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Global Tax Alert

The Latest on BEPS and Beyond

December 2022

EY Tax News Update: Global Edition

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Highlights

Whoever thought an agreement on Pillar Two within the European Union (EU) would not be happening before year-end should be surprised by now. After several discussions in Brussels, Hungary lifted its veto and allowed the EU to unanimously adopt the Pillar Two Directive. However, this agreement did not come without a price, as on the same day, the EU approved part of the cohesion funds and the recovery and resilience plan for Hungary, providing Hungary with badly needed EU-funding and potential access to more funding once conditions are met.

While for many the world begins and ends with Pillar Two, the EU has also been active on other fronts, with EU negotiators of the Council (the EU Member States) and the European Parliament reaching a provisional and conditional agreement on the Carbon Border Adjustment Mechanism and a provisional agreement on the EU Emissions Trading System. To be final, both agreements must be confirmed via formal voting of the same institutions in the coming period.

Building a better working world

Activity is also intense at the OECD, where people do not seem to have been distracted by the holiday spirit yet, as right before the end of 2022, several public releases on the two pillars came out. On Pillar Two, three documents were released on 20 December: (i) Guidance on Safe Harbors and Penalty Relief; (ii) a Public Consultation on the Global Anti-Base Erosion (GloBE) Information Return; and (iii) a Public Consultation on Tax Certainty. On Pillar One, a Public Consultation document on the Draft Multilateral Convention Provisions on Digital Services Taxes and other Relevant Similar Measures was added to the releases. (Please note that this month's *Latest on BEPS and Beyond* summaries cover developments through 19 December 2022. Individual Global Tax Alerts will be issued on the 20 December OECD developments.)

Consequently, approaching the year-end, different stakeholders will be busy drafting comments to be submitted to the OECD, Member States' legislators will be anticipating the implementation of the Public Country-by-Country Reporting (CbCR) Directive since its transposition deadline will conclude before the end of the following semester and both Member States and businesses will start preparing for entry into effect of the Pillar Two Directive at the end of 2023. For businesses, this will not be the only thing to look out for, as they also need to get ready for increased transparency with public CbCR and reporting under the Corporate Sustainability Reporting Directive entering into effect in 2024.

Looking ahead, 2023 will kick off with a change in the EU Council Presidency, with Sweden succeeding Czechia. In addition to work on indirect taxes, tax transparency is sitting at the top of the Swedish Presidency's priorities, with a focus on reinforcing exchange of tax information in the EU.

This year has been intense from beginning to end, and the simultaneous and continuous release of initiatives makes information difficult to digest. We hope that our updates have helped you keep track of the developments impacting your operations. As the holiday season is approaching, we also hope all these tax policy developments will not hold you back from enjoying the festivities and spending time with family and friends.

We wish you a joyful holiday season and a very Happy New Year!

BEPS 2.0

OECD

OECD releases public consultation on Amount B of Pillar One

On 8 December 2022, the OECD released a public consultation of Amount B under Pillar One. Amount B provides for a simplified and streamlined approach to the application of the arm's-length principle to in-country baseline marketing and distribution activities.

This consultation document outlines the main design elements of Amount B. It defines what in-country baseline marketing and distribution transactions are and how to identify them in practice. It also describes how in-scope transactions may be priced while ensuring outputs consistent with the arm's-length principle. Further, it explains the current status of discussions concerning an appropriate implementation framework and seeks inputs from stakeholders in a number of specific questions.

The consultation will run until 25 January 2023. The Inclusive Framework will consider public comments to this document with the objective of releasing the final Amount B deliverable by mid-2023.

See EY Global Tax Alert, *OECD releases public consultation document on Amount B of Pillar One on baseline marketing and distribution functions*, dated 15 December 2022.

OECD update on tax certainty under Pillar One and Pillar Two

On 22 November 2022, the OECD held its fourth annual Tax Certainty Day. Among other items, the OECD provided an update of the ongoing work on tax certainty under Pillars One and Two of the OECD/G20 project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project).

Regarding Pillar One, the speakers recognized the need for information sharing processes between jurisdictions, for jurisdictions to discuss resolutions among themselves but also for a cut-off point for the issue to be escalated to the Determination Panel. It was also noted that an advance certainty process would decrease the risk of companies having to refile amended tax returns in multiple jurisdictions due to knock-on effects of audit adjustments.

As for Pillar Two, the speakers discussed potential avenues to address any disputes under Pillar Two, including: (i) Mutual Agreement Procedure (MAP) article in tax treaties; and (ii) a multilateral instrument and a proposed domestic dispute provision for GloBE.

See EY Global Tax Alert, *OECD holds Tax Certainty Day addressing MAP developments and tax certainty under Pillars One and Two*, dated 1 December 2022.

European Union

EU Member States unanimously adopt Directive implementing Pillar Two Global Minimum Tax rules

On 15 December 2022, the Council of the EU (i.e., the EU Member States) unanimously adopted the Directive ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the Union (the Directive). This adoption follows a Permanent Representatives Committee II meeting (COREPER II) held on 12 December 2022 where EU Member States' ambassadors reached unanimous agreement on the Directive and made the decision to advise the Member States to adopt the Directive via written procedure.

