

## The Latest on BEPS and Beyond

November 2023

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### EY Tax News Update: Global Edition

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### Highlights

The imminent political commitment by the members OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) to implement Pillar Two before 2024, brings necessary considerations to the forefront. With just over a month remaining to introduce Pillar Two, only three jurisdictions have final legislation enacting these regulations.

The European Union (EU) Directive on Minimum Taxation sets a deadline for Member States to implement Pillar Two by the end of 2023. However, challenges arose due to the Inclusive Framework's continuous release of guidance after the Directive was adopted in December 2022 and the need to analyze the potential impact of the new rules. The Inclusive Framework has also indicated that it is currently developing additional administrative guidance, which is expected to be released in the coming weeks.

Recognizing the concerns stemming from the release of administrative guidance after the EU adopted the Minimum Tax Directive, the EU Finance Ministers recently adopted a Council Statement, highlighting the progress on BEPS 2.0 and confirming the compatibility of the Inclusive Framework Administrative Guidance with the EU Minimum Tax Directive. Furthermore, the statement suggests that the EU Member States and the European Commission (the Commission) consider the Undertaxed Profits Rule (UTPR) Safe Harbour compatible with the EU Minimum Tax Directive.

While the EU Directive establishes a deadline, it cannot ensure that all Member States will implement Pillar Two in a timely manner. Past experiences with EU Directives have shown that some Member States may postpone implementation and face infringement procedures. Consequently, Member States may either implement Pillar Two later with a retroactive effect or introduce it in subsequent year(s). However, retroactive implementation may face legal restrictions in certain Member States and raise constitutional concerns. Either way, delayed implementation of Pillar Two could create challenges for businesses that should reassess any potential top-up tax under the new rules, and it could present difficulties for provisioning purposes if retroactivity is applied.

The delay in implementing EU Directives can be exemplified through the EU Directive on Public Country-by-Country Reporting (CbCR). More than five months after the transposition deadline, only slightly more than half of the Member States have implemented these regulations. Ensuring certainty around this transparency initiative becomes essential, as CbCR has gained attention due to its connection with other initiatives like Pillar Two, and the implementation of Public CbCR reveals differences among Member States.

The international tax landscape remains dynamic and weeks remaining in 2023 will be particularly active, requiring businesses to remain adaptable and closely monitor the implementation of various tax initiatives. Any delay in implementing a tax initiative requires careful analysis to ensure no adverse impacts from a tax or accounting perspective.

## BEPS 2.0

### European Union

#### **European Commission and Council release statements on BEPS 2.0 progress**

On 9 November 2023, the Council of the EU (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where Finance Ministers adopted a [Council Statement](#) welcoming the progress on BEPS 2.0. The Council Statement was published together with a Statement by the Commission.

On Pillar One, both the Council and the Commission take note of the progress made by the Inclusive Framework on the Multilateral Convention (MLC) on Amount A. In its Statement, the Commission calls on Member States to swiftly sign and ratify the MLC. Support was also expressed for Amount B, which for the Commission remains a key component of the agreement.

On Pillar Two, the Council welcomes the Commission's view that Administrative Guidance issued by the Inclusive Framework in December 2022, February 2023 and July 2023, including the Safe Harbours, is compatible with the EU Minimum Tax Directive. The Council also reiterates the need for Member States to consistently apply the aforementioned guidance when transposing the Directive.

See EY Global Tax Alert, [European Commission and Council release statements on BEPS 2.0 progress](#), dated 20 November 2023.

#### **Commission publishes Regulation integrating amendments to IAS 12 in view of Pillar Two**

On 8 November 2023, the Commission published in the EU's *Official Journal* Regulation 2023/2468 amending Regulation (EU) 2023/1803, regarding International Accounting Standard (IAS) 12. The amendments incorporate the amendments issued by the International Accounting Standards Board (IASB) on 23 May 2023, and include:

- ▶ A mandatory temporary exception to the accounting for deferred taxes arising from the jurisdictional implementation of the Pillar Two model rules
- ▶ Disclosure requirements for affected entities to help users of the financial statements better understand an entity's exposure to Pillar Two income taxes arising from that legislation, particularly before its effective date

The mandatory temporary exception applies retrospectively in line with IAS 8, which prescribes that changes in an accounting policy apply, in principle, retrospectively. The remaining disclosure requirements apply for annual reporting periods beginning on or after 1 January 2023, but not for any interim periods ending on or before 31 December 2023.

The Regulation entered into force on 10 November 2023 and is directly applicable in Member States.

## Country developments

### **Barbados announces intention to implement Pillar Two**

On 7 November 2023, the Prime Minister of Barbados delivered a [ministerial statement](#) outlining a proposal to implement Pillar Two. The proposal would include a qualified domestic minimum top-up tax (QDMTT) for fiscal years starting on or after 1 January 2024. However, the QDMTT would not be applicable until 2025 for in-scope groups if their ultimate parent entity is in a jurisdiction that has not implemented Pillar Two or whose constituent entities are not subject to an Income Inclusion Rule (IIR) or a UTPR. The proposal also contemplates the introduction of qualified refundable tax credits.

Draft legislation is expected to be published shortly.

### **Belgium sends draft legislation on Pillar Two to Parliament**

On 13 November 2023, the Belgian Government sent to Parliament [draft legislation](#) to implement Pillar Two into domestic legislation. The draft legislation is closely aligned with the EU Minimum Tax Directive, including an IIR and a Domestic Minimum Top-up Tax (DMTT) for fiscal years starting on or after 31 December 2023. The draft legislation also includes a UTPR for fiscal years starting on or after 31 December 2024. The draft legislation also includes a CbCR Safe Harbour provision in line with the OECD Administrative Guidance.

