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 thirtieth edition deals with the new measures published in July 2023 by the OECD, the European Union, the African Tax Administration Forum, and in 15 countries: Australia, Bulgaria, Canada, Cyprus, Denmark, Egypt, France, Germany, Ireland, Gibraltar, Liechtenstein, Lithuania, Luxembourg, Romania, and the United Kingdom.

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

Gertrud Bergmann,
Partner, Transfer Pricing
Mazars in Germany
gertrud.bergmann@mazars.de

Frédéric Barat,
Partner, Transfer Pricing
Mazars in France
frederic.barat@avocats-mazars.com

OECD

The OECD published a progress report, "Tax Transparency in Latin America 2023," in connection with the eighth meeting of the Punta del Este Declaration, an initiative established in 2018 and focused on improving effective exchange of information in tax administrations in Latin America. The report provides an update on the progress achieved to date and describes how jurisdictions in the region have developed and implemented a strategy to increase the use of exchange of information as a tool to support audits and investigations using the international network and the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). Additionally, the report highlights the growing interest in the multilateral pilot project to expand the use of information exchanged via tax-treaty channels for purposes beyond taxation. The aim of the pilot project is to strengthen the efforts of the government in combating illicit financial flows (IFFs), as the information maximize the effective use to tackle financial crimes such as money laundering, terrorism financing, corruption, and customs violations. Two outcome statements were released in connection with the meeting, describing the accomplishments to date, calling on other Latin American countries to join the initiative, and looking forward to further collaboration in Latin America on tax transparency.

On 6 July 2023, the OECD published a progress report, "Tax Transparency in Africa 2023." The report provides an update on the progress achieved to date and countries' experiences showing the impact of the Africa Initiative on their revenue collection. It also details capacity-building activities carried out by the Global Forum and its partners in Africa throughout 2022 and proposes practical strategies for further progress. During the same meeting, the OECD presented the "Toolkit for Establishing a Function for Cross Border Assistance in the Recovery of Tax Claims." This toolkit provides guidance on building the frameworks necessary for this form of assistance with a focus on the establishment and management of a dedicated function within a tax authority.

On 12 July 2023, at the conclusion of the 15th meeting of the OECD/G20 Inclusive Framework on BEPS, the OECD released a statement reflecting the agreement reached by 138 of the 143 Inclusive Framework member jurisdictions on the remaining elements of their project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project). The July 2023 statement summarizes the Inclusive Framework deliverables in four areas:

1. The Multilateral Convention (MLC) on Amount A of Pillar One
2. Amount B of Pillar One
3. The Subject to Tax Rule (STTR) under Pillar Two
4. Plan for implementation support

Among the series of documents that the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework released on 17 July 2023 focusing on elements of the OECD/G20 project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project), is a document under Pillar Two containing the model treaty provision of the Subject to Tax Rule (STTR), together with an accompanying commentary explaining the purpose and operation of the STTR. Like the Global Anti-Base Erosion (GloBE) Rules, the STTR is an integral part of Pillar Two. The STTR is a treaty-based rule that applies to intragroup payments from source jurisdictions (i.e., the jurisdiction in which the income arises) that are subject to tax rates below 9% in the payee's jurisdiction of residence. The STTR allocates to the source country a limited and conditional taxing right to ensure a minimum level of taxation. The relevant tax rate under the STTR generally is the statutory tax rate applicable in the jurisdiction where the related person deriving the income is a resident, subject to special rules that apply if the person benefits from a preferential adjustment in respect of the income. The STTR applies to interest, royalties and a defined set of other payments made between connected companies, including all intra-group service payments. Application of the STTR is subject to a series of exclusions and the so-called mark-up and materiality thresholds. The STTR also includes an anti-avoidance rule that targets

