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Global Tax Alert

The Latest on BEPS and Beyond

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Highlights

As the global tax landscape continues to shift, multiple jurisdictions are amending their existing Pillar Two legislation to align with the latest Administrative Guidance and the anti-arbitrage rules for the Transitional Country-by-Country Reporting (CbCR) safe harbor. This development highlights the dynamic nature of Pillar Two, as well as the commitment of jurisdictions to ensure a consistent and coordinated implementation.

However, the Organisation for Economic Co-operation and Development's (OECD's) journey with the release of Administrative Guidance is far from over. In the coming weeks, it is expected the release of additional guidance. As jurisdictions worldwide implement Pillar Two legislation based on the publicly released information, the subsequent issuance of new guidance may result in a lack of synchronization between domestic laws and the latest guidance. This disconnect could be problematic, particularly in jurisdictions where such guidance is considered "soft law" and may hold little value until it is formally translated into "hard law" through legislative amendments.

The situation becomes even more complex when the guidance seems to alter the Model Rules, rather than merely clarifying existing ones. In such cases, jurisdictions may face delays in transposing these changes into their domestic laws, potentially leading to inconsistencies and interpretative challenges for taxpayers operating across multiple jurisdictions.

In the midst of the implementation of Pillar Two, the EU Ministers of Finance recently reached an agreement at the ECOFIN Council on the Directive on a Faster and Safer Tax Excess Relief (FASTER). While FASTER is set to streamline withholding tax procedures and mitigate double taxation on dividends, it also introduces additional reporting obligations for qualified intermediaries. These obligations may lead some intermediaries to reconsider their market presence, weighing the benefits for investors against the increased compliance burden.

All these developments highlight the far-reaching implications of the global tax policy shift. As this landscape continues to evolve, businesses must stay informed, proactively engage with relevant stakeholders, and carefully assess the potential impacts on their tax positions, operating models, and overall business strategies. Embracing a proactive and collaborative approach will be crucial for businesses to navigate these changes effectively, mitigate risks and position themselves for long-term success in the post-Base Erosion and Profit Shifting (BEPS) era.

BEPS 2.0

OECD

OECD releases Consolidated Commentary to the GloBE Rules

On 25 April 2024, the OECD released a Consolidated Commentary document on the Pillar Two Global anti-base Erosion (GloBE) rules along with a revised document with illustrative examples under the GloBE rules. The updated Commentary reflects, in a single consolidated text, the changes and additions that were previously published in three rounds of Administrative Guidance in February, July and December 2023. Similarly, the updated examples document includes the new examples published in the three prior rounds of Administrative Guidance.

G7 Finance Ministers and Central Bank Governor release statement including reference on Pillar One and Pillar Two

On 17 April 2024, the G7 Finance Ministers and Central Bank Governors met on the margin of the International Monetary Fund and World Bank Group Spring Meetings and released a statement. Among various topics, they reiterated their commitment to establish a more stable and fairer international tax system fit for the 21st century. Specifically, they urged all members of the Inclusive Framework to strive toward signing the MLC on Pillar One by the end of June 2024.

Additionally, the G7 Finance Ministers expressed approval for the growing number of jurisdictions that have either announced intentions to implement or have already implemented Pillar Two into their domestic legislation. They also voiced support for the OECD/G20 Inclusive Framework's efforts to ensure consistent implementation.

Country developments

Belgium approves amendments to Pillar Two legislation

On 2 May 2024, the Belgian parliament adopted a bill amending the Pillar Two legislation. These revisions are aimed at aligning with the OECD Administrative Guidance issued in 2023. Key adjustments involve modifications in the computation of GloBE, the introduction of the Qualified Domestic Minimum Top-Up Tax (QDMTT) and the Under-Taxed Profits Rule (UTPR) safe harbor, and the integration of anti-abuse measures for hybrid arbitrage arrangements.