### **Cyprus releases consent statement on QDMTT and UTPR Safe Harbours**

On 30 October 2023, the Government of Cyprus issued a [statement](#) confirming its consent to the QDMTT and the UTPR Safe Harbours under Pillar Two.

This confirmation is important in relation to the EU Minimum Tax Directive. According to Article 32 of the EU Directive, all EU Member States must agree to the terms of a qualifying international agreement on safe harbours. As Cyprus is not a participant of the Inclusive Framework, this statement serves as confirmation of its support for the QDMTT and UTPR Safe Harbours.

### **Cyprus releases Pillar Two draft legislation**

On 3 October 2023, Cyprus' Ministry of Finance published [draft legislation](#) for public consultation on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Minimum Tax Directive. The IIR will apply from 31 December 2023 and the UTPR will be applicable from 31 December 2024. The draft legislation also includes a QDMTT to be effective as of 1 January 2025.

The draft legislation has been enriched with certain provisions from OECD Administrative Guidance, as well as provisions regulating administrative matters, to enhance the interpretation of Cyprus' Pillar Two law. Moreover, the draft legislation provides that there will be no top-up tax for entities that meet the requirements of an "acceptable international safe harbor agreement" that is determined by a decree issued by the Minister of Finance.

The consultation period was open until 31 October 2023.

See EY Global Tax Alert, [Cyprus issues draft legislative proposal on Pillar Two global minimum tax](#), dated 9 October 2023.

### **Croatia releases Pillar Two draft legislation for public consultation**

On 6 November 2023, Croatia's Minister of Finance published [draft legislation](#) on the implementation of Pillar Two into domestic law. The draft legislation is aligned with the EU Minimum Tax Directive. It includes an IIR and a DMTT applicable for fiscal years starting on or after 31 December 2023. The draft legislation also includes a UTPR applicable for fiscal years starting on or after 31 December 2024.

Furthermore, the draft legislation incorporates a transitional CbCR Safe Harbour in line with the OECD guidance.

### **Estonia releases Pillar Two draft legislation**

On 27 October 2023, Estonia released [draft legislation](#) to implement Pillar Two into domestic law. Estonia chose to defer the implementation of Pillar Two in accordance with the EU Minimum Tax Directive until 31 December 2029 at the latest. The draft legislation only includes administrative aspects, such as filing requirements, which are set to go into effect on 1 January 2024. Currently there is no plan to introduce a QDMTT.

## Finland opens consultation on Amount A of Pillar One

On 9 November 2023, Finland released a [public consultation](#) on Amount A of Pillar One. In this consultation document, Finland requests input on whether it should sign the MLC to Implement Amount A of Pillar One recently released by the OECD.

The consultation will be open until 4 December 2023.

## Finland submits Pillar Two legislation to Parliament

On 19 October 2023, the Finnish Government submitted a [bill](#) to the Parliament with the aim of incorporating Pillar Two into domestic law. The bill closely aligns with the consultation document released in August 2023, but it now includes legislation on the DMTT, intending to follow OECD guidance to make it 'qualified'. The Parliament will now discuss the bill, and it is expected that the bill will be approved before the end of the year in 2023.

## Germany's Lower House approves Pillar Two legislation

On 10 November 2023, the Lower House of the German Parliament [adopted](#) the bill implementing the EU Minimum Tax Directive into domestic legislation. The approved bill includes recent amendments that incorporate provisions from the February 2023 and July 2023 Administrative Guidance of the Inclusive Framework, such as the UTPR and QDMTT Safe Harbours.

The bill will now proceed to the Upper House of the German Parliament for further discussion and approval.

## Hungary submits draft legislation on Pillar Two to Parliament

On 31 October 2023, the Hungarian Ministry of Finance sent to the Parliament [draft legislation](#) to implement Pillar Two into domestic Law. The draft legislation broadly aligns with the EU Minimum Tax Directive and includes the IIR and the QDMTT, set to take effect from 31 December 2023. Moreover, it introduces a UTPR, which is generally scheduled to enter into effect on 31 December 2024.

In addition to these measures, the draft legislation includes a transitional CbCR Safe Harbour.

See EY Global Tax Alert, [Hungary's draft legislation on BEPS 2.0 Pillar Two introduced to Parliament](#), dated 7 November 2023.

## Ireland releases draft legislation on Pillar Two

On 19 October 2023, Ireland's [Finance \(No. 2\) Bill 2023](#) was published which includes the draft legislation to implement Pillar Two into domestic law. The Bill implements the EU Minimum Tax Directive and closely follows the OECD Model Rules building on the detailed consultation process.

Key components of the draft legislation include the implementation of the IIR and the QDMTT for fiscal years commencing on or after 31 December 2023. It also incorporates a UTPR, applicable from fiscal years starting on or after 31 December 2024.

Furthermore, the draft legislation introduces provisions for the Transitional CbCR Safe Harbour, Transitional UTPR Safe Harbour, and the QDMTT Safe Harbour. For QDMTT calculations, Ireland provides for the use of the local accounting standard. The draft legislation also addresses filing obligations and administrative matters.

## Lithuania releases Pillar Two draft legislation for filing obligations

On 27 October 2023, Lithuania's Ministry of Finance released [draft legislation](#) to implement Pillar Two into domestic law. As previously communicated, Lithuania will postpone the implementation of Pillar Two until 31 December 2029, aligned with Article 50 of the EU Minimum Tax Directive. Consequently, the draft legislation focuses on filing obligations and administrative aspects, while not addressing the specific application of the IIR or the UTPR.

## Luxembourg submits amendments of the Pillar Two legislation to Parliament

On 10 November 2023, the Government of Luxembourg submitted to the Parliament [amendments](#) to the draft legislation implementing the EU Minimum Tax Directive into domestic legislation. The amendments incorporate provisions from the Inclusive Framework's February 2023 and July 2023 Administrative Guidance, such as the UTPR and QDMTT Safe Harbours. Additionally, the amendments provide for the use of local accounting standard for calculating the QDMTT provided that all the constituent entities of the group apply the same accounting standard and have the same financial year as the consolidating parent entity.

