

## The Latest on BEPS and Beyond

December 2023

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### EY Tax News Update: Global Edition

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### Highlights

December is a time of looking back and forward. Exactly a year ago, the EY message in this publication focused on the agreement reached in the European Union (EU) on the introduction of Pillar Two. That agreement was regarded as the decisive first step toward the introduction of the global minimum tax rules. Soon after, many other jurisdictions followed with announcements of steps to be taken on introduction.

Exactly one year later, EU legislators are working hard to ensure they meet the 1 January 2024 deadline for introduction of the Minimum Tax Directive. With less than two weeks remaining until the end of the year, only a handful of EU Member States have enacted legislation on Pillar Two. For some of the others, it is already clear they will not make the deadline. Typically, these jurisdictions have the intention to introduce the legislation with retroactive effect in 2024. However, it is a question mark whether this option will be available to all EU Member States that fail to make the deadline.

Different from what was expected last year, the EU is relatively alone in its introduction of Pillar Two for now. Important jurisdictions have decided to delay introduction of the rules following the agreement reached on the Undertaxed Profits Rule Safe (UTPR) Harbour in July 2023, or have not made any decision on introduction yet. This also results in the rules not yet having the global reach foreseen in its initial design.

When looking forward, the key question is what this unexpected fragmentation in the global reach of these rules means for businesses worldwide. The most important effect, probably, is the split between multinational enterprises (MNE) groups that may be captured by an Income Inclusion Rule (IIR) and those that are not. The ones captured will have to grapple with complexity, many open issues for which guidance is not yet available and uncertainty connected to EU Member States' legislation processes not being finalized, given the proximity to the date of entry into effect. Also, these companies will be confronted with questions that have not been raised to date, given the novel and innovative nature of the rules. This will drive a need and desire for more guidance. This need and priority will not resonate with jurisdictions yet to introduce the rules. Moreover, while jurisdictions in the Global South and the big emerging economies have cast their vote in the United Nations (UN) as the global standard setter for tax matters going forward, most of the traditional OECD and all of the EU jurisdictions have maintained their preference for the OECD. These dynamics may take the focus away from refining and simplifying the Pillar Two rules and may make it more difficult to achieve consensus decisions in the OECD/G20 Inclusive Framework on BEPS (the inclusive Framework).

The fragmentation in the introduction of Pillar Two and the deadlock on Pillar One also mean that the only rules to fall back on remain the traditional international tax rules - i.e., the transfer pricing and tax treaty rules. This explains the new focus on these instruments by the EU and the OECD through, for example, the start of the negotiations by EU Member States on the proposed EU Transfer Pricing Directive and the finalization of administrative guidance on Amount B by the Inclusive Framework, to be included in the 2024 update of the OECD Transfer Pricing Guidelines.

Many will be monitoring the tax policy developments in the coming weeks and months, in particular to determine how to deal with challenging Pillar Two issues. And, of course, EY is committed to keeping you informed on new developments. Despite the flurry of developments still expected, we hope you will have a very relaxing and merry holiday season and start of the New Year.

## BEPS 2.0

### OECD

#### **OECD updates Pillar One timeline**

On 18 December 2023, the Inclusive Framework released a [Statement](#) updating the timeline to finalize the Multilateral Convention (MLC) for Amount A of Pillar One. According to the Statement, there are some remaining differences that need to be resolved which will have to be addressed next year, including the standstill on new digital service taxes (DSTs) and other relevant similar measures. The goal is to achieve a consensus-based solution and to finalize the text of the MLC by the end of March 2024, with a view to hold a signing ceremony by the end of June 2024.

#### **OECD releases third set of Administrative Guidance on Pillar Two**

On 18 December 2023, the Inclusive Framework released the third set of [Administrative Guidance](#) on Pillar Two. The new Administrative Guidance supplements the Commentary to the Global Anti-Base Erosion (GloBE) Model Rules to clarify their application. It also provides guidance on multiple issues, including the application of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour and the mechanism for allocating taxes arising from a Blended Controlled Foreign Companies (CFC) Tax Regime. It also elaborates on purchase price accounting adjustments and the mismatch between Fiscal Years of the ultimate parent entity (UPE) and another constituent entity.

In relation to the CbCR Safe Harbour, the Inclusive Framework has become aware of certain arrangements that are qualified as "hybrid arbitrage arrangements." These arrangements appear to enable a constituent entity to qualify for the safe harbor and thereby avoid the full GloBE calculations and potential connected top-up taxes that would otherwise arise. The Inclusive Framework has identified three different hybrid arbitrage arrangements: (i) a deduction/non-inclusion arrangement; (ii) a duplicate loss arrangement; and (iii) a duplicate tax recognition arrangement. The Inclusive Framework has agreed that for the purposes of determining

whether a Tested Jurisdiction qualifies for the Transitional CbCR Safe Harbour, adjustments must be made to the Tested Jurisdiction's Profit (Loss) before Income Tax and income tax expense with respect to any Hybrid Arbitrage Arrangements entered into after 15 December 2022. This date may be shifted to 18 December 2023 for jurisdictions that constitutionally do not have the ability to provide retrospective effect.

The Inclusive Framework expects to release further guidance in the first half of 2024 on the application of deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes, such as CFC Tax Regimes. In addition, the [press release](#) indicates that the Inclusive Framework is working on a peer review process and continue the ongoing work on the administrative framework and dispute resolution mechanisms.

