



BEPS and international tax newsletter  
**Edition 29 – June 2023**

## Introduction

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

Our twenty-ninth edition deals with the new measures published in June 2023 by the OECD, the European Union, the IASB, and in 16 countries: Argentina, Bahamas, Canada, Denmark, Germany, Kenya, Luxembourg, Malaysia, the Netherlands, Norway, Saudi Arabia, Spain, Switzerland, Thailand, Uzbekistan, and Vietnam.

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



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## OECD

On 13 June 2023, the OECD announced that its Pillar Knowledge Sharing Network had just held its first virtual meeting. The Knowledge Sharing Network, which was launched at the recent Forum Tax Administration's Capacity Building Network meeting, aims to support developing countries in implementing the two-pillar solution by providing a global platform for tax administrations to share knowledge. During the virtual meeting, experts from tax administrations in "early implementer" jurisdictions discussed practical advice and lessons learned on implementing Pillar Two. This initiative complements the OECD's strategy, which includes training, guidance, and hands-on engagements to support developing countries in implementing Pillar One and Pillar Two.

The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) announced that it has developed new guidance for implementing a secure perimeter for automatic exchange of information purposes. The guidance was launched in French on 7 June 2023 and in English on 8 June 2023 and is available on demand to all interested jurisdictions. The guidance helps jurisdictions interested in automatic exchange of information (AEOI), such as the Common Reporting Standard on financial accounts or CbCR. Its purpose is to assist in the design and implementation of a secure perimeter within the operations of these jurisdictions, ensuring the robustness of information security controls in accordance with internationally agreed requirements for AEOI. This guidance aligns with the Global Forum Secretariat's Strategy, which aims to unlock the potential of AEOI for developing countries. In combination with the tailored technical assistance on information security available to all member jurisdictions, the guidance provides further support in enabling jurisdictions to implement the elements of AEOI in a cost-effective and timely manner.

The OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). According to this update, Faroe Islands signed the CbC MCAA on 17 May 2023.

The total number of jurisdictions that have signed the CbC MCAA is now 97.

During the OECD Ministerial Council Meeting on 7-8 June 2023, the OECD Ministers approved the revised G20/OECD Principles of Corporate Governance. These principles, to be endorsed by G20 Finance Ministers and Central Bank Governors in July 2023, include a new section on "Sustainability and resilience," providing recommendations to help companies navigate climate transition risks and other sustainability challenges. The revised principles also address evolving trends such as corporate ownership, the role of institutional investors, increased corporate risks, and the influence of digitalization.

At the same meeting, the OECD released an update to the Guidelines for Multinational Enterprises. The OECD Guidelines for MNEs are recommendations to MNEs to enhance the business contribution to sustainable development and address adverse impacts associated with business activities on people, planet, and society. Since their introduction in 1976, the Guidelines have been continuously updated to remain fit for purpose in light of societal challenges and the evolving context for international business. This update reflects a decade of experience since their last review in 2011 and responds to urgent social, environmental, and technological priorities facing societies and businesses. The Guidelines include a chapter on taxation, which was updated to, among other things, emphasize the importance of tax transparency in upholding the integrity of a country's tax system and ensuring compliance with tax laws. It also highlights various actions from the OECD/G20 Inclusive Framework on BEPS project aimed at improving transparency, including the exchange of CbCRs, disclosure of taxpayer-specific rulings, and mandatory disclosure rules for aggressive tax planning schemes. Additionally, it underscores the significance of the Multilateral Instrument (MLI) in reinforcing the coherence and consistency of the international tax rules, including minimum standards for the for the avoidance of treaty abuse and for the improvement of dispute resolution through positive relationships, cooperation, and reciprocity. Furthermore, the OECD Ministerial Council Meeting resulted in the release of a

statement and key issues paper. The statement reaffirms support for developing countries in swiftly implementing the two-pillar solution and existing international tax rules, emphasizing increased access and use of CbCR. The new Crypto-Asset Reporting Framework and revised Common Reporting Standard were welcomed as international standards. The Ministerial Council encouraged the OECD to collaborate with interested jurisdictions and stakeholders to explore further improvements in tax transparency.

On 8 June 2023, the OECD released the crypto-asset reporting framework (CARF) and 2023 update to the Common Reporting Standard (CRS).

