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.

These eighty-three edition deals with the new measures published in March 2023 by the OECD the European Union (EU), the IMF and in 22 countries: Australia, Brazil, Belgium, Costa Rica, Croatia, Cyprus, Estonia, Germany, Honduras, Italy, Japan, Luxembourg, Malaysia, Malta, Netherlands, Saudi Arabia, South Africa, Spain, Sweden, Thailand, Turkey, and the United States of America (USA).

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OECD

On 16 March 2023, the OECD held a public consultation meeting on the consultation documents on the Pillar Two Global Anti-Base Erosion (GloBE) Information Return and on tax certainty for the Pillar Two GloBE rules, which the OECD Secretariat released on 20 December 2022. During the public consultation, there were three panels where key questions related to the proposed rules on tax certainty were discussed. These include why tax certainty is important for the implementation of the GloBE Rules, how differences/issues in applying the rules can be prevented, and how potential differences/issues can be resolved. On the GloBE information return, there were two panels coveringthe simplification of data points and return as well as standardization of administration.

On 27 February 2023, the OECD held a Tax Talks webcast during which members of the OECD Secretariat provided an overview of the latest international tax developments, including updates on the Two-Pillar solution to address the tax challenges arising from the digitalization of the economy (the so-called BEPS 2.0 project). The event also provided an update on G20 developments, ongoing efforts to enhance tax certainty, recent developments regarding the international aspects of Value Added Tax/Goods and Services Tax, ongoing tax and development work and capacity-building efforts, and the launch of the Inclusive Forum on Carbon Mitigation Approaches. Regarding Pillar Two, the speakers mentioned that the prereview would start in 2023, and it will examine domestic rules implementing Pillar Two to ensure compatibility with qualified Income Inclusion Rules (IIRs). The outcome of the peer review will be published on the OECD website to be used as a basis by taxpayers and tax administrations. Furthermore, it was mentioned that the multilateral instrument on the subject-to-tax rule (STTR) has been almost finalized and also that there is a process to identify the tax treaties in which the STTR needs to be inserted With respect to timing, the release of outstanding items of the two pillars (Multilateral Convention on Amount A, finalization of Amount B, GloBE Information Return, tax certainty aspects, additional administrative guidance, and the STTR) is still expected in summer 2023. Regarding deliverables to be released in 2023, the OECD's Director, Grace Perez-Navarro, mentioned, among others, the following:

• Two Pillar Solution Implementation aspects

• Capacity building to implement the Two-Pillar international tax package effectively

• Update on the 2022 G20/OECD Roadmap on Developing Countries and International Taxation

• New Report on voluntary exchange of information regarding immovable property transactions undertaken by non-residents

• New Global Forum Report to assist interested jurisdictions in streamlining processes to obtain consent to use of information received via tax treaties for non-tax purposes

On 8 March 2023, Angola joined the Global Forum on Transparency and Exchange of Information for Tax Purposes. According to the Press Release, Angola will also participate on an equal footing and is committed to combatting offshore tax evasion through the implementation of the internationally agreed standards of exchange of information on request and automatic exchange of financial account information.

On 15 March 2023, Mexico deposited its instrument of ratification of the MLI with the OECD. When depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Mexico updated its preliminary positions by adding a reservation to article 3 (transparent entities), opting to apply article 9 (4) (capital gains from immovable property), and withdrawing a reservation on article 16 (Mutual Agreement Procedure). The MLI will enter into force for Mexico on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of their instrument of ratification, i.e., on 1 July 2023.

Also, on 6 March 2023, Romania notified the OECD Depositary of the MLI the completion of its internal procedures for the entry into effect of the MLI provisions concerning certain Covered Tax Agreements (CTAs). This notification is required for the MLI to have effect on CTAs when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI. In addition, on the same date, Portugal notified that its tax treaty with Timor-Leste entered into force on 12 October 2022. Lastly, on 21 February 2023, the OECD published an update to the Arbitration Profiles of four jurisdictions applying Part VI (mandatory binding arbitration) of the MLI, namely, Belgium, Luxembourg, Netherlands, and the United Kingdom. On the same date, Hong Kong notified the OECD Depositary of the MLI the completion of its internal procedures for the entry into effect of the MLI provisions concerning certain Covered Tax Agreements (CTAs).

