Fiscal Countdown

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Editor

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 eighth edition deals with the new measures published in October 2022 by the OECD, the EU and in 13 countries: Australia, Bulgaria, Chile, Cyprus, France, Germany, Ghana, Ireland, Israel, Malaysia, The Netherlands, Peru, and Poland.

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OECD

On 4 October 2022, the OECD published the sixth annual Progress Report of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

According to the Progress Report, since the high-level agreement reached in October 2021 on key parameters with respect to Pillar One and Pillar Two of the BEPS 2.0 project, the Inclusive Framework has focused on implementation.

On Pillar One, the Report states that good progress has been made, noting the release in July 2022 of the Progress Report on Amount A of Pillar One in the form of a public consultation document. However, the Report indicates that the novelty of the concepts used in Amount A led the Inclusive Framework to conclude that further deliberation, including additional stakeholder input, was needed to finalize the design of the new rules properly. Therefore, the Inclusive Framework agreed to a new timeline for delivery on Amount A, with the aim of completing the work on the Multilateral Convention and related Explanatory Statement with respect to Amount A so that a signing ceremony can be held in the first half of 2023 for it to come into force in 2024 with ratification by a critical mass of jurisdictions. With respect to Amount B, which is intended to provide for fixed returns for baseline marketing and distribution activities, the Report indicates that a public consultation document is expected to be released by year-end.

On Pillar Two, the Progress Report notes the release of the Global Anti-Base Erosion (GloBE) Model Rules for the minimum tax in December 2021 and the related Commentary in March 2022, which is intended to enable Inclusive Framework member jurisdictions to begin implementing the global minimum tax rules.3 Further, the Report indicates that the GloBE Implementation Framework, which will include administrative guidance, a common filing process and safe harbors to reduce compliance costs, will be released in the second half of 2022. In addition, the Report states that the Subject to Tax Rule (STTR) draft model tax treaty provision and related commentary is expected to be released for public comment later in the year.

With respect to the 15 Actions under the original BEPS project, the Progress Report states that steady progress has continued, in particular on the implementation of the four BEPS minimum standards:

Action 5 on Harmful Tax Practices: The Report indicates that the Forum on Harmful Tax Practices (FHTP) has reviewed over 300 preferential regimes and the substance legislation of 12 no-tax or only nominal tax jurisdictions. In addition, over 41,000 exchanges of information on tax rulings have occurred between governments.

Action 6 on Tax Treaty Abuse: The Report refers to the March 2022 peer review report, which showed that the level of compliance has more than doubled since last year and that around 2,300 of the 2,400 tax treaties between Inclusive Framework member jurisdictions should become compliant with the Action 6 minimum standard soon.

Action 13 on Country-by-Country (CbC) reporting (CbCR): The Report refers to the October 2021 peer review report on the implementation of CbC reporting, noting that there are now more than 3,200 bilateral CbC exchange relationships in place between 83 jurisdictions. In addition, the fifth annual peer review on the implementation of CbC reporting was released on 4 October 2022, and the Report indicates that the work on the 2020 review of BEPS Action 13 will resume in the fourth quarter of 2022.

Action 14 on Mutual Agreement Procedure (MAP): The Report indicates that 82 jurisdictions have been reviewed under the two-stage approach established for the Action 14 peer review, but that work on the 2020 Action 14 review has been temporarily suspended to allow the Inclusive Framework and OECD Secretariat to prioritize work on the BEPS 2.0 project. The Report notes that the Action 14 minimum standard review will resume after further progress on that work and that discussions on reviewing the Assessment Methodology and the MAP Statistics Reporting Framework resumed in June 2022.

The Progress Report states that progress has also been made over the last year on other BEPS Action items, noting in particular BEPS Action 1 through the development of value-added tax Digital Toolkits for developing countries as well as BEPS Actions 8-10 through the release of the 2022 edition of the OECD Transfer Pricing Guidelines.4 The Report indicates that the fourth edition of the OECD's Corporate Tax Statistics database, developed in connection with BEPS Action 11, will soon be released. The Report indicates that the new edition will further expand the coverage of CbC reporting statistics, with at least 45 jurisdictions reporting covering about 6,600 CbC reports and will contain new data on withholding tax rates.