## European Union

The Commission published a legislative proposal for a Directive setting forth rules that aim to make withholding tax (WHT) procedures in the EU more efficient and secure for investors, financial intermediaries and Member States (the draft Directive is also referred to as FASTER). This initiative was earlier announced in the Commission's 2020 Action Plan on the Capital Markets Union.

The draft Directive proposes the following key actions:

- A common EU digital tax residence certificate to be issued by the investor's residence state within one working day after a request is submitted
- A choice for Member States between "relief at source" procedure and a "quick refund" system or a combination of both
- A standardized reporting obligation that imposes common reporting obligations on all financial intermediaries in the chain through the establishment of a national register of certified financial intermediaries; registration will be mandatory for "large financial institutions" and voluntary for others, and non-EU intermediaries can participate on a voluntary basis

Together with the draft Directive, the Commission also launched a public consultation inviting public input on the proposal in the form of open comments by 14 August 2023.

The draft Directive will now move to the negotiation phase among Member States with the aim of reaching a final agreement. In the EU,

adoption of tax legislation generally requires unanimity between all 27 Member States. The Commission proposes that the Member States shall transpose the Directive into their national laws by 31 December 2026 for the rules to come into effect as of 1 January 2027.

During the 16 June 2023 Economic and Financial Affairs (ECOFIN) Council meeting, the Council adopted its report (progress report) to the European Council on tax issues and the Code of Conduct Group (COCG) progress report.

The presidency released a progress report including the state of play on all key tax initiatives, including DAC8 (Directive introducing tax transparency rules for crypto assets), the Code of Conduct, and Unshell. On Unshell, the Presidency confirms that there are still many outstanding issues of contention in the negotiations between Member States. As a new item, the report references a draft "Multilateral Convention on the International Tax Dispute Resolution Council" that a number of Member States have developed under the EU's Fiscalis program. This initiative aims to establish an "alternative dispute resolution commission of a permanent nature" (a "Standing Committee"), which is foreseen in the Directive on tax dispute resolution mechanisms. Under the Directive on tax dispute resolution mechanisms, an advisory commission is set up to provide its opinion on how to resolve the dispute that has arisen. The standing committee replaces the advisory commission and is responsible for delivering opinions on dispute resolution while providing flexibility in the choice of dispute resolution methods.

The Member States also approved the ECOFIN report on the progress achieved by the Code of Conduct Group (COCG) during the Swedish Presidency. There are three material issues mentioned in the report: (i) new criterion on beneficial ownership information (COCG continued working on the design); (ii) a monitoring mechanism on tax defensive measures against listed jurisdictions (COCG concluded that further work is needed to develop an efficient, flexible monitoring mechanism); and (iii) extension of the geographical scope (COCG examined the possibility of extending the geographical scope of the EU list and how jurisdictions would be selected for the EU screening exercise). For all these the workstreams, the COCG concluded that further work is necessary.

On 13 June 2023, the Commission launched a public consultation on a draft Implementing Regulation establishing reporting obligations for the transitional period (from 1 October 2023 to 31 December 2025) of the carbon border adjustment mechanism (CBAM). Stakeholders may provide input until 11 July 2023. As for the next steps, the Commission will examine the feedback received once the consultation has concluded and shape the final version of the Implementing Regulation.

On 7 June 2023, the European Commission (the Commission) published a Questions and Answers (Q&A) on various aspects of the Foreign Subsidies Regulation (FSR), which will apply as of 12 July 2023.

## **IASB**

On 23 May 2023, the International Accounting Standards Board (IASB) issued International Tax Reform – Pillar Two Model Rules – Amendments to IAS 12 (the Amendments). The IASB amended the standard to: (i) provide timely relief for affected entities; (ii) avoid diverse interpretations of IAS 12 Income Taxes developing in practice; and (iii) improve the information provided to users of financial statements before and after Pillar Two legislation comes into effect. The Amendments introduce: (i) a mandatory temporary exception to the accounting for deferred taxes arising from the jurisdictional implementation of the Pillar Two model rules; and (ii) disclosure requirements for affected entities to help users of the financial statements better understand an entity's exposure to Pillar Two income taxes arising from that legislation, particularly before its effective date.