OECD updates to MAP and APA guidance have implications for US multinationals.

European Union (EU)

The While it seemed a long way off when the public Country-by-Country reporting (CbCR) directive was adopted with a qualified majority of European Union (EU) Member States in 2021, now the date at which EU Member States need to have introduced their domestic legislation to implement public CbCR is approaching fast. On 22 June 2023, all EU Member States need to have transposed the Directive into domestic legislation. And while the governments of the EU Member States are contemplating how best to make this translation, businesses are starting to monitor and track the divergences from what was included in the Directive. Even though directives create EU-wide obligations, they are only considered minimum standards and with that they leave room for elections and additions when translated into the domestic legislation by a specific Member State. And this is exactly what is giving companies headaches, as divergences mean complications and additional administrative burdens. With only a few countries having adopted the legislation at this moment, the issue of divergences is already starting to become apparent. Romania has for example adopted legislation requiring reporting for fiscal years starting on or after 1 January 2023. The Directive requires reporting for fiscal years starting on or after 22 June 2024. For multinational enterprise (MNE) groups with a medium or large undertaking in Romania and a fiscal year that equals a calendar year, this means that reporting will have to take place two years earlier than anticipated. While the rules as drafted currently would mean that both EU and non-EU headquartered groups would have to report as of January 2023, it could be that the rules for EU-groups will be adapted to align these rules with the Directive. According to the Directive, for EU-groups the country where the ultimate parent entity (UPE) is a resident is nominated as the country where reporting and filing would have to take place. If the UPE country aligns its legislation with the Directive, then reporting will only have to take place for fiscal years starting on or after 22 June 2024. Besides Romania, Spain has also adopted a deviation, requiring reporting in 6 months instead of 12 months from the date of the balance sheet of the fiscal year.

Also adding to the complexity, Hungaryhas already indicated it will not use the option given in the Directive to allow MNE-groups to defer publication of commercially sensitive information. Hence, we can already see that relevant differences between the Directive and the domestic legislation of the EU Member States will result after the transposition has taken place. This will make it difficult for companies to design a centralized EU-wide governance system for public CbCR. To add reputational sensitivity to the complications raised by Romania's early entry into force date, Russia was placed on the list of non-cooperative tax jurisdictions recently. Consequently, reporting on Russia needs to take place on a country level, instead of on an aggregated level in combination with all other non-EU jurisdictions in which the group has operations.

Besides the EU, the Financial Accounting Standards Board (FASB) on 15 March issued proposals based on which more disaggregated reporting of income taxes (including jurisdictional information) would also be required in the United States (US). The proposals are open for comment until the end of May.

IMF

The International Monetary Fund (IMF) released Policy Paper No. 2023/001 on International Corporate Tax Reform (policy paper). According to the policy paper conclusions, the BEPS 2.0 project assists in shaping an international tax system more robust to tax spill overs and better qualified to adapt to the challenges of digitalization and moderately increasing global tax revenues. The policy paper also indicates that the international tax system should be further amended, once the Inclusive Framework agreement on Pillar Two is finalized, to ensure revenue mobilization for developing countries. In addition, the policy paper indicates that in the process of implementing the BEPS 2.0 project, countries will need to proceed with introducing amendments to their corporate income tax systems (i.e., review tax incentives and anti-avoidance rules) and domestic policies in general and be strategic in the way they will adopt the rules. In that respect, the policy paper lays out guidance on the implementation of the rules – including a qualified domestic minimum top-up tax (QDMTT). The Policy Paper also focuses on the interests of developing countries, stressing the importance of the subject to tax rule's introduction in tax treaties and the need for expanded international guidance and simplification rules to allow lower capacity administrations to cope with the new regime and procedures. Nevertheless, regarding safe harbors as means of simplification, the policy paper emphasizes the need to ensure profits are allocated to low-income countries when designing them.

IMF releases policy paper on Elements of Effective Policies for Crypto Assets.