particular situations, including using back-to-back payments or interposing a connected person that is subject to a tax rate above 9%. Coordination rules provide that taxing rights under the STTR take precedence over tax treaty provisions on the elimination of double taxation. The STTR document reiterates that the STTR takes priority over the GloBE Rules, so that the application of the STTR does not take into account a qualified Income Inclusion Rule (IIR), qualified Undertaxed Profits Rule (UTPR) or a Qualified Domestic Minimum Top-up Tax (QDMTT). It also reiterates that Inclusive Framework member jurisdictions with nominal corporate income tax rates below the 9% STTR rate have committed to implementing the STTR into their bilateral treaties with other members that are developing countries, if and when they are asked to do so. A multilateral instrument to facilitate implementation of the STTR in relevant bilateral tax treaties will be open for signature from 2 October 2023.

On 17 July 2023, the OECD released several technical documents on Pillars One and Two of the OECD/G20 project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project). The documents released on Pillar Two include Administrative Guidance on the Global Anti-Base Erosion (GloBE) Model Rules. The July Guidance, which has been approved by the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), provides additional information on a series of technical issues, and establishes two new safe harbors. This is the second tranche of Administrative Guidance approved by the Inclusive Framework, following the release of the first tranche of Administrative Guidance in February 2023. The July Guidance covers:

- Currency conversion under the GloBE Rules
- Tax credits
- The Substance-based Income Exclusion (SBIE)
- The Qualified Domestic Minimum Top-up Tax (QDMTT)
- A QDMTT Safe Harbour and a UTPR Safe Harbour

The July Guidance will be incorporated into a revised version of the Commentary that will be released later this year and will replace the original version of the Commentary released in March 2022. The examples included in the July Guidance will be incorporated in a revised set of detailed examples that will be released at the same time as the revised Commentary. The Inclusive Framework will continue to consider Administrative Guidance priorities on an ongoing basis, focusing on areas where more clarity is required, with the aim of releasing guidance as soon as it is agreed so that Inclusive Framework member jurisdictions can meet their implementation schedules.

General currency conversion rules for the GloBE Rules

Neither the Model GloBE Rules nor the existing Commentary provide specific guidance on the relevant currency in which the GloBE calculation should be made. The July Guidance provides that MNE Groups must perform all the relevant calculations for the Model GloBE Rules and report the relevant amounts on the GloBE Information Return in the presentation currency of the MNE Group's Consolidated Financial Statements. In cases where the MNE Group has amounts that have not been converted to the presentation currency during the accounting consolidation process but need to be translated for purposes of the GloBE calculations, the MNE Group will be obligated to translate such amounts recorded in the local accounting functional currency following the relevant foreign currency translation rules under the Authorised Financial Accounting Standard. The local accounting functional currency follows from the accounting standard of the Ultimate Parent Entity (UPE) and can differ by Constituent Entity. The July Guidance clarifies that the adjustment of Asymmetric Foreign Currency Gains and Losses in Article 3.2.1(f) of the Model GloBE Rules is determined by reference to the Constituent Entity's tax functional currency and accounting functional currency. The resulting amount will need to be translated to the presentation currency. The July Guidance states that the implementing jurisdictions are to determine their own foreign currency translation rules applicable for translating any Top-up Tax amounts under the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) from the presentation currency into local currency. The exchange rate must be reasonable on the basis that it is determined by reference to exchange rates during the Fiscal Year (e.g., the average foreign exchange rate for the year or the foreign exchange rate on the last day of the year) or on the payment date. The July Guidance provides

that if the presentation currency of the MNE Group differs from the currency in which thresholds are expressed in the domestic law of an implementing jurisdiction, the MNE Group must translate the relevant amount from its presentation currency to the currency specified in domestic law. This translation will be based on the average foreign exchange rate for the December month of the previous Fiscal Year as quoted by the European Central Bank (if the domestic threshold is expressed in Euros (EUR)) or by the jurisdiction's Central Bank (in all other cases).