The text in the adopted Directive is the version that was published by the Czech EU Presidency on 25 November 2022. The adopted version includes only editorial changes following a legal-linguistic review by the EU institutions, as compared to the previous compromise text of 21 June 2022.

EU Member States have until 31 December 2023 to transpose the Directive into national legislation with the rules to be applicable for fiscal years starting on or after 31 December 2023, with the exception of the Undertaxed Profits Rule (UTPR) which is to be applicable for fiscal years starting on or after 31 December 2024.

See EY Global Tax Alert, *EU Member States unanimously adopt Directive implementing Pillar Two Global Minimum Tax rules*, dated 15 December 2022.

Country developments

Canada confirms its commitment to implement Pillar One and Pillar Two

On 3 November 2022, Canada tabled the Canada's Economic and Fiscal Update 2022 which contains several tax measures including a brief update on the Canadian Government's Pillar Two developments. In the report accompanying the update, the Government outlined its commitment to implement the global minimum tax and working with the other members of the OECD/G20 Inclusive Framework on BEPS to develop a coordinated implementation framework that is put in place timely.

Swiss Parliament approves Pillar Two implementation

On 16 December 2022, the Swiss Parliament approved the constitutional amendment to implement the Pillar Two rules. Except for minor items, the draft constitutional amendment submitted in June 2022 to the Parliament by the Federal Council remained unchanged.

As a result of the legal procedure, this amendment is now subject to a public vote in June 2023, where a majority of the elective citizens as well as a majority of the Cantons (result of the popular vote per Canton) must approve the change to the Constitution. If the constitutional amendment is approved by the public vote, Switzerland would be able to legally implement the Pillar Two rules as of 1 January 2024.

In addition, the Swiss Federal Council is expected to publish a second ordinance regulating the procedural aspects. A public consultation for that second ordinance is expected after the OECD releases its Agreed Administrative Guidance.

See EY Global Tax Alert, *Swiss Parliament approves domestic BEPS 2.0 Pillar Two implementation | Constitutional amendment now subject to public vote*, dated 16 December 2022.

UK Chancellor delivers Autumn Statement reiterating UK's commitment to introduce Pillar Two

On 17 November 2022, the United Kingdom (UK) Chancellor delivered his Autumn Statement. The Chancellor confirmed that he will implement the BEPS Pillar Two rules put forward by the OECD.

The following rules will be implemented for accounting periods beginning on or after 31 December 2023: (i) Income Inclusion Rule (IIR); and (ii) a supplementary Qualified Domestic Minimum Top-up (QDMTT) tax rule, which will require large groups to pay a top-up tax where their UK operations have an effective tax rate of less than 15%. Both rules will incorporate the substance-based income exclusion that formed part of the G20-OECD agreement. The rules will apply to large businesses operating in the UK with global revenues over €750m.

In addition, the Government intends to implement the UTPR in the UK and has confirmed that this will apply no earlier than for accounting periods beginning on or after 31 December 2024. See EY Global Tax Alert, *UK Chancellor delivers Autumn Statement*, dated 17 November 2022.

BEPS and other developments

OECD

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

On 16 December 2022, Azerbaijan joined the Inclusive Framework on BEPS, bringing the total number of members to 142. As a new Inclusive Framework member, Azerbaijan has committed to comply with the BEPS minimum standards, which are contained in the final reports on Action 5 (Countering Harmful Tax Practices), Action 6 (Preventing Treaty Abuse), Action 13 (Transfer Pricing Documentation) and Action 14 (Enhancing Dispute Resolution). Azerbaijan will also participate on an equal footing with the members of the Inclusive Framework in the remaining standard setting activities, as well as the review and monitoring of the implementation of the BEPS package.

Further, Azerbaijan also joined the statement to address the tax challenges arising from the digitalization of the economy, bringing to 138 the total number of jurisdictions participating in the agreement.

OECD releases sixth annual peer report on Action 5

On 14 December 2022, the OECD released the sixth annual peer review report (the report) relating to compliance by members of the Inclusive Framework on BEPS with the minimum standard on BEPS Action 5 for the compulsory spontaneous exchange of certain tax rulings (the transparency framework).

The report covers 131 of the 141 current Inclusive Framework jurisdictions, including all jurisdictions that joined prior to 30 June 2021, and Jurisdictions of Relevance (i.e., jurisdictions that are outside the Inclusive Framework but are deemed to be of interest for the purposes of transparency in tax) identified prior to 30 June 2021. The report assesses the 2021 calendar-year period and contains 61 recommendations for 58 jurisdictions to improve their legal or operational framework to identify and exchange tax rulings. Further, the report indicates that as of 31 December 2021, over 23,000 tax rulings within the scope of the transparency framework had been issued by the jurisdictions under review, and almost 50,000 exchanges of information had taken place.

