



# Fiscal Countdown

## Newsletter n°85 – May 2023

### 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-fifth edition deals with the new measures published in May 2023 by the OECD, the European Union, the IASB, and in 13 countries: Australia, Brazil, Denmark, Egypt, Italy, Kenya, Netherlands, New Zealand, Nigeria, Switzerland, Uganda, the United Kingdom, and the USA.

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## OECD

On 11 May 2023, the OECD published a Progress Report (the Report) for the G7 Finance Ministers and Central Bank Governors' May 2023 meeting, which follows up on the OECD's May 2022 report by outlining progress on tax cooperation and identifying potential new areas for future consideration. The Report describes how the principles set out in the 2022 report are being incorporated into the design of Pillars One and Two under the so-called BEPS 2.0 project and how these principles are being translated into action. It also discusses capacity-building developments and plans. The G7 Finance Ministers and Central Bank Governors met in Japan on 11-13 May 2023. After the meeting, the G7 Presidency issued a communiqué summarizing key topics discussed. Concerning international taxation, the Finance Ministers reaffirm their strong political commitment toward the swift global implementation of Pillars One and Two. The communiqué acknowledges the significant progress in the negotiation of the Pillar One Multilateral Convention (MLC) and reaffirmed the Finance Ministers' commitment to swift completion of the negotiations so that the MLC is ready for signature within the agreed timeline. The communiqué welcomes the progress in implementing Pillar Two into domestic legislation and calls on the Inclusive Framework to work on further administrative guidance for globally consistent implementation. The communiqué also indicates their intention to support developing countries in strengthening their tax capacity to build sustainable tax revenue sources and highlights the importance of assistance for the implementation of Pillars One and Two.

## European Union

The European Commission (Commission) has released a proposal to reform the European Union's (EU's) customs regime, which will see the introduction of a new EU

customs authority and a single online data system. Changes will also be imposed for online marketplaces and the duty exemption for goods valued under €150 will be abolished. The legislative proposals will now be sent to the European Parliament and the Council of the European Union for agreement, and to the European Economic and Social Committee for consultation.

On 16 May 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where the EU finance ministers reached political agreement (general approach) on compromise text for the Directive on administrative cooperation implementing the Organisation for Economic Co-operation and Development's (OECD) rules on reporting for crypto assets and amendments to the Common Reporting Standard (CRS) (the Directive or DAC8). DAC8 introduces reporting requirements for crypto assets related to transactions carried out by European Union (EU) resident clients of reporting crypto-asset service providers. DAC8 also extends the scope for exchanging advance cross-border rulings to those concerning natural persons in certain situations and introduces the possibility of exchanging information received under the DAC framework for non-tax-related purposes. The compromise text, published by the Swedish Council presidency in advance of the ECOFIN meeting, is the result of negotiations among the Member States that amended the European Commission's (the Commission) initial proposal published on 8 December 2022. As for next steps, it is expected that the Directive will be formally adopted in early June, after the parliamentary consultation process is completed on 30 May 2023. Following the Council's formal adoption of DAC8, Member States will generally have until 31 December 2025 to transpose the main rules into national law. The provisions

will apply as of 1 January 2026 with some exceptions.

The Court of Justice of the European Union (CJEU) issued an important decision opening the door to the possibility of obtaining a refund of value-added tax (VAT) paid due to adjustment of the input VAT deduction when goods that have lost their usefulness are scrapped.

A case was brought before the European Union (EU) General Court against the Council of the EU for annulment of the Minimum Tax Directive (the Directive). The annulment case comes up against the Directive's interaction with shipping and shipping-related activities, as well existing tonnage regimes. The pleas in law and the main arguments of the procedure are that the Directive infringes the principles of equal treatment, proportionality, protection of legitimate expectations and legal certainty, and Articles 115 and 107 of the Treaty on the Functioning of the EU.

## **IASB**

On 3 May 2023, the International Accounting Standards Board (IASB) held a supplementary meeting to discuss proposed narrow-scope amendments to the International Financial Reporting Standards (IFRS) for Small and Medium Enterprises (SMEs) Accounting Standard. During the meeting, the IASB tentatively decided to propose amendments to the IFRS for SMEs Standard. These amendments include a temporary exemption for accounting and information disclosures on deferred taxes under Pillar Two rules, without a specified sunset period. The IASB also agreed not to introduce new disclosure requirements for SMEs during periods when Pillar Two legislation is enacted or substantively enacted but not yet in effect. This supplementary meeting comes after the IASB decided in late April that the Pillar Two Model Rules (and the proposed amendments to IAS

12) are relevant to entities applying the IFRS for SMEs Accounting Standard. The IASB plans to publish an exposure draft in the second quarter of 2023, which will be open for public consultation for 45 days.

