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 eighty-second edition deals with the new measures published in February 2023 by the OECD, the European Union, the FASB, and in 23 countries: Argentina, Belgium, Bulgaria, Cyprus, Denmark, France, Germany, Hong Kong, Ireland, Japan, Liechtenstein, Moldova, Netherlands, Poland, Qatar, Romania, Singapore, Spain, Sweden, Switzerland, the United Kingdom, Uruguay, and USA.

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OECD

On 2 February 2023, the OECD/G20 Inclusive Framework released Administrative Guidance to address issues related to the GloBE Model Rules and Commentary. The guidance, which includes additions and modifications to the Commentary, aims to provide clarification on topics such as the allocation of taxes arising under blended CFC regimes, the design of QDMTT, the interaction between QDMTT and CFC Tax Regimes, and the scope of transactions covered under article 9.1.3. According to the OECD, a revised Commentary, which will include the guidance, and a set of detailed examples will be released later this year. The document also states that additional administrative guidance may be needed as issues emerge during the implementation of the GloBE Rules, and that such guidance may include both interpretive and operational guidance.

The OECD released a new revenue impact of the two-pillar solution. According to newly released analysis from the OECD, the revenue increase from the implementation of Pillar One and Pillar Two will be higher than initially anticipated. As for Pillar One, is now expected to allocate taxing rights on about US$200 billion in profits to market jurisdictions annually. This is expected to bring about an annual increase in global tax revenue ranging from US$13 billion to US$36 billion, based on data from 2021. Pillar Two is now predicted to result in an estimated annual increase of global revenue of around US$220 billion, or 9% of the global corporate income tax revenues.

The OECD/G20 Inclusive Framework on BEPS agreed on a revised Assessment Methodology for the BEPS Action 14 peer review process. Accordingly, jurisdictions without “meaningful MAP experience” will undergo a simplified peer review process, and those with it will undergo a full peer review process, beginning in 2023 and 2024, respectively. A jurisdiction would be considered to have “meaningful MAP experience” on the basis of the following conditions: (i) a threshold of 10 Mutual Agreement Procedure (MAP) cases in its MAP end inventory as reported in its MAP Statistics over the three previous years on average; or (ii) feedback is received from other members of the Forum Tax Administration MAP Forum indicating that the jurisdiction’s policy or practice concerning MAP requires improvement. In the press release, the OECD announced that new data points will be reported by all Inclusive Framework member jurisdictions in their MAP Statistics, including: (i) break down of the average time to close cases in the unilateral and bilateral stages of MAP; and (ii) identification of the age of pending cases. Additionally, annual statistics with respect to Advance Pricing Arrangements (APAs) will be reported and published on the OECD website in a common format and will be available from 2024 onwards. Finally, there are also ongoing discussions about changes to the BEPS Action 14 minimum standard.

On 1 February 2023, the OECD published a manual on the handling of multilateral MAPs and APAs to provide guidance to jurisdictions on how to handle these cases. The manual provides an overview of the challenges that arise in multilateral cases and the experiences of 19 jurisdictions including Australia, Canada, France, India, Japan, the United Kingdom (UK) and the US, based on responses to a survey circulated in 2020.

European Union

On 1 February 2023, the European Commission (the Commission) published a Communication on a Green Deal Industrial Plan for the Net-Zero Age (the Communication). The Communication covers the four following pillars (i) a predictable and simplified regulatory environment; (ii) faster access to sufficient funding; (iii) skills; and (iv) open trade for resilient supply chains. With respect to the second pillar, the Communication proposes that the EU will make use of EU funding, comprising both existing (REPowerEU, InvestEU, and the Innovation Fund) and new (European Sovereignty Fund) sources of funding. Furthermore, the Commission intends to temporarily relax the State aid Rules to provide Member States with flexibility in granting aid and calls for swift and accelerated implementation of the Commission's legislative proposals implementing the 2020 Capital Markets Union (CMU) Action Plan. The Communication was discussed during the Special European Council meeting that took place on 9 and 10 February. In the meeting conclusions, the EU Leaders invited the Commission and the Council to fully deploy available funding, explore the full potential of the European Investment Bank, and accelerate the implementation of the CMU Action Plan. As for State aid relaxation, the conclusions reference tax credits as a means of permissible targeted support in the sectors that are strategic for the green transition. The Commission is expected to come forward with concrete legislative proposals by mid-March, and EU Leaders may discuss them during the European Council on 23-24 March.