Spain and Indonesia notify completion of domestic procedures for certain Covered Tax Agreements under the MLI

On 30 and 10 November 2022, Spain and Indonesia notified, respectively, to the OECD Depositary of the Multilateral Instrument (MLI), the completion of their internal procedures for the entry into effect of the MLI provisions with respect to certain Covered Tax Agreements (CTAs). This notification is required when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI. Spain notified three CTAs (Hong Kong, Senegal, and Thailand) and Indonesia notified six CTAs (China, Hong Kong, Romania, Seychelles, Spain, and Thailand).

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 30 days after the Depositary has received the notification from Spain and Indonesia that they have completed their internal procedures.

Likewise, on 10 November 2022, Malaysia made a notification with respect to the MLI. Malaysia added Ukraine to its list of CTAs. The MLI will therefore apply alongside the Malaysia-Ukraine tax treaty.

OECD releases the 2021 MAP statistics and MAP awards

On 22 November 2022, the OECD held its fourth Tax Certainty Day. During the event, the OECD released the 2021 statistics on MAPs and presented the 2021 MAP awards. The 2021 statistics include the information from all members that joined the Inclusive Framework on BEPS prior to 2022. As a consequence, a total of 127 jurisdictions have submitted their MAP statistics, an increase from the 118 jurisdictions covered in 2020 data. Overall, the OECD's MAP statistics post-2016 show a trend of starting and ending inventories of MAP cases continuing to increase in the majority of jurisdictions tracked.

The 2021 MAP awards recognized the particular efforts of competent authorities following the same categories as last year: (i) average time to close MAP cases; (ii) age of inventory; (iii) caseload management; (iv) cooperation; and (v) most improved jurisdiction.

See EY Global Tax Alert, *OECD holds Tax Certainty Day addressing MAP developments and tax certainty under Pillars One and Two*, dated 1 December 2022.

OECD releases fourth edition of its annual Corporate Tax Statistics

On 17 November 2022, the OECD released the fourth edition of its annual Corporate Tax Statistics publication together with an updated database. The fourth edition of the publication and database compile new data items and statistics in various existing data sets held by the OECD, such as: corporate tax revenues, corporate effective tax rates, BEPS Action 13 implementation, and anonymized and aggregated statistics collected via Country-by-Country (CbC) reports, among others. According to the OECD, the new data released highlights continuing BEPS risks and the need to implement the two-pillar solution for addressing the tax challenges of the digitalization of the economy developed under the BEPS 2.0 project to ensure that large MNEs pay a fair share of tax wherever they operate and earn their profits.

See EY Global Tax Alert, *OECD releases corporate tax statistics and the 2022 revenue statistics and consumption tax trends*, dated 7 December 2022.

European Union

CJEU annuls European Commission's decision on State aid granted by Luxembourg to a financing company

On 8 November 2022, the Court of Justice of the European Union (CJEU) issued its judgment on the Luxembourg State aid case. The decision concerns an Advance Pricing Agreement issued by the Luxembourg tax authorities to a Luxembourg member of an MNE group. This company provided treasury services and financing to the companies of the group established in Europe.

The CJEU noted that Luxembourg law incorporated specific rules which apply to companies belonging to the same MNE group and that carry on intra-group financing activities. More specifically, according to the arm's-length principle established in the Luxembourg Income Tax Law, intra-group transactions are to be remunerated as if they had been agreed to by stand-alone companies negotiating under comparable circumstances at arm's length. In addition, Circular No. 164/2 explained how to determine an arm's-length remuneration in the case of intra-group financing companies.

According to the CJEU where specific national rules exist, only the national law applicable in the Member State concerned should be considered to identify the reference system, while the OECD Transfer Pricing Guidelines can be taken into account in the examination of the existence of a selective advantage only if a national system makes explicit reference to them.

To determine whether a measure constitutes State aid, a comparison must be made with the tax system normally applicable in the relevant EU Member State. The CJEU concluded that for the comparison in question, the arm's-length principle as it has actually been incorporated into Luxembourg law needs to be considered rather than an "abstract expression of the arm's-length principle" (as had been done by the European Commission and the EU General Court). The final judgment of the CJEU annulled the Commission's decision, which means that it is not established that the financing company received illegal State aid.

See EY Global Tax Alert, *CJEU annuls European Commission's decision on State aid granted by Luxembourg to a financing company*, dated 2 December 2022.

EU Member States give final approval to Foreign Subsidies Regulation

On 28 November 2022, the Council of the EU (i.e., the Member States) formally adopted a Regulation on foreign subsidies distorting the internal market (the Regulation). The Regulation aims to prevent distortions on the EU's internal market which arise as a result of subsidies from foreign (non-EU) countries. This Regulation therefore expands the scope of the EU's existing State aid prohibition to "subsidies" provided by non-EU countries. The term "subsidies" is defined broadly and captures a wide range of subsidies, such as contributions, loans, grants, guarantees, and tax benefits.

