



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 fifth edition deals with the new measures published in July 2022 by the OECD, the EU and in 13 countries: Brazil, China, Cyprus, Denmark, Germany, Honduras, Hungary, Italy, The Netherlands, Poland, Saudi Arabia, Tanzania, and UK.

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OECD

The OECD Secretary-General released the tax report to the G20 Finance Ministers and Central Bank Governors ahead of their 15-16 July meeting under the 2022 Indonesian Presidency. This Report provides updates on the BEPS 2.0 project and the launch of the Inclusive Forum on Carbon Mitigation Approaches, as well as on the ongoing work on tax and development, tax transparency and implementation of the outcomes of the original BEPS project. In addition, the Report includes as an Annex the Progress Report on Amount A of Pillar One prepared by the OECD Secretariat and released as a consultation document.

On BEPS 2.0, the Report notes that the technical work on Pillar Two is close to completion following the release of the Global Anti-Base Erosion (GloBE) Model Rules and the related Commentary. According to the Report, most countries are planning for entry into force of the GloBE rules in 2024, which will provide sufficient time for the Inclusive Framework on BEPS to develop the Pillar Two Implementation Framework.

In addition, the Report notes that work is progressing on the Pillar Two' subject to tax rule (STTR) draft model provision and related Commentary as well as the draft multilateral instrument to facilitate its implementation.

Regarding Pillar One, the Report indicates that negotiations are ongoing, noting that progress has been made based on the stakeholder input provided in the series of public consultations on key building blocks held earlier this year. The Report also states that work on Amount B has been progressing, indicating that its release is expected by the end of 2022. The Report further notes the Progress Report released on 11 July 2022 (and attached as an annex) and refers to the new timeline agreed by the Inclusive Framework to deliver the multilateral

convention (MLC) for the implementation of Amount A as a more realistic timeline that increases the chances of global implementation.

On the Inclusive Forum on Carbon Mitigation Approaches (the Inclusive Forum) that was launched in June 2022, the Report indicates that it is expected to comprise both OECD and non-OECD members, and its objective is to assist policymakers in converting high-level policy ambitions, such as those under the Paris Agreement and the United Nations Sustainable Development Goals, into tangible outcomes domestically. The Report further notes that the Inclusive Forum also could help countries use low-carbon development policies to achieve domestic resource mobilization. Work on the procedural aspects of the Inclusive Forum is currently advancing.

On tax and development, the Report notes that domestic resource mobilization and tax sustainability remain challenging areas for developing countries, especially in the current environment of increasing prices. During the Indonesian Presidency's G20 Ministerial Symposium on Tax and Development held on 14 July 2022, the implementation of international tax standards, including the BEPS measures and exchange of information, and the consequences of the implementation of Pillar Two for developing countries, as well as improvements in tax administration, were identified as the key priority areas for supporting developing countries. In particular, regarding Pillar Two, it was noted that the focus should be on tax incentives and domestic resource mobilization. These views are expected to be considered in the development of a Roadmap on Developing Countries and International Tax to be delivered during the G20 Finance Ministers' October 2022 Meeting.

On tax transparency, the Report indicates that work is advancing on the global implementation of the Automatic Exchange of Financial Account Information in Tax Matters (AEOI) Standard, with its peer review expected to be finalized before the G20 Leaders' meeting in October 2022. As of January 2022, technical assistance has been provided to more than 60 jurisdictions, 24 of which received assistance on the implementation of the AEOI standard. Moreover, the Report notes that the number of jurisdictions not having sufficiently implemented the tax transparency standards (the so-called OECD blacklist) has dropped from five to four^[viii] since Dominica started exchanging financial account information automatically.

The Report also indicated that progress has been identified in the Global Forum's regional initiatives. Following the Latin American and African initiatives, the Asia Initiative (pdf) was released in November 2021 and signed^[ix] on 14 July immediately before the G20 Finance Ministers' meeting.