On 14 February 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where Finance Ministers approved the Council Conclusions on the revised EU List. During the meeting, the Council decided to add the British Virgin Islands, Costa Rica, Marshall Islands, and Russia to Annex I (also referred to as the "EU Blacklist"). Meanwhile, Barbados, Jamaica, North Macedonia, and Uruguay were removed from Annex II due to their pending commitments, while Albania, Aruba, and Curaçao were added. The updated EU List now includes 16 jurisdictions in Annex I and 18 jurisdictions in Annex II. The Council plans to review and revise the list biannually and the next update is scheduled for October 2023.

European Commission opens public consultation on the Implementing Regulation on Foreign Subsidies Regulation.

The Commission opens public consultation on Implementing Regulation introducing criteria of equivalence of information exchanged under agreements between Member States and a non-EU country to that under DAC7.

FASB

On 1 February 2023, at the Financial Accounting Standards Board (FASB) meeting, the FASB staff responded to a technical inquiry about whether an entity should record deferred taxes for the GloBE minimum tax by recognizing GloBE specific deferred taxes or remeasuring existing deferred taxes at the GloBE minimum tax rate. The staff stated it believes that the GloBE minimum tax, as illustrated in the inquiry, is an alternative minimum tax as discussed in ASC 740, and, therefore, deferred tax Assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax. Therefore, the incremental tax an entity has to pay under the GloBE rules would be recognized in the period it arises and deferred tax assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax. Because a country may enact tax laws that differ from the GloBE rules, entities will need to evaluate provisions of laws enacted in each jurisdiction to determine whether they are consistent with the GloBE model rules to apply the accounting indicated by the FASB staff.

Argentina

Argentina updates list of non-cooperative jurisdictions.

Belgium

Belgium released guidance on the interest deduction limitation rule (the Guidance), in view of the transposition of the Anti-Tax Avoidance Directive. According to Belgian domestic legislation, excess borrowing costs are deductible up to the highest of 30% of the taxpayer's earnings before interest, taxes, depreciation, and amortization (EBITDA) or 3 million euros. Among other items, the guidance clarifies that certain financial undertaking, standalone entities, and, under conditions, taxpayers with activity limited to long-term public infrastructure project, are exempt from the rule. In addition, the guidance sets out a number of items that are considered equivalent to interest, such as compensation owed by the taxpayer to a related foreign company. The guidance also defines a number of items that are excluded from the EBITDA, such as income exempt under the participation exemption or under a tax treaty. Finally, the guidance provides clarity on the application of the rules for groups and restructurings with a couple of illustrative examples. The clarifications with respect to restructurings provide for new insights, whereas the other administrative comments basically confirm positions that were already well established in practice.

Bulgaria

Bulgaria's Minister of Finance issues updated list of jurisdictions with preferential tax regimes.

Cyprus

Update of EU list of non-cooperative jurisdictions may trigger withholding tax and other implications.

Denmark

Danish Supreme Court issues rulings on beneficial ownership.

France

On 5 February 2023, the French Minister of Finance published in the Official Gazette the updated list of Non-Cooperatives States and Territories (the NCST list) (Decree of 3 February 2023). Following the latest update of the EU list of non-cooperative jurisdictions in October 2022, France added Bahamas and Turks and Caicos Islands to the updated NCST list with effect from 1 May 2023. The updated list includes the following jurisdictions: American Samoa, American Virgin Islands, Anguilla, Bahamas, British Virgin Islands, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos, and Vanuatu.

Germany

On 9 February 2023, the First Chamber of the German Parliament approved in its second reading the Act ratifying the international agreement on the exchange of Country-by-Country (CbC) reports with the US (the agreement). A bilateral agreement is necessary for the exchange of CbC reports given that the US has not signed the multilateral competent authority agreement on the exchange of CbC reports. If the law is passed, the agreement will enter into effect on 31 March 2023.

Hong Kong

Hong Kong to further revise its foreign source income exemption regime to expand scope of disposal gain.

Ireland

Ireland updates guidance in relation to Country-by-Country Reporting (CbCR).

On 2 February 2023, the Irish Revenue updated the Irish Tax & Duty Manual (TD&M) on the Interest Limitation Rule (ILR) to reflect the amendments made to Irish tax legislation under Finance Act 2022. At a high level, the updates include the following:

- Clarifications to the definition of “interest equivalent” for the purposes of the ILR;
- Outlining which portion of debt should be treated as paid in priority where a debt repayment includes a mixture of legacy debt and non-legacy debt;
- Updates in relation to the calculation of “relevant profit” or “relevant loss” and the interaction with group relief/non-trade charges.

Japan

On 3 February 2023, the Japanese Ministry of Finance released draft legislation on Pillar Two. The legislation only includes the Income Inclusion Rule (IIR). The UTPR and QDMTT will not be addressed until the 2024 tax reform at the earliest. The draft legislation follows the OECD Model Rules. Parliamentary approval is needed for the draft law to take effect, but it is expected to be enacted on 1 April 2023. If passed, the IIR will apply to fiscal years starting 1 April 2024 or later.