Additionally, the bill requires mandatory registration for in-scope groups in the Belgian Commercial Register for GloBE purposes. The deadline for registration is expected to be 30 June 2024. Detailed instructions regarding this registration process are expected to be provided in a forthcoming Royal Decree.

The adopted bill also includes amendments to the Innovation Income Deduction (IID) regime. Accordingly, Belgian taxpayers will now get the option not to apply part of the IID but to carry it forward in the form of a nonrefundable tax credit. This allows them to achieve an effective tax rate of 15% without facing a top-up tax, all while retaining the benefits of the IID for the relevant tax year and subsequent taxable periods. Importantly, the tax credit can be carried forward indefinitely and without limitations.

See EY Global Tax Alert, *Belgium further aligns Pillar Two legislation with OECD's Agreed Administrative Guidance*, dated 21 May 2024.

Canada releases Pillar Two draft legislation

On 30 April 2024, the Canadian Department of Finance released the Notice of Ways and Means Motion to introduce the Budget Implementation Act, 2024, No.1. Among other items, this legislation includes a draft of the Global Minimum Tax Act (GMTA), which aims to implement Pillar Two into domestic law. The draft GMTA includes the Income Inclusion Rule (IIR) and the QDMTT, both of which are applicable from 31 December 2023. The UTPR is not part of this draft legislation.

The draft GMTA updates the document released in August 2023, and incorporates key elements of the administrative guidance released by the OECD in July and December 2023, including on the transitional and permanent safe harbors.

A first reading of the Bill was performed on 2 May 2024.

Czech Republic releases draft bill to amend the Pillar Two legislation

On 26 April 2024, Czechia published a draft bill to amend its Pillar Two legislation. The amendments intend to reflect some of the provisions included in the different Administrative Guidance released in 2023. Among other items, the draft legislation incorporates anti-arbitrage rules for purposes of the Transitional CbCR safe harbor and also proposes an extension of the deadline for filing the initial information statement/top-up-tax return to 30 June 2026 at the earliest.

The bill is expected to undergo further revisions throughout the legislative process. To be formally enacted, the draft bill must be approved by both chambers of the Parliament, receive the President's signature and ultimately be published in the *Official Gazette*.

Estonia approves Pillar Two legislation

On 10 April 2024, the Estonian Parliament approved the Pillar Two legislation, addressing the reporting obligations despite deferring the implementation of Pillar Two until 2030, as permitted under the EU Minimum Tax Directive. In this regard, Ultimate Parent Entities in Estonia should designate a foreign reporting entity responsible for reporting on behalf of the group.

The approved legislation does not incorporate a QDMTT, and it remains unclear whether Estonia will introduce such a tax in the future. To become applicable law, the legislation will need to be announced by the President and published in the *State Gazette*.

Japan releases explanatory notes on Pillar Two

On 26 April 2024, the Japanese National Tax Agency (NTA) released the explanatory notes on the Japanese Pillar Two law and regulations. These explanatory notes provide additional details on the interpretative guidance issued by the NTA in September 2023 and how the NTA arrived at such interpretative positions.

These explanatory notes are not legally binding on taxpayers.

Poland releases Pillar Two draft legislation

On 25 April 2024, the Polish government published draft legislation, for public consultation, aimed at implementing Pillar Two into domestic law. The draft legislation includes the IIR, the UTPR and the QDMTT. It generally aligns with the EU Minimum Tax Directive. Additionally, the draft legislation incorporates the transitional CbCR safe harbor rules.

While the draft legislation is anticipated to take effect from 1 January 2025, a specific provision allows in-scope groups to voluntarily opt for QDMTT and IIR in Poland for fiscal years starting on or after 1 January 2024.

The legislative process is expected to conclude with the adoption of the final law in the third quarter of 2024.

See EY Global Tax Alert, *Poland publishes draft legislation implementing global minimum tax (Pillar Two), with option to apply retroactively from 1 January 2024*, dated 26 April 2024.