See EY Global Tax Alert, [Luxembourg updates draft legislation on implementation of the EU Minimum Tax Directive](#), dated 20 November 2023.

## Malaysia releases draft legislation on Pillar Two

On 7 November 2023, the Malaysian Government [presented](#) the Finance Bill (No.2) 2023 for its first reading in Parliament. This bill contains proposed legislation for the implementation of Pillar Two. Included in the draft legislation is an IIR and a DMTT, both set to take effect for financial years starting on or after 1 January 2025. Notably, the draft legislation does not incorporate the UTPR. Overall, the draft legislation closely aligns with the OECD Model Rules.

## Malta will not introduce Pillar Two in 2024

On 30 October 2023, Malta's Finance Minister [announced](#) in the 2024 Budget Speech that Malta has opted to apply the derogation provided under Article 50 of the EU Minimum Tax Directive, allowing for a delay in Pillar Two implementation. Accordingly, Malta will not introduce the IIR, UTPR or QDMTT for fiscal year 2024.

See EY Global Tax Alert, [Malta will not be introducing any component of Pillar Two in 2024](#), dated 1 November 2023.

## Netherlands' Lower Chamber approves Pillar Two legislation

On 26 October 2023, the Lower House of the Dutch Parliament [adopted](#) the bill implementing the EU Minimum Tax Directive into domestic legislation. The approved bill includes recent amendments that incorporate provisions from the February 2023 and July 2023 Administrative Guidance by the Inclusive Framework, such as the UTPR and QDMTT Safe Harbours. Additionally, the amended bill provides the use of the local accounting standard for calculating the QDMTT.

The bill will now proceed to the Upper House of the Dutch Parliament for further discussion and approval, which is scheduled for 19 December 2023.

## Dutch State Secretary updates Parliament on Pillar One

On 24 October 2023, the Dutch State Secretary of Finance briefed the Parliament on Pillar One. According to the [briefing](#), the Netherlands supports reaching an international agreement on Pillar One and is prepared to sign the MLC to Implement Amount A of Pillar One. However, if a global agreement becomes uncertain, the Netherlands will explore alternatives. Specifically, the preference would be for a unilateral digital services tax (DST) to be introduced within the EU.

## South Korea releases Decree outlining detailed rules on Pillar Two

On 9 November 2023, South Korea's Finance Minister released, for public consultation, a [Decree](#) outlining detailed Pillar Two rules. This Decree includes revisions and clarifications regarding the scope, the calculation of Global Anti-Base Erosion (GloBE) income/loss and covered taxes, a transitional CbCR Safe Harbour and additional details on the GloBE Information Return.

The Decree also incorporates provisions from the February 2023 Administrative Guidance released by the Inclusive Framework.

The expected timeline for final approval and implementation of the Decree is set for December 2023.

## Turkiye amends accounting standards to align with Pillar Two legislation

On 19 September 2023, the Turkish Public Oversight, Accounting and Auditing Standards Authority's decision regarding amendments in Turkish Accounting Standard 12 was published in the *Official Gazette*. These amendments are in line with the amendments to IAS 12 (Income Taxes) recently published by the IASB in light of Pillar Two.

The amendments to the Turkish Accounting Standard 12 provide entities an exception to the requirements to recognize and disclose information about deferred tax assets and liabilities related to Pillar Two income taxes. Entities must disclose reliance on this exception in the footnotes of their financial statements.

In addition, for periods in which Pillar Two legislation is enacted or substantively enacted but not yet in effect, an entity must disclose known or reasonably estimable information to help users of the financial statements better understand the entity's exposure to Pillar Two income taxes arising from that legislation. For purposes of this disclosure requirement, an entity must disclose qualitative and quantitative information regarding exposure to Pillar Two income taxes at the end of the reporting period.

The abovementioned disclosure requirements apply to annual accounting periods that begin on or after 1 January 2023. Also, an entity is not required to disclose the information for any interim period ending on or before 31 December 2023.

See EY Global Tax Alert, [Turkiye amends accounting standards to align with BEPS 2.0 Pillar Two legislation](#), dated 25 September 2023.

## Turkiye Constitutional Court annuls rule blocking access to digital services

On 12 September 2023, Turkiye published in the *Official Gazette* a decision from the Turkish Constitutional Court annulling a provision from the DST regime that blocks access to digital services in Turkiye. According to the Turkish DST law, the Ministry of Treasury and Finance has the authority to block access to the services of digital service providers if they failed to meet their tax filing or payment obligations in a timely manner.

The Constitutional Court determined that blocking access to services provided by digital service providers due to their failure to fulfill tax-related obligations constituted a severe penalty. The Constitutional Court pointed out that less-severe measures, such as restrictions on advertising or the prohibition of entering into contracts, should be considered as initial steps. Consequently, the Court concluded that the restrictions imposed by the rule on the freedom of enterprise were disproportionate and violated the principle of proportionality.

The annulment decision will enter into force nine months after 12 September 2023.

See EY Global Tax Alert, [Turkiye's Constitutional Court annuls rule that allows blocking access to digital services upon default on Digital Services Tax liability](#), dated 15 September 2023.

## US releases public consultation on Amount A of Pillar One

On 11 October 2023, the United States (US) Treasury Department [released](#) a public consultation on the draft of the MLC to Implement Amount A of Pillar One. According to the consultation, Pillar One represents a uniquely significant reform to the international tax system. Because of the complexity of the changes proposed, the US Treasury Department is especially interested in comments related to novel issues identified by a review of the complete text, implementation and administrability issues, as well as technical adjustments to address errors or clarify the operation of the Pillar One MLC provisions.

