BEPS and international tax newsletter

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Introduction

This newsletter provides regular updates and insights on the OECD's BEPS initiative and ongoing international tax reforms.

Our fifteenth edition deals with the new measures published in April 2022 by the OECD, the EU, and in 19 countries: Brazil, Canada, Cyprus, France, Germany, Greece, Ireland, Luxembourg, Mauritius, The Netherlands, Paraguay, Peru, Russia, Singapore, Spain, Switzerland, Turkey, UK, and the USA.

If you have any questions, please don’t hesitate to get in touch with a member of our team.

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OECD

The Secretariat of the OECD released a public consultation document with draft rules regarding the scope under Amount A for Pillar One of the OECD/G20 project on addressing the tax challenges arising from the digitalization of the economy ("BEPS 2.0"). Under the draft rules, the scope of Amount A is based on two threshold tests: (i) a global revenue test; and (ii) a profitability test. Both of these tests are to be met for a Group to be considered a Covered Group under the Amount A rules. The global revenue test requires a Group to have Total Revenues greater than EUR 20 billion. The profitability test is a three-pronged test that is met if the Group's Pre-Tax Profit Margin is: (i) greater than 10% in the period; (ii) in two or more of the four periods preceding the period; and (iii) on Average across the period and the four periods immediately preceding the period. Further, the consultation document does not include the rules for industry exclusions or segmentation. These rules will be released for public consultation later as standalone documents. The public consultation was open to receive input from stakeholders until 18 April 2022.

The OECD released the standardized IT-format (a User Guide and an XML Schema) to support the electronic reporting and automatic exchange of information collected under the OECD's Model Reporting Rules for digital platforms released in 2020 and the optional module that extends the scope of the Model Reporting Rules released in 2021. These Model Reporting Rules require digital platforms to report on the income realized by those offering accommodation, transport, and personal services, as well as those selling goods, through platforms and to report the information to tax authorities. The Digital Platform Information (DPI) XML Schema is intended to minimize burdens on digital platform operators, which might otherwise arise were jurisdictions to apply multiple different requirements. Also, the DPI XML Schema was developed in close coordination with the EU, to ensure that the schema can also be relied upon for the reporting and exchange of information according to the Council Directive (EU) 2021/514 (DAC7).

The OECD released the fourth annual peer review report on the implementation of BEPS Action 6 relating to the prevention of treaty abuse. The peer reviews were carried out under the revised peer review methodology published in April 2021. Under this new methodology, the focus has been placed on those bilateral and multilateral agreements for which no viable route to the adoption of the minimum standard has been established. Jurisdictions are being asked to develop plans for such adoption and will be held accountable for executing these plans. The report reflects detailed information on the implementation of BEPS Action 6 by the 139 jurisdictions that were members of the Inclusive Framework on 31 May 2021. According to the report, compliant agreements concluded between members of the Inclusive Framework and covered by the Multilateral Instrument (MLI) have almost doubled from 350 to more than 650 between 2020 and 2021. Furthermore, nearly 70% of the agreements concluded among the members of the Inclusive Framework are being brought into compliance through the MLI. In addition, the report notes that the MLI remains the most widely used route taken for the implementation of the minimum standard in non-compliant agreements, covering

more than 470 agreements that are not yet compliant.

Thailand deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Thailand confirmed its initial MLI positions. The MLI will enter into force for Thailand 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 its instrument of ratification, i.e., on 1 July 2022.

The Armenian Government approved the Draft Law on Ratifying the Multilateral Convention, implementing tax treaty related measures to prevent base erosion and profit shifting. The Draft law has yet to be ratified by the Armenian National Assembly. Armenia submitted its MLI position at the time of the signature, listing its reservations and notifications as well as the 46 Tax Agreements it wishes to be covered by the MLI.

The MLI was approved by the Cabinet of South Africa for submission to the Parliament for ratification. South Africa signed the MLI and submitted its provisional MLI position, listing its reservations and notifications as well as the 76 tax treaties it wishes to be covered by the MLI, on 7 June 2017.

A definitive list of reservations and notifications of each country will need to be provided once the internal ratification process is completed and the instrument of ratification is deposited with the OECD.

The OECD published a Public Consultation Document which proposes new and amended reporting requirements covering reporting of crypto-assets and e-money as well as containing broader revisions to the existing Common Reporting Standard (CRS).