The European Commission (the Commission) can impose a range of redressive measures to address distortions, including the mandatory repayment of the foreign subsidy. In a worst-case scenario, the Commission can prohibit an envisioned merger and acquisition transaction or prohibit the award of a contract in a public procurement procedure. The Commission may also, on its own initiative, examine information regarding alleged foreign subsidies and may engage in a dialogue with third countries to explore options aimed at obtaining the termination or modification of the subsidies.

As a next step, the Regulation will be published and is expected to enter into effect as from the second quarter in 2023 (exact date to be confirmed). The Regulation will be directly applicable without transposition into the domestic laws of EU Member States.

See EY Global Tax Alert, *EU Member States give final approval to Foreign Subsidies Regulation*, dated 5 December 2022.

Conclusions of the ECOFIN meeting

On 6 December 2022, the Economic and Financial Affairs (ECOFIN) Council meeting took place where, among other things, the Council adopted its report (progress report) to the European Council on tax issues. The progress report includes the state of play on all key tax initiatives, including the Minimum Tax Directive, Unshell, Debt-equity bias reduction allowance (DEBRA), and the Code of Conduct Group (COCG) reform.

On Unshell, the report mentions that progress was made on exploring the way forward as regards tax consequences and compromise texts were submitted on parts of the proposal, such as the identification of entities not having minimum substance as well as on the exchange of information. Most delegations generally supported the objectives of the proposal but also were of the view that further important technical work would be necessary before an agreement could be feasible. Discussions appear to focus on what tax consequences should be applied on companies that lack substance.

Regarding DEBRA, the examination of this proposal will be suspended and, if appropriate, it will be reassessed within a broader context only after other proposals in the area of corporate income taxation announced by the Commission (including BEFIT) have been put forward.

The Member States also approved conclusions on the progress achieved by the COCG welcoming the adoption of the revised mandate in November which broadens the scope of the tax measures under scrutiny to general features of tax systems of EU Member States.

EU publishes Directive proposal on tax transparency rules for crypto-assets

On 8 December 2022, the Commission published a legislative proposal for revision of the Directive on Administrative Cooperation (Council Directive 2011/16/EU or DAC). It proposes to include further categories of income and assets such as crypto-assets as also defined in the proposed Regulation on Market in Crypto-Assets into the scope of the automatic exchange of information (AEOI).

These rules will implement the OECD Crypto-Assets Reporting Framework into EU law, with a proposed start date of 1 January 2026. However, the rules go further than the OECD package of crypto-asset rules and Common Reporting Standard amendments. Among others, the proposal includes an additional requirement for non-EU entities to report in the EU under certain circumstances.

The proposal also makes several consequential amendments to the rules for AEOI in the EU, which include bringing e-money institutions into the scope of reporting and setting minimum penalties across the EU. In addition, the proposal expands the scope of reporting under existing measures including enhanced reporting by tax authorities on high net-worth individuals, reporting by banks and financial institutions on financial accounts, and the introduction of a verification tool on taxpayer identification numbers for governments. Also, information exchanged under the DAC may be used for the detection of violation or circumvention of restrictive measures (EU sanctions).

On the same date, the Commission also launched a public consultation for feedback on the proposal with a deadline of 7 February 2023. The feedback period is being extended every day until the proposal is available in all EU languages.

See EY Global Tax Alert, *EU publishes Directive proposal on tax transparency rules for crypto-assets*, dated 9 December 2022.

CJEU invalidates provision making information on beneficial ownership public

On 22 November 2022, the CJEU rendered its judgment in a case concerning the validity of conditions for allowing access to beneficial ownership information under the Anti-Money-Laundering Directive.

Luxembourg, when implementing the Anti-Money-Laundering directive, established a Register of Beneficial Ownership requiring information on the beneficial ownership of registered entities to be filled in and retained, while the public had also access to part of this information.

The CJEU held that Luxembourg's requirement that beneficial ownership register information should be displayed online and remain accessible for all members of the public interfered with the EU Charter of Fundamental Rights establishing the rights to respect private life and to protection of personal data. While the CJEU agreed that this requirement was appropriate to attain the objective of preventing money laundering and terrorist financing, it was not limited to what was strictly necessary, making it disproportionate.

CJEU rules on confidentiality between lawyers and clients for purposes of Mandatory Disclosure Rules (MDR)

On 8 December 2022, the CJEU rendered its decision in a case concerning a specific provision of the EU's MDR (DAC6).

DAC6 imposes an obligation on EU-based tax consultants, banks, lawyers, and other intermediaries to disclose any cross-border arrangement that contains one or more features or "hallmarks," if they are identified as intermediaries for the purposes of the Directive.

If the intermediary is protected by legal professional privilege under national law, then the obligation to disclose is transferred to any other intermediary which can disclose, and if not, then to the taxpayer. In such cases the lawyers are required to notify any other intermediary, or the relevant taxpayer, of their reporting obligations. This requirement was subject to the court proceedings as it would breach the legal professional privilege by which lawyers are bound.

