Fiscal Countdown

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Edito

The Fiscal Countdown, a monthly summary of international tax news, provides you with regular insights into the introduction of the OECD's BEPS initiative and the ongoing international tax reforms.

This seventy fourth edition deals with the new measures published in June 2022 by the OECD, the European Union, the Union Nations and in 18 countries: Finland, Greece, Hong Kong, Indonesia, Ireland, Italy, Luxembourg, Malaysia, Mauritius, Netherlands, New Zealand, Saudi Arabia, Sweden, Switzerland, Tanzania, Turkey, United Arab Emirates and United Kingdom.

Frédéric Barat, Partner

Frédéric Lubczinski, Partner

OECD

The OECD published updated transfer pricing (TP) country profiles reflecting the current TP legislation and practices of certain jurisdictions. In this update, four new jurisdictions were added (Egypt, Liberia, Saudi Arabia, and Sri Lanka). The information in these profiles intends to reflect the current state of the respective countries' legislation and to what extent their rules follow the OECD TP Guidelines. Currently, the TP country profiles cover 73 jurisdictions, and the OECD expects to release additional updates as changes in legislation or practice are submitted to the OECD Secretariat.

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

The OECD Secretariat released two public consultation documents regarding the Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A for Pillar One of the OECD/G20 project on Addressing the Tax Challenges Arising from the Digitalisation of the Economy (the BEPS 2.0 project). The Tax Certainty Framework for Amount A provides a new approach to resolving disputes under Amount A. It combines elements of dispute prevention and dispute resolution in a structured, binding process that provides certainty to Groups in a timely manner. For this, the document describes three mechanisms to provide certainty over aspects of Amount A, each of which is voluntary for the Groups. In each of these, the Lead Tax Administration, typically the tax administration of the Group's Ultimate Parent Entity, plays a key role in coordinating the process and engaging with the group. These mechanisms are: (i) Scope Certainty Review; (ii) Advance Certainty Review; and (iii) Comprehensive Certainty Review. The second consultation document on Tax Certainty for Issues Related to Amount A contains draft provisions setting out a mandatory binding mechanism to resolve TP and permanent establishment profit attribution disputes that Competent Authorities are unable to resolve through the Mutual Agreement Procedure (MAP) within two years of the presentation of the MAP case to these Competent Authorities.

European Union

The European Parliament adopted the package of carbon legislation, with a significant majority of votes. The package includes the revision of the European Union (EU) Emission Trading System, the new Carbon Border Adjustment Mechanism and the Social Climate Fund.

The Council of the EU (the Council) held an ECOFIN meeting where Finance Ministers publicly discussed the Proposal for a Directive on ensuring a global minimum level of taxation for multinational groups in the EU (the Pillar Two Directive). The discussion took place following the ECOFIN meeting of

5 April, where EU Finance Ministers were unable to reach agreement as Poland did not support the Directive. During the public debate, Poland dropped its reservation and expressed support for the Directive. Poland mentioned that it has now received the relevant assurances on the link between the introduction of both Pillar One and Pillar Two However, Hungary, who supported the Directive in the ECOFIN meeting of 5 April changed its position and objected to the adoption. Hungary expressed concerns about the Directive, referring to undesirable delays of Pillar One and mentioning the Ukraine war as a new circumstance. The draft Directive requires a unanimous decision for adoption. French Minister Bruno Le Maire said that he remains optimistic, and he still hopes to reach agreement during the French Presidency. On 1 July 2022, the Czech Republic takes over the EU Council Presidency from France.