The consultation is open until 11 December 2023.

## UAE may delay QDMTT until 2025

On 15 September 2023, the United Arab Emirates (UAE) hosted a Pillar Two [Regional Forum](#) together with the OECD.

During this Forum, it was confirmed that the UAE will not introduce Pillar Two rules in 2024. It was suggested that the UAE may be looking to introduce a QDMTT from 2025. It was also reiterated that the UAE would like to follow a consultation process to gather feedback from the business community.

## BEPS and other developments

### OECD

#### Fiji joins Global Forum on Transparency and Exchange of Information for Tax Purposes

On 16 November 2023, Fiji [joined](#) the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), becoming the 169th member. With the inclusion in the Global Forum, Fiji commits to combatting offshore tax evasion through the implementation of the internationally agreed standards of Exchange of Information on Request (EOIR) and automatic exchange of financial account information.

#### Platform for Collaboration on Tax releases Progress Report on domestic resource mobilization

On 15 November 2023, the Platform for Collaboration on Tax (the Platform) released its [Progress Report 2023](#). Launched in 2016, the Platform brings together the International Monetary Fund, the OECD, the United Nations (UN) and the World Bank and aims to strengthen collaboration on domestic resource mobilization.

The Progress Report 2023 provides an update on the work of the Platform under its revised work program designed for July 2022 to December 2023. The revised program consists of five workstreams and builds on work of the previous program while focusing on three priorities, including international taxation.

The Progress Report covers the five workstreams in detail, outlining the objectives, activities, outcomes and next steps for each of them. Throughout 2023, the Platform provided regular updates on international taxation developments and explored the role that the Platform could play in technical working group meetings. In addition, the Platform continued to meet and discuss relevant topics, such as updates on the Two-Pillar Solution and the work of the UN Tax Committee, including its resolution on the promotion of inclusive and effective international tax cooperation.

As for next steps, the Platform will continue to follow international tax-related developments to identify areas in need of collaboration. The Platform also aims to release updated toolkits on its website, providing technical guidance to its audience, as the organization has not published such materials for some time. Additionally, the Platform plans to explore ways to help developing countries assess the impact of Pillar Two on their corporate tax incentives.

The Platform's work will continue until June 2028, and it will prepare a new workplan for the forthcoming five-year period.

### Philippines and Kuwait join the Inclusive Framework on BEPS

On 10 and 15 November 2023, the [Philippines](#) and [Kuwait](#), respectively, joined the Inclusive Framework on BEPS, bringing the total number of [members](#) to 145.

As new Inclusive Framework members, the Philippines and Kuwait have 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). The Philippines and Kuwait will also participate on an equal footing with the members of the Inclusive Framework on BEPS in the remaining standard setting activities, as well as in the review and monitoring of the implementation of the BEPS package.

Further, both jurisdictions have committed to addressing the tax challenges arising from the digitalization and globalization of the economy by joining the [July 2023 Outcome Statement on the Two-Pillar Solution](#) to reform the international taxation rules and ensure that multinational enterprises (MNEs) pay a fair share of tax wherever they operate, bringing to 140 the total number of jurisdictions participating in the project.

### OECD updates Arbitration Profiles of the Netherlands and New Zealand under MLI on BEPS

On 10 November 2023, the OECD updated Arbitration Profiles of [the Netherlands](#) and [New Zealand](#), which contain information regarding their position with respect to applying Part VI (mandatory binding arbitration) of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI on BEPS).

Arbitration profiles contain references to (i) the jurisdictions' MLI position, (ii) Mutual Agreement Procedure (MAP) profiles, (iii) synthesized texts obtainable from the MLI Matching Database, (iv) hyperlinks to the competent authority agreements concluded in respect to the Arbitration clause of the MLI, and (v) the type of arbitration process.

New Zealand and the Netherlands have updated their competent authority agreements section, reciprocally including each other on their respective lists. Furthermore, New Zealand also expanded its list by including the United Kingdom (UK).

### Romania and Spain make notifications for entry into force of the MLI on BEPS for some of their CTAs

On 10 November 2023, [Romania](#) and [Spain](#) made a notification confirming the completion of their internal procedures for the entry into effect of the provisions of the MLI on BEPS with respect to 1 (CTA with Tunisia) and 3 (CTAs with Mexico, Tunisia and Vietnam) of their covered tax agreements (CTAs), respectively.

In accordance with Article 35(7)(a)(i) of the MLI on BEPS, both jurisdictions had reserved the right to delay the entry into effect of the provisions of the MLI on BEPS until "the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions." The MLI on BEPS shall enter into effect for the CTAs mentioned above as of 10 December 2023 (i.e., on or after 30 days after the Depositary has received the notification from Romania and Spain that they have completed their internal procedures).

In addition, Spain made a notification on the withdrawal of the reservation for Article 9(6)(a) and additional notifications for Article 9(7) and 9(8) of the MLI on BEPS by Finland. Finally, Spain also made notifications confirming the completion of internal procedures for the entry into effect of the provisions on arbitration for 19 of its CTAs.

## OECD Secretary General welcomes joint statement by 48 countries to implement CARF by 2027

On 10 November 2023, the OECD Secretary General issued a [press release](#) welcoming the [joint statement](#) by 48 countries to implement global tax transparency standard for crypto-assets (Crypto-Asset Reporting Framework or CARF) by 2027.

In the joint statement, jurisdictions welcome the CARF international standard and stress the important of its consistent and timely implementation in the combating tax evasion and guaranteeing tax compliance. The signatories indicate they aim to swiftly transpose the CARF into domestic law and start applying exchange agreements by 2027.

In addition, signatories of the joint statement encourage other jurisdictions to join them to enhance the global system of automatic information exchange and prevent tax evasion.