## European Union

### **European Commission confirms five Member States will delay IIR and UTPR introduction**

On 10 December 2023, the European Commission (the Commission) released a [Note](#) acknowledging that Estonia, Latvia, Lithuania, Malta and Slovakia have made use of the election under Article 50 of the Minimum Tax Directive.

Article 50 of the Minimum Tax Directive allows Member States in which no more than 12 UPEs of groups within the scope of the Directive are located to delay implementation of IIR and the UTPR for six consecutive fiscal years beginning from 31 December 2023. These Member States should nevertheless implement the rest of the provisions contained in the Minimum Tax Directive to ensure proper application of the system in other jurisdictions and by taxpayers. In addition, the Minimum Tax Directive also explicitly provides that other Member States should apply the UTPR to their constituent entities of such groups for fiscal years beginning from 31 December 2023.

The EU Member States' commitment to implementing the UTPR Safe Harbour also means groups headquartered in Estonia (corporate income tax (CIT) 20%), Latvia (CIT 20%), Malta (CIT 35%), and Slovakia (CIT 21%) can benefit from a late introduction of the Pillar Two rules because UPEs in these jurisdictions should not be subject to any UTPR top-up tax therein for fiscal years (no longer than 12 months) that begin on or before 31 December 2025, and end before 31 December 2026.

## Country developments

### **Austrian Parliament approves legislation on Pillar Two**

On 14 December 2023, the Upper Chamber of the Parliament of Austria approved the [legislation](#) to introduce Pillar Two into domestic law. The legislation closely follows the EU Minimum Tax Directive and implements an IIR and a Qualified Domestic Minimum Top-up Tax (QDMTT) for fiscal years starting on or after 31 December 2023. Likewise, the legislation implements the UTPR for fiscal years starting on or after 31 December 2024.

To be considered as formally enacted, the legislation needs to be signed by the President and published in the *Official Gazette*.

### **Belgian Parliament approves legislation on Pillar Two**

On 14 December 2023, the Belgian Parliament [approved](#) the legislation implementing Pillar Two. The legislation introduces an IIR and a QDMTT applicable for fiscal years starting on or after 31 December 2023. The legislation also introduces a UTPR applicable for fiscal year starting on or after 31 December 2024.

The next step in the legislative process is to receive Royal Assent. Once this is accomplished, the legislation will be considered as officially enacted.

See EY Global Tax Alert, [Belgian parliament approves draft bill on Pillar Two](#), dated 19 December 2023.

### **Bulgarian Parliament passes Pillar Two legislation**

On 12 December 2023, the Bulgarian Parliament [approved](#) the legislation introducing Pillar Two into domestic law. The legislation is generally aligned with the EU Minimum Tax Directive. It includes an IIR and a QDMTT for fiscal years starting on or after 31 December 2023 and a UTPR for fiscal years starting on or after 31 December 2024.

To be enacted, the legislation still needs to be promulgated by presidential decree and published in the *State Gazette*.

### Czechia approves Pillar Two legislation

On 1 December 2023, the Czech Parliament approved the Pillar Two [legislation](#). The legislation is generally aligned with the EU Minimum Tax Directive. It includes an IIR and a QDMTT for fiscal years starting on or after 31 December 2023 and the UTPR for fiscal years starting generally on or after 31 December 2024. The legislation has now been sent to the President of the Czech Republic for approval. Upon receiving approval from the President, the next step is the formal publication of the legislation in the *Official Gazette*.

### Denmark's Parliament approves Pillar Two legislation

On 7 December 2023, the Danish Parliament [approved](#) the legislation implementing Pillar Two into domestic law. The legislation closely follows the EU Minimum Tax Directive and incorporates an IIR and a QDMTT for fiscal years starting on or after 31 December 2023 and the UTPR for fiscal years starting on or after 31 December 2024.

The next step in the legislative process is to receive Royal Assent from the Queen of Denmark. After receiving the Royal Assent, the legislation is considered officially enacted.

See EY Global Tax Alert, [Denmark passes Pillar Two](#), dated 7 December 2023.

### German Parliament approves Pillar Two legislation

On 15 December 2023, the German Federal Council approved the [legislation](#) on Pillar Two. The legislation is closely aligned with the EU Minimum Tax Directive and the OECD GloBE Model Rules. The legislation also implements the February 2023 and July 2023 OECD Administrative Guidance and foresees accompanying amendments to the German Commercial Code, the *Financial Administration Act* and the General Tax Code.

For this legislation to effectively enter into force, it still needs to be published in the *German Federal Gazette* after being signed by the Federal President.

### Hungary publishes Pillar Two legislation

On 30 November 2023, Hungary published in the [Official Gazette](#) legislation implementing Pillar Two. The legislation is generally aligned with the EU Minimum Tax Directive. It includes an IIR and a QDMTT for fiscal years starting on or after 31 December 2023 and a UTPR for fiscal years starting on or after 31 December 2024.

See EY Global Tax Alert, [Hungary enacts local legislation on BEPS 2.0 Pillar Two](#), dated 15 December 2023.

### Ireland's House of Representatives approves Pillar Two legislation

On 12 December 2023, Ireland's [Finance \(No. 2\) Bill 2023](#), which includes legislation implementing the EU Minimum Tax Directive, passed through all stages in the Dáil (Irish Houses of Parliament). The legislation introduces an IIR and a Qualified Domestic Top-up Tax effective for fiscal years starting on or after 31 December 2023 as well as the UTPR effective for fiscal years starting on or after 31 December 2024.

The legislation is now awaiting signature by the Irish President.