South Korea releases regulations on Pillar Two

On 28 February 2024, the Ministry of Economy and Finance of South Korea released regulations regarding Pillar Two in amendments to the 2023 tax reform bill. These regulations incorporate various provisions, including allocation rules for income and losses between a Main Entity and a Permanent Establishment, as well as details on the scope of the Pillar Two rules. This aligns with the Administrative Guidance released in February and July 2023.

Furthermore, the regulations introduce the GloBE Information Return form and the Pillar Two tax return form for domestic filing in South Korea.

The amendments entered into effect on 22 March 2024. The new provisions apply for tax years starting on or after 31 December 2023.

BEPS and other developments

OECD

OECD updates list of signatories of the CbC MCAA

On 30 April 2024, the OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). According to this update, Albania signed the CbC MCAA on 11 March 2024, Cameroon on 25 January 2024, and Mauritania on 12 February 2024. The total number of jurisdictions that have signed the CbC MCAA is now 103.

OECD holds Ministerial Council Meeting, issues Ministerial Council Statement and Outcomes

On 2 and 3 May 2024, the OECD Ministerial Council Meeting was held in Paris, culminating in the issuance of the 2024 Ministerial Council Statement (the Statement). This Statement highlighted various issues, including fiscal challenges, and underscored the necessity for strengthened collaboration between the OECD and the United Nations to promote multilateralism. The Ministers pledged to implement the OECD/G20 Principles of Corporate Governance promptly and effectively. Additionally, the statement urged all members of the Inclusive Framework to expedite the completion of Pillar One and to aim for the signing of the Amount A MLC by the end of June 2024.

In the accompanying Key Issues paper, the OECD reiterated the importance of fostering cooperation among international organizations and avoid duplicating efforts.

Alongside the Statement, the Ministers released several supporting documents on the meeting's outcomes. These documents highlight the OECD's ongoing commitment to the implementation of both Pillar One and Pillar Two, as well as its dedication to assisting developing countries in these endeavors, thereby enhancing the inclusivity and effectiveness of international tax cooperation.

Here is the complete list of supporting documents.

European Union

European Commission starts evaluation of Directive on Administrative Cooperation 2 to 6

On 7 May 2024, the European Commission (the Commission) initiated an evaluation of the Directive on Administrative Cooperation (DAC) 2 to 6, accompanied by a public consultation. Input submitted by stakeholders to the public consultation will inform the Commission's evaluation that will focus on the relevance, effectiveness, efficiency, coherence and EU added value of the DACs. The iterations of DAC that are under review are:

- DAC2: Reporting on and automatic exchange of financial account information (CRS)
- DAC3: Exchange of information on rulings
- DAC4: Reporting and Exchange of CbCRs
- DAC5: Access to beneficial ownership information (as collected for AML purposes)
- DAC6: Mandatory Disclosure Rules

The initial iteration of DAC and more recent iterations are out of scope of the evaluation. DAC1 introduced exchange of information on request on specific information categories as well as automatic exchange on five non-financial categories including employment income.

The public consultation consists of a Call for Evidence and a questionnaire, and the participants may upload a free form submission in the form of paper. The Commission invites public feedback through its website by 30 July 2024.

EU Member States reach political agreement on Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER)

On 14 May 2024, the Council of the EU reached political agreement on the Directive setting forth rules that aim to make withholding tax (WHT) procedures in the EU more efficient and secure for investors, financial intermediaries and Member States (the Directive is also referred to as FASTER). The Commission proposed the Directive on 19 June 2023 and had earlier announced it in the Commission's 2020 Action Plan on the Capital Markets Union.

The Directive prescribes the following key actions:

- A common EU digital tax-residence certificate (for individuals and corporate entities) to be issued by the Member State of residence within 14 calendar days after a request is submitted
- A choice for Member States between "relief at source" procedure and a "quick refund" system, or a combination of both, to be applied to WHT that a Member State can withhold on dividends from publicly traded shares and, where applicable, interest from publicly traded bonds
- A standardized reporting process that imposes common reporting obligations on certain financial intermediaries in the chain through a national register of certified financial intermediaries

Member States are expected to formally adopt the Directive after the European Parliament has provided its second nonbinding opinion given the substantial changes that have taken place on the proposal during the negotiations.

