarter of 2022, and adoption is expected by the fourth quarter of 2022.

The Commission opens public consultation on DEBRA proposal

On 13 May 2022, the Commission launched a public consultation on the Directive Proposal on Debt-Equity Bias Reduction Allowance (DEBRA), allowing the public to provide feedback through a comments box and attach free-form feedback. The Commission will summarize the feedback received and present it to the European Parliament and Council, aiming to contribute to the legislative debate.

The consultation runs until 29 July 2022, and the feedback will be published on the site of the Commission.

Country developments

Chile clarifies the application of general anti-avoidance rule on a group reorganization

On 28 April 2022, the Internal Revenue Service (IRS) of Chile published Ruling 1414 (available here, in Spanish), analyzing the application of the general anti-avoidance rule in the context of a business reorganization. In this case, a group outsourced to third parties most of the administrative and accounting services of the group. The group planned to incorporate a new company to provide exclusively administrative and accounting services to companies of the same group. When providing these services, the new company would invest the group's liquidity in investment funds under the instructions of the companies of the group.

The taxpayer requested the IRS to confirm whether such business reorganization could be regarded as being legitimate for business purposes instead of being regarded as tax avoidance. The IRS concluded that based on the facts presented by the taxpayer, such business reorganization does not constitute tax avoidance. This is because the purpose of the business reorganization would be to concentrate the provision of services. Furthermore, the taxpayer has the right to organize its activities and businesses to the best of its interests, be allowed to choose from other tax alternatives, and even pick the least burdensome.

The IRS also confirmed that the provision of funds to the new entity destined to be invested would not be subject to Value Added Tax (VAT) and that the services provided in general by said entity also were not subject to VAT.

Dominican Republic releases public consultation on MAP provision and draft rules on granting tax treaty benefits

On 26 May 2022, the Dominican Republic released a public consultation seeking comments on the draft provisions for the MAP. The draft rules set forth general rules on the MAP. They include how to submit a MAP request that should be submitted within the term specified by the relevant tax treaty. Once submitted, the competent authority would analyze the content of the MAP request within 30 working days, and the taxpayer may be required to provide additional documentation and clarifications. If a request is accepted, the competent authority will determine whether it can resolve the issue unilaterally. If not, the competent authority of the other Contracting State will be notified.

On the same date, the Dominican Republic released a public consultation seeking input on granting benefits included in tax treaties. The consultation document includes a process to grant tax treaty benefits which will be applied through a tax refund. For this, taxpayers should file a formal request with some general information. The tax authorities would analyze the content of the request and subsequently issue an opinion within 10 working days after the date of request. In some cases, tax authorities may require the taxpayer to provide additional information or documentation, which must be submitted within 15 working days.

Both consultation documents run until 30 June 2022.

Finnish Tax Administration issues Press Release regarding tax evasion schemes

On 8 June 2022, the Finnish Tax Administration issued a Press Release stating that it has detected multiple companies enabling tax evasion and tax avoidance using malicious activity and, in particular legislative loopholes in the Finnish tax system. Examples of these schemes are the establishment of conduit companies and the involvement in cum/ex and cum/cum dividend transactions. The Finnish Tax Administration estimates that Finland has lost approximately €80m in withholding taxes between 2018 to 2021 due to such tax evasion and avoidance.

According to the Press Release, the next step for the Finnish Tax Administration is to combat tax evasion by controlling operations related to refunds of tax at source using the OECD initiative named Treaty Relief and Compliance Enhancement (TRACE).

Finnish Tax Administration releases Guidance on reverse hybrid entities rules

On 27 May 2022, the Finnish Tax Administration released an update to the Guidance on hybrid mismatch rules. This update includes a new section on reverse hybrid entities. Below is a high-level summary of the key elements of the updated Guidance on hybrid mismatch rules. Refer to the actual Guidance for further details.

According to the Guidance, a reverse hybrid entity for Finnish tax purposes is defined as a Finnish partnership, which is treated as a separate taxpayer under the laws of another state. The new section describes situations where taxation of income of reverse hybrid entities takes place in Finland.

In particular, a share of income received by a nonresident taxpayer from a Finnish reverse hybrid entity would be taxable in Finland if: (i) the nonresident holds at least 50% of the voting rights (directly or indirectly), capital or at least 50% of the profits of the reverse hybrid entity; (ii) the state of residence of the partner(s) does not tax the share of income because it considers the reverse hybrid entity to be a separate taxable person (i.e., tax opaque); and (iii) the income is not taxed in Finland under any other provision.

The Guidance also introduces an exception for widely-held and diversified alternative investment funds within the meaning of the Alternative Fund Managers Act (i.e., the Finnish implementation of the AIFM Directive). Accordingly, if a reverse hybrid entity is such an alternative investment fund, the reverse hybrid rules may not apply.