On support for developing countries, the Progress Report describes the participation by developing countries in the Inclusive Framework and their progress on the BEPS minimum standards as reflected in the peer reviews. The Report also notes the work of the OECD/UNDP Tax Inspectors Without Borders (TIWB) initiative which provides support by matching experienced tax auditors with developing country tax administrations to assist with specific cases, particularly on transfer pricing audits. Looking ahead, the Report states that effective implementation of Pillars One and Two will be important to support domestic resource mobilization in developing countries. Ad hoc assistance is being provided to Inclusive Framework member jurisdictions needing help in the current work on finalizing the technical work on the BEPS 2.0 project. Once the rules and instruments for implementation are finalized, support will have to be geared more toward bespoke assistance on a bilateral basis to implement the rules into domestic law and to facilitate timely signature and ratification of the necessary legal instruments. Support also will be needed on putting the rules into practice.

On 6-7 October 2022, the Inclusive Framework held its 14th plenary meeting, with over 500 delegates from over 135 jurisdictions participating either in person or virtually. Several sessions of the 14th plenary meeting of the Inclusive Framework were made available for public viewing, all of which focused on topics other than BEPS 2.0.

The session on climate change and tax policy began with a presentation by the OECD Secretariat on the new report on Pricing Greenhouse Gas Emissions and the 2022 edition of its annual Tax Policy Reforms report, which includes a special focus on policy response to the energy crisis. The Secretariat also provided an update on the creation of the Inclusive Forum on Carbon Mitigation Approaches, noting that the first meeting of this group is expected to take place in January 2023. The session concluded with a conversation between Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration, and the new Director of the OECD's work on the environment, focusing on the OECD's work on tax and the environment.

The session on transparency began with a presentation by the Chair of the Global Forum on Transparency and Exchange of Information for Tax Purposes, focusing on developments with respect to the exchange of information on request and the automatic exchange of information. The session also included a presentation by the Co-Chairs of Working Party 10, providing a preview of the new document on the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard which was released on 10 October 2022.

The session on tax administration provided an update on the September meeting of the Forum on Tax Administration, with a focus on the FTA's ongoing work on the digitalization of tax administration which is viewed by the participating tax authorities as essential. The objective is to deliver a seamless experience to taxpayers, with a view to reducing burdens, increasing compliance and addressing the tax gap. The future work of the FTA is intended to be collaborative, including input from taxpayers, and will be aimed at helping to accelerate tax administrations' domestic efforts.

The session on tax and development began with a preview of the G20/OECD Roadmap on Developing Countries and International Taxation, which was prepared by the OECD Secretariat and released in advance of the 12-13 October 2022 meeting of the G20 Finance Ministers in Washington, DC. The session also included discussion of the recent OECD report on Tax Morale II, the progress of developing countries on tax transparency, and the work of the TIWB initiative.

Finally, with respect to the BEPS 2.0 project, the OECD Secretary-General Mathias Cormann stressed the need to make Pillar One and Pillar Two a reality, warning that if this does not happen there will be a resurgence of uncoordinated measures creating disputes and controversy at a difficult time in the global economy. He also noted the need to do more to ensure that developing countries can reap the full benefits of the two pillars. Beyond BEPS 2.0, he called for continued focus on ensuring that all the international tax standards remain up to date and fit for purpose, noting that ongoing cooperation on tax transparency is essential. Looking forward, he described the Inclusive Forum on Carbon Mitigation Approaches as building on the success of the cooperative efforts of the Inclusive Framework, highlighting its focus on supporting jurisdictions' policy actions to achieve their climate commitments.