The CJEU held that this notification requirement unlawfully infringes the right to respect for communications between lawyers and their clients, laid down under the Charter of Fundamental Rights. This requirement infringes also in an indirect manner the right to legal professional privilege since intermediaries are obliged to inform the competent tax authorities of the lawyer's identity and also having been consulted.

United Nations

UN intends to develop an international tax cooperation framework

On 23 November 2022, at the 77th Session of the United Nations (UN) General Assembly, the UN approved a resolution to develop a new international tax cooperation framework initially proposed by a block of African countries. The resolution considers the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a UN intergovernmental process, taking into full consideration existing international and multilateral arrangements.

However, the representatives of some countries expressed their concerns that this proposal may distract from and duplicate ongoing work in the two-pillar approach.

Country developments

Belgian Constitutional Court partially annuls GAAR and SAARs under the Annual Securities Account Tax legislation

On 27 October 2022, the Belgian Constitutional Court (the Court) rendered its decision No. 138/2022 regarding the appeals for the full or partial annulment of the law introducing an annual securities account tax (the law), including one general anti-abuse rule (GAAR) and two specific anti-abuse rules (SAARs).

While the Court did not accept the arguments regarding the law's incompatibility with the principles of equality and non-discrimination under the Belgian Constitution, the European Convention on Human Rights and the Charter on Fundamental Rights of the European Union, it partially annulled the SAARs and the retroactivity of the GAAR.

The law applies to securities accounts of resident and nonresident natural and legal persons with a tax rate of 0.15% on the average value of a securities account. A GAAR was introduced to prevent taxpayers proceeding to advantageous actions against the objective of the law. In addition, the SAARs were enabled when an account holder attempted to avoid or reduce its tax liability via the split of the securities account in multiple accounts with the same financial institution to avoid the €1 million threshold, or via the conversion of securities held on a securities account into nominative instruments that were registered directly with the issuer.

While the law entered into force on 26 February 2022, the GAAR and the SAARs were granted retroactive effect as of 30 October 2020.

The Court annulled the retroactivity of the GAAR because the requirements set in the law to establish the abusive behavior and the notification in the Belgian *Official Gazette* of the law's amendment were insufficient to justify retroactivity. In addition, the Court found the SAARs incompatible with the principle of legality due to the lack of clarity of the provisions.

Belgium implements new corporate income tax rules starting 1 January 2023

On 24 November 2022, the Belgian Government submitted a bill to the Chamber of Representatives. The bill introduces, among other items, changes to the notional interest deduction regime (NID), the foreign tax credit (FTC) regime for royalty income and the limitation rule for certain tax attributes.

The NID is a deemed (off-balance) tax deduction for which no cash payment or interest expense is booked. In this Bill, the Government has decided to eliminate the NID for taxable periods ending from 31 December 2023. Carried forward NID, accumulated in the past, can still be deducted going forward.

As for the FTC, Belgium provides for a unilateral relief from double taxation on certain foreign-source income, including royalties, under the form of an FTC. Based on current legislation, a lump-sum approach is applied for royalties (standard 15% credit), irrespective of the royalty withholding tax actually paid in the source state. As from 1 January 2023, the FTC remains in place, but will be limited to the withholding tax actually paid in the source state, with a maximum of 15%.

Lastly, since 2018, Belgian tax law limits the combined use of certain tax attributes to €1 million, increased by 70% of the taxable profit exceeding the amount of €1 million. As of tax year 2024 (financial years starting on or after 1 January 2023), the threshold will be reduced to 40%. According to the Government, this additional limitation will be abolished when the global minimum tax enters into force.

The new corporate income tax rules are expected to be adopted by the Parliament before year-end and will enter into force on 1 January 2023.

See EY Global Tax Alert, *Belgium implements new corporate income tax rules starting 1 January 2023*, dated 12 December 2022.

Canada Fall Economic Statement includes update on Mandatory Disclosure Rules and interest limitation rules

On 3 November 2022, Canada tabled the Federal Government's Economic and Fiscal Update 2022. Among other items, the Government announced that it intends to delay the coming into force date of the reporting requirements for reportable transactions and notifiable transactions until the date on which a bill implementing these changes receives Royal Assent. The coming into force date for uncertain tax treatments would remain the same as described in proposals (i.e., taxation years beginning after 2022, with penalties only applying after Royal previous Assent).

On the same day, revised legislative proposals were also released on the excessive interest and financing expenses limitation (EIFEL) rules to take into account comments received since their initial release in February 2022. One notable change is the effective date of the rules. It is now proposed that the EIFEL rules will apply in respect of taxation years that begin on or after 1 October 2023 (instead of 1 January 2023).

Interested parties are invited to provide comments in respect of the revised EIFEL proposals by 6 January 2023.

See EY Global Tax Alert, *Canada releases revised EIFEL proposals for public comment*, dated 14 November 2022.