Tax credits

Transferable tax credits

The Model GloBE Rules contain specific rules on the treatment of Qualified Refundable Tax Credits (QRTCs) (i.e., generally, tax credits that are refundable within four years from when a Constituent Entity satisfies the conditions for receiving the credit) and Non-Qualified Refundable Tax Credits (Non-QRTCs). Under these rules, QRTCs are considered equivalent to government grants and therefore are treated as GloBE Income, whereas Non-QRTCs are treated as a reduction to Covered Taxes. The Model GloBE Rules and other OECD guidance that had been issued to date, however, did not address the treatment of transferable tax credits (e.g., the US renewable energy-related transferable tax credits introduced under the Inflation Reduction Act of 2022 or the Italian "super bonus" tax credits intended to promote energy efficiency and upgrades in residential buildings). Further, the accounting treatment of tax credits (under either International Financial Reporting Standards (IFRS) or US Generally Accepted Accounting Principles (GAAP)) differs depending on the particular features of the credits and any jurisdictionally developed accounting practices, leading to a lack of uniform guidance in this area. The July Guidance specifies the mandatory GloBE treatment with respect to the new concepts of Marketable Transferable Tax Credits (MTTCs), Non-Marketable Transferable Tax Credits, and Other Tax Credits (OTCs). It also provides some clarifications as to the treatment of QRTCs and Non-QRTCs. MTTCs are tax credits that can be used by the credit holder to reduce its Covered Tax liability in the credit-issuing jurisdiction and that meet the "legal transferability standard" and the "marketability standard." The legal transferability standard is satisfied (i) for the originator of the credit, if the originator is permitted, under the relevant tax credit regime, to transfer the credit to an unrelated party in the Fiscal Year in which it meets the eligibility criteria for the credit (the Origination Year) or within 15 months from the end of the Origination Year or (ii) for the purchaser of the credit, if the purchaser is permitted to transfer the credit to an unrelated party in the Fiscal Year of the purchase. The marketability standard is met: (i) for the originator, if the credit is transferred within 15 months of the end of the Origination Year (or, where the credit is not transferred or is transferred between related parties, if similar tax credits trade between unrelated parties within the foregoing 15 months) at a price equal to or exceeding the Marketable Price Floor (i.e., 80% of the net present value of the credit); or (ii) for the purchaser, if the purchaser acquired the credit from an unrelated party at or over the Marketable Price Floor. In determining a tax credit's GloBE category, the refundability criteria should be tested first before the transferability criteria. Therefore, a tax credit qualifying as a QRTC will be treated as a QRTC regardless of its transferability. If a tax credit qualifies as an MTTC, the July Guidance treats it in a manner similar to QRTCs (i.e., considering it as GloBE Income, rather than as a reduction to Covered Taxes). For the originator of the MTTC, in the event the MTTC is not transferred, the originator must generally treat the face value of the MTTC as GloBE Income in the Origination Year. However, if, for accounting purposes (such as under the deferral method of accounting with respect to investment tax credits allowed under US GAAP), income from the credit is recognized over the productive life of an asset to which the credit is related, the originator shall follow the same accounting policy for GloBE purposes. If the originator transfers the MTTC, different rules apply. If the originator transfers the credit within 15 months of the end of the Origination Year, it must include the transfer price (as opposed to the face value) in its GloBE Income in the Origination Year; if the originator transfers the MTTC after this period, it must treat any difference between the face value that was included in GloBE Income in the Origination Year and the transfer price as a loss in the Fiscal Year of the transfer. Where the credit is transferred within or after the 15-month period, if the credit is included as income ratably over the productive life of an asset for both accounting and GloBE purposes, the difference between the transfer price and