### Latvia releases draft rules on Pillar Two reporting obligations and defers implementation of Pillar Two

On 3 November 2023, Latvia released [draft legislation](#) to implement Pillar Two into domestic law and launched a public consultation open for feedback until 17 November. The rules will enter into effect on 1 January 2024. Latvia opted for deferred implementation of the IIR and the UTPR until 31 December 2029 as allowed under Article 50 of the EU Minimum Tax Directive. In addition, the draft legislation does not include rules for the implementation of a QDMTT.

The draft legislation only includes reporting obligations. In this regard, UPEs in Latvia should designate a foreign reporting entity who will report on behalf of the group. Additionally, the draft legislation requires the UPE and constituent entities of the group located in Latvia to ensure that all the necessary information is provided to the reporting entity.

### Luxembourg Parliament raises concerns on the implementation of Pillar Two

On 5 December 2023, the Luxembourgish Parliament [discussed](#) implementing Pillar Two into domestic legislation. A parliamentary committee noted that they need more time for the legislative process given the complexity of the rules, suggesting that the implementation of Pillar Two is unlikely to occur in 2023 and is expected to occur in 2024.

## Malaysia's House of Representatives approves Pillar Two legislation

On 28 November 2023, Malaysia's House of Representatives approved the [Finance Bill](#) that includes legislation on Pillar Two. The next steps in the legislative process require the approval of the Senate and subsequently the receipt of Royal Assent for this Bill. Broadly mirroring the OECD Model Rules, the Pillar Two legislation includes a QDMTT and an IIR, both applicable for fiscal years starting on or after 1 January 2025. The UTPR is not part of this legislation.

## New Zealand reintroduces Pillar Two legislation into Parliament

On 6 December 2023, following the formation of the new coalition Government, the New Zealand Government reinstated to Parliament the [Bill](#) introducing Pillar Two into domestic legislation. The Bill remains unchanged as originally introduced in May 2023. It is possible that further amendments will be made to incorporate the new Government's policy preferences and/or public submissions received as part of the ordinary legislative processes.

The bill is expected to progress to enactment by 31 March 2024.

See EY Global Tax Alert, [New Zealand Government reinstates bill introducing Pillar Two rules, following General Election](#), dated 8 December 2023.

## Norway submits draft legislation on Pillar Two to Parliament

On 24 November 2023, the Norwegian Government presented to Parliament a [proposal](#) for a new law to implement Pillar Two in Norway. The proposal intends to implement the OECD GloBE Model Rules along with the Commentary and Administrative Guidance into Norwegian law.

The final proposal aligns with the earlier public consultation document, with the difference that the Government now intends to implement Pillar Two through separate legislation instead of incorporating it into Norway's General Tax Code.

The proposed legislation will implement an IIR and a Domestic Minimum Top-Up Tax (DMTT) rule from fiscal year 2024. The proposal does not include a UTPR, which the Ministry of Finance intends to implement only at a later stage. Additionally, the proposal includes more details regarding the DMTT and makes it clear that the intention from the Ministry of Finance is to ensure that the DMTT qualifies both as a QDMTT and pursuant to the QDMTT Safe Harbour under the OECD GloBE Model Rules.

## Slovakia's Parliament approves legislation on Pillar Two

On 8 December 2023, the Slovak Parliament approved the [legislation](#) implementing Pillar Two into domestic law. The legislation aligns closely with the EU Minimum Tax Directive but does not incorporate the IIR or the UTPR. These rules will be deferred until 2029 as allowed under Article 50 of the EU Minimum Tax Directive.

The legislation introduces a QDMTT for fiscal years starting on or after 31 December 2023. To be enacted, the legislation still needs to be approved by the President and published in the *Official Gazette*.

## Slovenian Parliament approves legislation on Pillar Two

On 13 December 2023, the Parliament of Slovenia approved the legislation to introduce Pillar Two into domestic law. The legislation introduces an IIR and a QDMTT for fiscal years starting on or after 31 December 2023 as well as the UTPR for fiscal years starting on or after 31 December 2024.

The legislation is now awaiting signature by the Slovenian President and publication in the *Official Gazette* to be considered as officially enacted.

## Swedish Parliament approves legislation on Pillar Two

On 13 December 2023, the Parliament of Sweden [passed](#) the legislation to introduce Pillar Two into domestic law. The legislation closely follows the EU Minimum Tax Directive and implements an IIR and a QDMTT for fiscal years starting on or after 31 December 2023. Likewise, the legislation implements the UTPR for fiscal years starting on or after 31 December 2024.

After the approval of the Parliament, the legislation will be formally enacted.

## United Arab Emirates releases Decree to implement Pillar Two

On 24 November 2023, United Arab Emirates (UAE) released [Federal Decree-Law No. 60 of 2023](#) to implement Pillar Two into domestic legislation. The Decree is a placeholder for the introduction of a top-up tax into the domestic legislation.

The UAE Ministry of Finance has announced that Pillar Two will not apply in the UAE in 2024. However, the Ministry will be releasing a public consultation in the first quarter of 2024. This consultation will seek input on the design and timing of the Pillar Two rules in the UAE from the relevant stakeholders.

## United Kingdom will introduce amendments to the Pillar Two rules

On 22 November 2023, in the [Autumn Statement 2023](#), the United Kingdom (UK) Government confirmed that it will introduce technical amendments in the Autumn Finance Bill 2023 to amend the IIR and the DMTT to reflect the OECD Administrative Guidance on Pillar Two. Additionally, the UK Government reconfirmed its commitment to introduce the UTPR with effect no earlier than for accounting periods beginning on or after 31 December 2024. Although draft legislation has previously been released for the UTPR, only the technical amendments were included in the Autumn Finance Bill published on 29 November 2023.