Greece releases public consultation on reverse hybrid mismatch rule

On 30 May 2022, the Greek Ministry of Finance released a public consultation on draft legislation for the implementation of the reverse hybrid mismatch rules of the Council Directive (EU) 2017/952 (ATAD II). This provision counteracts hybrid mismatches resulting from reverse hybrid entities, i.e., entities that are considered transparent from a Greek tax perspective and if at least 50% of the voting rights, capital interests or profit rights in the entity are directly or indirectly held by related parties that are resident in a jurisdiction that qualifies the entity as non-transparent. In such a case, the reverse hybrid entity would become subject to corporate income tax in Greece. The provision also includes an exemption for collective investment vehicles meeting certain conditions.

The consultation ran until 14 June 2022 and would apply retroactively from 1 January 2022.

Indonesia confirms its commitment to implement BEPS 2.0

On 19 May 2022, the Indonesia Government through the Ministry of Finance published an article on the BEPS 2.0 project which states that Indonesia is ready to implement Pillar One and Pillar Two. This statement comes from the Deputy Minister of Finance who, in the Global Tax Policy Webinar organized by the Harvard Kennedy School - Irish Tax Institute, said that Indonesia is looking forward to the implementation of Pillar One and Pillar Two. In particular, the article confirms that Indonesia welcomes the global minimum tax to mobilize domestic resources as well as to attract funding from foreign investors.

Ireland launches public consultation on the implementation of Pillar Two

On 26 May 2022, Ireland opened a Public Consultation on how the OECD's Pillar Two framework will be implemented into Irish law. The consultation seeks stakeholder views on the transposition of Pillar Two into Irish law and sets out a series of questions. The consultation document notes that upon final agreement of the text, the primary basis for the transposition of the Pillar Two agreement in Ireland will be the EU Minimum Tax Directive. It is intended that the rules will be transposed into Irish law via future Finance Act(s) and anticipated that each jurisdiction applying a Qualified Domestic Top-Up Tax (QDTUT) becomes a "safe habour" for the purposes of satisfying the requirements of the Income Inclusion Rule and Under-Taxed Profits Rule under Pillar Two.

The consultation also notes that "[i]t is very likely that Ireland will introduce a QDTUT as part of the Pillar Two implementation process."

The consultation runs until 22 July 2022.

See EY Global Tax Alert, *Ireland launches consultation on Pillar Two implementation*, dated 31 May 2022.

Italy issues Guidance clarifying the application of the arm's-length principle

On 24 May 2022, the Italian tax authorities published Circular No. 16/E of 24 May 2022, providing Guidance on the application of the arm's-length principle. The Circular includes the following clarifications: (i) the calculation of the arm's-length range should follow the basis of the OECD TP Guidelines; (ii) if the transactions identified are equally comparable, any value within the range will be acceptable; (iii) if identified transactions do not have the same degree of comparability, the narrower range, e.g., the interquartile range, should be chosen; (iv) the median of the range would be limited to cases in which the range does not include values that have a sufficient level of comparability, in these cases, the tax authorities should properly explain the reasons.

Luxembourg and United Kingdom sign new double tax treaty

On 7 June 2022, Luxembourg and the United Kingdom (UK) signed a new double tax treaty (the DTT) which will replace the DTT signed in 1967. The new DTT will enter into force following the completion of the ratification process in both jurisdictions.

The new DTT includes (but is not limited to) the following key updates:

- New preamble language, which clarifies that the tax treaty is intended to eliminate double taxation with respect to taxes on income and on capital gains without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.
- An update to the residence tie-breaker provision to align with the OECD model convention under which mutual agreement between contracting states shall be reached to determine the tax residency of a person other than an individual that would be resident in both contracting states (as opposed to the existing tie-breaker based on effective management). However, the Protocol sets out that, where the status of a company was determined under the existing treaty, neither the UK nor Luxembourg will seek to revisit that determination so long as all the material facts remain the same.
- All dividends (except dividends paid from income derived from immovable property by an investment vehicle) are now exempt from withholding tax, provided the receiving company is the beneficial owner. In addition, Article 12 has been amended to remove the 5% withholding tax on royalties paid by both the UK and Luxembourg.
- Article 13 governing capital gains now allows gains derived by a resident of a Contracting State from the disposal of shares or comparable interests, such as interests in a partnership or trust, deriving more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in the other Contracting State to be taxed in that other state.
- In line with the commitments taken within the framework of the MLI initiative for implementing BEPS in DTTs, the new DTT contains a Principal Purpose Test (PPT).

See EY Global Tax Alert, *Luxembourg and the United Kingdom sign new double tax treaty*, dated 20 June 2022.