Finally, the Report provides an update on the OECD ongoing activity with respect to the BEPS minimum standards on the taxation of multinationals:

- BEPS Action 5 (harmful tax practices): the Forum on Harmful Tax Practices (FHTP) has reviewed more than 300 preferential regimes and the substance legislation of 12 no-tax or nominal tax jurisdictions. The first annual monitoring of the effectiveness of the substantial activities requirements in no or only nominal tax jurisdictions was finalized in April 2022, and its outcomes are expected to be published later in 2022.
- BEPS Action 6 (treaty abuse): The Inclusive Framework approved the fourth peer review report, which

shows that compliance with the minimum standard on treaty shopping has more than doubled since last year, with about 2,300 of the 2,400 tax treaties concluded between Inclusive Framework jurisdictions expected to comply with the minimum standard shortly.

- BEPS Action 13 (transfer pricing documentation): progress is advancing with over 100 jurisdictions having introduced a domestic legal framework for reporting, 83 jurisdictions having signed multilateral or bilateral competent authority agreements, approximately 90 jurisdictions having been assessed for confidentiality and data safeguards, and 84 jurisdictions having provided the Inclusive Framework with detailed information on the appropriate use of the Country-by-Country reports.
- BEPS Action 14 (dispute resolution): On 1 April 2022, the Inclusive Framework released the ninth batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Andorra, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Faroe Islands, Macau (China), Morocco, and Tunisia.

On 16 July 2022, at the close of the G20 Finance Ministers and Central Bank Governors meeting, the G20 Chair issued a summary of the outcomes. On Pillars One and Two, the G20 Chair's summary states:

"We reaffirm our commitment to the swift implementation of the OECD/G20 two-pillar international tax package. We support the ongoing work on Pillar One and welcome the completion of Pillar Two Global Anti-Base Erosion (GloBE) Model Rules, which pave the

way for consistent implementation at a global level as a common approach, and look forward to the completion of the GloBE Implementation Framework. We call on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to finalize Pillar One, including by signing the Multilateral Convention in the first half of 2023, and call on the Inclusive Framework to complete the negotiations that would allow the development of the Multilateral Instrument for implementation of the Subject to Tax Rules (STTR) under Pillar Two”.

On other tax-related issues, the summary indicates that G20 members reaffirmed the objective to strengthen the tax and development agenda in light of the G20 Ministerial Symposium on Tax and Development. In addition, the summary notes that G20 members support the progress made on implementing internationally agreed tax transparency standards, including regional efforts. They welcomed the progress at the OECD on the Reporting Framework for Crypto-Assets as well as the amendments to the Common Reporting Standard and called for their swift completion.

Although the G20 Chair’s summary does not include a reference to the Inclusive Forum on Carbon Mitigation Approaches, G20 Finance Ministers and Central Bank Governors, together with international, attended a High-Level Breakfast Discussion on Climate Mitigation where Ministers and Governors shared best practices, national experiences, and an overview of international efforts to address climate change.

~~The OECD Secretary-General report to the G20 Finance Ministers and the G20 Chair’s summary each provide high-level updates on the tax-related workstreams of the OECD. Both summaries show that there is still work to be done in the Inclusive Framework for the completion and implementation of both pillars~~

~~of the BEPS 2.0 project, while also reflecting the continued intention of the G20 members to finalize work soon.~~

~~It is important for businesses to follow the developments with respect to the BEPS 2.0 project as they unfold, including evaluating the potential impact of the new rules on their organization and considering what will be needed to prepare for the compliance obligations associated with the rules. In addition, affected companies may want to consider taking the opportunity to engage with the OECD and country policymakers through the consultation process on the Pillar One Progress Report that is currently open until 19 August 2022. Businesses also should monitor global developments with respect to tax policy and climate change, including activity in the OECD, the G20 and the European Union.~~

European Union

On 6 July 2022, the Czech Presidency of the Council of the EU released its programme summarizing its main priorities. In the tax area, the Czech Council Presidency will aim to simplify the tax system, combat tax evasion and reduce the number of unjustified tax exemptions. In addition, it will focus on the current legislative proposals, including Pillar One and Pillar Two, and the area of strengthening tax transparency. Other priorities of the Presidency are updating the EU list of non-cooperative jurisdictions and reaching a political agreement on the Carbon Border Adjustment Mechanism. Finally, the Presidency intends to discuss with the Member States the possibilities of introducing new EU own resources from 1 January 2023. The Czech Presidency presented this programme to the EU Finance Ministers for an exchange of views during the ECOFIN meeting held on 12 July 2022. Regarding the OECD Two-pillar solution, the Minister of Finance of Czechia stated that the Council

wishes to complete the relevant debate on the implementation of the two pillars.