EU

The Council of the EU (the Council) held an ECOFIN meeting where EU Finance Ministers publicly discussed the proposal for a Directive on ensuring a global minimum level of taxation for multinational groups in the EU. In advance of the meeting, the French Council Presidency issued a new compromise text to resolve the remaining issues and reach a unanimous agreement during the ECOFIN meeting. The three remaining issues were: (i) the specifics of the optional provision for the small Member States to delay the application of the rules; (ii) the administrative burden placed on small businesses; and (iii) the link between the introduction of Pillar One and Pillar Two. During the public debate, all EU Member States expressed support for the new proposal except for Poland. Poland reiterated its position that the OECD two-pillar solution mandates the implementation of Pillar One and Pillar Two in parallel. Poland, therefore, requires a legally binding assurance on the link between the introduction of the two pillars. The draft Directive requires a unanimous decision for adoption. The French Presidency of the Council will continue the negotiations with Poland and the other Member States to reach an agreement during the next ECOFIN meeting on 24 May.

The European Commission (the Commission) opened a public consultation on improving withholding tax procedures for non-resident investors. The specific objectives of the Commission under this initiative are to provide the EU Member States with the necessary information to prevent tax abuse in the field of withholding taxes and to create swift and efficient processes of refund on request and relief at

the source. The public consultation allows the public to provide feedback through a questionnaire and a brief document including any additional points not covered by the questionnaire. The public consultation focuses on stakeholders' views regarding the current functioning of withholding tax procedures, the need for action at the EU level, their preferences on the available policy options to improve withholding tax refund procedures, and further details of the potential EU relief at source system. The public consultation runs until 26 June 2022.

The Commission adopted the consolidated final regulatory technical standards (“RTS”) to the Sustainable Finance Disclosure Regulation (2019/2088/EU) (“SFDR”) and the EU Taxonomy Regulation (EU/2020/852) (“Taxonomy Regulation”). The SFDR came into force on 10 March 2021 and imposes environmental, social, and corporate governance ("ESG") disclosure and reporting requirements for a wide range of "financial market participants", including investment firms and fund managers. The Taxonomy Regulation supplements (and should be read alongside) the SFDR, and establishes an EU-wide classification system or 'framework' which is intended to provide businesses and investors with a common language to identify to what degree their economic activities can be considered environmentally sustainable. The RTS specifies the content, methodologies, and presentation of information required to be disclosed under both regulations, including the specification of mandatory website, pre-contractual, and periodic reporting templates. To date, financial market participants have only been required to comply with the main provisions of the SFDR and Taxonomy Regulation (i.e. the level 1 requirements) and have not been required to comply with the RTS, which had not been finalised and adopted until now. The RTS will now be reviewed by the European Parliament and Council and, provided that there are no objections to it, it will be published in the Official Journal of the EU. The RTS is expected to come into force on 1 January 2023, provided there are no further delays to its implementation. Given that the RTS has now been finalised, firms should ensure that they familiarise themselves with the requirements contained therein, including the mandatory templates, to ensure compliance from 1 January 2023.

The European Parliament published on 17 March 2022 a study providing an overview of the recently implemented anti-tax avoidance and evasion measures, notably the ATAD and DAC 6. It reviews the implementation of these directives across different Member States and assesses the problems that arise concerning the interpretation of some of the directives' provisions.

The Court of Justice of the European Union (CJEU) has further clarified the concept of a ‘fixed establishment’ for VAT purposes. In the recently published case Berlin Chemie A. Menarini (decision C-333/20 of 7 April 2022), the CJEU held that a foreign subsidiary that provides services exclusively to its parent company was established in another Member State does not automatically qualify as a fixed establishment of the parent company. A German company involved in the marketing and sale of pharmaceutical products concluded a service contract with its Romanian subsidiary to promote, advertise, and market its sales in Romania. The German parent company was the only client of its Romanian subsidiary and had access, in particular, to technical resources of the subsidiary such as computers, operating systems, and vehicles. The German parent company directly supplied its products to its customers in Romania. The Romanian subsidiary had been invoicing the German