The European Commission (the Commission) announced a new initiative named “Tackling the role of enablers involved in facilitating tax evasion and aggressive tax planning in the European Union.” The objective of the Commission is to develop a set of rules that will limit the possibilities of enablers (e.g., tax advisers, lawyers, accountants) to create structures that result in tax evasion or aggressive tax planning by taking advantage of loopholes and differences existing in and between the various national tax systems and double tax treaties. The status of the Directive is “upcoming.” A public consultation is planned for the second quarter of 2022, and adoption is expected by the fourth quarter of 2022

United Nations

the United Nations (UN) Conference on Trade and Development released the World Investment Report 2022: International Tax Reforms and Sustainable Investment, together with an Overview document. The Report is divided into four Chapters. Chapter three of the Report examines the impact of the global minimum tax under the OECD Pillar Two on Foreign Direct investment (FDI) using a new metric based on the income reported in the host country and the income generated in the host country but shifted to low tax jurisdictions (FDI-level ETR). Based on the FDI-level ETR, the Report concludes that the introduction of a global minimum tax will increase the Effective Tax Rate (ETR) by 2%. Although the tax revenues of both developed and developing countries are expected to rise due to the ETR increase, the latter is also expected to result in a decrease in FDI activities. However, this reduction is expected to be balanced in high tax jurisdictions because the global minimum tax will result in a reduction in tax rate differentials and, subsequently, a diversion of investment from low to high tax jurisdictions. The Report also advises that the interest of developing countries should not be disregarded, and cooperation and technical assistance are key in that respect. In addition, according to the Report, “no country can afford to ignore Pillar Two,” while national policies like the provision of tax incentives will be severely impacted. The Report also emphasizes the need for investment promotion agencies to reconsider how they use tax incentives and special economic zones to attract investment in light of the new constraints that a global minimum tax would impose.

Finland

The Finnish Tax Administration issued a Press Release stating that it has detected multiple companies enabling tax evasion and tax avoidance using malicious activity and, in particular legislative loopholes in the Finnish tax system. Examples of these schemes are the establishment of conduit companies and the involvement in cum/ex and cum/cum dividend transactions. The Finnish Tax Administration estimates that Finland has lost approximately €80m in withholding taxes between 2018 to 2021 due to such tax evasion and avoidance. According to the Press Release, the next step for the Finnish Tax Administration is to combat tax evasion by controlling operations related to refunds of tax at source using the OECD initiative named Treaty Relief and Compliance Enhancement (TRACE).

The Finnish Tax Administration released an update to the Guidance on hybrid mismatch rules. This update includes a new section on reverse hybrid entities. According to the Guidance, a reverse hybrid entity for Finnish tax purposes is defined as a Finnish partnership, which is treated as a separate taxpayer under the laws of another state. The new section describes situations where taxation of income of reverse hybrid entities takes place in Finland. In particular, a share of income received by a non-resident taxpayer from a Finnish reverse hybrid entity would be taxable in Finland if:

(i) the non-resident holds at least 50% of the voting rights (directly or indirectly), capital or at least 50% of the profits of the reverse hybrid entity;

(ii) the state of residence of the partner(s) does not tax the share of income because it considers the reverse hybrid entity to be a separate taxable person (i.e., tax opaque); and

(iii) the income is not taxed in Finland under any other provision.

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

Greece

The Greek Ministry of Finance released a public consultation on draft legislation for the implementation of the reverse hybrid mismatch rules of the Council Directive (EU) 2017/952 (ATAD II). This provision counteracts hybrid mismatches resulting from reverse hybrid entities, i.e., entities that are considered transparent from a Greek tax perspective and if at least 50% of the voting rights, capital interests or profit rights in the entity are directly or indirectly held by related parties that are resident in a jurisdiction that qualifies the entity as non-transparent. In such a case, the reverse hybrid entity would become subject to corporate income tax in Greece. The provision also includes an exemption for collective investment vehicles meeting certain conditions. The consultation ran until 14 June 2022 and would apply retroactively from 1 January 2022.

Hong Kong

The Inland Revenue (Tax Concessions for Certain Shipping-related Activities) Bill 2022 was submitted to Hong Kong's Legislative Council. The bill introduces a dedicated tax concession regime offering tax incentives to qualifying shipping commercial principals (i.e., ship agents, ship managers and ship brokers) in Hong Kong.