## United States Treasury provides guidance on the creditability of Pillar Two taxes and grants relief for pre-GloBE dual consolidated losses

On 11 December 2023, in [Notice 2023-80](#) (Notice), the United States (US) Treasury Department (Treasury) and the Internal Revenue Service (IRS) outlined guidance on the interaction of the foreign tax credit (FTC) rules and dual consolidated loss rules with top-up taxes imposed via the IIR or a QDMTT under the OECD GloBE Model Rules.

The Treasury also announced its intent to issue proposed regulations that will align with this new guidance. The Notice generally does not provide guidance on the FTC implications of the UTPR; however, the Treasury and the IRS are analyzing these issues and plan to release additional guidance.

Under the Notice, the creditability of a Pillar Two tax generally depends on whether it is a “final top-up tax,” and if so, how it is computed. The rule on final top-up tax only applies to taxes that meet the definition of a “foreign income tax” (as defined under Treas. Reg Section 1.901-2) and the examples assume that an IIR and QDMTT meet that definition.

On the application of the GloBE Model Rules to FTCs, the Notice anticipates that the forthcoming proposed regulations will apply to tax years ending after 11 December 2023. Taxpayers may rely on the guidance in the Notice for tax years ending after 11 December 2023, and on or before the proposed regulations are published, as long as they apply the guidance consistently to all applicable tax years.

See EY Global Tax Alert, [US Treasury provides guidance on the creditability of Pillar Two taxes, grants relief for pre-GloBE DCLs and extends temporary relief from FTC regulations](#), dated 15 December 2023.

## Vietnam's National Assembly approved the implementation of Pillar Two

On 29 November 2023, Vietnam's National Assembly approved Resolution No. 107/2023/QH15 on the implementation of Pillar Two in Vietnam. The Resolution includes an IIR and a QDMTT. Both rules will be applicable for fiscal years starting on or after 1 January 2024. As a next step, the Vietnamese Government will promulgate a decree providing more details for the implementation of the Resolution.

In response to comments from members of the Parliament, the Standing Committee of the National Assembly acknowledges that the Government needs to introduce the UTPR in the proposed amendment to the Corporate Income Tax Law in the 2024 Law and Ordinance Building Program, which is expected to be effective from 2025.

See EY Global Tax Alert, [Vietnam National Assembly passes top-up CIT in accordance with GloBE Model Rules](#), dated 8 December 2023.

## BEPS and other developments

### OECD

#### Global Forum holds 16th plenary meeting noting progress on transparency

From 29 November to 1 December 2023, the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) held its 16th plenary [meeting](#) noting significant progress on delivering transparency and exchange of information. In 2023, five jurisdictions joined the Global Forum bringing the number of members to 170, with more than 55% being developing countries.

In advance of the meeting, the Global Forum's [annual report](#) for 2023 was released, covering monitoring, peer-reviews of the implementation of the automatic exchange of information and exchange of information on request (EOIR), and capacity-building and outreach activities undertaken throughout the year.

During the meeting, delegates also discussed the recently adopted new framework for monitoring and peer review processes. The framework emphasizes enhanced monitoring, in-depth reviews, and thematic reviews, and is designed to offer thorough monitoring of the progress of standards' implementation across jurisdictions, using a blend of self-assessment, peer input and annual monitoring to track changes. The new processes will apply as of 1 January 2025 for jurisdictions that have completed their second EOIR peer review.

According to the [press release](#), six additional jurisdictions (Bermuda, Colombia, Faroe Islands, Indonesia, Mauritius and Monaco) adhered to the joint statement by 48 countries to implement global tax transparency standard for crypto-assets (Crypto-Asset Reporting Framework or CARF) by 2027. As noted in its annual report, the Global Forum also developed a Group on CARF.

During the meeting, Global Forum members reached consensus on the creation of a new group to monitor and identify risks to tax transparency standards (Group on Risk).

#### Indonesia makes notification for entry into effect of MLI on BEPS for some CTAs

On 27 November 2023, [Indonesia](#) made a notification confirming the completion of its internal procedures for the entry into effect of the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures (MLI) to Prevent Base Erosion and Profit Shifting (BEPS) with respect to its covered tax agreements (CTAs) with Bulgaria, Mexico, South Africa and Vietnam.

In accordance with Article 35(7)(a)(i) of the MLI, Indonesia had reserved the right to delay the entry into effect of the provisions of the MLI until "the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions." The MLI shall enter into effect for the CTAs mentioned above as of 27 December 2023 (i.e., on or after 30 days after the Depositary has received the notification from Indonesia that it has completed its internal procedures) under the condition that the Contracting Jurisdictions have not made a similar reservation or have already completed their procedures. In addition, Indonesia made a notification on the withdrawal of the reservation for Article 9(6)(a) and an additional notification for Article 9(8) of the MLI by Finland.

Indonesia also [added](#) its tax treaties with Austria, Belarus, Germany, Jordan, Kuwait, Mongolia, Morocco, Papua New Guinea, Singapore (new treaty), Sri Lanka, Tunisia, Ukraine and the UAE (new treaty) as agreements that it wishes to become CTAs. Furthermore, Indonesia deposited the notification to remove an amending Instrument under its CTA with Philippines.