On 6 July 2022, the European Commission (the Commission) launched a public consultation on its initiative to regulate the role of tax enablers. The Commission aims with this initiative to step up the fight against tax evasion and aggressive tax planning by setting rules applicable to the professionals creating structures with no substance. The public consultation runs until 12 October 2022 and consists of a questionnaire and the opportunity to submit a position paper. A concrete legislative proposal is expected to be developed by the Commission and released during the first quarter of 2023. The Commission has provided little detail on how it intends to shape the initiative. Nevertheless, the questions of the survey provide some glimpse at the Commission's current thinking, asking for input on the following ways to tackle the role of enablers in facilitating tax evasion and aggressive tax planning: (i) establishment of an EU register of enablers and the obligation to register; (ii) introduction of due diligence procedures to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning; (iii) creation of a code of conduct that would prohibit the enablers without any complementary mandatory measures; and (iv) introduction of a new reporting requirement for "EU taxpayers" of participations above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU. In terms of enforcement, the questionnaire includes the option of imposing monetary penalties and/or prohibiting the provision of services by tax enablers.

Members of the European Parliament (MEPs) adopted a resolution on national vetoes that undermine the global tax deal. In

the resolution, the MEPs underline that Hungary's reported demands were already taken into account in the international agreement and urged Hungary to put an immediate end to its blockage of the global tax deal. The MEPS also suggested that the Commission and the Member States not engage in political bargaining with the Member States who abuse their national vetoes. Furthermore, the MEPS indicated that the Commission should refrain from approving Hungary's national recovery and resilience plan unless all the criteria are fully complied with. If Hungary persists with its veto, MEPs call for alternative options to be explored, including the enhanced cooperation procedure, the unilateral implementation of the Pillar Two Directive by all Member States, and the use of Article 116 Treaty of the Functioning of the EU that allows proposals on taxation to be adopted by co-decision and decided by qualified majority voting among the Member States. For the longer term, the MEPs suggest considering the benefit of gradually transitioning to qualified majority voting on tax matters.

Brazil

Brazil ratifies income tax treaty with Singapore, making treaty fully effective.

China

China's new Stamp Duty Law is now in effect

Cyprus

The House of Representatives of Cyprus voted on and approved amendments to the Income Tax Law and the Assessment and Collection of Taxes Law in relation to transfer pricing (collectively TP legislation). These legislative developments aim to introduce transfer pricing rules and documentation requirements in accordance with recommendations of the Organisation for Economic Co-operation and Development on

Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines). The laws will enter into force once published into the Official Gazette of the Republic, which is expected to occur in the next couple of weeks. The TP legislation will be effective as of 1 January 2022.

Denmark

Denmark publishes draft bill introducing tax liability for activities carried out in Denmark's Exclusive Economic Zone.

Germany

German Federal Ministry of Finance requires disclosure in cases of licensing of IP registered in Germany.

On 7 July 2022, the Scientific Advisory Council (SAC) at the Ministry of Finance of Germany released an opinion on OECD Pillar One and Pillar Two drafted on 31 March 2022. The opinion examines the advantages and disadvantages of the upcoming implementation of the two pillars while it also analyzes its economic implications for Germany resulting from such implementation. With respect to Pillar One, the SAC stresses that the allocation of taxing rights to market jurisdictions is not easy if a common tax base is required. According to the opinion, while Pillar One prevents the unilateral introduction of digital taxes, alternatives should be examined before allocating taxing rights to the market jurisdictions. Overall, the SAC concludes that since Germany maintains an export surplus, Pillar One would likely not result in additional tax revenue for Germany. That said, the SAC also concludes that Pillar One should not result in significantly reduced tax revenue in Germany. Background is, that the currently foreseen rule only relates to the residual profit of very large groups. With respect to Pillar Two, the opinion states that Germany's tax revenue increase is yet uncertain and depends on multiple factors, for instance, the

change in companies' and jurisdictions' behavior once Pillar Two is implemented. Eventually, the SAC also concludes that an increase in Germany's tax revenue would be reduced if low-tax jurisdictions increased their tax accordingly. The SAC indicates that countries that use tax incentives to attract investments, e.g., developing countries, are expected to be affected the most. In addition, according to the SAC, tax competition will probably be reduced but not eliminated since countries may shift towards using other instruments such as subsidies. Finally, the SAC suggested that the EU should not implement Pillar Two before its significant partners do likewise since early adoption at the EU level may affect its competitive position while also being irrevocable.