Australia

Australian Treasury releases Exposure Draft Bills on thin cap changes and tax transparency disclosure of information.

Brazil

The Brazilian Federal Revenue Office (RFB) published Normative Instruction (NI) nº 2.132/23 providing guidance on the taxpayers' option for early adoption of the transfer pricing rules set forth in Provisional Measure (PM) nº 1.152, from 28 December 2022, related to controlled transactions carried out during the calendar year 2023. The NI establishes that the option for applying the provisions of the PM to the controlled transactions that occurred in 2023 shall be digitally formalized by taxpayers during the period between 1 September 2023 and 30

September 2023. Once the election is made, it will be irrevocable and will apply to all transactions carried out during the calendar year. Among other provisions, the NI establishes criteria for carrying out transfer pricing adjustments throughout the year and ratifies certain regulations set forth by the PM with respect to the deductibility of royalties.

Belgium

2 March 2023, the Belgian Finance Minister announced a tax reform allowing for a significant tax shift in Belgium. This proposal is only the first phase of a broader tax strategy for the next 10 years and is currently subject to debate within the Belgian federal Government. Even though the entry into force is foreseen for 1 January 2024, the specifics of this plan can still change during the political and legislative process. The Finance Minister stated that the tax burden on labor income and capital income is disproportionate. To compensate for the reduced tax burden on labor income, among others, the implementation of a global minimum tax (15%) for multinational enterprises operating in Belgium is proposed. Such minimum taxation is foreseen in the Pillar Two Directive, which needs to be implemented at the domestic level by the end of 2023. This legislation will ensure a minimum effective tax rate of 15% (to be assessed at a Belgian group level, not necessarily for each Belgian group entity as such – based on the “jurisdictional blending” principle).

Costa Rica

Costa Rican Tax Authority creates National Large Taxpayers Dialogue Forum.

Croatia

Croatia completed its transposition of DAC7 (EU Directive on Administrative Cooperation in the Field of Taxation to extend its scope to reporting obligations of digital platform operators) by publishing in its Official Gazette the Bylaw implementing Annex V. Annex V sets forth due diligence procedures, reporting requirements and other rules that shall be applied by the Reporting Platform Operators. This follows Croatia’s adoption of Law No. 2338, amending rules on the mandatory automatic exchange of information implementing DAC7 on 22 December 2022.

Cyprus

Cyprus Tax Authority publishes 10-year government bond yield rates for NID purposes.

Estonia

Estonian tax measures triggered after new countries including Russia are added to EU list of non-cooperative jurisdictions.

Germany

The German Ministry of Finance (MoF) published its discussion draft for the implementation of the Global Minimum Tax on Monday (20 March 2023). By publishing the discussion draft, the MoF is tackling the implementation of the EU Directive on the introduction of a Global Minimum Tax (2022/2523), which the EU finance ministers agreed to in December 2022. The discussion draft is closely aligned with the requirements of the EU Directive as well as the OECD Model Rules. With the Minimum Tax Directive Implementation Law, Germany aims to ensure that from 2024 onwards, a top-up tax in accordance with the rules agreed to at an international level will be introduced. The discussion draft includes a transitional Country-by-Country Reporting (CbCR) safe harbor, as well as two permanent safe harbors, the Non-Material Constituent Entity (NMCE) safe harbor and the “Qualified Domestic Minimum Top-up Tax” (QDMTT) safe harbor, aiming to simplify compliance and reduce complexity for certain entities. The legislative process is expected to extend well into the second half of 2023.

Honduras

Honduran Government to file new tax reform before the National Congress.

Italy

Italy approves decree implementing DAC7.

Japan

Japan's Tax Authority confirms that a representative and registration in Japan as required under Companies Act does not create a PE.

Luxembourg

Luxembourg submits Draft Law implementing Public CbCR Directive to Parliament.

Malaysia

Malaysia releases FAQS on Mutual Agreement Procedure.

Malta

Malta issues clarification on DAC6 filing requirement waiver.

Netherlands

Dutch Minister of Finance submits letter to Parliament on Tax Treaty Negotiations.

Saudi Arabia

Saudi Arabia announces third wave of Phase 2 e-invoicing integration.