Indonesia

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

Ireland

Ireland opened a Public Consultation on how the OECD's Pillar Two framework will be implemented into Irish law. The consultation seeks stakeholder views on the transposition of Pillar Two into Irish law and sets out a series of questions. The consultation document notes that upon final agreement of the text, the primary basis for the transposition of the Pillar Two agreement in Ireland will be the EU Minimum Tax Directive. It is intended that the rules will be transposed into Irish law via future Finance Act(s) and anticipated that each jurisdiction applying a Qualified Domestic Top-Up Tax (QDMTT) becomes a "safe habour" for the purposes of satisfying the requirements of the Income Inclusion Rule and Under-Taxed Profits Rule under Pillar Two. The consultation also notes that "[i]t is very likely that Ireland will introduce a QDTUT as part of the Pillar Two implementation process". The consultation runs until 22 July 2022.

Italy

The Italian tax authorities published Circular No. 16/E of 24 May 2022, providing Guidance on the application of the arm's-length principle. The Circular includes the following clarifications:

(i) the calculation of the arm's-length range should follow the basis of the OECD TP Guidelines;

(ii) if the transactions identified are equally comparable, any value within the range will be acceptable;

(iii) if identified transactions do not have the same degree of comparability, the narrower range, e.g., the interquartile range, should be chosen;

(iv) the median of the range would be limited to cases in which the range does not include values that have a sufficient level of comparability, in these cases, the tax authorities should properly explain the reasons.

Luxembourg

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

Luxembourg Tax Authority issues guidance on defensive measure related to EU-listed non-cooperative jurisdictions.

The Council of Ministers of Luxembourg approved an amendment to the Act on International Cooperation in Tax Administration, implementing the Directive on Administrative Cooperation (DAC7) to expand reporting obligations and exchange of information to cover sales through digital platforms. The amendment provides closer international cooperation and the possibility of carrying out joint tax audits with the participation of several EU Member States. Companies will be required to report on a yearly basis to Luxembourg Tax Authorities, by the end of January, specific information, such as the seller's identification and the income realized from the usage of the platform for the previous calendar year. The amendment still needs to be approved by the Chamber of Representatives, but the implementation is expected by 31 December 2022, and the bill would be applicable as of 1 January 2023. An exception is provided for joint audits for which implementation and application are expected to be delayed for one year.

Luxembourg's Inland Revenue issued Circular L.I.R. 168/2 on defensive tax measures against jurisdictions listed in Annex I of the EU List (the so-called "EU Blacklist"). According to the defensive measure, under certain circumstances, the deduction of interest and royalties owed by Luxembourg corporate taxpayers to related enterprises established in an EU-listed jurisdiction is denied. The Circular also specifies the three conditions to be met in order for the defensive measures to apply and the exclusion from the scope of the Luxembourg interest limitation rules of any interest that cannot be deducted under the defensive measures introduced. The taxpayer can fall outside the scope of the defensive measures if it is proved that the transaction was implemented for valid business reasons, which reflects economic reality, and such economic advantage needs to exceed any potential tax benefit resulting from the transaction. The Circular confirmed that a ruling could be filed with the Luxembourg Tax Authority to confirm in advance if the business reasons represent economic reality.

Malaysia

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

Mauritius

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

Netherlands

A letter to the Dutch House of Representatives and published several attachments regarding the status of the Dutch tax policy agenda. According to the State Secretary, in the coming period, the emphasis in the fight against tax avoidance will be on measures adopted at the international level. Accordingly, the Dutch Government is committed to an effective implementation of the agreement within the Inclusive Framework of the OECD. The Government is therefore taking a positive and constructive approach towards the European initiative in that respect, i.e., the Pillar Two Directive. In that respect, it was noted that the announced removal of the "substantial economic activity" exception for the Controlled Foreign Company provision would not be introduced unilaterally if Pillar Two is implemented pursuant to the EU Directive. In addition, the Dutch Government also supports the introduction and adoption of Pillar One within the EU and endorses the Unshell Proposal Directive, which aims at preventing tax avoidance via the use of shell companies. However, with respect to the Unshell proposal, it is worth noting that the earlier evaluation of the draft Directive by the Dutch Government found that the operational set-up is very challenging and complex, and an implementation delay until 1 January 2024 is preferred in view of the associated IT challenges.