The German Ministry of Finance released the updated list of countries for automatic exchange of information regarding financial accounts in fiscal matters, applicable from 30 September 2022. For Germany, automatic exchange of information takes place reciprocally with the rest of the EU Member States. It also includes third-country members of the multilateral agreement signed by Germany; members of the convention on mutual administrative assistance in tax matters; and countries that have entered into agreements with the EU on the automatic exchange of information. The updated list includes three new jurisdictions for 2022, namely Ecuador, Kazakhstan and Maldives, reaching a total number of 107. The list for 2023 is expected to be announced in an upcoming bill.

Honduras

Honduras joins the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Hungary

On 8 July 2022, the U.S. Treasury Department announced the termination of the

double-tax treaty with Hungary. The treaty, which scores of US investors called very beneficial, was concluded in 1979 and the termination will take effect from January 2024. The announcement came shortly after Hungary's veto against the global minimum tax.

New Hungarian transfer pricing rules impose additional reporting requirements and require adjustments to the median:

- Companies subject to TP documentation requirements will have a new reporting obligation. They will be required to provide transaction-level details on their intercompany dealings in their annual CIT returns. The exact content of the reporting obligation is not included in the bill but will be determined by an upcoming Ministry of Finance Decree. It is expected that the transactional volume, profit and loss impact and TP method retained to be part of the new data reporting obligation.
- The default penalty for violating the TP documentation requirements will increase from HUF2 million to HUF5 million per intercompany transaction. In the event of repeated infringements, the maximum default penalty will increase from HUF4 million to HUF10 million.
- The use of the interquartile range will always be mandatory for comparable searches based on a public database. If the return/price falls outside the arm's-lengths range, it will be obligatory to adjust to the median of the benchmarking study.
- The new reporting obligation applies for the first time to CIT returns submitted after 31 December 2022, while the new rule regarding the

adjustments applies for the first time to tax years started in 2022.

Implications and actions required

The prescription of additional reporting obligations, the change in the rules for adjustments and the simultaneous increase of default penalties by 150% clearly show that transfer pricing will be a priority for the Hungarian Tax Authority (HTA).

The new rules will apply to the current financial year. Therefore, immediate action is required, with TP compliance processes needing to be reviewed and updated.

In the past, it was not necessary to submit the documentation and deadlines were not strictly enforced. A significant portion of companies prepared the documentation after filing their CIT return. However, since the TP method will need to be disclosed in the CIT return for each intercompany transaction, going forward this will be a riskier option.

Centrally prepared benchmarks also will pose a significant risk going forward. The aim of the HTA will be to determine whether the return falls outside the interquartile range of the benchmark prepared based on their specific requirements. If it does, the adjustment will be made to the median instead of the closest quartile which may result in a significant increase in volume and thus the tax impact of adjustments.

Also, to avoid adjustments to the median, companies will have to prepare their segmented P&Ls under Hungarian GAAP by the time they submit their CIT return.

The new rules require taxpayers to significantly alter their CIT and TP compliance processes. Since the bill affects the current financial year, companies should start preparing and implementing adjustments as soon as possible. Naturally, the Decree with additional rules will need to be monitored; however, taxpayers should

start their review and preparation without delay.

Italy

Italy's sugar tax will enter into force on 1 January 2023.