Luxembourg's Council of Ministers approves draft bill implementing DAC7

On 1 June 2022, the Council of Ministers of Luxembourg approved an amendment to the Act on International Cooperation in Tax Administration, implementing the Directive on Administrative Cooperation (DAC7) to expand reporting obligations and exchange of information to cover sales through digital platforms.

The amendment provides closer international cooperation and the possibility of carrying out joint tax audits with the participation of several EU Member States. Companies will be required to report on a yearly basis to Luxembourg Tax Authorities, by the end of January, specific information, such as the seller's identification and the income realized from the usage of the platform for the previous calendar year.

The amendment still needs to be approved by the Chamber of Representatives, but the implementation is expected by 31 December 2022, and the bill would be applicable as of 1 January 2023. An exception is provided for joint audits for which implementation and application are expected to be delayed for one year.

Luxembourg Tax Authority issues Guidance on defensive measures related to EU-listed non-cooperative jurisdictions

On 31 May 2022, Luxembourg's Inland Revenue issued Circular L.I.R. 168/2 on defensive tax measures against jurisdictions listed in Annex I of the EU List (the so-called "EU Blacklist"). According to the defensive measure, under certain circumstances, the deduction of interest and royalties owed by Luxembourg corporate taxpayers to related enterprises established in an EU-listed jurisdiction is denied. The Circular also specifies the three conditions to be met in order for the defensive measures to apply and the exclusion from the scope of the Luxembourg interest limitation rules of any interest that cannot be deducted under the defensive measures introduced.

The taxpayer can fall outside the scope of the defensive measures if it is proved that the transaction was implemented for valid business reasons, which reflects economic reality, and such economic advantage needs to exceed any potential tax benefit resulting from the transaction. The Guidance confirmed that a ruling could be filed with the Luxembourg Tax Authority to confirm in advance if the business reasons represent economic reality.

See EY Global Tax Alert, *Luxembourg Tax Authority issues Guidance on defensive measure related to EU-listed non-cooperative jurisdictions*, dated 9 June 2022.

Malaysia confirms its commitment to implement Pillar One and Pillar Two

On 3 June 2022, Malaysia released its 2023 Pre-Budget Statement. Among other items, it includes a section on Malaysia's commitment at the international level. In this section, Malaysia confirmed that it has implemented the four minimum standards of the BEPS Action Plan and that it continues to review the rest of the Action Plan under Malaysia's domestic laws. Crucially, the Pre-Budget Statement reveals that Malaysia is currently reviewing technical details of Pillar One and Pillar Two as well as exploring the possibility of introducing a Pillar Two QDTUT.

Malta releases FAQs on DAC6

On 29 April 2022, the Maltese Office of the Commissioner for Revenue published Frequently Asked Questions (FAQs) on the Mandatory Automatic Exchange of Information in relation to Cross-Border Arrangements (DAC6).

The document is divided into three sections. The first section provides clarifications with respect to when an intermediary is subject to reporting requirements. Under the second section, guidelines are provided with respect to reporting deadlines and obligations. Finally, under the third section, responses to other general questions are provided, e.g., who is liable for paying the penalties.

The list is expected to be updated regularly with developments and potential interpretations of the rules.

Mauritius publishes Budget Speech for 2022-2023

On 7 June 2022, the Mauritian Ministry of Finance, Economic Planning and Development published the Budget Speech for 2022-2023. Among others, the speech included a reference to the introduction of a domestic top-up tax with the aim of ensuring that Mauritian companies, members of multinational enterprises, are taxed at a minimum rate of 15%. The Budget Speech is accompanied by an Annex to Budget, including explanatory notes on the main provisions to be included in the "Finance (miscellaneous provisions) Bill 2022." According to the Annex, amendments will be introduced to the *Income Tax Act* to ensure the implementation of the domestic top-up tax provision. This provision, in line with the OECD Pillar Two Model Rules, will apply to companies resident in Mauritius which are part of multinational enterprise groups with global annual revenue of €750 million.

Netherlands' tax policy agenda addresses Pillar One, Pillar Two and Unshell proposal

On 3 June 2022, the Dutch State Secretary for Finance sent a letter to the Dutch House of Representatives and published several attachments regarding the status of the Dutch tax policy agenda. According to the State Secretary, in the coming period, the emphasis in the fight against tax avoidance will be on measures adopted at the international level.

Accordingly, the Dutch Government is committed to an effective implementation of the agreement within the Inclusive Framework of the OECD. The Government is therefore taking a positive and constructive approach towards the European initiative in that respect, i.e., the Pillar Two Directive. In that respect, it was noted that the announced removal of the "substantial economic activity" exception for the Controlled Foreign Company provision would not be introduced unilaterally if Pillar Two is implemented pursuant to the EU Directive.