New Zealand

New Zealand Inland Revenue Officials consult on domestic adoption of OECD Pillar Two.

Saudi Arabia

the Saudi Arabia Zakat, Tax and Customs Authority (ZATCA or Authority) issued the final Controls, Requirements, Technical Specifications and Procedural Rules for Implementing the Provisions of the E-Invoicing Regulation (including the xml implementation standards, e-invoice security features implementation standard and data dictionary) for Phase 2 (Phase 2 Regulations), which would be effective from 1 January 2023. Phase 2 Regulations will form an important base for taxpayers to complete e-invoicing implementation under Phase 2 which is also called the Integration Phase. Under this phase, the relevant businesses must integrate their systems with the Authority's system to obtain a clearance for Tax Invoices (including the corresponding debit and credit notes) and report the transactions for which Simplified Tax Invoices (including the corresponding debit and credit notes) have been issued. The Integration Phase will be implemented in waves and based on the announcement on the ZATCA portal dated 24 June 2022, resident businesses with a taxable turnover of more than SAR3 billion in the calendar year 2021 are part of the first wave and should comply with the e-invoicing Phase 2 requirements between the period 1 January 2023 to 30 June 2023. The final Phase 2 Regulations have now crystallized both the operational and technical requirements mandated as part of Phase 2 of the e-invoicing system in Saudi Arabia based on which the impacted businesses should start taking the relevant actions.

The Kingdom of Saudi Arabia Finance Minister and Chairman of the ZATCA issued Decision No. 59334 (Decision) approving the increase of customs duties on a range of products. The increase in customs duties is intended to encourage and protect national industries and local agricultural products. The Decision was published in the Official Gazette on 12 June 2022 and came into effect on the same day.

Sweden

The Ministry of Finance of Sweden released a Facts Memorandum (the Memorandum) on the Debt-Equity Bias Reduction Allowance (DEBRA) Proposal published by the European Commission on 11 May 2022. The Memorandum includes a summary of the DEBRA Proposal by making reference to its background and content. The MoF considers that two provisions should be introduced in the Swedish Income Tax Act: (i) a provision implementing the limitation on interest deduction; and (ii) a provision implementing the deduction on equity since Sweden does not have similar rules under its national law.

Regarding Sweden’s initial position towards the DEBRA Proposal, the Swedish Government doubts whether the benefits of the proposal outweigh the disadvantage of the Member States’ sovereignty in tax matters being restricted. In addition, given that the initiative has been released in the form of a Directive, the Swedish Government is also questioning whether EU law principles of subsidiarity and proportionality are respected. The DEBRA Proposal will probably be negotiated during Sweden's EU Council Presidency from 1 January to 30 June 2023.

Switzerland

The Swiss Federal Council published the dispatch alongside the proposed constitutional amendment for the imminent Base Erosion and Profit Shifting (BEPS) 2.0 implementation in Switzerland. The dispatch provides the basis for the upcoming parliamentarian discussions, culminating in a public vote likely to take place in June 2023. The constitutional amendment will provide the legal basis for the introduction of Pillar One and Two into Swiss domestic law in the ordinary legislative procedure. Furthermore, due to the urgency of the implementation, the amendment also contains a transitional provision to implement Pillar Two in a first step by way of temporary ordinances. This would lead to an application of the Pillar Two rules from 1 January 2024. From a material perspective, the constitutional amendment reflects the Federal Council's decision dated 12 January 2022, in which it was decided to introduce Pillar Two by implementing the Income Inclusion Rule (IIR), the Undertaxed Payments Rule (UTPR) as well as a domestic top-up tax (in the form of a Qualified Domestic Minimum Top-up Tax (QDMTT) as per the Pillar Two Model Rules) to ensure the 15% minimum level of taxation in Switzerland for in-scope multinational enterprises. As result of the feedback received during the public consultation procedure, the following aspects were adjusted in the dispatch and the updated draft constitutional amendment:

- Potential additional proceeds resulting from the QDMTT, IIR and UTPR will be shared between the Cantons and the Federation, instead of attributing the whole amount to the Cantons as proposed in the public consultation. While the Cantons would receive 75% of the additional proceeds, the Federation would be entitled to the remaining 25%. According to the transitional provision in the constitution, the Cantons must adequately consider the cities and communes.
- The additional proceeds going to the Federation are appropriated according to the constitutional amendment. After the additional required contributions into the national fiscal equalization scheme, the remaining proceeds should be used for measures increasing the attractiveness of the Swiss business location.
- In contrast to the consultation proposal, the dispatch now explicitly stipulates that the legislation procedure should consider the modalities of foreign domestic Pillar Two implementations – such as in the EU Member States and the United States – when enacting the temporary ordinances.
- The Federation generally expects additional revenues. However, they iterated that any estimation is highly uncertain at this moment.

From a procedural point of view, Pillar Two will be introduced in a first step by way of two ordinances. The first ordinance will regulate the material aspects and the second all procedural aspects. The release and content of the dispatch are a welcome development. The suggested provisions provide affected companies with legal certainty and show that the Swiss Government is committed to maintaining Switzerland's attractiveness as a business location by ensuring the lowest possible impact of the BEPS 2.0 project for affected companies. Furthermore, it seems likely that Switzerland will be able to adhere to its internal deadlines, with the Pillar Two rules slated to be introduced by 1 January 2024.

Tanzania

Tanzania's Parliament passes Finance Bill 2022.

Turkey

Turkish Parliament members submitted a draft law (the Bill) which introduces the establishment of the Istanbul Finance Center (IFC) to the Turkish Parliament. The Bill aims to promote Istanbul as an international finance center, to support the economic growth of Turkey by increasing financial competitiveness and developing high value-added financial products and services in the financial sector, and to strengthen integration into international financial and capital markets. Participants of the IFC will have certain tax advantages, including the ability to keep their legal books in foreign currency and the eligibility to freely choose a law of a different jurisdiction as the governing law for their private law contracts.

United Arab Emirates

The United Arab Emirates Federal Tax Authority published a new Public Clarification EXTP007 (Clarification) on excise goods. The Clarification sets out the scenarios where relief from excise tax may be granted for excise goods that are found to be deficient, shortage, considered as wastage, or where goods are intended to be destroyed.

United Kingdom

UK Government launches short consultation on draft Energy (Oil and Gas) Profits Levy Bill.

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

The UK Government provided an update on the consultation into the implementation of the OECD Pillar Two rules in the UK and what to expect in the coming months.

According to the update, more than 50 responses to the public consultation were received, and the UK is moving forward with the development of the draft legislation to be published during Summer 2022. Respondents to the consultation noted that seeking to implement the rules from Spring 2023, ahead of the likely implementation date in other countries, would compromise the long-term success and sustainability of the regime and put UK businesses at a competitive and administrative disadvantage. As a result, the UK Government has advised that, alongside the next steps and/or draft legislation, it will confirm in Summer 2022 that the UK Pillar Two legislation will first apply to accounting periods beginning on or after 31 December 2023.

Contacts

Frédéric Barat, Partner,
Mazars Société d'Avocats
frederic.barat@avocats-mazars.com

Frédéric Lubczinski, Partner,
Mazars Société d'Avocats
frederic.lubczinski@avocats-mazars.com

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