#### Azerbaijan signs MLI on BEPS

On 20 November 2023, the OECD [announced](#) that Azerbaijan signed the MLI on BEPS. At the time of signature, Azerbaijan submitted a list of 54 tax treaties that it would like to designate as CTAs and submitted a preliminary list of reservations and notifications in relation to the CTAs ([MLI positions](#)). The definitive MLI positions for Azerbaijan will be provided when its respective instrument of ratification, acceptance or approval of the MLI is deposited.

## OECD holds Tax Certainty Day addressing MAP developments and updates on tax certainty efforts

On 14 November 2023 the OECD held its fifth annual [Tax Certainty Day](#).

During the event, the OECD released the 2022 statistics on Mutual Agreement Procedure (MAP) and presented the 2022 [MAP awards](#). There were also updates on other activities of the MAP Forum, the International Compliance Assurance Programme and 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).

### Dispute resolution

The [MAP 2022 statistics](#) reflect the continued trend of increasing MAP inventory, and reveal that MAP cases continue to take a long time to reach a resolution. In addition, according to the statistics, approximately 70% of total MAP cases are concentrated in 10 countries and approximately 44% in five countries (Germany, France, Italy, Spain and Belgium). In 2022, MAP outcomes have remained generally positive and only 3% cases closed without agreement.

The OECD also published its first edition of the [consolidated information on MAP](#), which provides an overview in one place of all published information on MAP for every jurisdiction member of the Inclusive Framework. The overview will be updated and released annually.

### Tax certainty

The Director of the OECD's Centre for Tax Policy and Administration stated that tax certainty remains a central design priority in relation to the BEPS 2.0 project. A key part of Pillar One is the incorporation of binding dispute prevention and resolution mechanisms to secure certainty regarding the application and calculation of Amount A and related provisions. Inclusion of these mechanisms in the most recent draft of Amount A marks a big step. For Pillar Two, members of the OECD Secretariat indicated that certainty regarding consistent application of the GloBE Model Rules is achieved through drafting detailed model rules/commentary, issuing administrative guidance, determining qualified status of certain components of the rules and the

ongoing peer review/monitoring process, and continuing to use the GloBE information return. The members of the OECD Secretariat further provided a detailed overview of tax-certainty processes under Pillar One and Pillar Two.

See EY Global Tax Alert, [OECD holds Tax Certainty Day addressing MAP developments and updates on tax certainty efforts](#), dated 21 November 2023.

## European Union

### ECOFIN adopts progress report under Spanish Presidency

On 8 December 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where Finance Ministers adopted the [progress report](#) on tax matters under the Spanish Council Presidency. The report summarizes the state of play of key tax files including Unshell, Faster and Safer Relief of Excess Withholding Taxes (FASTER), Business in Europe: Framework for Income Taxation (BEFIT), Transfer Pricing (TP) and Head Office Tax (HOT).

On FASTER, the report mentions that substantial progress has been made and, in particular, the provision regarding the electronic tax residence certificate has received broad support. Nevertheless, further technical work is required before the file can be submitted to the Council for approval of a general approach.

On Unshell, the Spanish Presidency made limited progress. The Spanish Presidency suggested a two-step approach, starting with automatic exchange of information based on a number of agreed hallmarks coupled with domestic tax consequences, followed by the exchange of best practices about the use of that information to apply tax consequences among the Member States. During the ECOFIN meeting, the Commission suggested an alternative based on a minimum standard approach and a toolbox of consequences. However, there was no agreement on either of the approaches. Further discussions will be needed to see if a compromise solution can be found.

In 2024, technical work will also continue on the BEFIT, TP and HOT proposals. As of 1 January 2024, Belgium takes over the EU Presidency from Spain.



## Code of Conduct Group on Business Taxation presents report to the Council

On 1 December 2023, the Code of Conduct Group (COCG) presented its [report](#) to the Council, summarizing its work in the second half of 2023 under the Spanish Council Presidency.

The report demonstrates that the COCG's work is not limited to its review of third country tax regimes, as regimes of Croatia, Poland, Romania and Spain were also analyzed. They were not considered harmful. According to the report, the actual effects of individual measures continue to be monitored, including regimes of Greece (patent tax incentive), Lithuania (CIT for companies implementing large projects), Luxembourg (measure on intra-group financing), Poland (notional interest deduction regime and cooperative compliance program for large taxpayers), Portugal (notional interest deduction regime) and Romania (measure on reduction of income tax for maintain/increasing own capital). Furthermore, cooperative compliance programs in the EU have been mapped to ensure they do not go beyond the primary aim of ensuring tax compliance. In this context, the COCG agreed to monitor the effect of the "tacit rulings" in the Italian cooperative compliance program.

In addition to updating the blacklist and grey list, the COCG agreed to expanding the list of jurisdictions to be reviewed to regimes of Brunei, Kuwait and New Zealand.

## United Nations

### United Nations adopts resolution for tax cooperation

On 22 November 2023, during its seventy-eighth session, the Second Committee of the UN General Assembly [approved](#) a Resolution for the promotion of inclusive and effective international tax cooperation to initiate actions in the UN on the development of a framework convention on international tax cooperation. The Resolution was adopted under a [vote](#) by simple majority, with 125 jurisdictions voting in favor, 48 against and nine abstained. An [amendment](#) proposed by the UK replacing the phrase "framework convention" with the word "framework" did not secure approval from the Committee.