On 1 June 2023, the IASB released the Exposure Draft on proposed amendments to the International Financial Reporting Standards (IFRS) for small to medium-sized entities (SMEs) Standard for Pillar Two. The SMEs Standard was amended because Section 29 (Income Tax) is based in IAS 12 (Income Tax), which was recently amended in light of Pillar Two. By aligning Section 29 and IAS 12, the IASB intends to avoid diverse interpretations of Section 29. Accordingly, the amendments to the SMEs Standard include a temporary exemption for accounting and information disclosures on deferred taxes under Pillar Two rules. The IASB also decided not to introduce new disclosure requirements for SMEs during periods when Pillar Two legislation has been enacted or

substantively enacted but is not yet in effect. The Exposure Draft is open for comments until 17 July 2023.

## **Argentina**

Argentine Government issues regulations for the promotional regime of investments in the automotive and auto parts industry.

## **Bahamas**

Bahamas released a public consultation announcing the potential implementation of a Corporate Income Tax (CIT) system as well as implementing Pillar Two. According to the consultation document, there is a financial incentive for The Bahamas to create a minimum level of taxation for groups in-scope of the Pillar Two rules, at least from January 2024. This could take the form of a Qualifying Domestic Minimum Top-up Tax (QDMTT). Although it is not likely for The Bahamas to implement a completely new CIT system by 2024, a new system could be gradually introduced by implementing a QDMTT as the initial phase. Given the limited time remaining until January 2024, it is likely that introducing a QDMTT from January 2024 would involve some retroactive legislation (e.g., legislation passed in 2024 with effect from January 2024).

## **Canada**

On 6 June 2023, the Canadian Department of Finance released a consultation paper to reform and modernize Canada's transfer pricing rules. The consultation document includes a series of potential changes intended to provide greater clarity on the application of the arm's-length principle in Canada. The consultation document provides stakeholders with the opportunity to provide input on administrative matters connected to transfer pricing, such as documentation and penalty provisions and the possibility of adopting more modern or simplified approaches in specific situations. The proposed changes include: (i) new de minimis transaction rules and exemptions for small taxpayers; (ii) safe-harbor interest rates or ranges; (iii) higher thresholds for transfer-pricing penalties; (iv) new streamlined pricing approaches for certain transactions, such as low-value-adding intra-group services and distribution. The consultation document also explores the potential adoption of a standardized OECD-style Local File/Master File model for transfer pricing documentation. For the Local File, Canada proposes an alternative

approach that balances materiality considerations with safeguards against base erosion. As for the Master File, Canada suggests requiring the filing of a prescribed form upon request by the Canadian Revenue Agency, but only for taxpayers who are part of larger MNE groups subject to CbCR requirements.

## Denmark

Due to a technical issue with the information technology system used to submit tax compliance materials, the Danish Tax Agency has postponed the deadline for submitting the annual corporate income tax return. For companies with calendar year fiscal years, the deadline is postponed from 30 June 2023 to 25 August 2023. In consequence, as the transfer pricing compliance deadline is linked to the annual corporate tax return deadline, it is postponed from 29 August 2023 to 24 October 2023 for these companies.

## Germany

The German Federal Ministry of Finance (MoF) issued updated Administrative Principles Transfer Pricing (AP TP 2023). Administrative principles in Germany represent a third element (in addition to the tax law and order decree law) of German tax provisions. In contrast to tax law and executive orders, the administrative principles are not legally binding on either taxpayers or the tax courts. However, they are only binding on the tax administration that needs to apply them when assessing or auditing the taxpayer. As such, they serve as additional guidance for the interpretation and illustration of the tax law and executive order by the tax administration; accordingly, they are of significant practical importance for taxpayers.

The AP TP 2023 replace the previous version of the AP TP published on 30 September 2021 (publication in the Federal Tax Gazette) and are intended to align the AP TP to the current transfer pricing (TP) rules by providing the MoF viewpoint to the interpretation of the arm's-length principle in Germany.

Key changes include updated administrative guidance on the German cross-border transfer-of-function rules to align the existing Administrative Principles on Transfer of Business Functions as of 13 October 2010 with recent legal changes in the cross-border transfer-of-function rules in the German Foreign Tax Act and the corresponding updated Order Decree Law on

Transfer of Business Functions (Funktionsverlagerungsverordnung - FVerIV). In particular, the AP TP 2023 clarify the definition of a "transfer of function" and the calculation of the transfer package by following the stricter legal rules compared to the previous law. Additionally, the MoF continues to follow a restrictive view on some aspects not regulated by law. Specifically, the new guidance does not include a de minimis rule and certain other aspects that were previously helpful in practice and, thus, further tightens the application of transfer-of-function rules for taxpayers.