Colombia introduces domestic minimum tax

On 13 December 2022, Colombia enacted Law 2277 which includes, among other items, a domestic minimum tax. This new minimum tax, which was added to the bill during the legislative process (i.e., it was not part of the first bill submitted by the Executive branch to Congress), was initially conceived as a general straightforward rule and calculation. When the effective tax rate of a company subject to Colombian Corporate Income Tax (CIT) was to be lower than 15%, the taxpayer would have to increase its CIT in the percentual points required to arrive at the 15% effective tax rate.

Nonetheless, the text approved incorporates a more "sophisticated" formula to determine the taxpayer's adjusted tax rate, which: (i) cannot be lower than 15%; and (ii) would be adjusted to achieve the 15% rate otherwise. The adjusted tax rate is determined by the ratio between the adjusted income tax over the adjusted income calculated based on the factors expressly indicated by the Law.

The minimum tax will not apply to companies incorporated under the special economic and social development zones regime (ZESE) during a specific number of years since the companies' corporate income tax would be 0%. However, in the final text approved, the non-applicability was extended to nonresidents, to companies whose principal domicile and the whole activity is carried out in zones affected by armed conflict (ZOMAC), to companies engaged exclusively in publishing activities, to hotel services subject to a 15% tax rate and concession agreements.

Neither the first draft presented during the legislative process, nor the text finally approved are necessarily aligned with the Pillar Two model rules.

Finish Parliament approves Bill on DAC7 implementation

On 9 December 2022, the Finnish Parliament approved the Bill, submitted by the Government on 20 October 2022, transposing the rules revising the EU Directive on Administrative Cooperation in the Field of Taxation to extend its scope to reporting obligations of digital platform operators (DAC7) via amendments of several Finnish Laws. Under DAC7, digital platforms are obliged to collect, verify and report information on sellers who use their platform to sell defined goods or to provide services. DAC7 also aims to enforce the exchange of information and cooperation between the EU Member States' tax authorities, for example, through a joint audit framework or data breach procedures.

The law will enter into force on 1 January 2023.

Germany approves changes to extra-territorial taxation of Intellectual Property (IP)

On 2 December 2022, the German Bundestag (one of the two chambers of German Parliament) approved an amendment to Germany's extra-territorial taxation of IP [please find the link for the entire document here], which the Bundesrat has also approved without further amendments on 16 December 2022. To enter into force, the law has moved into the closing procedures (Signature of the Federal President (Bundespräsident) and publishing in the *Federal Law Gazette*). In its update, the extra-territorial taxation of IP will repeal its application to third-party transactions (both retrospectively and proactively) and limit its ongoing application to related party transactions. Thus, a taxpayer is not subject to limited tax liability under the updated sec. 49 if either of the two following conditions is met: (i) the transaction (licensing or disposal of particular rights which are registered in a German registry) is between non-related parties; or (ii) there is an exemption under a tax treaty taking into account certain domestic anti-treaty abuse rules (e.g., against treaty shopping). Both conditions are part of the domestic law, which means that if there is a treaty exemption the taxpayer is considered not to have "registry" income under the rule, hence no taxes could be withheld or triggered. However, according to the rules governing the burden of proof, the taxpayer still needs to establish that a treaty exemption applies and domestic anti-abuse rules (e.g., against treaty shopping) are satisfied. Effectively, this means that taxpayers have to continue to review actual treaty eligibility of entities licensing or selling rights registered in Germany and in particular meet compliance with the requirements of the German anti-treaty shopping rules.

See EY Global Tax Alert, *German Bundestag approves Annual Tax Act 2022 and addresses extraterritorial taxation of IP*, dated 2 December 2022.

Hungarian Parliamentary Economic Committee approves Bill transposing DAC7 into national law

On 25 October 2022, the Hungarian Parliament approved the bill transposing the rules revising the EU Directive on Administrative Cooperation in the Field of Taxation to extend its scope to reporting obligations of digital platform operators (DAC7). The bill was published in the *Hungarian Official Gazette* in Gazette No. 180 of 2022.

Under DAC7 digital platforms are obliged to collect, verify and report information on sellers who use their platform to sell defined goods or to provide services. DAC7 also aims to enforce the exchange of information and cooperation between the EU Member States' tax authorities, for example, through a joint audit framework or data breach procedures.

It will enter into force in two phases: (i) new reporting obligations and their automatic exchange with other jurisdictions will become effective for reporting platform operators as of 1 January 2023; and (ii) new rules regarding joint audits and extended exchange of information for royalty payments will come into effect as of 1 January 2024.

Hungarian Government submits Tax Package including draft bill on implementation of EU Public CbCR to the Parliament

On 18 October 2022, the Hungarian Government submitted to the Parliament a draft bill including various tax measures. Among other items, the draft bill announces the introduction of the EU public CbCR directive into Hungarian domestic legislation.

The national legislation aligns with the EU Directive introducing a reporting requirement for (i) multinational groups with consolidated revenues exceeding HUF275,000 million (approx. €687.5 million at current exchange rates) for each of the last two consecutive financial years; and (ii) subsidiaries or branches established in Hungary with consolidated revenues exceeding €750 million for each of the last consecutive financial years in the cases where the ultimate parent entity falls out of the scope of the legislation of EU Member States.