Member States will then have until 31 December 2028 to transpose the Directive into national legislation, with the rules applicable for fiscal years starting on or after 1 January 2030.

See EY Global Tax Alert, *EU Member States reach political agreement on Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER)*, dated 14 May 2024.

Country developments

Australia enacts law amending its thin-capitalization regime

On 8 April 2024, the Australian government enacted new legislation to strengthen the country's thin-capitalization rules, in line with OECD guidelines under Action 4 (limitation on interest deductions).

The Treasury Law Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Act 2024 targets multinational businesses operating in Australia with at least AU$ 2m in debt deductions, on an associate inclusive basis.

The new rules introduce three new tests applicable to "general class entities":

- Fixed ratio test: Limits the net debt deductions of an entity to 30% of its tax earnings before interest, taxes, depreciation, and amortization (EBITDA). Excess deductions can be carried forward for up to 15 years, subject to meeting modified continuity of ownership or business continuity tests. This is the default option unless a taxpayer elects to use one of the other two methods.
- Group ratio test: Uses a worldwide gearing ratio based on the group's net third-party interest expense and EBITDA from its financial statements. Carry forward of denied deductions is not allowed under this method.
- Third-party debt test: Limits debt deductions to those from external debt that satisfy certain conditions. Deductions from related-party debt are denied without carry forward.

Existing tests for financial entities and Authorised Deposit-taking Institutions (ADIs) remain as follows (i) the safe harbor test and the worldwide gearing ratio test are kept for both, and (ii) the arm's-length debt test is maintained for ADIs, while the third-party debt test will apply for financial entities that are not ADIs.

Additionally, new debt deduction creation rules are introduced to prevent multinational businesses from generating internal debt to exploit additional deduction capacity.

The new rules apply to fiscal years starting on or after 1 July 2023, with the exception of the new debt deduction creation rules which will apply to income years commencing on or after 1 July 2024.

Minister of Justice of Austria releases draft law implementing the EU Public CbCR Directive

On 3 April 2024, the Federal Ministry of Justice of Austria published the draft law implementing the EU Public CbCR Directive into domestic law.

The draft law closely aligns with the EU CbCR Directive. Austria has opted for both optional provisions under the Directive: the "website exemption," which allows entities to disclose the report on income tax information and the informative statement on the General Business Registry for permanent public access, and the "safeguard clause," which permits the temporary omission of information from the report if its disclosure would be prejudicial to the commercial position of the multinational enterprise group to which the report refers. The explanatory statement to the draft law

notes that the website exemption seems to be adopted by all Member States, so not allowing the publication of potentially harmful information with a delay would lead to competitive disadvantages and complications in Austria. The "safeguard clause" was adopted due to the challenges faced by the Commercial Register Court in verifying and maintaining permanent access to the report on a third-party website.

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 after 21 June 2024. As of next steps, the Parliament and the Federal Council should approve the draft law.

Canada releases Budget 2024-25

On 16 April 2024, Deputy Prime Minister and Federal Finance Minister, Chrystia Freeland, tabled the federal Budget 2024-25 (Budget 2024-25) introducing several tax-related measures.

The budget expands exemptions under the excessive interest and financing expenses limitation rules for certain infrastructure projects, particularly those involving rental housing finance, with applicability for tax years commencing on or after 1 October 2023. It also amends mandatory disclosure rules, removing the general penalty for failing to file information returns on reportable transactions as of 22 June 2023. The amendments of the mandatory disclosure rules are included in Bill C-69, which had its first reading on 2 May 2024.