South Africa

Among others, the Budget announces that amendments to domestic legislation will be released with the view of implementing rules related to the two-pillar solution. Since there is no final agreement on Pillar One, South Africa will, for the moment, only publish a draft position for public consultation on the implementation of Pillar Two. The draft position will be published in 2023. In addition, draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.

Spain

On 6 March 2023, the Spanish Ministry of Finance released a public consultation document regarding the transposition of the EU Directive implementing Pillar Two Global Minimum Tax rules (Minimum Tax Directive) into the Spanish tax law. This document is not a draft tax law but rather a description of the structure of the EU Minimum Tax Directive provisions; it is subject to public consultation until 24 March 2023. There is no indication whether Spain will opt to approve a qualified domestic minimum top-up tax or any other tax policy position available to implementing jurisdictions. In addition, the document acknowledges that the Spanish rules transposing the Minimum Tax Directive should be implemented before 31 December 2023 (31 December 2024 in the case of the UTPR), and the provisions implementing the Minimum Tax Directive into the Spanish tax law will be applicable in 2024. Input is requested on: (i) problems that this initiative seeks to solve; (ii) the need and opportunity for its approval; (iii) the purpose of the rule; and (iv) the potential alternatives from a regulatory or non-regulatory perspective. Taxpayers and stakeholders may submit observations by 24 March 2023.

Sweden

Sweden presents draft bill for the implementation of the Public Country-by-Country Reporting (CbCR) Directive.

Thailand

On 7 March 2023, the Thai Cabinet approved in principle to collect a global minimum tax in Thailand to align with the OECD BEPS 2.0 Pillar Two. The Revenue Department is assigned to draft the associated legislation and set the guidelines to:

• Collect top-up taxes in accordance with the OECD's Pillar Two (the Revenue Department is in the process of drafting the legislation, of which the first draft should be ready for consideration by 2023 with an effective date in 2025)

• Allocate 50% to 70% of top-up taxes collected under Pillar Two to the Competitiveness Enhancement Fund of the Board of Investment of Thailand (BOI) (details will be further discussed between the Revenue Department and the BOI)

• Share the details of top-up taxpayers with the BOI The BOI should consider providing cash grants to qualifying investors, subject to the investment/spending amount that would promote Thailand's competitiveness and long-term investment.

Turkey

A recently enacted Turkish law adds a tax on corporations for 2022 to help address damage caused by recent earthquakes.

Unite States of America (USA)

Addressing BEPS 2.0, a senior US Treasury official this week said negotiations have been so challenging that he does not expect the Inclusive Framework (IF) will be able to craft a permanent safe harbor under the Pillar Two Global Anti-Base Erosion (GloBE) rules. Recent guidance provided for several temporary safe harbors that apply to the first three years that GloBE is in effect. On the other hand, the official was also quoted as saying that the IF is working on a qualified domestic minimum top-up tax (QDMTT) safe harbor that would eliminate an in-scope multinationals' liabilities under the Income Inclusion Rule (IIR) and Undertaxed Profit Rule (UTPR).

On 9 March 2023, US President Joe Biden released the Administration's FY 2024 Budget (the Budget) and accompanying Treasury Greenbook. In the Budget, the President also announced a number of international tax proposals. The Budget would make several changes to the GILTI regime, including replacing "global averaging" for calculating a US shareholder's GILTI with a jurisdiction-by-jurisdiction calculation and creating a separate foreign tax credit (FTC) limitation for each jurisdiction. Since GILTI would be deemed to be a compliant global minimum tax due to other proposals in the Budget, taxes paid under an IIR by a foreign parented group would be creditable against any GILTI tax paid by a US domestic corporation that is a member of that group. Another proposed international tax change would repeal the base erosion and anti-avoidance tax (BEAT) and replace it with a UTPR that is consistent with the UTPR described in the OECD Pillar Two Model Rules, including a global annual revenue threshold, de minimis exclusions and allocation among jurisdictions. A US domestic minimum top-up tax would be part of the UTPR proposal to protect the US Treasury from the imposition of UTPR by other countries.

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