The Netherlands

The Dutch State Secretary of Finance (Finance Secretary) published a new decree related to transfer pricing and the interpretation of the arm's-length principle in the Netherlands (Decree). The Decree replaces the previous transfer pricing decree dated 11 May 2018 and reflects the most recent changes in the Organisation for Economic Co-operation and Development's (OECD's) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines), most notably the inclusion of the guidance on financial transactions. The Decree also includes further details on the transfer pricing considerations with respect to governmental support, which have been particularly relevant as a result of the COVID-19 pandemic. The Decree provides the formal position of the Dutch Tax Administration, but it does not legally bind taxpayers. The Decree provides information regarding the position of the Dutch Tax Administration with respect to the application of the arm's-length principle and the OECD Guidelines in the Netherlands. The Decree provides further interpretation of the arm's-length principle where the OECD Guidelines leave room for own interpretation or where there is a need for clarifications in practice. The insights from the Decree can help taxpayers in assessing the view that may be taken by the Dutch Tax Administration in similar cases. The Decree covers, among others, topics such as characterization and recognition of intercompany transactions, comparability analysis (including relevance of options realistically available), aggregation of transactions, use of arm's-length ranges and

multi-year data, impact of government policies, transfer pricing methods, valuations, secondary adjustments, intangible assets (including hard-to-value intangibles), business restructurings, intra-group services, cost contribution arrangements, group procurement functions, financial transactions (loans, guarantees, and cash pooling), group financing entities, captive insurance, transfer pricing documentation requirements, advance certainty, and early consultation with foreign authorities on prevention of possible double taxation. For certain transfer pricing issues, especially with respect to intercompany financial transactions and the characterization of funds as debt or equity, there may be tension between the guidance set forth in the OECD Guidelines and Dutch case law. The Decree acknowledges this and stipulates that the OECD Guidelines will be taken as the starting point in cases where taxpayers request certainty in advance to ensure that unilaterally given advance certainty is also internationally defensible. However, no guidance is provided in the Decree as to which position (OECD or Dutch jurisprudence, in the case of conflicting guidance) should apply to situations where taxpayers do not seek advance certainty. It is also noted that if the application of the OECD Guidelines leads to a transfer pricing mismatch as a result of which part of the profits remain untaxed, the Dutch Tax Administration can deviate from the content of the Decree. Similar to the previous decree, the Decree confirms that insofar as the recent changes to OECD Guidelines provide further clarification with regard to the application of the arm's-length principle, these changes also apply to years in which these changes were not yet published.

The Dutch Minister of Finance published in the Government Gazette an updated Decree on Profit allocation to Permanent Establishments (PEs) to provide clarifications

on how the Dutch Tax Administration assesses such a profit allocation.

Poland

Poland proposes significant changes to Corporate Income Tax law.

Saudi Arabia

On 4 July 2022, the Saudi Arabia Zakat, Tax and Customs Authority (ZATCA) issued a public consultation document proposing to amend the Transfer Pricing (TP) Bylaws (Amendments to Transfer Pricing Bylaws to be applied to Zakat payers). One of the major proposed amendments, if approved, will result in the applicability of TP documentation to zakat payers such as TP disclosure forms, and local file and master file requirements, in addition to the existing Country-by-Country Reporting (CbCR) requirements for qualifying multinational groups. Comments on the proposal may be submitted by 30 July 2022.

Tanzania

Tanzania's President assents to Finance Act 2022.

UK

The United Kingdom Government released a number of documents for consultation ahead of potential inclusion in Finance Bill 2022/23. The consultation on these Finance Bill measures will run until 14 September 2022. The final contents of Finance Bill 2022/23 will be a decision for the Chancellor at the next Budget. The Government has also published a number of tax-related consultations and summaries of responses to consultations which have already been conducted. The documents can be divided into the following categories:

- Draft legislation to take forward previous announcements
- Draft legislation not previously announced

- New consultations and consultation responses

The United Kingdom Government released the summary of responses to the OECD' BEPS 2.0 Pillar Two consultation that closed on 4 April 2022. Alongside this, the UK Government also released draft legislation on the "Introduction of the new multinational top-up-tax". This draft legislation builds on the Global Anti-Base Erosion (GloBE) Model Rules published by the OECD on 20 December 2021 which effectively provided governments with a template for legislating the global minimum tax rules. The Draft Legislation covers the application of the Income Inclusion Rule (IIR), however details on the timing and design of the UK's Undertaxed Profits Rule (UTPR) are not included. An update on the UTPR is expected to be issued later, in light of wider developments internationally. The Draft Legislation confirms that the IIR is expected to apply to accounting periods commencing on or after 31 December 2023.

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