Among others, the budget suggests strengthening the Income Tax Act's information gathering provisions by granting the Canada Revenue Authority competence to issue notice for noncompliance, mandate information reporting under oath, and enforce a ten percent 10% penalty for noncompliance with compliance orders when tax owed exceeds CA$50,000. The budget further introduces a supplementary rule to bolster the tax debt anti-avoidance rule, imposing penalties on property transfer schemes designed to avoid the tax liability.

Finally the budget suggests the introduction of a Crypto-Asset Reporting Framework requiring annual reports from Canadian crypto businesses starting in 2026 and updates to the Common Reporting Standard to include e-money and digital currencies, enhancing reporting from that year.

Bill C-69 has been tabled in the House of Commons is now at second reading. The Bill is now also in pre-study in the Senate. It will need to be adopted by the Senate before going back to the House of Commons and receiving Royal Assent. The latter is expected before Parliament adjourns towards the end of June 2024.

See EY Global Tax Alerts, *Canada tables Federal Budget 2024-2025*, dated 19 April 2024, and *Canada's 2024 budget implementation bill no. 1 introduced in House of Commons*, dated 10 May 2024.

China issues guidelines on advance tax rulings

On 18 April 2024, the Beijing tax authority issued guidelines for advance tax rulings. These measures aim to enhance the tax administration system, foster a better business environment, and provide greater clarity on tax policies for enterprises in Beijing.

The guidelines define advance tax rulings as "written clarifications from tax authorities on how tax policies apply to specific situations" and emphasize that "they do not constitute legally binding administrative actions." In addition, the guidelines specify which taxpayers and situations are eligible for advance tax rulings, excluding (i) events that will not occur within 24 months, (ii) matters lacking reasonable commercial purpose or already clearly defined in the current tax policy, and (iii) transactions with the same characteristics as those completed in previous years.

Applications for advance tax rulings are to be submitted to the First Division Tax Bureau of Beijing or the relevant tax office. Required documentation includes an application form, the information letter, any relevant contracts or plans, and any additional information requested by the tax authority. The tax authority will review applications and issue the advance rulings. Under certain conditions, such as unforeseeable circumstances or lack of necessary information, the tax authority may suspend or terminate the process.

The guidelines also indicate that rulings are case-specific and do not set precedents for other taxpayers or situations.

The trial implementation of the guidelines started the date of their issuance.

Costa Rican Legislative Assembly approves law amending the legal framework on exchange of tax information

On 29 April 2024, the Legislative Assembly of Costa Rica approved the law amending the legal framework on exchange of information for tax purposes. In particular, Article 106 quater of the Tax Code has been amended to streamline the process of financial information exchange with jurisdictions under international agreements.

According to the law, financial institutions and entities conducting financial activities must provide client information relevant for tax purposes to the Tax Administration, and such information can then be shared with jurisdictions that have tax information exchange agreements with the country.

Entities must respond to individualized requests from the Tax Administration within 10 business days. The Tax Administration has the authority to supervise, verify and monitor compliance through annual actions. These actions are based on objective criteria published annually, and financial entities must implement any recommendations within three months after a report is finalized.

Noncompliance, such as failing to provide information or apply due diligence, will result in fines based on gross income from the prior tax period, with the possibility of reduced penalties in case of timely correction. Providing incorrect information can also result in penalties. However, penalties may be waived in case of unforeseeable circumstances.

The law entered into force on 7 May 2024, after its publication in the *Official Gazette*. As for next steps, the Executive Branch is tasked with integrating these changes into regulations within six months. In addition, the Tax Administration is expected to detail the procedures for automatic information exchange, including annual reporting and internal compliance controls, through a general resolution.

Costa Rica's tax administration launches public consultation on a draft resolution on reporting and due diligence for digital platform operators

On 26 April 2024, the Tax Administration of Costa Rica launched a public consultation on a draft resolution on the automatic exchange of information regarding sellers conducting significant activities through digital platforms. The draft resolution outlines the legal framework for the exchange of tax information between Costa Rica and other jurisdictions under international agreements, particularly focusing on digital platform operators.