parent company for marketing services exclusive of VAT under general B2B place of supply rules (i.e. with the services located for VAT purposes in Germany, the country of the recipient). The Romanian tax authorities challenged this position, taking the view that the German parent company had sufficient technical and human resources located in Romania (i.e. access to the subsidiary's resources) to carry out economic activity in Romania, which would shift the place of supply of the marketing services from Germany to Romania. Consequently, VAT was imposed in Romania on those services. In its decision, the CJEU recalled that, for a location to qualify as a fixed establishment, (i) the company must have its own human and technical resources there (or resources at its disposal as if they were its own), and (ii) this structure of resources must allow it to receive services supplied to it and to use them for its economic activity. The CJEU added that the same human and technical resources cannot be understood to provide and receive the same services at the same time, meaning that the resource structure in Romania could not be understood to be used for the provision by the subsidiary and receipt by the parent. Since the German parent must therefore be understood to be using its Germany-based resource structure to carry out its economic activities, the criteria for a fixed establishment were not met, and the CJEU could not qualify the Romanian subsidiary as a fixed establishment of the German parent. This decision further clarifies the concept of 'fixed establishment' and whether the place of taxation can be shifted based on third-party human and technical resources. Nevertheless, the economic reality remains the fundamental test for interpreting VAT rules, which process continues to require a case-by-case analysis of the facts at hand. Many questions about how the concept of 'fixed establishment' is to be applied are still unanswered and will depend on the circumstances of each business model.

Brazil

The Brazilian Tax Authority and the OECD met to discuss the implementation of the arm's-length principle in Brazil. Currently, Brazil follows a formulary transfer pricing (TP) approach based on pre-established arithmetic formulas. The reasons for changing Brazil's TP system include the following: (i) integrating Brazil into the global value chain of multinational enterprises (MNEs); (ii) avoiding double-taxation and double non-taxation scenarios; (iii) meeting Brazil's development goals (preventing loss of revenues due to current BEPS practices); and (iv) facilitating Brazil's entrance into the OECD. Among other items, the revised TP system would allow taxpayers to select either a domestic or foreign tested party as part of the TP analysis. It would also implement all OECD-recognized TP methods, including the transactional net margin method (TNMM) and the profit split method (PSM). Moreover, the new TP system would allow a primary adjustment when taxpayers do not comply with the arm's-length principle, and a secondary adjustment to address the consequence of profit shifting. To eliminate double taxation scenarios, a corresponding adjustment would be available under the mutual agreement procedures (MAPs). Further, Brazil would follow BEPS Action 13 and implement a three-tiered approach (i.e., Local File, Master File, and Country-by-Country report). To provide certainty and simplification, the proposal would implement a legal framework to make sure that safe harbor conditions are reflective of those practiced in the market.

The Brazilian Tax Authority also highlighted that it may be possible to adopt safe harbors for Amount B of Pillar One.

Canada

Canada released its Budget 2022. Among other items, the Budget 2022 proposes to implement Pillar Two, along with a domestic minimum Top-up Tax that would apply to Canadian entities of MNEs that are within the scope of Pillar Two. To implement the rules, the Canadian Government launched a public consultation on the implementation in Canada of the OECD Model Rules of Pillar Two and a domestic minimum Top-up Tax. The purpose of the consultation is to ensure that the draft legislation takes into account any necessary adaptations of the OECD Model Rules. The consultation welcomes comments on all aspects of the implementation of these rules in domestic law. For this, the consultation set out questions on specific aspects of the OECD Model Rules as being of particular interest. The public consultation will run until 7 July 2022. The Government anticipates the Income Inclusion Rule and the domestic minimum Top-up Tax would come into effect in 2023. The Undertaxed Payment Rule would come into effect no earlier than 2024. The Budget also includes a reference to Pillar One. In this reference, the Canadian Government mentions that it is reviewing the public input received for the draft legislative proposals for a Digital Services Tax (DST). According to the Budget, the DST could be imposed as of 1 January 2024, but only if the Multilateral Convention implementing Amount A has not come into force. In that event, the DST would be payable as of 2024 in respect of revenues earned as of 1 January 2022.

Cyprus

The Cypriot Tax Department published, a list of Frequently Asked Questions (FAQs) on its website, providing further clarifications and practical insights regarding the interpretation of key terms and provisions of the Cypriot Mandatory Disclosure Rules (MDR) Law (Law 41(I)/2021 of 31 March 2021, amending Law 205(I)/2012 on Administrative Cooperation in the Field of Taxation of 2012) and further elaborating on the content of the Cypriot MDR guidelines (Ministerial Decree N. 438/2021, of 29 October 2021). The FAQs cover different questions of general interest and can be split into four thematic categories: (i) general questions; (ii) questions relating to reporting mechanics; (iii) questions relating to the Main Benefit Test (MBT); and finally, (iv) questions relating to the hallmarks of the Cypriot MDR Law.