## **Australia**

Australian Taxation Office issues second draft of compliance guidelines on intangibles arrangements.

Australia delivers 2023/24 Federal Budget.

## **Brazil**

The Brazilian Federal Senate has approved legislation addressing the new transfer pricing (TP framework in Brazil). Specifically, Bill of Law No. 8 of 2023, approved on 10 May 2023, stems from Provisional Measure No. 1,152 (PM 1,152/22), which was published on 29 December 2022 and addresses the new TP framework. This approval is one of the last steps in implementing a TP system in accordance with the guidelines established by the Organisation for Economic Co-operation and Development (OECD). The new TP model aims to integrate Brazil into the global value chains and mitigate both double taxation and double nontaxation scenarios. Moreover, this new TP system will likely remove one of the main obstacles associated with tax credits recognition in the United States (i.e., foreign tax credits) arising from income tax paid and/or withheld in cross-border transactions involving Brazil.

The main changes that the Lower House of Congress made to the original text include:

- Modification of art. 13: Clarifications for commodities transactions included:
  1. Allowing the use of internal comparables, when available;
  2. Allowing the use of another method, besides the comparable uncontrolled price (PIC-Preço Independente Comparável) method, when it is considered more appropriate;

3. Emphasizing the importance of avoiding comparability adjustments that could affect the reliability of the PIC method, resulting in the selection of a different methodology;
  4. Emphasizing that use of public prices should be considered for TP analysis as long as they were used by independent parties under comparable transactions; and,
  5. Emphasizing that, under extraordinary conditions, the use of public prices should not be considered appropriate if the result would be inconsistent with the arm's-length principle
- Modification of art. 17: Removed the secondary adjustment concept
  - Removal of art. 19: Removed the secondary adjustment specifications
  - Modification of art. 45: Removed the deductibility limitation for IRPJ (Imposto de Renda sobre Pessoa Jurídica (corporate income tax)) and CSLL (Contribuição Social sobre o Lucro Líquido (Social Contribution on Net Profits)) calculation basis for amounts paid, credited, delivered, used or remitted as royalties and technical, scientific, administrative or similar assistance to entities resident or domiciled in a jurisdiction or dependency with favored taxation or a privileged fiscal regime

As the final step in implementing the new transfer pricing system in Brazil, the Bill of Law resulting from the Provisional Measure 1,152/22 should be sent for presidential sanction. Afterward, it should be published in the Federal Official Gazette (Diário Oficial da União - DOU).

Brazilian taxpayers may opt to adopt the new TP system aligned with the OECD guidelines this year. To do so, taxpayers must inform the Brazilian Tax Authorities (RFB)<sup>1</sup> between 1

September and 30 September 2023. The new TP system will be mandatory for all taxpayers as of 1 January 2024.

As a conclusion, the main technical aspects of the new TP model are as follows:

- Effective as of 1 January 2024; may be early adopted as of 1 January 2023
- Introduces the arm's-length principle and broadens the related-parties concept
- Applies the new TP system to all cross-border intercompany transactions (i.e., intangibles, cost-contribution agreements, and business restructuring)
- Implements all TP methods according to the OECD standard (PIC, PRL, MCL, MLT, MDL) and best-method rule for intercompany transaction analysis
- Introduces functional (functions, assets and risks) and economic analysis for applying the new TP documentation rules
- Applies the comparable uncontrolled price (CUP) method as the most appropriate method when reliable comparables are available for cross-border commodities transactions; however, taxpayers may apply other methods based on the appropriate facts and circumstances
- Selects the tested party based on the most reliable data and best-method rule
- Includes all cross-border financial transactions, such as intercompany loans, guarantees, centralized treasury functions and insurance transactions
- Eliminates the royalty deductibility limitation currently in force in the Brazilian tax framework and including royalty transactions under the scope of the new TP system
- Introduces a comparable range (interquartile or complete) considering profit-level indicators

- Introduces spontaneous, compensatory and primary adjustment
- Introduces simplification measures and tax certainty instruments (mutual agreement procedures and advance pricing agreements)