On 6 October 2022, the OECD Secretariat released a Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One. The Progress Report is a consultation document that covers important building blocks not included in the Progress Report on Amount A of Pillar One released on 11 July 2022,[1] namely the rules on the administration of the new taxing right and the tax certainty-related provisions. The Secretariat document does not represent the consensus views of the Inclusive Framework jurisdictions. The Report has been released by the OECD Secretariat in order to obtain further input from stakeholders on the administration and tax certainty aspects of Amount A, with written comments requested by 11 November 2022. The Report also indicates that two other public consultation documents will be released by the end of 2022: one addressing the withdrawal and standstill of digital services taxes and other relevant similar measures, and the other one on Amount B. Finally, the Report states that the work on Amount B will proceed with a view to completing it in the first half of 2023.

On 6 October 2022, the OECD announced that Mongolia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI).

South Africa and Bulgaria deposited their respective instrument of ratification of the MLI.

On 13 October 2022, the OECD released additional guidance to give greater certainty to tax administrations and MNE groups on the implementation and operation of BEPS Action 13 (CbCR). As jurisdictions have moved into the implementation stage, some questions of interpretation have arisen. In the interests of consistent implementation and certainty for both tax administrations and taxpayers, the Inclusive Framework on BEPS has issued this updated guidance to address the following: (i) positive and negative figures in completing Table 1; (ii) reporting permanent establishment information; and (iii) short accounting periods/long accounting periods.

European Union

On 13 October 2022, the European Commission launched a public consultation on its “Business in Europe: Framework for Income Taxation” (BEFIT) initiative. The consultation seeks the public’s views on the various policy options to design BEFIT, such as:

- Scope: Align BEFIT as much as possible with the Pillar Two threshold or further broaden its scope through mandatory or optional application, for example, to cover Small and Medium-sized Enterprises.
- Calculation of the BEFIT tax base: Establish a comprehensive set of tax rules to determine taxable income, or start from companies’ financial accounting statements and make limited adjustments for taxation.
- Distribution of the tax base across EU countries using a formula: Pillar One consensus on using a profit allocation formula could help pave the way for using a formula in BEFIT. The Pillar One formula only uses one factor, while the BEFIT should use at least three factors (tangible assets, staff numbers, payroll and sales by destination).

The public consultation consists of a questionnaire and the opportunity to submit a position paper. It also includes a document with the call for evidence for an impact assessment that is open for feedback in a free format. The deadline for submitting input is 5 January 2023, and the Commission is expected to develop a concrete legislative proposal and release it during Q3 2023.

On 4 October 2022, during an Economic and Financial Affairs Council (ECOFIN) meeting, Finance Ministers approved the revised EU List of non-cooperative tax jurisdictions. In this update, the Council decided to add Anguilla, the Bahamas, and the Turks and Caicos Islands to Annex I of the EU list (the so-called EU black list). The revised Annex I of the EU List now includes 12 jurisdictions: American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the Turks and Caicos Islands, the US Virgin Islands and Vanuatu. With respect to Annex II (the so-called EU gray list) and the state of play of pending commitments, the Council decided to remove Bermuda and Tunisia from Annex II as they have fulfilled all their commitments. Armenia and Eswatini were added to the Annex II as they have received recommendations to amend their preferential tax regimes by the end of 2023. In addition, Costa Rica was not removed from this list as it did not remove its foreign-source income exemption regime. As a result, the revised Annex II now comprises 22 jurisdictions: Armenia, Barbados, Belize, Botswana, British Virgin Islands, Costa Rica, Dominica, Eswatini, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Russia, Seychelles, Thailand, Turkey, Uruguay, and Vietnam. The Council will continue to review and update the EU List biannually, with the next update due in February 2023.

Australia

Australia issues 2022-23 October Federal Budget. The Budget includes details of three measures announced by the Australian Labor Party during their election campaign "to ensure multinationals pay their fair share of tax." This follows an August 2022 Treasury consultation paper and corresponding submissions in response. It is proposed to:

- Change the thin capitalization interest deduction limitation rules;
- Introduce a new rule limiting multinational enterprises' (MNEs) ability to claim tax deductions for payments relating to intangibles and royalties that lead to insufficient tax paid;
- Introduce a series of "enhanced" tax transparency measures.