In addition, the Hungarian draft legislation does not make use of the option for a five-year deferral to omit information from the report that could be seriously prejudicial to the commercial position of the MNE group.

The bill will enter into force for financial years starting on or after 22 June 2024.

Kenya signs MCAA for Exchange of Country-by-Country reports

On 9 September 2022, Kenya signed the Multilateral Competent Authority Agreement for Exchange of Country-by-Country Reports (CbC MCAA). Kenya's signing of the CbC MCAA will enable the automatic exchange of financial information in tax matters between Kenya and the other signatory members.

Kenya's CbCR legislation includes an exemption from filing CbCR reports for those MNEs whose ultimate parent entity (UPE) or surrogate entity (responsible for filing the CbC report) is located in a jurisdiction that has a competent authority agreement with Kenya for the exchange of tax information.

See EY Global Tax Alert, *Kenya signs MCAA for Exchange of Country-by-Country reports | Implications for MNEs operating in Kenya*, dated 6 December 2022.

Moldova introduces transfer pricing (TP) rules

On 7 December 2022, the Moldovan Government approved the fiscal and customs policy for 2023 (draft Bill).

Among others, the draft Bill introduces revisions to the Moldovan Tax Code, including the introduction of a new chapter named "Special rules for determining transfer prices according to the arm's-length principle."

According to the new provisions, the taxpayer bears an obligation to prepare TP files reflecting the price of goods and services in transactions with related parties in line with the arm's-length principle.

This chapter also includes general concepts related to TP, rules on the preparation and presentation of the TP file, as well as TP verification methods.

Once approved by the Parliament, the Bill will enter into force on 1 January 2024.

The Netherlands initiates project against tax-avoidance arrangements

On 29 November 2022, the Dutch Minister of Finance announced via a public consultation a new project to identify and (potentially) tackle remarkable tax avoidance arrangements. According to the consultation document, there is a remarkable tax avoidance arrangement when the taxpayer pays the minimum possible tax via the structuring, transforming or shifting of transactions, income profit and assets.

The consultation consists of a questionnaire and is supplemented by examples of remarkable tax avoidance arrangements and an Annex with 10 existing common such arrangements.

The feedback period will run until 31 January 2023. The identified remarkable tax avoidance arrangements will be presented in the Spring Memorandum 2023.

The Dutch Secretary of Finance submits letter to the Parliament on the UN resolution on international tax cooperation

On 5 December 2022, the Dutch State Secretary submitted a letter to the lower house of the Parliament expressing his opposition to the UN resolution on international tax cooperation.

The Dutch Government has concerns regarding work being duplicated since much has been already achieved in the field of transparency and exchange of information within the framework of the OECD. In this framework, the interests of developing countries are being taken into account and also in the context of the Two-Pillar Solution.

In this light, the Government supports the call in the Resolution to investigate whether additional work can be done in a UN context but does not see any added value in creating an additional negotiating forum that also focuses on international tax issues. The letter also indicates that such initiative would impose additional demands on the already low capacity of many countries.

In addition, the Government does not share the idea that the representation of developing countries will be more robust in a UN context due to the higher voting ratio since different positions among countries will continue to arise while the aim for consensus will remain.

Netherlands issues favorable withholding tax Decree dealing with disregarded entities

On 6 December 2022, the Dutch State Secretary of Finance published a Decree with guidance on the application of the withholding tax exemption in the *Dutch Dividend Withholding Tax Act 1965* (DWHTA) and the *Conditional Withholding Tax Act 2021* (CWHTA) and in (certain) tax treaties.

Guidance is provided for the specific case of a Dutch entity (withholding agent) that is disregarded for US federal income tax purposes making a dividend, interest, or royalty payment to a United States (US) hybrid entity (i.e., non-transparent for Dutch tax purposes and transparent for US federal income tax purposes), which is itself held by a (non-transparent) US corporate shareholder.

In the new Decree, the Dutch State Secretary of Finance states that the domestic withholding tax exemptions as included in the DWHTA and CWHTA can be applied (subject to the general conditions) if the Dutch withholding agent can substantiate that the underlying income from which the dividend, interest or royalty payment is made has already been recognized as income in the US in the current or prior year.

In comparable situations, and if the above conditions are met, the dividend, interest or royalty is also considered as an item of income of a resident for purposes of tax treaties that include a similar hybrid provision.

The above can be substantiated inter alia via the US federal income tax return of the US tax resident corporate shareholder evidencing that the underlying income is included, and the Decree mentions that this US inclusion can happen before the payment by the withholding agent.

The Dutch State Secretary of Finance confirmed that the above interpretation also applies to structures with multiple intermediate hybrid entities (so-called "stacking of hybrid entities").

See EY Global Tax Alert, *Netherlands issues favorable withholding tax Decree dealing with disregarded entities*, dated 6 December 2022.