Liechtenstein

Liechtenstein confirms implementation of Pillar Two.

Moldova

Moldova releases law introducing transfer pricing regime and general anti-abuse provision.

Netherlands

The Netherlands issues favorable Decree clarifying application of transfer pricing anti-mismatch rules for asset transfers to Dutch corporate taxpayer through contributions and distributions, dated 24 January 2023.

Dutch State Secretary of Finance submits letter to the Parliament on conduit companies.

Poland

Poland launches public consultation on DAC7 implementation.

Qatar

On 2 February 2023, Qatar published in the Official Gazette Law no. 11 of 2022 to amend some of the provisions of the Income Tax Law no. 24 of 2018 (ITL). The ITL Article 34 new addition on BEPS notes that “The regulation shows the provisions necessary to address the requirements arising from the digitization of the economy and sets a minimum tax for entities located in the country on the basis of their excess profits determined in a manner equivalent to the global rules for combating the erosion of the tax base, provided that it is not less than 15%, and the regulation also specifies the scope and conditions.” The ITL Article 34 new text is interpreted as essentially a placeholder reinforcing Qatar’s commitment to BEPS, before the more detailed introduction of the GloBE rules and/or a QDMTT in the future. The detailed law/regulations on how Qatar will implement the GloBE rules (IIR only or both IIR and UTPR) and/or a QDMTT is expected to follow in the future. Currently there is no official date set for when the further detailed law/regulations will be released.

Romania

Romania enacts DAC7 implementation.

Singapore

On 14 February 2023, Singapore announced in its Budget 2023 that it will implement GloBE rules and a QDMTT (referred to as the DTT) for fiscal years starting on or after 1 January 2025. The DTT will ensure that the effective tax rate of a Multinational Enterprise (MNE) group in Singapore is increased to 15%. Only MNE groups that operate in Singapore and generate annual revenues of at least €750 million, as stated in the consolidated financial statements of the ultimate parent entity, will be subject to the DTT. The DTT, which is anticipated to be closely aligned with the GloBE rules, will undergo minor changes to correspond with Singapore's tax regime. Singapore has initiated discussions with industry stakeholders on the DTT's design and will continue to monitor international developments leading up to the implementation of the GloBE rules and the DTT.

Sweden

On 7 February 2023, Sweden released a white paper proposal for draft legislation concerning Pillar Two. Whereas the proposal generally aligns with the EU Directive, it is still a work in progress, as it has not yet fully incorporated all the provisions of the EU Directive due to time limitations. The IIR will be applicable for fiscal years starting on or after 31 December 2023. The UTPR will be applicable for fiscal years starting on or after 31 December 2024.The consultancy period for the white paper proposal ends on 15 May 2023.

Switzerland

Switzerland significantly increases safe harbor interest rates for 2023.

Spain

Spain issues draft List of Non-Cooperative Jurisdictions for Tax Purposes.

The United Kingdom

United Kingdom amends Mandatory Disclosure Rules.

Uruguay

Uruguayan Tax Authority publishes adjustments in interest taxation under Double Tax Treaty between Chile and Uruguay.

USA

On 3 February 2023, the United States Tax Court issued a stipulation approving an agreement between Eaton Corp. (Eaton) and the Internal Revenue Service (IRS) to adjust Eaton's tax bill for 2005 and 2006 to US$8.81 million. The proposal follows lengthy litigation in both the Tax Court and the Sixth Circuit Court of Appeals. The case originated with Eaton's inadvertent errors in calculating its transfer pricing methodology for its Advance Pricing Agreement (APA) annual reports in 2005 and 2006. The IRS used these inadvertent errors to justify cancelling Eaton's APAs and proposing a $75 million adjustment plus $51 million in Internal Revenue Code Section 6662 penalties. The Tax Court held that the IRS was not authorized to cancel Eaton's APAs and rejected the IRS's assertion of penalties. The IRS appealed the Tax Court's decision to the Sixth Circuit, but the appeals court ruled in favor of Eaton, finding that the IRS had the burden of proving that it had grounds to cancel the APAs under contract-law principles and failed to do so. In November 2022, Chief Judge Kerrigan ordered Eaton and the IRS to submit a proposed decision on or before 20 January 2023.3 The proposed decision determined deficiencies of $4.7 million in 2005 and $4.6 million in 2006, with no penalties. On 3 February 2023, Chief Judge Kerrigan issued a stipulated order identical to the proposed decision, which also took into account overpayments of tax for each year to result in the final $8.8 million adjustment.

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