## Global Forum publishes peer review reports

On 8 November 2023, the Global Forum [published](#) new peer review reports on transparency and EOIR related to six of its members (Latvia, Mauritania, Pakistan, Poland, Serbia and Thailand) and supplementary reports on progress made by two of its members (Botswana and Dominica) in implementing the EOIR standard.

These reports evaluate jurisdictions against the updated standard, which requires beneficial ownership (BO) information of all relevant legal entities and arrangements, in line with the definition used by the Financial Action Task Force Recommendations. The assessment results in one of four distinct overall ratings (a rating is allocated to a jurisdiction once it has undergone a full peer review): (i) compliant; (ii) largely compliant; (iii) partially compliant; or (iv) noncompliant.

With the exception of Mauritania, the other seven jurisdictions peer reviewed received an overall “largely compliant” rating for this peer review. For Mauritania, the Phase 1 peer review suggests that further improvement is needed, in particular when it comes to changes in BO, and availability of BO bank account data. Also, Mauritania has no sanctions in place for noncompliance. Mauritania’s legal and regulatory framework will be evaluated, and a rating will be assigned by 2026 to allow the country to gain more experience regarding information exchange.

Further, according to the Press Release, more than half of the Global Forum members have been fully reviewed and among them 88% are compliant or largely compliant, 10% are partially compliant and 2% are non-compliant.

## OECD and African Tax Administration Forum renew Memorandum of Understanding

On 31 October 2023, the OECD and the African Tax Administration Forum (ATAF) [signed](#) a renewal of their Memorandum of Understanding (MoU) for a period of five years. Under this MoU, the OECD and ATAF commit to working on their common goal of achieving fair and efficient tax systems and administration in Africa, with a focus on tax policy, tax administration, and domestic and international taxation.

In the same vein, on 12 October 2023, the OECD released a [report](#) on “International Tax and Africa” to inform discussions at the G7-Africa Ministerial Roundtable, held on 14 October 2023 in Marrakech. The report stresses the significance of the international tax agenda for the African economies and emphasizes the importance of the OECD-Africa collaboration to shape and address this agenda. Among other things, the report discusses the priority areas for African countries, their role in the governance of the Inclusive Framework, their design of the Two-Pillar Solution, and the progress in the implementation of the BEPS minimum standards by African Inclusive Framework members.

## OECD updates frequently asked questions on model reporting rules for digital platforms

On 10 October 2023, the OECD updated the frequently asked questions ([FAQs](#)) for the Model Reporting Rules for Digital Platforms (model rules) by adding 10 questions and answers. These FAQs address inquiries from business and Government delegates, aiming to offer clarifications for the model rules and ensure their consistent implementation.

This update brings additional clarity to the definitions of “platform,” “personal services,” “known or reasonable knowable considerations” and “relevant activity.” Furthermore, the FAQs have been refined to illuminate due diligence procedures, specifically focusing on the verification of seller information by reporting platform operators. Finally, the update provides insights into reporting requirements, covering aspects such as the treatment of vouchers, the treatment of barter transactions, and the use of local currencies.

## European Union

### **Directive on transparency rules for crypto assets enters into force**

On 13 November, 20 days after publication in the Official Journal of the EU, the recent amendments to the Directive on Administrative Cooperation entered into force. The amendments introduce a number of expansions of the reporting and information exchange framework on taxation of the EU, including implementing the OECD framework for reporting for crypto assets (DAC8). The publication of the Directive follows its formal adoption by the Council of the EU (i.e., the EU Member States) on 17 October 2023.

Member States have until 31 December 2025 to transpose the main rules into national law; the new provisions will generally apply as of 1 January 2026 (exceptions apply).

See EY Global Tax Alert, [EU adopts Directive introducing tax transparency rules for crypto assets \(DAC8\)](#), dated 24 October 2023

### **Parliament adopts its nonbinding opinion on amended draft Own Resources Decision**

On 9 November 2023, the European Parliament (Parliament) [adopted](#) in plenary its [opinion](#) on the Commission's amended proposal for the Own Resources [Decision](#). The EU's "own resources" are the main sources of revenue for the EU budget and include Member State contributions and part of Value-Added Taxes (VAT) revenues. Among the three newly proposed own resources, the Commission proposes a statistically based national contribution on corporate profits that will apply temporarily, until there is an agreement for a contribution, which is expected from BEFIT (Business in Europe: Framework for Income Taxation). The BEFIT proposal sets forth rules introducing a common framework for corporate income taxation in the EU, with the aim of replacing the current Member States' various ways for determining the taxable base for groups of companies that have annual combined revenues exceeding €750m.

The opinion generally supports the proposal as presented by the Commission and tables very few amendments. In any case, the Parliament only has an advisory role in the legislative process on Own Resources and its opinion is nonbinding. Adoption of the Own Resources Decision would require unanimity among all 27 Member States.

## United Nations (UN)

### **UN releases revised draft resolution on tax cooperation**

On 21 November 2023, the UN General Assembly released an [updated version](#) (dated 15 November) of the draft resolution submitted by the Nigerian delegation on behalf of the UN member states belonging to the African Group in October 2023.

The revised draft suggests the development of a framework convention on international tax cooperation, and the establishment of an ad hoc intergovernmental committee to draft the terms of reference for the convention to be developed. Work on the [draft proposals](#) of the Second Committee for the 78th session should be concluded by 22 November 2023 and, if the revised draft is adopted, the ad hoc committee should finalize its work by August 2024 and provide a progress report by September 2024 (next session of the UN General Assembly).