The Resolution that was approved was an [updated version](#) (dated 15 November) of the draft resolution submitted in October 2023 by the Nigerian delegation on behalf of the UN member states belonging to the African Group. The Resolution provides for the establishment of an ad hoc

intergovernmental committee to draft the terms of reference for a framework convention on international tax cooperation. The intergovernmental committee is to convene in New York with a view to finalizing its work by August 2024, and is to submit a report with the draft terms of reference to the General Assembly at its seventy-ninth session, opening on 10 September 2024.

## Country developments

### Australian Government refers proposed amendments to the thin capitalization and debt deduction creation measures to Committee for review

On 5 December 2023, the Australian Senate referred the proposed [Government Amendments](#) on sheet RU100 to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023 (Bill) to the Senate Economics Legislation Committee for further inquiry.

This Bill includes amendments to the thin capitalization regime. Among other things, the amendments include a one-year delay to the start date for the debt deduction creation rules. This means that although all the other proposed measures will apply to income years commencing on or after 1 July 2023, the debt deduction creation rules will apply for income years beginning on or after 1 July 2024 (notwithstanding these rules will then apply to schemes entered into both prior to and after this date). In addition, the scope of schemes that may be covered by these rules has been narrowed. An additional change enables a broader range of entities to transfer their excess earnings before interest, taxes, depreciation and amortization (EBITDA) to other eligible entities. Lastly, the exemption for some kinds of credit support rights under the third-party debt test conditions has been expanded.

The Senate Economics Legislation Committee is set to report back to the Senate by 5 February 2024. Once the report has been tabled, the Senate will consider the Bill.

See EY Global Tax Alert, [Australian thin capitalization changes and new subsidiary disclosure rules – December 2023 update](#), dated 15 December 2023.

## Belgian Government submits bill on strengthening CFC rules to Parliament

On 28 November 2023, the Belgian Government submitted a [Bill](#) to the Parliament to amend its CFC regime.

The current Belgian CFC rules target income derived by a CFC from non-genuine/artificial arrangements put in place with the essential purpose of obtaining a tax advantage (option B of the EU Anti-Tax Avoidance Directive I/ATAD I). The CFC rules apply in relation to undistributed profits which the CFC has obtained within a taxable period closed within the taxable period of the Belgian controlling entity. To the extent profits of the CFC obtained within a taxable period are distributed within a same taxable period, no undistributed profits would be reported and the CFC rules would therefore not apply.

Under the proposed Bill, the CFC regime (option A of the EU ATAD I) targets undistributed income of the CFC that is derived from certain categories of (passive) income, such as interest and royalties, unless (i) the CFC carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances, (ii) less than one third of the total revenues of the CFC is considered passive income or (iii) the CFC falls within certain type of financial institutions (subject to certain conditions).

As a next step, the Bill needs to be voted in the Parliament. Once adopted, the Bill will apply as of 1 January 2024.

## Canadian Bill C-59, Fall Economic Statement Implementation Act 2023, receives first reading in the House of Commons

On 30 November 2023, Bill C-59, Fall Economic Statement Implementation Act, 2023, received first reading in the House of Commons. Bill C-59 stipulates the introduction of new earnings-stripping rules to limit the amount of net interest and financing expenses that a corporation may deduct in computing business or property income, or taxable income, to a fixed ratio (or a higher group ratio) of adjusted taxable income for the year. Adjusted taxable income approximates the accounting concept of tax EBITDA. The rules apply for tax years beginning on or after 1 October 2023.

In addition, Bill C-59 proposes the introduction of new rules to neutralize the effects of hybrid mismatch arrangements. The new rules are generally consistent with recommendations in the OECD/G20 BEPS Action 2, and generally apply to payments between parties that satisfy a relationship test and payments between unrelated parties under certain structured arrangements designed to produce a mismatch. In addition, new reporting requirements are introduced for amounts that are subject to the deduction denial rule, income inclusion rule, or dividend restriction rule, but only for amounts arising, or dividends received, on or after 1 July 2023.

Furthermore, the Bill includes various amendments to modernize and strengthen the general anti-avoidance rule (GAAR), including addition of a GAAR preamble and an economic substance test, reduction in the threshold for the avoidance transaction test, changing it from a “primary purpose” test to a “one of the main purposes” test, and introduction of a penalty equal to 25% of the amount of the tax benefit. The GAAR amendments apply to transactions that occur after 2023, but the preamble applies on Royal Assent of Bill C-59 - if before the end of 2023.

Finally, the Bill amends reportable transaction rules to allow for a voluntary disclosure of a (series of) transaction(s) in circumstances where a disclosure would not otherwise be required. These amendments apply to transactions that occur on or after 1 January 2024.

See EY Global Tax Alert, [Canadian Bill C-59 to implement Budget 2023 and other measures receives first reading](#), dated 5 December 2023.

## Colombia releases Bill introducing arbitration on tax matters

On November 22, 2023, the Colombian Minister of Finance and Public Credit submitted draft [Bill 198](#) to the Senate. This proposal aims to amend Bill 1563 of 2012, the Arbitration Statute, to establish arbitration as an alternative dispute resolution mechanism in tax and customs matters.

According to the draft bill, both the taxpayer and the Tax Authority have the option to request dispute resolution through arbitration. Furthermore, the draft bill states that the Highest Tax Court retains the authority to review and potentially annul arbitral awards under specific conditions.