A further election announcement to implement a public registry of beneficial ownership to improve transparency on corporate structures, to show who ultimately owns or controls a company or legal vehicle, is yet to be developed.

Consultation is currently ongoing concerning the election commitment to implement the OECD' Two-Pillar solution (BEPS 2.0.) which includes the 15% global minimum effective tax rate on profits of large MNEs.

On 4 October 2022, the Australian Treasury released a consultation paper seeking input on how to design and implement the OECD/G20 BEPS 2.0 two-pillar global agreement in Australia. The paper poses 40 questions on how the two-pillar global agreement would operate in Australia, and how Australian stakeholders view the benefits, challenges and impacts. The consultation paper includes 24 questions on implementation of the GloBE Model Rules in Australia, which address issues such as the potential mode of implementation, ways to minimize compliance costs and the implementation of a Domestic Minimum Tax. In addition, the consultation paper raises questions around implementation timing, administrative provisions and safe harbors. The consultation will run until 1 November 2022.

Bulgaria

A draft bill for amendments to the Bulgarian Value Added Tax (VAT) Act has been circulated for public consultation. One of the key proposed changes introduces VAT recovery on unpaid receivables. In particular, according to the proposal, the VAT position of the supplier should be adjusted through the issuance of a credit note. The published texts, if enacted, would govern the requirements and conditions for the application of the bad debt relief.

Chile

Several changes are made.

Taxation of dividends attributed to the "Temporary Differences Registry" (RDT) : The Bill initially proposed applying corporate income tax (CIT) to dividends attributed to profits that were not previously subject to CIT (e.g., due to temporary differences). Under the Modifications Bill, an entity could deduct paid CIT from its annual taxable income basis. The goal of this modification is to avoid the double taxation that would be triggered when the temporary differences are reversed.

New 22% sole tax on dividends: The Modification Bill clarifies that individuals domiciled or resident in Chile could claim the excess remaining after withholding the 22% sole tax on dividends (i.e., for distribution of dividends ultimately attributed to non-taxable income) as a credit against their annual personal tax (the Global Complementary Tax).

New "development surtax" and investment incentives: The Modifications Bill would eliminate the reference to the development surtax as a CIT. Consequently, development surtax paid would not be creditable against the dividend withholding tax (WHT), resulting in an increase of the combined tax burden from the current 35% to 36.7% when dividends are paid to shareholders that reside in a jurisdiction with a Double Tax Treaty (DTT) in force with Chile.

Limitations on foreign tax credits: The Modifications Bill would leave intact the indirect foreign tax credits that the Bill proposed to eliminate (i.e., foreign taxes paid by foreign subsidiaries indirectly owned by Chilean entities, whether located in different countries, are still creditable). It would also leave intact the ability to claim as a foreign tax credit (FTC) the dividend withholding tax paid on Chilean-source income by a domestic subsidiary indirectly owned by the Chilean entity.

Rather than decreasing the credit cap on the taxes paid abroad from 35% to 27%, as proposed by the Bill, the Modification Bill would tie the credit cap to "the CIT rate currently in force during the same fiscal year."

The Modification Bill would also require taxpayers claiming FTCs to document their foreign tax payments with the corresponding certificates issued abroad, to ensure traceability of the respective income's taxation across entities.

New tax on retained earnings: The Modifications Bill proposes to increase the annual 1.8% tax on the retained earnings of companies holding passive investments to 2.5%, which would only apply to amounts over 22% of those retained earnings (i.e., while the rate would increase, the taxable base would decrease to 22% of its original determination). The 2.5% tax would not be creditable against the wealth tax imposed on individuals with domicile or residence in Chile who hold a personal estate worth more than 6,000 Annual Tax Units (equivalent to approx. US$5m).