This follows the adoption of a resolution to promote inclusive and effective international tax cooperation during the UN General Assembly's meeting in December 2022, and the UN Secretary General's [report](#) on international tax cooperation last August providing three options for improved international tax cooperation:

- ▶ A multilateral convention on tax (option 1)
- ▶ A framework convention on multilateral tax cooperation (option 2)
- ▶ A (nonbinding) framework for international tax cooperation (option 3)

In September 2023, the EU adopted its position on the proposals, stating that its Member States, recognize the important role of the UN, but remain committed to the ongoing work of the Inclusive Framework. In the meantime, in an op-ed published in the *Financial Times International Tax*, former President of South Africa, Thabo Mbeki, called on the EU and the UK to support the UN initiative on tax cooperation. Mr. Mbeki reiterated the African countries' preference for the UN to host the negotiations to guarantee inclusiveness.

## Country developments

### **Barbados publishes updated list of jurisdictions under CbC MCAA**

On 19 October 2023, the Barbados Revenue Authority published the updated list ([Guidance Note PPG No. 08/2023](#)) of jurisdictions that has or intends to have an agreement under the OECD Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA).

As of 17 October 2023, Barbados aims to establish exchange relationships with 20 more jurisdictions beyond the current 72. The additional jurisdictions are the following: Bahamas, British Virgin Islands, Canada, Cyprus, Gabon, Georgia, Gibraltar, Haiti, Indonesia, Jersey, Kazakhstan, Maldives, Monaco, Morocco, Pakistan, Senegal, Sweden, Turkey, the UAE and the US. Because the US is not party to the CbC MCAA, Barbados is required to negotiate a bilateral Qualifying competent authority agreement to facilitate the exchange of CbC Reports.

### **Belgian Federal Service for Finance releases guidance on DAC7**

On 18 October 2023, the Belgian Federal Service for Finance released [FAQs](#) on the domestic legislation implementing DAC7. Under DAC7, digital platforms are obliged to collect, verify and report information on sellers who use their (online) platform to sell defined goods or to provide services.

The FAQs provide clarifications on important points such as the definitions of a “platform” and a “reportable seller,” the registration obligations of platform operators, penalties for non-compliance, and record-keeping requirements. In addition, the FAQs clarify that the reporting obligation of platform operators does not apply to the sale of intangible assets, such as the sale of cryptocurrencies or crypto assets.

### **Belgium expands reporting obligations for payments to tax havens**

On 19 October 2023, the Government of Belgium submitted to the Parliament a [draft law](#) expanding, among others, reporting obligations for payments to tax havens. Currently, Belgian corporate taxpayers already have an obligation to disclose in a specific attachment to the corporate tax return (form 275F) all direct or indirect payments to persons

established in tax havens, permanent establishments in tax havens, bank accounts managed or held by persons or permanent establishments in tax havens, bank accounts managed by or held with credit institutions located or with a permanent establishment in tax havens, if the total amount of such payments exceeds €100,000 in the taxable period.

In certain circumstances, taxpayers could (try to) avoid this reporting obligation by deferring (part of) the actual payment to a next taxable period (through booking said amount as a payable on the balance sheet). To close this loophole, the proposed amendment suggests taking into account not only actual payments, but also any increase in short-term debts vis-à-vis the aforementioned persons or permanent establishments located in a tax haven during the financial year, when examining whether the €100,000 threshold is met.

### **Brazil publishes Normative Instruction to regulate the new Brazilian transfer pricing system**

On 29 September, the Brazilian Federal Revenue Service (FRB) published [Normative Instruction 2,161/23](#) (NI) for the new transfer pricing rules under Law 14,596/23 (new TP rules). The new TP rules, published on 15 June 2023, establish a TP framework in Brazil that is aligned with the OECD TP guidelines and the arm’s-length principle (ALP). The adoption of the new Brazilian TP system is mandatory as from 1 January 2024 and optional as from 1 January 2023.

The NI confirms the application of TP rules to transactions with related parties abroad, tax havens and privileged tax regimes. In line with the provisions of the new TP rules, the NI ratifies that the OECD TP Guidelines can be used by taxpayers as a reference for applying the ALP, if approved by the FRB and as long as they are not contrary to the new TP rules or any normative act issued by the FRB, and will serve as a secondary source for applying local TP rules, particularly, for matters not yet regulated by the NI.

The NI, in part, clarifies that Brazilian taxpayers must prepare a Master File and a Local File, in addition to the CbC Report. The documents must be prepared and filed through the FRB’s portal within three months after the deadline of the tax returns. For fiscal years 2023 and 2024, the deadline for the Master File and the Local File will be the last business day of the following year.

The NI also provides that under the Local File, when the combined intercompany transactions of the prior year are greater than 500 million Brazilian real (BRL 500m) then detailed documentation is required, while when such transactions are between BRL 15m and BRL 500m, only standard documentation is required. For combined intercompany transactions of the prior year below BRL 15m, there is no need to prepare either a Local File or a Master File.

See EY Global Tax Alert, [Brazil publishes Normative Instruction to regulate the new Brazilian transfer pricing system](#), dated 19 October 2023.

### Cyprus enacts law implementing DAC 7

On 3 November the “[Law amending the Administrative Cooperation in the Field of Taxation Laws](#)” (Law), implementing DAC7, was published in the *Official Gazette* of the Republic of Cyprus. The Law provides for an automatic exchange of information on certain data to be reported by platform operators on certain types of sales.

Platform operators, as defined in the Law, must:

- ▶ Register with the Cypriot Tax Department (CTD) or notify the CTD if they are already registered in another Member State
- ▶ Carry out specific due diligence procedures and report to the CTD certain determined information on the sellers as required in the Law

To ensure that information is effectively exchanged upon request and to prevent requests from being unnecessarily refused, the Law furthermore delineates and codifies the internationally agreed standard of “foreseeable relevance.” Furthermore, for taxable periods starting on or after 1 January 2025, the Law extends the mandatory automatic exchange of information to information on Cypriot real estate owned by individuals and entities resident in another Member State. The Law also introduces joint audits.