## France updates transfer pricing guidelines and guide for SMEs

On 22 November 2023, France released the first [update](#) to the transfer pricing guide for small and medium sized enterprises (SMEs) issued in 2006, and updated its general transfer pricing [guidelines](#). The updates cover a variety of topics, including the definition of transfer pricing and the arm's-length principle. Moreover, the updated guidelines include details on the valuation of hard-to-value intangibles, and the pricing of intragroup financial transactions. On dispute resolution procedures, the updates provide guidance on procedures available to SMEs to eliminate double taxation resulting from transfer pricing reassessments. For transfer pricing documentation, the updated guidance provides details on the filing obligations deriving from the Master File, the Local File and the Country-by-Country report.

## France's Supreme Administrative Court annuls dividend withholding tax guidelines

On 8 December 2023, the French Supreme Administrative Court issued its judgment on [Case no. 472587](#), annulling part of the [guidelines](#) of the French tax authorities on the application of the dividend withholding tax.

The guidelines stated that the dividend withholding tax could be imposed on income that was considered benefiting a person not tax resident in France, clarifying that this would be the case also when the recipient of the dividend resides in France but the actual beneficiary no.

The case was brought before the Court by the French Banking Federation which claimed the guidelines should be annulled since according to the French General Tax Code, the dividend withholding tax cannot be applied to distributions made to a resident in France.

The Supreme Administrative Court upheld this view, annulled this part of the guidelines and indicated that imposition of dividend withholding tax to a resident in France is only possible when the distributions fall within the scope of specific (dividend stripping rules) or general (abuse of law) anti-abuse provisions.

## Germany issues draft guidance on Tax Haven Defense Act

On 30 November 2023, the Ministry of Finance of Germany [released](#) draft guidance on the application of the [Tax Haven Defense Act](#) (law to prevent tax avoidance and unfair tax competition) of 1 July 2021. The aim of this act is to encourage states and territories that do not adhere to internationally recognized tax standards and promote tax evasion, tax avoidance and unfair tax competition, to make adjustments toward the implementation and compliance with international standards in the field of taxation, by using administrative and substantive tax measures (defensive measures).

The guidance provides clarifications on most aspects of the *Tax Haven Defense Act* with particular focus on the application of defensive measures and its interaction of the Act with other regulations, including existing double tax treaties.

Stakeholders are invited to provide their input on the draft guidance until 9 January 2024.

## Hong Kong amends Foreign-Sourced Income Exemption Regime

On 8 December 2023, the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) [Ordinance 2023](#) (the 2023 Amendment Ordinance) was enacted to refine the Foreign-Sourced Income Exemption (FSIE) regime and bring it in line with the updated EU guidance on FSIE regimes issued in December 2022.

Under the updated regime, the scope of assets has been expanded to cover all types of property in relation to foreign-sourced disposal gains. Also, a new intra-group transfer relief is introduced according to which charging of tax is deferred if the property concerned is transferred between associated entities, subject to specific anti-abuse rules. In addition, a transitional provision allows for the expansion of the Commissioner's Opinion on compliance of an MNE with the economic substance requirement in relation to disposal gains of the added assets provided under the amendment, until 31 December 2023.

The rules will apply as of 1 January 2024 and the Government will request removal from the EU watchlist.

See EY Global Tax Alert, [Hong Kong passes bills on asset disposal gain regimes](#), dated 12 December 2023.

## Italy issues implementing rules for DAC7

On 20 November 2023, Italian Revenue Agency issued [implementing rules](#) 406671/2023 for the legislative [Decree No. 32 of 1 March 2023](#) implementing the EU Directive expanding the scope of exchange of information to digital platform operators (DAC7).

The implementing rules set out terms and methods for communicating information, procedures for the registration of platform operators with reporting obligations and guidelines for foreign and excluded platform operators. The rules also include registration and data transmission specifications, timelines for communication and information exchange, as well as details about data treatment. More specifically, the implementing rules indicate that a platform operator should register with the Italian Revenue Agency (IRA) and submit the required information electronically via the IRA portal and using an XML format.

The platform operators should comply with their due diligence obligations by 31 December of each reporting period, and the relevant information should be communicated by 31 January of the following year. The deadline for the first reporting period is, thus, 31 January 2024.

## Latvia updates list of noncooperative jurisdictions

On 23 October 2023, Latvia published in the *Official Gazette* an [updated list](#) of noncooperative states and territories in response to the latest update (October 2023) of the EU list of noncooperative jurisdiction for tax purposes.

In this update, Latvia added to the list Antigua and Barbuda, Belize and Seychelles, and removed British Virgin Islands, Costa Rica, and Marshall Islands.

Hence, the updated list includes the following jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Bahamas, Belize, Fiji, Guam, Palau, Panama, Russian Federation, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

The updated list applies as of 1 November 2023.

## Dutch Senate adopts bill implementing EU Public CbCR Directive

On 5 December 2023, the Dutch Senate (Eerste Kamer) [announced](#) the adoption of the Bill implementing the EU Public CbCR Directive into national law. The implementation deadline under the Directive was 22 June 2023. The Bill will apply for financial years starting on or after 22 June 2024.

As of next steps, the King should sign the Bill, the Minister for Legal Protection should countersign it, and it will enter into effect the day after the date of issuance of the *Government Gazette* in which it is published.

## Dutch State Secretary of Finance clarifies application of interest deduction limitation regime

On 28 November 2023, the Dutch State Secretary of Finance published [Decree no. 2023-22492](#) clarifying the application of the interest deduction limitation rules set out in the national rules implementing EU ATAD I, also called the earnings stripping rule. Based on this rule, the balance of the interest expenses and interest income taken into account when determining a taxpayer's profit for Dutch CIT purposes are only deductible in a year up to the highest of (i) 20% of the taxpayer's taxable EBITDA or (ii) €1m. The Decree provides, among other things, a further description and explanation of the terms outlined below and how to determine them.