Substitute tax applicable to retained earnings: The transitory regime available from 1 January 2026, until 31 December 2027, which would allow paying a 12% substitute tax (ST) instead of the 22% dividend WHT, would be available until the last banking day of each year.

A mandatory 12% sole tax would apply to earnings distributed in excess of an entity's "Accumulated Profits Registry" (RUA) and its RDT if: (i) the entity distributes the earnings during 2026 and 2027; and (ii) the entity also maintains a positive balance of retained taxable profits accumulated in its "Taxable Income Registry" (RAI) at the end of business year 2024. If a 22% WHT was applied instead of the 12% the difference would be refundable.

The Modifications Bill also proposes reducing to 20% the 32% ST established for excess withdrawals registered in companies in respect to certain individuals (i.e., dividend payments that, under past legislation, deferred final taxes). If a taxpayer keeps a balance of excess withdrawals as of 1 January 2026, a 25% ST would apply to the positive balance of excess withdrawals accumulated by the end of business year 2026, to be paid by in up to five business years.

Limitations on the use of tax losses : The Modifications Bill would postpone the limitation on the use of tax losses (as set out in the Bill) from 1 January 2024 to 1 January 2025. In addition, a transitory provision would allow its gradual application:

- During calendar year 2025, taxpayers could deduct tax losses from previous years, up to 80% of the taxable income calculated for that year

- During calendar year 2026, taxpayers could deduct tax losses from previous years, up to 65% of the taxable income calculated for that year
- From calendar year 2027 onwards, taxpayers could use tax loss carryforwards of up to 50% of the taxable income of the year

Transfer pricing regulations: The tax authority could challenge, in accordance with transfer pricing regulations, business reorganizations or restructurings that occur abroad and affect the property of Chilean taxpayers (or take place in Chile with effects abroad). Reorganizations that comply with the arm's-length principle, would not be subject to Article 41 E of the Income Tax Law (transfer pricing principles) or Article 64 of the Tax Code (local restructuring and valuation rules).

Changes to the General Anti Avoidance Rule (GAAR): The Bill permitted tax inspectors to administratively apply the GAAR without requiring judicial authorization. The Modifications Bill would create a special administrative procedure for this purpose, under which an Anti-Avoidance Committee (Committee), consisting of deputy directors of the audit, normative and legal departments of the Chilean Tax Administration, would determine whether abuse or simulation existed. If the Committee determined that the GAAR did not apply to the particular case, the tax office could not apply (in its place) a Special Anti-Avoidance Rule (SAAR). A special hierarchical appeal would be established to allow the taxpayer to challenge the Committee's decision before the National Director of the tax office. Fines under the GAAR would be eliminated for taxpayers but not for advisors who design or facilitate tax-avoiding operations.

Cyprus

Cyprus Tax Authority issues clarification regarding Competent Authority Agreement with United States for exchange of CbC reports.

France

The OECD published the Arbitration Profile of France applying Part VI (mandatory binding arbitration) of the OECD' MLI. The arbitration profile contains the following: (i) references to a jurisdiction's MLI position, Mutual Agreement Procedure (MAP) profile and the synthesized texts obtainable from the MLI Matching Database; (ii) indication of the type of arbitration process that will apply to that jurisdiction as the default type of arbitration; (iii) reservations made; (iv) hyperlinks to the competent authority agreements concluded in respect to the Arbitration clause of the MLI; and (v) any further clarifications.

As part of the examination of the 2023 Finance Bill, the Government has published its annual report on France's treaty network for the exchange of information. After a presentation of the principles governing international administrative assistance, this report lists the changes in France's treaty network that have occurred since the previous report, takes stock of the exchange of information for 2021, and specifies the contours of the OECD's Multilateral Instrument.