face value is included in the GloBE Income or Loss ratably over the remaining life of the asset. A purchaser that uses the MTTC to satisfy its own Covered Tax liability must include the difference between the purchase price and the face value of the credit in its GloBE Income when (and in proportion to the amount used) the credit is used by the purchaser to satisfy its Covered Tax liability. A purchaser that sells the MTTC must include the gain or loss on the sale in its GloBE Income or Loss in the Fiscal Year of the sale. A Non-MTTC is a tax credit that, if held by the originator, is transferable but is not an MTTC, and if held by a purchaser, is not an MTTC. Non-MTTCs in the hands of the originator are treated as complete tax reductions for GloBE purposes. A purchaser of a tax credit that is a Non-MTTC in the purchaser's hands reduces its Covered Tax by any excess of the face value of the tax credit over its purchase price in proportion to the amount of the credit used to satisfy its liability for a Covered Tax. OTCs are nonrefundable and nontransferable tax credits that can only offset the originator's Covered Tax liability. OTCs are treated as complete tax reductions for GloBE purposes. With respect to QRTCs, the July Guidance clarifies that if, for accounting purposes, income from a QRTC is recognized over the productive life of an asset to which the credit is related, the originator may follow the same approach for the QRTC to determine its GloBE Income or Loss. The Guidance indicates that the Inclusive Framework will consider providing further guidance on transitional issues and deferred tax implications with respect to QRTCs and other tax credits.

New timing rules for applying the Qualified Flow Through Tax Benefits rule

In a tax-equity structure common in the United States, an investor invests in a partnership that has an unrelated developer as one of its partners (without having control that would trigger line-by-line consolidation). The developer manages and controls the partnership, which invests in certain activities (e.g., low-income housing or generation of renewable energy) giving rise to nonrefundable tax credits. These tax credits and other tax benefits (generally tax losses arising from depreciation) are allocated to the investor. The February Guidance provided special guidance for these structures by introducing the concept of Qualified Flow Through Tax Benefits (QFTB) with respect to an investor's Qualified Ownership Interest (QOI). Under this guidance, QFTBs (which are tax benefits from tax credits or tax losses) are first treated as a reduction to the QOI investment until the QOI investment is reduced to zero and then as a reduction to the investor's Adjusted Covered Taxes. Although this generally provided favorable treatment of tax-equity investments, a concern had been raised that this approach could give rise to a cliff effect for an investment where the Pillar Two impact from the tax reduction arises all at once at the tail end of the investment. To address this concern, the July Guidance introduces an approach consistent with the "proportional amortization" method of accounting allowed under US GAAP. The proportional amortization method applies to certain investors engaged in tax-equity structures, where the investor's after-tax return from the investment is spread over the duration of the investment. Under the Guidance, an investor with a QOI that uses the proportional amortization method for financial accounting purposes is required to apply the same method for determining the amount of the QOI investment recovered each year for GloBE purposes. Specifically, the investor must treat the QFTB items that flow through or are received in respect of the QOI (e.g., tax credits, tax deductible losses) as a reduction to the investment in proportion to the ratio of the QFTB items that flowed through or are received in the Fiscal Year to the total of such items that are expected to flow through or be received over the investment period. The Guidance permits investors with a QOI that do not use the proportional amortization method of accounting to irrevocably elect to use this methodology.

Definition of Qualified Ownership Interest

The financial accounting treatment of QOIs in a tax equity partnership differs depending on the financial accounting standard used by the MNE Group. Under US GAAP, both the developer and investor are treated as owning an equity interest in the partnership. Under IFRS, however, the developer is typically treated as owning 100% of the equity in the partnership, while the investor is treated as making a loan to the partnership. Each year in which tax benefits are transferred to the investor, these amounts are treated like a payment-in-kind for the loan. The definition of QOI in the February Guidance required that the investor's interest be an Ownership Interest, which in turn is defined as an equity interest under the financial accounting standard used by the investor. This could lead to a situation where

an investor adopting IFRS would not be able to apply the QFTB rule in the February Guidance. The July Guidance makes changes to the definition of QOI to ensure consistent treatment for investors with a QOI regardless of their accounting treatment of the interest. Under the revised definition, a QOI is (subject to other conditions) an investment in a Tax Transparent Entity that is treated as an equity interest for local tax purposes and that would be treated as an equity interest under an Authorised Financial Accounting Standard in the jurisdiction in which the Tax Transparent Entity operates. The July Guidance also clarifies the interaction between the QFTB rule and transferable credits, providing that QOI status applies even if the tax equity partnership generates tax credits that are expected to be sold (rather than allocated to the investor). The July Guidance does not cover the treatment of a developer in a tax-equity structure. Both the February and July Guidance indicate that this issue will be addressed separately in future guidance.