France

The French Tax Authority published an updated list of non-cooperative states and territories in the Official Journal. In this update, France removed Dominica from the list (change effective on 16 March 2022). In addition, although Anguilla and Seychelles were withdrawn from the EU list of non-cooperative jurisdictions published on 12 October 2021, they are retained in the French list due to the absence of a tax information exchange agreement with France. The updated list includes the following jurisdictions: American Samoa, American Virgin Islands, Anguilla, British Virgin Islands, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad, and Tobago as well as Vanuatu.

Germany

The Ministry of Finance of Germany published an updated list of jurisdictions included in the Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country Reports. The jurisdictions added to the list are Azerbaijan, Maldives, and Turkey. The list is effective as of 29 March 2022.

Greece

The Greek Government issued Law 4916/2022, including a provision dedicated to introducing the safeguard clause for applying the interest deduction limitation rule (group escape). According to the new provision and by way of an exception, an entity forming part of a consolidated group for financial accounting purposes is entitled to either:

- Fully deduct exceeding borrowing costs as long as it proves that the ratio of its equity over its total assets is equal or lower or higher by at most two percentage points from the relevant ratio of the group and provided that all assets and liabilities are measured according to the same method, as in the consolidated financial statements; or
- Deduct exceeding borrowing costs as per a higher limit than the one normally applicable. This higher limit is calculated as follows. First, a group ratio should be determined by dividing the exceeding borrowing costs of the group vis-à-vis third parties over the Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) of the group. Second, the group ratio should be multiplied by the EBITDA of the entity.

The aforementioned provision is in force as of 28 March 2022.

The Greek Tax Authority published new guidance on the application of the Greek Controlled Foreign Companies (CFC) rules clarifying that such rules do not apply to shipping companies. Nor does it apply to companies concerning funds that derive from maritime activities or investments from shipping funds, provided that such funds belong to individuals associated with shipping companies operating under the regime of L. 27/1975 and L.D. 2687/1953, since such companies are excluded from the domestic income tax regime. In addition, the Circular clarifies that the substantial economic activity exemption applies only to EU and European Economic Area companies, and the burden of proof lies with the tax authorities.

Ireland

The Irish Revenue Commissioners published the updated Tax and Duty Manual on EU Mandatory Disclosure of Reportable Cross-Border Arrangements (DAC6) to reflect the changes introduced by the Finance Act 2021 and to provide additional guidance on the various hallmarks, filing obligations, nexus requirements to address situations where a company that is not tax resident in its place of incorporation will also have a nexus with its place of incorporation. It also provides guidance relating to the application of the main benefit test, among others. Additional examples have also been added.

Luxembourg

The Luxembourg Tax Authority (LTA) updated Circular L.I.R. n°168bis/1 to clarify certain technical aspects of the interest limitation rules introduced in domestic law after transposing the Anti-Tax Avoidance Directive 2016/1164 (ATAD). In this update, the Circular covers the effect of the London Interbank Offered Rate (LIBOR) phase-out on the grandfathering clause according to which the modification of the loan reflecting the end of the LIBOR should not constitute a modification of the original agreement if certain conditions are met. If so, interest on loans that were concluded before 17 June 2016 continues to benefit from the grandfathering clause. It also clarifies the interaction of the interest limitation rules with the participation exemption. As a result, the

rule embedded in the participation exemption that borrowing costs with a direct economic link up to the amount of tax-exempt dividend income are non-deductible applies first. Lastly, the Circular explains the definition of tax EBITDA, defined as the total net taxable income as per the Luxembourg Income Tax Law, increased by exceeding borrowing costs, and the tax values of impairments, depreciation, and amortizations that have reduced taxable income. No further increases or corrections are required to determine it.

The LTA announced an update to the Mandatory Disclosure Rules (MDR) XSD schema and User Guide on submitting MDR reports. Such reports are required under the implementation of the EU Directive on the Mandatory Disclosure and Exchange of Cross-border Tax Arrangements (DAC6). According to the update, as of 30 March 2022, filing a corrective MDR report can be done by either sending the new XML file or manually entering the corrections on the Luxembourg administrative portal, (i.e. MyGuichet.lu), instead of contacting the LTA to delete the initial report and enable the filing of a new one. In addition, specific fields have been integrated into the arrangement chart allowing for detailing the logical structure of the arrangement. This feature will be available as of 27 April 2022.

Mauritius

Mauritius amends income tax regulations regarding 80% income exemption for investment dealers and defines specialized software and systems.