Except for certain rules relating to joint audits, the Law takes effect from 1 June 2023. Reporting platform operators will have to register with the CTD by 31 December 2023, at the latest, and the first DAC7 reporting deadline is 31 January 2024.

See EY Global Tax Alert, [Cyprus enacts law implementing tax transparency rules for digital platforms \(DAC7\)](#), dated 14 November 2023.

### Finland issues press release on BEFIT, TP and HOT proposal Directives

On 26 October 2023, the Government of Finland issued a [press release](#) expressing its support towards the objectives of the BEFIT, TP and Head Office Taxes (HOT) proposal Directives, but also emphasizing the national competence of Member States when it comes to tax matters.

In particular, the Government supports the objectives of reducing administrative costs, improving the competitiveness of companies, and promoting a uniform application of the arm’s length principle within the EU. However, it is skeptical on whether the proposals will decrease the administrative burden as intended and stresses the need to ensure the proposals will not cause an unreasonable administrative burden for companies or tax administrations.

Furthermore, the Government considers that the BEFIT and HOT proposals suggest a relatively far-reaching harmonization of corporate taxation, which would narrow Finland’s competence in that field, and could trigger uncertainty in its tax revenues. In that regard, Finland emphasizes the need for further impact assessment.

Finally, the Government finds the proposed implementation timeframe to be challenging, especially with regard to the BEFIT proposal, as there are other international corporate taxation projects underway.

### French tax authorities update their guidelines on Hallmark D1b under DAC6

On 13 September 2023, French tax authorities updated their [guidelines](#) on Hallmark D1b, which pertains to schemes that undermine the reporting obligations as required under the Common Reporting Standard (CRS) or other agreements on the automatic exchange of information on financial accounts, by transferring the financial accounts or assets to jurisdictions that do not have such agreements with the residence state of the taxpayer involved.

An example pertaining to Hallmark D1b specifies that the scheme involving a transfer of financial accounts, assets or flows that are part of a reportable cross-border arrangement is only reportable by the financial organization when the organization is aware of it. In addition, it has also been pointed out that, in case of an intermediary not disclosed to this financial organization, the reporting obligation falls to this intermediary or to the taxpayer if the intermediary is exempted.

## Greece publishes Law implementing Public CbCR Directive in its Official Gazette

On 14 November 2023, the Greek Government published in its *Official Gazette* ([FEK A' 188/14.11.2023](#)) [Law 5066/2023](#) implementing the Public CbCR Directive. This follows adoption of the law on 9 November 2023, and a [public consultation](#) launched on 19 October 2023, which was open for feedback until 1 November 2023.

Law 5066/2023 is closely aligned with the Public CbCR Directive. The law integrates the “website exemption” option provided by the Directive (i.e., the entities shall publish the report on income tax information and the informative statement on the General Business Registry, where such information shall remain indefinitely publicly accessible). The entities must publish on their website that the relevant report is available on the General Business Registry website and provide the relevant link.

Greece has not opted for the safeguard clause (i.e., option of temporarily withholding information from the report if its disclosure would be prejudicial to the commercial position of the MNE group to which the report refers).

The deadline for publishing the report is 12 months after the balance sheet date of the reporting year for which this report on income taxes is prepared. The rules will apply for financial years beginning on or after 22 June 2024.

## Greece publishes in its Official Gazette Circular updating the list of non-cooperative jurisdictions for 2022

On 25 October, Greece published in its *Official Gazette* ([FEK B' 68659/15.10.2023](#)) [Decision A. 1160/2023](#) to update the domestic list of non-cooperative jurisdictions for fiscal year 2022.

Compared to fiscal year 2021, Angola, British Virgin Islands, and Nicaragua have been added, while Barbados, Eswatini, Jordan, Maldives, Namibia, and Paraguay have been removed.

The updated list includes the following 43 jurisdictions for the fiscal year 2022: Algeria, Anguilla, Angola, Antigua and Barbuda, Belarus, Benin, Botswana, British Virgin Islands, Burkina Faso, Cambodia, Chad, Republic of Congo, Cote d'Ivoire, Djibouti, Dominica, Gabon, Ghana, Guatemala,

Guinea, Guyana, Haiti, Honduras, Kazakhstan, Kingdom of Lesotho, Liberia, Madagascar, Mali, Mauritania (until 31 July 2022), Nicaragua, Niger, Palau, Panama, Papua New Guinea, Philippines, Rwanda (until 30 November 2022), Seychelles, Sint Maarten, Tanzania, Thailand (until 31 March 2022), Togo, Trinidad and Tobago, Vanuatu and Viet Nam.

## Government of Hungary submits draft bill aligning domestic legislation with ATAD I to Parliament

On 31 October 2023, the Hungarian Government submitted [Bill T/5893](#) to the Parliament including rules to comply with the Anti-Tax Avoidance Directive I (ATAD I). This follows [infringement procedure](#) opened by the Commission on 14 July 2023 against Hungary. The draft bill was also under a [public consultation](#) until 25 October 2023.

According to the draft bill only the tax actually paid must be taken into account for purposes of applying the controlled foreign companies (CFC) provisions. In addition, the draft bill clarifies the concept of “affiliated enterprise” under the domestic rules implementing ATAD I.

Once adopted, the law will be published in the *Official Gazette* and the rules will enter into effect on the day following its publication.

## North Macedonia enacts law on TP report submission upon request

On 25 September 2023, North Macedonia Published in its *Official Gazette* amendments to the Profit Tax Law. According to the new rules, the taxpayer is no longer obliged to submit a TP report to the tax authorities by 30 September 2023. Such report should only be prepared and submitted following a request by the tax authorities.

The authorities may request from the taxpayer to submit the TP documentation 30 days following the deadline for filling the Corporate Income Tax Return (CITR), i.e., 30 days following 15 March the following year. Furthermore, the taxpayer is obliged to submit the TP documentation in a period of 15 days following the receipt of the request from the authorities. In addition, the taxpayer will be obliged to submit a form which would contain information on the intercompany transactions along with the CITR.