Substance-based Income Exclusion (SBIE)

Multi-jurisdictional location of employees or assets

The existing Commentary indicates that further guidance will be issued to address cases where employees work partially outside the jurisdiction of the Constituent Entity or across multiple jurisdictions and where assets (e.g., an aircraft of an international airline or satellites or submarine cables) are not located in any jurisdiction or are located in multiple jurisdictions at different times during the Fiscal Year. The July Guidance states that the structure of Article 5.3 of the Model GloBE Rules grants the carveout under the SBIE only for employees performing activities in the jurisdiction of the Constituent Entity employer and for tangible assets located in the jurisdiction of the Constituent Entity owner (or lessee). Thus, the SBIE does not apply if employees or assets are used entirely outside the Constituent Entity's jurisdiction. In case of partial usage outside the Constituent Entity's jurisdiction, the Guidance specifies an allocation rule that is intended to be simple while ensuring that the SBIE acts as a reasonable proxy for substantial activity in the Constituent Entity's jurisdiction. Under this allocation rule, the Constituent Entity can fully retain the SBIE if an employee is located within the jurisdiction of the Constituent Entity employer more than 50% of their working time or an asset is located within the jurisdiction of the Constituent Entity owner more than 50% of the time. Where the more-than-50% test is not satisfied, the Constituent Entity employer or owner can claim the SBIE in proportion to the working time the employee spent within the jurisdiction of the Constituent Entity and in proportion to the time the tangible asset was located within the jurisdiction of the Constituent Entity. The July Guidance indicates that it is expected that with suitable company policies (that are appropriately enforced), employers will be able to determine whether the more-than-50% test is satisfied without tracking the location of their employees every day. For example, a policy could allow employees to work from home two days a week and otherwise to work in the office located in the employer's jurisdiction. However, if an employer cannot establish that the threshold requirement is met in this way, it would need to keep an auditable record of the days in which employees are in its jurisdiction.

Choice to claim the SBIE for some (but not all) employees or assets

The July Guidance provides that an MNE Group can claim the SBIE for only the subset of its employees and tangible assets for which it will undertake the relevant compliance work. The MNE Group is not required to calculate the maximum allowable SBIE to make any claim for SBIE whatsoever.

Stock-based compensation

In computing GloBE Income or Loss, Article 3.2.2 of the Model GloBE Rules allows an election to substitute the amount expensed as stock-based compensation in the financial accounts with the amount of stock-based compensation allowed as a deduction in the computation of taxable income of the Constituent Entity. The July Guidance provides that the SBIE is not intended to be impacted by an election under Article 3.2.2. Accordingly, payroll costs for the SBIE include stock-based compensation expensed in the financial accounts used to determine the Constituent Entity's Financial Accounting Net Income or Loss.

Leases

Article 5.3.5 of the Model GloBE Rules states that the SBIE shall be based on the carrying value of tangible assets as recorded for purposes of preparing the Consolidated Financial Statements. Article 5.3.4 provides that the carrying value shall include a lessee's right to use