The Netherlands

The Dutch legislative proposal for the implementation of DAC7 was submitted to parliament. DAC7 will require certain digital platform operators to perform specific due diligence procedures and to collect and report information on parties that use their platforms to sell goods or provide certain services from 1 January 2023. The information reported will be automatically exchanged between the EU Members States. DAC7 aims to increase tax transparency on income received through digital platforms. In addition, the legislative proposal includes improvements to existing administrative cooperation. For example, royalties would be added to the categories of income on which information is automatically exchanged between the EU Member States. In addition, a framework is proposed to be introduced for the conduct of joint audits between two or more EU Member States. The rules regarding the improvements to administrative cooperation should apply from 1 January 2024.

The Court of Appeal of Arnhem Leeuwarden (joined cases 20/00482 to 20/00484) ruled on the taxation of capital gains derived by a Dutch BV incorporated in the Netherlands, having its seat in Malta from the end of 2011. In its Dutch tax returns for the consecutive years after the transfer of its seat to Malta, the Dutch BV took the position that an exemption should apply to capital gains realized by the BV. In dispute is whether: (i) the remittance provision (Article 2, paragraph 5) of the treaty allows the Netherlands to levy tax on the capital gains; and (ii) whether Article 30, paragraph 1 of the treaty disallows the tax treaty benefits for the BV considering its status as a non-domiciled resident in Malta. Alternatively, in dispute is whether BV is eligible for a deduction of the taxes levied by Malta. The Arnhem-Leeuwarden Court of Appeal held that the Dutch BV was designated as a non-domiciled resident in Malta, as a result of which capital gains from the sale of Swiss investments were not subject to taxation. The Court of Appeal ruled that the remittance provision of the tax treaty with Malta does, therefore – prima facie – not

apply as the capital gains would (also) not have been subject to tax had they been remitted to Malta. However, the Court subsequently ruled that Article 30 of the treaty – which states that the treaty does not apply to entities, like the BV, that are fully or partly exempt from tax as a result of a specific regime – is applicable such that the treaty cannot be invoked by the BV. As a consequence, the Court endorsed the earlier decision by the Lower Court and held that the Netherlands is not obliged to grant the exemption for foreign corporate profits. The Court furthermore confirmed that Maltese income tax can (alternatively) be deducted as a cost from Dutch BV's profits.

Paraguay

Paraguayan Tax Authority publishes requirements for preparing the local transfer-pricing technical-study report and eliminates conflict-of-interest provisions for auditors.

Peru

On 26 March 2022, Peru's President enacted Legislative Decree 1540, amending the VAT Law and Tax Code to make it easier for taxpayers to claim the VAT paid on imports as input VAT and for the Peruvian Tax Authority to open a sales-and-income registry on behalf of taxpayers.

Effective 27 March 2022, taxpayers may use VAT paid on imports as input VAT without having a copy of the document from the Tax Authority certifying the VAT was paid and was approved by the customs agent.

Legislative Decree 1540 also authorizes the Peruvian Tax Authority to open a sales-and-income registry for taxpayers that fail to open a registry. The Tax Authority will record all of a taxpayer's transactions, as well as debit notes and credit notes electronically issued by the taxpayer. Taxpayers may adjust the information recorded by the Tax Authority. This measure will be effective on 1 July 2024.

Peru's President amends rules for determining the fair market value of Peruvian shares indirect transfers.

Russia

Foreign providers of electronic services may face practical difficulties with paying VAT to the Russian budget. As a solution to this problem, in Letter No. SD-4-3/3807 the Federal Tax Service of Russia (the "FTS") gave several recommendations on paying VAT for electronic services provided by foreign entities.

Singapore

The Inland Revenue Authority of Singapore updated its webpage on Country-by-Country (CbC) reporting. In this update, three jurisdictions were added to the list of jurisdictions that have exchange relationships with Singapore for the automatic exchange of CbC reports. The three jurisdictions are Azerbaijan and Turkey (both effective from FY 2020), and Maldives effective from FY 2023.

Spain

The Committee of Experts appointed to review the Spanish tax system delivered the White Book on Tax Reform to the Spanish Minister of Finance. Spain expects to approve the tax reform during the first quarter of 2023. The purpose of the White Book is to serve as a basis for a reform of the Spanish tax system that guarantees the sustainability of public finances so that Spain can respond to the financing of public spending. The White Book proposes, among others, measures related to several EU proposals, including Unshell, Debt-Equity Bias Reduction Allowance (DEBRA), and Business Europe Framework Income Taxation (BEFIT). In addition, the Committee of Experts suggested the review

of the concept of PE and ancillary or preparatory activities, the elimination of the digital tax, and coordinated implementation of Pillar I at the EU level. The introduction and the date of entry into force of the above measures are still uncertain.