The draft resolution mandates digital platform operators to establish due diligence procedures to identify and report information on sellers using their platforms. It specifies the information to be collected, such as personal and business identification details, and the timeframe for reporting. The draft resolution also details the penalties for noncompliance, which include fines based on a percentage of the operator's gross income. Additionally, it provides guidance on the exclusion criteria from reporting requirements for certain platform operators and the process for registering with the tax administration.

The draft resolution outlines the responsibilities of both the platform operators and the sellers in complying with the reporting requirements. Finally, the draft resolution includes annexes with technical details on the XML format for reporting and a sworn statement template for operators without reportable information.

The provisions included in the draft resolution may undergo changes prior to their final approval. For the provisions to come into effect, a final resolution must be approved and issued by the Tax Administration, and subsequently published in the *Official Gazette*.

Denmark updates list of participating jurisdictions under DAC2 and CRS

On 15 April 2024, the Ministry of Taxation of Denmark released Executive Order No. 398 (Order), which was subsequently published in the *Official Legal Gazette A* on 17 April 2024.

The Order updates the list of jurisdictions participating in the automatic exchange of financial account information in line with DAC2, the CRS CMCAA, and various bilateral automatic exchange agreements.

Under the Order, Georgia, Kenya, Moldova, and Ukraine were added to List B of Annex 1, expanding the number of participating jurisdictions involved in information sharing to 81.

The Order became effective on 30 April 2024.

Estonia adopts bill transposing EU Public CbCR Directive into domestic law

On 10 April 2024, the Parliament of Estonia adopted the bill implementing EU Public CbCR Directive into domestic law. Estonia has decided to transpose the Directive through amendments to tax legislation, allowing the tax authorities to publish online already-submitted CbC reports instead of requiring taxpayers to submit an additional report.

As previously reported (see The Latest on BEPS and Beyond | March 2024), the draft law closely aligns with the EU CbCR Directive, and Estonia has not opted to grant the "website exemption" (i.e., exemption from publication of the report on the website of a subsidiary or a branch) nor 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 multinational enterprise (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 the CbC report is prepared, and the rules will apply for financial years beginning on or after 22 June 2024.

The bill was published in the *Official Gazette* on 2 May 2024.

Finland updates list of reporting jurisdictions under DAC2 and CRS

On 25 April 2024, the Finnish Tax Administration issued the updated list of participating jurisdictions under DAC2, the CRS MCAA, and various automatic exchange agreements. The list now includes 114 jurisdictions.

Hong Kong updates list of reportable and participating jurisdictions for the automatic exchange of information

On 26 April 2024, the Secretary for Financial Services and the Treasury issued Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2024 updating the list of reportable and participating jurisdictions for the automatic exchange of financial account information for tax purposes.

According to the updated list, Ecuador, Oman, and Thailand are added to the reportable jurisdictions as of 2026. In addition, Bahrain, Belize, the Marshall Islands, Montserrat, Nauru, Niue, St. Vincent and the Grenadines, the Seychelles and Trinidad and Tobago are removed from the list of participating jurisdictions, while Azerbaijan, Ecuador, Jamaica, Kazakhstan, Kenya, Maldives, Nigeria, Oman, Pakistan, Peru and Thailand are added to that list.

The updated list will be effective as of 1 January 2025.

Irish Government publishes Feedback Statement on introduction of participation exemption for foreign dividends

On 5 April 2024, Ireland's Department of Finance published a Feedback Statement (FBS) on the introduction of a participation exemption (the exemption or the regime) for foreign dividends. The FBS includes a Strawman proposal (Strawman) outlining the key features of a potential approach to the exemption and aims to facilitate a focused debate around design considerations.