## Irish Revenue issues updated guidance on DAC7

On 23 October 2023, the Irish Revenue updated its [guidance](#) in the Tax and Duty Manual (TDM) [part 38-03-31](#), with respect to DAC7.

The updates include a confirmation of the average annual fixed foreign exchange conversion rate, and an example of a business model that indirectly connects sellers and users on the platform. In addition, the TDM updates the obligations on platform operators in relation to elections and de-registrations in Ireland and other Member States and clarifies their data protection obligations.

The registration portal for platform operators in Ireland has become available as of 1 November 2023.

In addition to the above, on 6 November 2023, the Irish Revenue issued [TDM Part 33-03-05](#) providing general [guidance](#) on how to register for the reporting obligations in Ireland.

## Italian Revenue Agency issue draft guidelines on asset management TP to support implementation of new Investment Management Exemption Regime

On 20 October 2023, the Italian Revenue Agency launched a public consultation for [guidance](#) including TP guidelines (draft TP Guidance) in connection with the implementation of the Investment management exemption regime (IME). The IME was introduced under the 2023 Italian Budget Law.

The draft TP Guidance addresses the requirement that for the IME to apply, the Italian tax resident asset/investment manager or advisor (or the permanent establishment of the non-Italian tax resident entity) should have received remuneration that is supported by Italian-compliant TP documentation.

In addition, the draft TP Guidance provides guidelines for the TP method selection for two broad categories of services that are generally performed within multinational asset/investment managers, i.e., investment management services and services related and instrumental to investment management activities.

See EY Global Tax Alert, [Italian Revenue Agency issue draft guidelines on asset management transfer pricing to support implementation of new Investment Management Exemption Regime](#), dated 1 November 2023.

## Liechtenstein updates list of jurisdictions for exchange of CbC reports

On 10 November 2023, the Liechtenstein published in its [Official Gazette](#) the updated list of jurisdictions that Liechtenstein will exchange CbC reports under the CbC MCAA and bilateral CAAs.

Compared to the list of 2022, Liechtenstein has added to the list Dominican Republic, Faroe Islands, Kenya, Liberia, Montserrat, Papua New Guinea, Thailand and Ukraine.

As of 1 January 2024, Liechtenstein will have established an exchange relationship with a total of 100 countries.

## Malta extends deadline for registration under DAC7

On 27 October 2023, Malta's Office of the Commissioner for Revenue issued an [update](#) of the Guidelines for DAC7. The updated guidelines extend the deadline for Malta reporting platform operators' and excluded platform operators' registration with the competent authority in Malta from 31 October 2023 to 20 November 2023.

The DAC7 Registration Portal became available for registration on 8 November 2023.

## Singapore updates list of jurisdictions for exchange of CbC reports

On 30 October 2023, the Inland Revenue Authority of Singapore published its [updated list](#) of jurisdictions with which it will exchange CbC reports under the CbC MCAA.

Compared to the list of 2022, Singapore has added to the list Barbados, Faroe Islands, and Thailand. The exchange relationships with Barbados and Faroe Islands are effective from fiscal years beginning on 1 August 2021, while the exchange relationship with Thailand takes effect for fiscal years beginning 1 January 2023.

Singapore has an exchange relationship with a total of 89 jurisdictions.

## Slovenian Government publishes draft bill introducing an interest limitation rule

On 17 October 2023, the Government of the Republic of Slovenia [published](#) a draft bill introducing amendments to the corporate income tax law. Among others, the draft bill suggests the introduction of an interest limitation rule as prescribed under ATAD I. The interest limitation rule under ATAD I allows companies to deduct their net financial expenses up to 30% of their operating profit (earnings before interest, taxes, depreciation and amortization (EBITDA)).

In line with ATAD I, the draft bill allows the deduction of excess borrowing costs up to the higher amount between the 30% of the taxpayer's EBITDA and €1m.

In addition, Slovenia provides for an exception for financial institutions, insurance undertakings, and standalone entities from the scope of the rule given the limited risks of tax avoidance. Since Slovenia does not have a fiscal unity regime, it has not opted for the application of the group ratio rule under Article 4(5)(b) of ATAD I. On the contrary, the bill forecasts a grandfathering clause for borrowing costs incurred on loans used to finance long-term public infrastructure projects in the EU, and loans concluded before 17 June 2016. Slovenia did not, however, opt for any carryforward possibilities.

If adopted, the amendments will enter into force on 1 January 2024.

## South Africa issues taxation guide

On 1 November 2023, the Commissioner for the South African Revenue Service (SARS) issued a [guide](#) on Taxation in South Africa providing a high-level overview of the most significant tax legislation administered in the country.

It is noted that the guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 (TAA) and accordingly does not create a practice generally prevailing under section 5 of the TAA and should therefore not be used as a legal reference. It is also not a binding general ruling under section 89 of Chapter 7 of the TAA.

The guide provides clarifications on, among other things, controlled foreign companies, general anti-avoidance rules, alternative dispute resolution, advance tax rulings, and automatic exchange of information.

With regard to companies, the information in the guide concerns income taxes for the 2023 year of assessment with financial years ending during the 12-month period ending on 31 March 2023.

## UAE Federal Tax Authority issues TP Guide

On 23 October 2023, the UAE Federal Tax Authority issued a [guide](#) clarifying the TP regime and documentation.

The guide is broadly aligned with the OECD TP guidelines. It covers an overview of TP regulations, including clarifications on whether a transaction takes place between related parties and whether it is at arm's length. In addition, the guidelines provide an overview of the compliance requirements, including TP documentation. They also include frequently asked questions to assist in-scope taxpayers mitigating uncertainties.

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