Switzerland

The Swiss Federal Council initiated a consultation to amend the Swiss Constitution to implement minimum tax rules aligned with Pillar Two of the OECD BEPS 2.0 Project. Accepting the proposed constitutional amendment requires a referendum expected to take place in June 2023. The consultation proposes to apply the minimum tax rules to MNE groups with a consolidated revenue of €750 million or more. Also, the consultation document explores the idea to introduce a domestic minimum Top-up Tax for those profits taxed below the agreed minimum effective tax rate which would be collected by the Swiss cantons. It also provides a substance carve out. The Consultation ran until 20 April 2022, and the draft bill, if accepted, will enter into force on 1 January 2024.

Turkey

The Turkish corporate income tax rate will be applied at 25%, instead of the standard rate of 20%, on the income of corporations in the financial sector such as banks, companies established under Law No 6361, electronic payment institutions, asset management companies, and insurance companies. This provision entered into force on the date of its publication (15 April 2022) and applies to the tax returns that must be submitted as of 1 July 2022 and is also applicable to corporate income for the taxation period starting from 1 January 2022.

The corporate income tax exemption provided for real estate investment companies will not cover taxpayers who use the title of "Real Estate Investment Company" but do not have portfolio management related to real estate. The amendment entered into force on the date of its publication (i.e. also on 15 April 2022) and is applicable to tax returns that must be submitted as of 1 July 2022 and are also applicable to the corporate earnings for the taxation period starting from 1 January 2022.

According to Article 5/1-a of the Corporate Income Tax Law, dividends derived by corporations from the specified investment funds are exempt from corporate income tax. Under an amendment of the Law, income, in addition to dividends, derived from returning participation shares to the fund and the earnings to be generated as a result of the year-end valuation of these participation shares will be considered within the scope of this exemption. This provision entered into force on the publication date of the Law (15 April 2022).

Funds transferred to Turkish companies by shareholders to replenish diminished capital will be excluded in the determination of corporate income. This provision entered into force on the publication date of the Law (15 April 2022).

UK

UK Tax Authority (HMRC) issues further guidance on UK Plastic Packaging Tax.

The HMRC published guidance on when a taxpayer must notify about uncertain tax treatment. In summary, the regime requires qualifying companies to notify HMRC of "uncertain amounts" in respect of "relevant taxes" subject to a threshold test and specific exemptions. "Relevant taxes" include corporation tax, income tax (including PAYE), and VAT. A company is a "qualifying company" in any financial year if, in the previous financial year, the company had a UK turnover exceeding £200m and/or a UK balance sheet total exceeding £2bn. An uncertain amount exists if one or both of

two notification criteria (or triggers) are met and create a tax advantage that exceeds a £5 million de minimis threshold. Broadly, the triggers are where a provision has been made in the relevant company's accounts or a filing position has been taken by the business that is contrary to HMRC's known interpretation. These rules apply to treatments included in returns required to be submitted on or after 1 April 2022. Therefore, notification is potentially relevant to transactions and uncertain treatments throughout 2021 (or earlier in some cases) as returns are submitted 12 months after the end of the accounting period. As an example, clients with years ended 30 June 2021, 30 September 2021, or 31 December 2021 could be within the scope of the new rules for those periods.

USA

United States (US) President Joe Biden released the FY2023 Budget. Among the major proposals, the Budget proposes to increase the 21% corporate rate to 28%, which would consequently increase the Global Intangible Low-Taxed Income (GILTI) rate. The new GILTI effective rate would be 20%, applied on a jurisdiction-by-jurisdiction basis. The corporate and GILTI rate increases would apply to tax years beginning after 31 December 2022. For an earlier tax year ending after 31 December 2022, a blended corporate rate would apply equally to 21% plus 7% multiplied by the portion of the tax year that takes place in the 2023 calendar year.

The Budget proposes to repeal the Base Erosion and Anti-avoidance Tax (BEAT) as modified by the Build Back Better Act and replace it with an Undertaxed Profit Rule (UTPR) that is consistent with the Undertaxed Payment Rule described in the OECD Pillar Two Model Rules, including a global annual revenue threshold ($850 million), and de minimis exclusions. The proposal to repeal the BEAT and replace it with the UTPR would be effective for tax years beginning after 31 December 2023. Further, the Budget includes a proposal to introduce a US domestic minimum Top-up Tax to protect US revenues from the imposition of UTPR by other countries.

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