tangible assets located in that jurisdiction and that the SBIE shall exclude property held for sale, lease, or investment. The July Guidance provides that the exclusion of property held for lease prevents two separate MNE Groups or two Constituent Entities of the same MNE Group from claiming the SBIE in respect of the same tangible asset. According to the July Guidance, under a finance lease, in the financial accounts, the lessor treats the leased assets as effectively transferred to the lessee in exchange for a receivable, and the leased asset is no longer reflected in its balance sheet. In such cases, the lessor is not allowed any SBIE, as the lessor is not actively using the underlying asset to earn income but instead is providing financing in respect of that asset (which is not a reliable measure of substantive activities of the lessor). The lessee is allowed the SBIE based on the full carrying value of its right-of-use asset. According to the July Guidance, the lease period of an operating lease is often substantially shorter than the productive life of the leased asset. In the financial accounts, the lessor continues to reflect the leased asset in its balance sheet. Additionally, depending on the lease terms, the lessee may also recognize its right-of-use asset, which will often be at a value far lower than the lessor's carrying value of the leased asset. In such cases, the lessee can claim the SBIE only based on its right-of-use asset. If lessee does not recognize the asset in its financial accounts (which may happen if the lease is a short-term lease of 12 months or less or the value of the lease is not material), the lessee cannot create a fictional or hypothetical right-of-use asset for GloBE purposes. The Inclusive Framework has determined that the lessor will also be allowed the SBIE if the leased asset is located in the same jurisdiction as the lessor. This shall be based on the excess, if any, of the lessor's average carrying value of the leased asset (at the beginning and end of the Fiscal Year) over the average amount of the lessee's right-of-use asset (at the beginning and end of the Fiscal Year). Where the lessee is not a Constituent Entity, the July Guidance indicates that the lessee's right-of-use asset is equal to the undiscounted amount of payments remaining due under the lease (including any extensions that would be taken into account in determining a right-of-use asset under the financial accounting standard used to determine the Financial Accounting Net Income or Loss of the lessor). In the case of a short-term rental asset, the lessee's right-of-use asset shall be deemed to be zero. The Guidance further indicates that in an intercompany lease between two Constituent Entities, the carrying value for the SBIE is determined after taking into account elimination entries in consolidation. Consequently, the lessee will not have a right-of-use asset and the SBIE for the lessee is based on the lessor's carrying values for purposes of preparing the Consolidated Financial Statements. Finally, the Guidance provides that, where the lessor leases a substantial part of an asset and the residual part is self-used (e.g., leasing some floors of a headquarters building), for purposes of the SBIE, the carrying value of the leased asset must be allocated between the leased part and the residual part based on a reasonable allocation key (e.g., surface area of the building).

The July Guidance includes several illustrative examples on the treatment of leases.

Impairment loss

The July Guidance states that impairment loss (and reversals thereof, to a specified extent) will be taken into account in determining the carrying value for the SBIE.

Adjustments to the SBIE in a Deductible Dividend Regime

The July Guidance includes rules providing that where a UPE is subject to a Deductible Dividend Regime and its GloBE Income is reduced by a dividend distributed under Article 7.2 of the Model GloBE Rules, the SBIE will be reduced proportionately.

Qualified Domestic Top-up Tax (QDMTT)

The February Guidance set out the general principles for determining whether a domestic minimum tax is "functionally equivalent" to the Model GloBE Rules and therefore constitutes a QDMTT. However, it did not cover certain aspects and implications of the QDMTT design and implementation, and it indicated that consideration would be given to providing further guidance in specified areas. The July Guidance addresses the specific areas identified in the February Guidance as well as some other aspects of a QDMTT requiring tailored solutions or additional clarifications. The July Guidance also indicates that the Inclusive Framework will consider providing further guidance on the following aspects:

- Clarification of the adjustments needed in a new Transition Year (supported by illustrative examples)
- The information collection and reporting requirements under the QDMTT in the context of the GloBE information return
- Clarification of the meaning of QDMTT paid or payable for the purpose of Article 5.2.3 of the Model GloBE Rules, to address cases where the QDMTT is not paid within four Fiscal Years or not payable under the GloBE Rules and develop a mechanism for recomputation to minimize the potential for double taxation and double nontaxation under the GloBE Rules.