UAE Ministry of Finance releases Corporate Tax Law

On 9 December 2022, the United Arab Emirates (UAE) Ministry of Finance (MoF) released Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (the Corporate Tax Law). The Corporate Tax Law provides the legislative framework for a federal corporate tax in the UAE on the net profits of corporations and other businesses. It is supplemented by Frequently Asked Questions to initially provide further detail on specific matters pending publication of further formal guidance.

Among others, the Law includes definitions of taxable person and income, tax base, permanent establishment, and UAE-sourced income. In addition, it introduces provisions on the applicable corporate income tax rates, exemptions, and free zones.

The Corporate Tax Law subjects payments made by UAE businesses to a nonresident earning UAE-sourced income to withholding tax at a 0% rate, unless the income is attributable to a branch, or a permanent establishment located in the UAE.

Regarding transfer pricing, according to the Law, transactions with related parties and connected persons are required to comply with the arm's-length principle. The language used in the Corporate Tax Law to define the arm's-length principle and other TP-related aspects is generally similar to OECD standards. However, the definitions of related parties and connected persons are broad, relative to international standards. In addition, the Corporate Tax Law requires UAE businesses to maintain TP documentation (i.e., master file and local file), subject to certain conditions which will be prescribed under a Ministerial Decision.

Finally, the Law includes general anti-abuse rules intended to disregard transactions or arrangements undertaken with the main purpose of obtaining a corporate tax advantage.

The new Corporate Tax regime will become effective for accounting periods beginning on or after 1 June 2023. However, general anti-avoidance and transitional rules do apply from the date the law is published in the *Official Gazette*.

See EY Global Tax Alert, *UAE Ministry of Finance releases Corporate Tax Law: Detailed review*, dated 12 December 2022.

UAE issues resolution on tax residency

On 2 September 2022, the Prime Minister of the UAE, issued Cabinet Resolution No. (85) of 2022 (Resolution) on determining tax residence in the UAE. The Resolution outlines the rules to determine when a person (i.e., a natural or legal) may be considered a tax resident of the UAE, and the associated administrative matters (e.g., formalities for the issuance of Tax Residency Certificates).

Under the Resolution, a corporate entity will be considered as a UAE tax resident where such entity is: (i) established, formed or recognized in the UAE; or (ii) considered a tax resident under the corporate tax law of the UAE. According to the new corporate tax law in the UAE, the definition of tax residency includes a person incorporated or otherwise established or recognized under the applicable legislation of a foreign jurisdiction that is effectively managed and controlled in the UAE.

Where an international agreement, such as a tax treaty, specifies certain conditions for determining tax residency, the Resolution provides priority to the application of such international agreement.

The Resolution will enter into force on 1 March 2023.

See EY Global Tax Alert, *UAE issues resolution on tax residency*, dated 16 November 2022.

UK parliamentary committee initiates review of the Digital Services Tax in the UK

On 31 October 2022, a UK parliamentary committee (the committee) launched an inquiry on the 2% DST introduced in the UK in April 2020. The tax applies on the revenues of search engines, social media platforms and online marketplaces which derive value from UK users. According to the Committee, the Government is expecting to repeal this law once the international reform under Pillar One is transposed into national law.

The Committee questioned senior officials at His Majesty's Revenue and Customs (HMRC) and His Majesty's Treasury on the design, implementation and administration of the DST and readiness to replace it with the OECD reforms. Among others, the Committee posed questions relating to the content and the rationale behind the introduction of the DST, the way HMRC addressed risks arising from such legislation and the experience in dealing with such law and its contribution towards Pillar One implementation.

Evidence in that respect was submitted until 27 November 2022.

UK confirms extension of the exemption of banks from hybrid mismatches legislation

On 7 November 2022, the Treasury released amendments on the Hybrid and Other Mismatches (Financial Instruments: Excluded Instruments) Regulations 2019. The amendments provide for the removal of the sunset clause introduced in May 2022 and allow certain regulatory capital instruments issued by banks to continue being excluded instruments under the hybrid mismatches rules beyond 31 December 2022.

Following, on 10 November, HMRC released a Tax Information and Impact Note (TIIN) covering this instrument. The TIIN includes, among others, information on who will be affected by the amendments, a description, the background and the policy objective of the measure, while it also summarizes its impacts.

The measure will take effect as of 1 January 2023.

US IRS will consider applying the economic substance doctrine

On 16 November 2022, in a tax conference, the Acting Commissioner of the Internal Revenue Service's (IRS) Large Business and International Division, confirmed that the IRS will more frequently consider whether the economic substance doctrine applies in TP audits.

The economic substance doctrine, which is codified under the Internal Revenue Code, considers a transaction to have economic substance only if: (i) the transaction has a meaningful economic impact other than federal income tax effects; and (ii) the taxpayer has a substantial purpose for entering the transaction other than for federal income tax purposes. If a transfer pricing transaction fails to have economic substance, the IRS may assert a 20% penalty.

See EY Global Tax Alert, *US IRS will consider applying the economic substance doctrine and related penalties more frequently in transfer pricing audits*, dated 30 November 2022.

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