With respect to intercompany financing transactions, the MoF aligns its interpretation on the examination of income allocation between entities involved in financing transactions with the Organisation of Economic Co-operation and Development (OECD) Guidelines and with recent German jurisprudence of the Federal Fiscal Court (BFH) on determining intercompany interest rates for intercompany loans. In particular, the MoF has changed its controversial view that interest expenses exceeding the risk-free market return are not deductible at the level of borrower group entities unless the financing company is "able and authorized" to control the financial investment and has the capacity to bear the corresponding risks. The MoF now clarifies that the interest rate should be determined based on the economic circumstances of the borrowers (not the lenders).

The provisions of the AP TP 2023 apply to all open tax cases effective immediately, with the exception of cross-border transfer of functions realized before 1 January 2022, for which the existing Administrative Principles on Transfer of Business Functions as of 13 October 2010 still apply. This Alert summarizes the key aspects of the AP TP 2023 and provides relevant background on the recent developments.

## Kenya

On 5 June 2023, the Kenya Revenue Authority issued a Public Notice notifying taxpayers that the CIT Return on the iTax Platform has been enhanced, allowing the declaration of transactions between related parties. This option is available for persons with related parties for which (i) the ascertainment of gains or profits from business related to stock is deemed to be derived from Kenya; or (ii) the gains or profits of business are derived under a preferential tax regime. When filing the CIT return, taxpayers

with transactions with related parties should indicate the existence of (i) related parties outside Kenya; and (ii) controlled transactions, under the Tax Company return.

## Luxembourg

As of tax year 2022, transparent entities or arrangements that are incorporated or established in Luxembourg are, under certain conditions, treated as corporate taxpayers (Reverse Hybrid Entity) and subject to Luxembourg corporate income tax (CIT) for the portion of their income that is not otherwise taxed in Luxembourg or in another jurisdiction (including that of the investor). The Luxembourg Tax Authority has now released an administrative Circular (Circular) that lays out how the Tax Authority intends to compute the income of a Reverse Hybrid Entity that is subject to CIT. A Circular explains the tax authority's view on the application of the law but is not legally binding on the taxpayer. The Luxembourg Tax Authority also published instructions on how to fill in the new form to be filed by most Luxembourg partnerships, whether or not they are Reverse Hybrid Entities, as from tax year 2022.

On 12 June 2023, the Luxembourg Inland Revenue published a newsletter providing clarifications with regard to the registration procedures under the Directive on Administrative on reporting obligations of digital platform operators (DAC7). According to the newsletter, both Reporting and Excluded Platform Operators should register electronically via MyGuichet with the tax administration by 31 December 2023. Reporting Platform Operators should also file electronically to the administration of direct contributions the income received by sellers passing through their platform related to covered activities under DAC7 on an annual basis. The information should be communicated by 31 January of the year following the calendar year during which the seller is identified as a Reportable Seller. Thus, the first declaration will concern information relating to 2023 and must be filed with the administration by 31 January 2024.

## Malaysia

The Inland Revenue Board of Malaysia (IRB) released new Transfer Pricing (TP) Rules, revoking the TP guidelines issued in 2012. Taxpayers are required to prepare and maintain robust local TP documentation, providing additional information and analysis on the MNE Group, such as groupwide organization

structure, description on group's business, supply chain of business products or services of the Group, etc. The contemporaneous TP documentation must be prepared prior to the due date for filing the tax return and the date of preparation must be stated on the documentation. The new rules tighten the band of the "arm's-length range" between the 37.5th and 62.5th percentiles of the data set to assess the appropriate price. If the price falls within the range, it is generally acceptable. However, the IRB has discretion to adjust the price of a controlled transaction to the median or any point above the median, due to comparability defects which cannot be quantified, identified, or adjusted. Also, when the price is outside the range, the arm's-length price is determined as the median. The new rules provide additional guidance on comparability analysis including the accurate delineation of a controlled transaction before determining a comparable uncontrolled transaction, and functional analysis considerations for the accurate delineation of a controlled transaction. Furthermore, they emphasize that the contributor to the value of the intangible property through DEMPE is entitled to an arm's-length consideration, regardless of legal ownership. These rules will apply for the year of assessment (YA) 2023 (i.e., 1 January 2023 to 31 December 2023 and subsequent YAs).