The Strawman includes the following key features with respect to the participation regime:

- The participation exemption regime would apply to Irish tax-resident companies and certain nonresident companies carrying on a trade in Ireland via a branch or agency.
- The regime would allow the exemption from Irish corporation tax of dividends from companies resident in the EU/European Economic Area or in jurisdictions with which Ireland has a double-taxation agreement in place.
- The exemption would be available for foreign dividends/ distributions in cases where an Irish taxpayer has control of at least 5% of the entity's ordinary share capital, holding of voting rights, entitlement to profits available for distribution and entitlement to assets on winding-up of the company. The control test must be satisfied for an uninterrupted period of 12 months up to and including the date of the dividend or on a "go-forward" basis.
- The regime would apply to dividends received in accounting periods commencing on or after 1 January 2025.
- The exemption would not be restricted to dividends paid out of trading profits.
- Ireland's existing "tax and credit" system for foreign dividend income would continue to be the default mechanism for double tax relief but taxpayers that would like to avail of the participation exemption are required to "opt in" to the regime by making an irrevocable three-year election on their Irish corporation tax return. Where the exemption is availed of by taxpayers, the exemption would apply to all in-scope foreign dividends and a foreign tax credit would not be available in respect of any foreign tax paid on the foreign dividend. The existing "tax and credit" provisions would continue to operate for distributions not within scope of the exemption. Any unrelieved foreign tax credits carried forward at the time of electing into the participation exemption would remain available for use against such distributions.

- The Strawman also includes three anti-avoidance provisions stipulating that dividends that are deductible for tax purposes in any other jurisdiction and dividends received from countries on the EU list of noncooperative jurisdictions would not qualify for the exemption. Furthermore, the participation exemption would only apply to dividends paid for bona fide commercial purposes and not for tax avoidance purposes.

The FBS states that key features of the Strawman should not be considered definitive or final and that the final design of the exemption could be significantly different.

Stakeholders were invited to provide responses to the FBS with the deadline running to the close of business on 8 May 2024. The Department of Finance has indicated that a second FBS will be published in mid-2024 which will contain draft approaches to the participation exemption legislation.

See EY Global Tax Alert, *Irish Government publishes Feedback Statement on introduction of participation exemption for foreign dividends*, dated 8 April 2024.

Italian Revenue Agency issues detailed provisions implementing optional 15% flat tax for foreign subsidiaries' profits

On 30 April 2024, the Italian Revenue Agency issued detailed provisions implementing the optional flat tax rate of 15% on the adjusted accounting net profits of foreign subsidiaries controlled by Italian entities introduced by Legislative decree n. 209, dated 27 December 2023 (International Tax Decree), as an alternative to the controlled foreign companies regime.

Generally, controlled foreign companies (CFCs) income is directly taxed to the Italian parent company if the foreign subsidiary meets two conditions: (i) it is subject to an effective tax rate (ETR) lower than 50% of the Italian theoretical ETR, and (ii) more than one-third of its revenues qualify as passive income.

The mentioned alternative option simplifies tax compliance by eliminating the need to compare foreign subsidiaries' tax rates with Italian rates and reduce the administrative burden of tracking the tax values of foreign entities' assets, income and losses.

The election is only available for CFCs with audited financials, it is irrevocably valid for three fiscal years and renews automatically unless explicitly revoked.

Lastly, the election applies to all the CFCs of the Italian taxpayer with audited financials under an "all in-all out" principle.

Moldova updates list of jurisdictions that do not adhere to international standards of transparency

On 8 March 2024, Moldova published on its *Official Gazette Nr. 96-97* the list of jurisdictions that do not adhere to international standards of transparency. This follows the approval of the methodology for establishing criteria to evaluate transparency, a method for updating noncompliant jurisdictions, and a procedure for their inclusion and exclusion from the list by the Moldavian government on 1 December 2023. The definition of a noncompliant jurisdiction includes those that fail to comply with international transparency standards set by organizations, such as the Financial Action Task Force, the Exchange of Information on Request, and the OECD Global Forum. The list includes 75 jurisdictions, among which, American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu (Annex I of EU list) and Belize, British Virgin Islands, Eswatini, Seychelles and Vietnam (Annex II of EU list).