Germany

On 7 October 2022, the German Federal Council approved a draft Ordinance updating the existing Ordinance on the Transfer of Business Functions (the existing Law). The draft, issued by the German Government on 31 August 2022, is intended to align the German legislation with recent legal changes to the cross-border transfer of function rules following the current OECD Transfer Pricing Guidelines in order to enhance legal certainty but also to provide clarification with respect to certain details of the existing Law. The updated Ordinance includes some aspects where the rules get further tightened beyond the recent legal changes and the existing Law. Among others, the updated Ordinance extends the definition of a “transfer of function” and includes changes to the calculation of the transfer package while it also eliminates certain provisions of the existing Law without replacing them. Additionally, while the existing Law only required a taxpayer to provide prima facie evidence, the updated Ordinance now shifts the burden of proof to taxpayers by requiring a taxpayer to provide evidence under certain provisions. The updated Ordinance will enter into force after its publication in the Official Gazette, and the rules are intended to apply with retroactive effect for all completed transfers of functions for the tax period beginning after 31 December 2021.

Ghana

Ghana enacts various amendments to tax laws introduced in 2022 Mid-year Budget Review Statement.

Ireland

On 27 September 2022, the Irish Minister for Finance presented Budget 2023. Among other items, the Minister:

• Reiterated Ireland’s commitment to the OECD two-pillar agreement and separately noted Ireland’s long-standing position that coordinated multilateral action is the best approach to ensuring that the international tax system keeps pace with the changes in how business today is conducted internationally.

• Announced that, in conjunction with work to develop the elements required to give effect to the Pillar Two rules, that serious ongoing consideration is being given to options for a move towards a territorial tax system of taxation.

• Announced that Ireland will introduce amendments to the payable element of the research and development tax credit scheme in Finance Act 2022 (to be enacted in December 2022) to ensure the regime is regarded as a “qualifying refundable credit” for the purposes of the Pillar Two Model Rules to protect the value of the regime in an international context

• Announced that, in recognition of anticipated changes in the broader international tax environment (specifically under the OECD Pillar Two agreement), the effective rate under the Knowledge Development Box regime is to be increased from 6.25% to 10% (from a date to be set by a future commencement order)

Israel

An amendment to the Israeli transfer pricing (TP) regulations was published following the adoption of the BEPS Action 13 principles in domestic legislation. The new regulations set an expanded reporting obligation in accordance with Chapter IV of the updated OECD TP Guidelines. The following are the key changes to the Israeli TP documentation requirements starting FY2022:

- Requirement for filing a TP report has been reduced to 30 days from demand (compared to 60 days previously) ;
- Israeli taxpayers that are members in a multinational group (MNE Group) whose revenue exceeded ILS150m (approx. US$42.5m) in the preceding year, will be required to prepare and file a Master File (within the 30 days framework mentioned above) ;
- Enhanced disclosure requirements regarding intercompany transactions as part of the annual tax return. This will include the identification of the ultimate parent entity (UPE) of the

MNE Group that the Israeli taxpayer is a member of, the consolidated revenue of the MNE Group and information on the reporting obligations of the said UPE ; and

- The new regulations also include rules on Country-by-country reporting, especially in relation to an Israeli UPE in an MNE Group whose revenue exceeds ILS3.4b (approx. US$965m).

Most of the new regulations will now apply to FY2022, which requires substantial preparation, however part of the regulations (especially those which apply to an Israeli UPE which heads an MNE Group with revenue of more than ILS3.4b), are applicable to FY2021.

Malaysia

On 7 October 2022, the Minister of Finance tabled the Government's Budget 2023 proposals to Parliament. Among other items, the Budget proposals reaffirmed Malaysia's commitment to implement Pillar Two and revealed Malaysia's target to implement a Qualified Domestic Minimum Top-up Tax in 2024. As Malaysia's Parliament was dissolved on 10 October 2022, the Budget will need to be re-tabled once a new Government is in place. Further details on the introduction of Pillar Two are expected from the Malaysian Government over time.

The Netherlands

Netherlands launches consultation on BEPS 2.0 – Pillar Two implementation.

Peru

Peru enacts regulations on temporary VAT reduction for specific hotels and restaurants.

Peru Tax Authority publishes new High Risk Schemes under GAAR.

Poland

Poland proposes changes to the “shifted profits tax”.

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