## Netherlands

The Dutch government sent to Parliament draft legislation to implement Pillar Two in domestic legislation. The draft legislation follows the legislative proposal released in October 2022 as part of a public consultation. The legislative proposal is structured as a separate tax law that is not intended to be embedded into the existing Dutch Corporate Income Tax Code. In line with the EU Directive, the Dutch Government proposes that the IIR and the UTPR become effective for financial reporting years starting on or after 31 December 2023 and 31 December 2024 (respectively). The draft legislation also introduces a DMTT, which is proposed to become effective for financial reporting years starting on or after 31 December 2023. Furthermore, the draft legislation incorporates a transitional safe harbor in line with the OECD guidance and a placeholder for a permanent safe harbor. Procedural aspects such as filing obligations, penalties, and procedures for

imposing the new tax are also regulated in the draft legislation.

### Norway

Norway released draft legislation for public consultation to implement Pillar Two in its domestic legislation. The draft legislation includes an IIR and DMTT. These measures are planned to take effect for the financial year 2024. The draft legislation does not include a UTPR provision, although the public consultation document clarifies that the Ministry of Finance will return to proposals on implementing the UTPR at a later date.

Furthermore, the draft legislation incorporates the Transitional Safe Harbor rules in line with the OECD Guidance and also includes aspects of the Commentary and Administrative Guidance. Similar to the EU Directive, the Norwegian legislation is proposed to cover both international MNE groups and large-scale domestic groups with an annual revenue above the €750-million threshold. The public consultation is open until 1 August 2023.

### Saudi Arabia

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

### Spain

On 1 June 2023, Spain submitted an additional notification to the OECD indicating the completion of its internal procedures for the entry into effect of the MLI provisions with respect to certain Covered Tax Agreements (CTAs). This notification is required when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI. In this case, Spain's notification relates to CTAs with Bulgaria and South Africa. Following Spain's notification of the completion of its internal procedures regarding the CTAs, the MLI will take effect on the notified treaties 30 days after the deposit with the OECD.

### Switzerland

With the approval in Switzerland of a constitutional amendment in a public vote on 18 June 2023, a majority (78.5%) of Swiss elective citizens as well as all 26 Cantons (result of the popular vote per Canton) cleared the way for the introduction of Pillar One and Pillar Two rules of the OECD/G20 Base Erosion and Profit Shifting (BEPS) 2.0 Project into Swiss domestic law. The constitutional amendment provides the legal

basis for the implementation and the competence for the Swiss Parliament to introduce Pillar One and Pillar Two taxes in federal tax bills if deemed adequate. Due to the ambitious timeline set forth by the OECD, the constitutional amendment also contains a transitional provision for Pillar Two that gives authority to the Swiss Federal Council to introduce the Pillar Two rules by way of an ordinance until the Swiss Parliament enacts a federal tax bill.

### Thailand

The Board of Investment of Thailand (BOI) issued Notification No. 1/2566 introducing a new measure to alleviate potential impacts from the implementation of Pillar Two on existing tax incentive programs. Under the new measure, eligible companies (i.e., companies already benefitting from tax incentives and new applicants for tax incentives with consolidated group revenue higher than €750 million) now have the opportunity to convert their current tax exemption system or apply for the new regime, which offers a 50% reduction in corporate income tax. This would effectively result in a reduced tax rate to 10% for a maximum period of 10 years. To utilize this new measure, certain conditions must be met, and specific application procedures need to be followed. The BOI may subsequently release further guidelines and clarifications.

### Uzbekistan

Uzbekistan joined the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), bringing the total number of members to 143. As a new Inclusive Framework member, Uzbekistan has committed to comply with the BEPS minimum standards, which are contained in the final reports on Action 5 (Countering Harmful Tax Practices), Action 6 (Preventing Treaty Abuse), Action 13 (Transfer Pricing Documentation) and Action 14 (Enhancing Dispute Resolution). Uzbekistan will also participate on an equal footing with the members of the Inclusive Framework in the remaining standard setting activities, as well as the review and monitoring of the implementation of the BEPS package. Further, Uzbekistan has committed to addressing the tax challenges arising from the digitalization and globalization of the economy by joining the two-pillar plan to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate, bringing to 139 the total



number of jurisdictions participating in the project.

### **Vietnam**

Vietnam deposits instrument of ratification of the MLI with the OECD. On 23 May 2023, Vietnam deposited its instrument of ratification of the MLI with the OECD. When depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Vietnam confirmed its preliminary positions. The MLI will enter into force for Vietnam 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 September 2023).

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