The Decree clarifies the definition of interest, stating that the term "interest" has an economic meaning. According to the State Secretary, legal interest should be taken into account when calculating the excess interest, but interest on tax due and late payment interest should not be covered under the term. Furthermore, if an entity becomes (partially) subject to Dutch CIT and the earnings stripping rule becomes applicable for the first time, the payables and receivables of the entity will be stated at fair market value on the opening balance sheet and any premium or discount will be charged/credited by means of an amortization or accretion. This amortization or accretion should fall within the term "interest." As for interest expenses, the Decree sets out that the term includes penalty interest and guarantee fees paid, whereas the related income does not qualify as interest income at the level of the recipient.

In addition, the Decree explains the definition of “loan,” stating that it incorporates a savings deposit but not a tax debt. The Decree also provides clarifications on what constitutes a contract comparable to a loan. Such a contract should consist of a principal amount, a repayment obligation and an obligation to pay interest (or an economically comparable payment) and the Decree provides among others financial lease and hire purchases as examples. Rental agreements and operational leases should not constitute a contract comparable to a loan.

Finally, the Decree elaborates on the determination of the adjusted profits and focuses on capitalized interest (adding negative interest balance and the amortization of capitalized one time financing costs and interest), amortizations and depreciations.

The Decree entered into force on 29 November 2023.

### **The Netherlands issues position on Head Office Tax Directive**

On 24 November 2023, the Working Group for the Assessment of New Commission Proposals (BNC) of the Netherlands issued the country’s [position](#) towards the Head Office Tax Proposal Directive. The Netherlands favors the creation of a robust, efficient and fair tax system and works towards reducing the complexity and reporting obligations in the area of taxation. Though the Netherlands supports the goals of the European Commission in terms of removing barriers of doing business in other Member States and reducing the administrative burden for businesses, it believes that the benefits of this proposal do not outweigh its drawbacks and doubts whether this proposal can solve the problem of complexity of rules for SMEs. In addition, the Dutch Cabinet is of the opinion that the proposal could lead to tax arbitration possibilities for SMEs, meaning that an enterprise may establish its head office in the jurisdiction which it considers more favorable from a tax perspective, and proceed with other kind of restructurings.

Furthermore, the Netherlands considers it problematic that the policy choices of the head office Member State should be taken into account for calculating the PE’s taxable base by the Member State of the PE. In addition, the Netherlands brings up the interaction of the proposal with existing anti-abuse provisions, and the nondiscrimination provision under double tax treaties, and competition concerns between SMEs which operate cross-border and those only within one Member State. Finally, the Dutch Cabinet believes that the scope is too limited, as SMEs using holding structures cannot make use of the proposal.

### **New Zealand Government reinstates digital services tax bill**

Following the formation of the new Government and the reconvening of Parliament, [the DST Bill](#) has now been reinstated in New Zealand, and work on its enactment will resume. The New Zealand Parliament was suspended ahead of the General Election, held on 14 October 2023. At that point any remaining unenacted bills lapsed, including the DST Bill, which would introduce a DST into New Zealand domestic tax law if insufficient progress is made toward the implementation of Pillar One of the OECD Two-Pillar solution.

The DST Bill introduced in September 2023, proposes to implement a flat 3% DST on the gross digital services revenue of large multinational groups if that revenue is attributable to New Zealand users or land.

The DST has a proposed application date of 1 January 2025. This date could be deferred by up to five years, with the latest possible implementation date being 1 January 2030. This would allow the DST to be deferred if the Government sees sufficient progress toward implementation of Pillar One.

See EY Global Tax Alert, [New Zealand Government reinstates Digital Services Tax Bill, following General Election](#), dated 8 December 2023.

### **Spain launches public consultation on draft Ministerial Order implementing DAC7 reporting obligations**

On 23 November 2023, Spanish Ministry of Finance launched a public consultation on the [draft Ministerial Order](#) on the registration and reporting forms, and the filing conditions and procedures under DAC7. In particular, the draft bill includes form 040 on the registration of non-qualifying foreign platform operators and other reporting platform operators, and form 238 on the reporting of information by platform operators.

Stakeholders could provide input until 4 December 2023. As of next steps, the Ministerial Order needs to be approved by the Finance Minister and published in the *Official Gazette*. The deadline for the first reporting period is 31 January 2024.

## Slovenian Financial Administration issues guidelines on DAC7 implementation

On 1 December 2023, the Slovenian Financial Administration issued [guidelines](#) and [model reporting rules](#) for platform operators under DAC7. The guidelines provide clarifications on the presentation and delivery methods for data reported by platform operators to the Financial Administration of Slovenia.

These rules stipulate the prescribed format for the reports of platform operators and the method of delivery, accompanied with instructions for initial reporting and a self-determination questionnaire for digital platform operators. The instructions define key terms, procedures for due diligence, registration requirements, and the criteria for data reporting, which include respective deadlines, data exchange, supervision, and fines. Reporting platform operators are required to complete due diligence procedures by 31 December 2023 and submit the final reports to the tax authorities by 31 January 2024.

The model reporting rules explain the differences between initial and correction messages and classify them as different message types. They also provide details on the naming conventions for files and message components, including the permissible combinations of the DocTypeIndic element within the cover elements. Moreover, the rules introduce the electronic means for reporting and guidance for the transmission of the reports. The questionnaire comprises four questions to qualify as a digital platform operator.

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