Dutch State Secretary for Finance issues Tax Plan 2025

On 16 April 2024, the Dutch State Secretary for Finance issued Tax Plan 2025. The Tax Plan 2025 primarily includes an overview of the intended plans for policy and its implementation in the field of taxation.

Among others, the Netherlands aims to tighten the application of the earnings-stripping rule for real estate entities to prevent fragmentation and misuse of interest deduction limitations with effect from 1 January 2025. The earnings-stripping rule limits the extent to which interest can be deducted from taxable profit. Under the Dutch legislation, the interest deduction limitation does not apply if the interest balance remains below the threshold of €1m. Based on practice, taxpayers, particularly in the rented real estate sector, are optimizing the use of the deduction threshold by splitting up into different companies to allocate interest balances separately and benefit from the deduction for each entity. With the new rules, this practice should be combatted.

Furthermore, the State Secretary points out that the Netherlands, when implemening the Anti-Tax Avoidance Directive I (ATAD I), did not include the Directive's general anti-abuse rule (GAAR) in its national laws, preferring to rely on its existing legal principle of *fraus legis* (i.e., fraud on the

law). However, as the European Commission has emphasized the importance of the Netherlands introducing a clear legal standard to address this issue, this is among the proposals under the Tax Plan 2025. The State Secretary points out that no substantive change compared to *fraus legis* is envisaged.

Independent legislative proposals, such as the rules implementing DAC8 (Directive on Administrative Cooperation implementing the OECD rules on reporting for crypto assets) into domestic law, will also follow in the course of 2025.

Presentation of the Tax Plan 2025 is scheduled for 17 September 2024.

Polish President signs Act implementing the EU Public CbCR Directive into domestic law

On 16 April 2024, the Polish Parliament signed the Act implementing the EU Public CbCR Directive into domestic law. The rules set forth in the Directive require both MNEs based in the EU and non-EU-based MNEs doing business in the EU through a branch or subsidiary with total consolidated revenue exceeding €750m in each of the last two financial years to publicly disclose additional information, including income taxes paid. Under the Polish implementation, the changes affect multinational enterprises with revenues exceeding 3.5b Polish Zioty (PLN) in each of the last two financial years, but the law also outlines specific conditions under which standalone entities must independently publish and provide a CbC report.

Poland has chosen to provide 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) for a period of up to five years after the publication of the report.

In line with the Directive, the CbC report should be published in the National Court Register within 12 months following the balance sheet date of the reporting year for which the CbC report is prepared and it should remain accessible on the website for at least five consecutive years. Poland has not opted to grant the "website exemption" (i.e., exemption from publication of the report on the website of a subsidiary or a branch).

The rules will apply for financial years beginning on or after 22 June 2024.

The law came into effect on 8 May, 14 days after its announcement, except for certain articles that will come into force on 22 June 2025.

Poland's Council of Ministers approves Act implementing DAC7 into domestic law

On 9 April 2024, the Polish Council of Ministers has approved the Act implementing DAC7 (EU Directive on expanding the scope of exchange of information to digital platform operators) into national law.

DAC7 mandates digital platforms to report on sellers' activities, focusing on transactions involving the sale of goods, and the provision of services, means of transport and real estate. Digital platform operators must provide aggregated information about the seller or sellers who conclude transactions electronically, using the platform to the National Tax Administration, in line with the specified template. However, small and occasional sellers of goods with fewer than 30 transactions and earnings under €2,000 annually are exempt.

The act also mandates the development of an information exchange mechanism between EU and third countries, and the improvement of the existing mechanisms of cooperation between EU administrations, for example by introducing the possibility of carrying out joint inspections.

The rules will enter into force on 1 July 2024. However, the reporting obligation also extends to entities identified as reporting platform operators as of 1 January 2023.

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