### **Denmark**

On 4 May 2023, the Danish Supreme Court issued rulings on two beneficial owner cases that had been referred back from the Court of Justice of the European Union (CJEU). The cases concerned the exemption from Danish withholding tax on interest payments made by Danish companies to EU-resident companies, which then fully or partially paid the interest to an ultimate parent company residing in a third country. The Danish Supreme Court determined that the financing transactions constituted a predetermined arrangement and found that the holding companies did not qualify as beneficial owners under the EU Interest and Royalty Directive and the relevant tax treaties. The Danish Supreme Court concluded that the holding companies lacked the power to dispose of the income they received, and therefore were not entitled to the tax benefits claimed. As a result, the Danish Supreme Court upheld the decisions of the high court and the tax authorities that the holding companies were not eligible for the tax benefits sought, and consequently Danish interest withholding tax should have been withheld.

### **Egypt**

Egypt introduces VAT guidelines for nonresident providers of remote digital and electronic services.

### **Italy**

Italian Tax Authority rules effects of UK VAT groups not recognized for Italian VAT purposes.

### **Kenya**

Kenya proposes tax changes under the Finance Bill, 2023.

### **Netherlands**

On 2 May 2023, the Dutch State Secretary for Finance issued a Decree (Decree No. 2023-2897 – dated 18 April 2023) updating the Decree on the Avoidance of Double Taxation under Tax Treaties and Other Regulations. In part, the updated Decree:

- (i) further clarifies the used methodology and applied sequence of available tax credits;
- (ii) provides information in relation to income of foreign sportsmen and artists; and
- (iii) contains policy around avoidance of double taxation in tax treaties that do not mention a type of income explicitly (i.e., domestic rules could be relied on instead).

The updated Decree applies as of 3 May 2023 (replacing Decree No. CPP2007/664M of 18 July 2008 and No. IFZ2002/357 of 16 April 2002).

Dutch Finance Ministry proposes changes to Tax Arrangement between the Netherlands and Curaçao.

### **New Zealand**

New Zealand to adopt the OECD GloBE (Pillar Two) rules.

### **Nigeria**

The Federal Inland Revenue Service (FIRS) published through a press release on its official LinkedIn Page, an Outcome Statement from the OECD-Nigeria workshop on maximizing the benefits of the two-pillar solution for Nigeria. Nigeria did not endorse the Pillar Two solution but participated in the workshop to familiarize relevant government officials with the rules and the potential benefits for the country. The Outcome



Statement noted the need for Nigeria's continued participation in the rule development and the potential impact of implementing the two-pillar solution, particularly Pillar Two. The stakeholders at the meeting resolved that Nigeria should implement fiscal policy measures to address these potential impacts.

### **Switzerland**

Switzerland opens public consultation on procedural aspects of the OECD's Pillar Two minimum corporate tax.

### **Uganda**

Uganda issues Tax Amendment Bills for 2023.

### **The United Kingdom**

The United Kingdom (UK) released a series of amendments to the Spring Finance Bill 2023, including amendments to the Multinational Top-up Tax proposal. Six of the amendments involve Schedule 16 (transitional provisions) and focus on applying anti-avoidance provisions for intragroup transfers (in particular, noting that the transitional rule applies to all transfers from transferors until they are fully subject to Pillar Two rules). An additional amendment also clarifies that figures used for the Multinational Top-up Tax transitional safe harbor must come from a qualifying country-by-country report. If this information was not included in the report, it must be adjusted as if it were. The amendment ensures that revenue and profit figures used in the transitional safe harbor provisions align with those included in a qualifying country-by-country report.

### **USA**

Proposed regulations would turn off IRC Section 367(d) following certain repatriations of IP.

In a Memorandum for Treaty and Transfer Pricing Operations Employees (memo), the

US Internal Revenue Service's (IRS's) Acting Director of Treaty and Transfer Pricing Operations (TTPO) informed IRS employees of new internal procedures for Advance Pricing Agreement (APA) prefiling meeting requests and the review and acceptance of APA submissions. The guidance implements a rigorous screening process whereby the Advance Pricing Mutual Agreement team (APMA) (along with other TTPO personnel) may shift taxpayers from the APA process to alternative workstreams. The IRS's stated goal for the procedural change is "to improve the quality and timeliness of APMA's APA program by providing an early mechanism for identifying potential roadblocks to successfully concluding a proposed APA and opportunities for other paths to certainty." While the memo represents interim guidance at the moment, it states that it will be incorporated into the Internal Revenue Manual within the next two years. The memo applies to prefiling memoranda and APA requests filed on or after 25 April 2023.

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<sup>[1]</sup> Where permitted under applicable country laws

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