In addition, the Dutch Government also supports the introduction and adoption of Pillar One within the EU and endorses the Unshell Proposal Directive, which aims at preventing tax avoidance via the use of shell companies. However, with respect to the Unshell proposal, it is worth noting that the earlier evaluation of the draft Directive by the Dutch Government found that the operational set-up is very challenging and complex, and an implementation delay until 1 January 2024 is preferred in view of the associated IT challenges.

Netherlands releases User instruction guide on DAC6 portal

In May 2022, the Dutch Tax Authority released a User Instruction Guide on the DAC6 data portal. The Guide includes guidelines for the use of the DAC6 portal, an overview of the portal and the system requirements for its first use. Among others, the Guide explains how and in which cases to upload, correct or (partially) delete a report.

Singapore releases website on BEPS Explainer

On 23 May 2022, Singapore's Ministry of Finance (MoF) released the BEPS Explainer on its website. In this website, the MoF explains the BEPS Project and describes the Two-Pillar solution under BEPS 2.0. Accordingly, in response to Pillar Two, Singapore is exploring the possible implementation of a domestic minimum top-up tax on in-scope multinational enterprise (MNE) groups, which will raise the MNE group's effective tax rate in Singapore to 15%. The MoF believes that while BEPS 2.0 may reduce tax competition among countries, it does not reduce competition for investment. Singapore will need to strengthen non-tax factors and reinvest to stay competitive in a post-BEPS 2.0 world.

Swedish Ministry of Finance releases Facts Memorandum on DEBRA

On 7 June 2022, the Ministry of Finance (MoF) of Sweden released a Facts Memorandum (the Memorandum) on the Debt-Equity Bias Reduction Allowance (DEBRA) Proposal published by the European Commission on 11 May 2022.

The Memorandum includes a summary of the DEBRA Proposal by making reference to its background and content. The MoF considers that two provisions should be introduced in the *Swedish Income Tax Act*: (i) a provision implementing the limitation on interest deduction; and (ii) a provision implementing the deduction on equity since Sweden does not have similar rules under its national law.

Regarding Sweden's initial position towards the DEBRA Proposal, the Swedish Government doubts whether the benefits of the proposal outweigh the disadvantage of the Member States' sovereignty in tax matters being restricted. In addition, given that the initiative has been released in the form of a Directive, the Swedish Government is also questioning whether EU law principles of subsidiarity and proportionality are respected.

The DEBRA Proposal will probably be negotiated during Sweden's EU Council Presidency from 1 January to 30 June 2023.

UK delays implementation of OECD Pillar Two to periods beginning on or after 31 December 2023

On 14 June 2022, the UK Government provided an update on the consultation into the implementation of the OECD Pillar Two rules in the UK and what to expect in the coming months. According to the update, more than 50 responses to the public consultation were received, and the UK is moving forward with the development of the draft legislation to be published during Summer 2022.

Respondents to the consultation noted that seeking to implement the rules from Spring 2023, ahead of the likely implementation date in other countries, would compromise the long-term success and sustainability of the regime and put UK businesses at a competitive and administrative disadvantage. As a result, the UK Government has advised that, alongside the next steps and/or draft legislation, it will confirm in Summer 2022 that the UK Pillar Two legislation will first apply to accounting periods beginning on or after 31 December 2023.

UK launches public consultation on retaining an exemption for certain hybrid instruments issued by banks

On 19 May 2022, Her Majesty's Revenue and Customs (HMRC) opened a public consultation on retaining the UK hybrid and other mismatch exemption for certain regulatory capital instruments issued by banks. This exemption will fall away after 31 December 2022 by virtue of a sunset clause, which was required by an EU Directive. The proposed regulations will remove the sunset clause to allow the exemption to continue to apply from 1 January 2023. The policy objective of the extension is to maintain the deductibility of interest payments on certain hybrid instruments that are used by banks to meet regulatory requirements.

Stakeholders can submit their comments by email. HMRC suggests reading the draft provision, the explanatory Memorandum and the impact note before feedback submission. The Consultation runs until 30 June 2022.

UK delays reporting rules for digital platforms to 1 January 2024

On 19 May 2022, HMRC issued an update on the UK's reporting rules for digital platforms. Following a recent consultation on the implementation of the OECD's Model Reporting rules for digital platforms, the UK Government has decided that the new rules will start from 1 January 2024, with collection of information and submission of the first reports due by the end of January 2025. The aim of the postponement is to give platforms and their advisors time to prepare for the implementation of the new rules.

HMRC is aiming to publish the Government's response to the consultation, draft regulations giving details of the new rules, and an update on interactions with EU rules in this area (referred to as DAC7) this summer.

See EY Global Tax Alert, *UK delays reporting rules for digital platforms*, dated 24 May 2022.

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
- Nadine K Redford nadine.k.redford@ey.com

Ernst & Young Belastingadviseurs LLP, Rotterdam

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

Ernst & Young Belastingadviseurs LLP, Amsterdam

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

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