Areas on which the February Guidance indicated that the Inclusive Framework would consider providing further guidance that are not covered in the July Guidance include:

- The types of benefits provided by a jurisdiction that may be deemed to be related to a QDMTT
- The determination of a lower threshold in the definition of Material Competitive Distortions under the QDMTT to achieve outcomes that are consistent with the Model GloBE Rules
- The allocation of income to permanent establishments under a QDMTT
- The interaction between the QDMTT and CFC Tax Regimes and taxable branch regimes

Joint Ventures, JV Subsidiaries and Minority-Owned Constituent Entities

The February Guidance indicated that the Jurisdictional Top-up Tax that is subject to the QDMTT is based on the whole amount of Top-up Tax liability, irrespective of the Ownership Interests held in the Constituent Entities located in the QDMTT jurisdiction by any Parent Entity of the MNE Group. The July Guidance confirms that this same principle applies to Joint Ventures and Minority-Owned Constituent Entities (MOCEs). Therefore, the Top-up Tax under a QDMTT in respect of Joint Ventures and MOCEs is the whole amount regardless of the fact that the UPE may only be subject to tax on its share of the Top-up Tax arising from Joint Ventures, Joint Venture (JV) Subsidiaries or MOCEs. To ensure that the other owners of the Joint Ventures and MOCEs bear their share of the QDMTT tax liability, the liability is therefore imposed on the Joint Venture, JV Subsidiary or MOCE itself. The July Guidance specifies that jurisdictions that limit the application of their QDMTT to MNE Groups where all the Constituent Entities located in the jurisdiction are 100% owned by the UPE or Partially Owned Parent Entity (POPE) for the entire Fiscal Year must similarly not apply their QDMTT to Joint Ventures, JV Subsidiaries and MOCEs located in the jurisdiction. The July Guidance provides that when the QDMTT applies to a member of the JV Group or Minority-Owned Subgroup (which includes a stand-alone JV and MOCE), the tax liability can be allocated directly to any member of the JV Group or Minority-Owned Subgroup or to a Constituent Entity located in the same jurisdiction. In the case of a tax liability arising from a JV Group, QDMTT jurisdictions that allocate the tax liability to Constituent Entities of the main Group should have a mechanism to avoid double taxation if both joint venture shareholders are MNE Groups subject to the GloBE Rules or a QDMTT.

Blending of income and taxes

There may be cases where the domestic rules of a jurisdiction do not provide for taxation of MNE Groups at a national level, but instead impose Covered Taxes and a QDMTT under the law of a sub-national governmental authority (e.g., a regional or provincial government). The July Guidance provides that, in such situations, the sub-national governmental authority in the jurisdiction may apply the QDMTT, including the Effective Tax Rate (ETR) and Top-up Tax computational rules, exclusively to Constituent Entities located in the sub-national jurisdiction (e.g., region or province). As a result, the QDMTT liability will be determined based on sub-national jurisdictional blending. The July Guidance further provides that a jurisdiction, or sub-national jurisdiction, may require the QDMTT to be applied on a taxable unit as determined under its domestic law (e.g., a single Constituent Entity). As a result, the QDMTT liability will be determined based on a taxable unit blending (e.g., on a Constituent Entity-by-Constituent Entity basis if the taxable unit is a single Constituent Entity). Determining the ETR on a Constituent Entity-by-Constituent Entity basis will not prevent the QDMTT from being considered functionally equivalent to the GloBE Rules.

Allocation of QDMTT tax liability among Constituent Entities

There is no requirement for QDMTT tax liability to be allocated among the Constituent Entities in any particular manner under the GloBE Rules. However, the July Guidance provides potential design options that QDMTT jurisdictions might consider for allocating the QDMTT liability on a basis that complies with their legal framework:

- In the case of a QDMTT that applies on a Constituent Entity-by-Constituent Entity basis, the QDMTT jurisdiction could allocate the QDMTT tax charge only to Constituent Entities that have an ETR lower than the Minimum Rate.
- If jurisdictional blending applies, the QDMTT tax charge could be allocated based on the ratio of the Excess Profits (instead of GloBE Income) of the Constituent Entity to the Excess Profits (instead of GloBE Income) of all Constituent Entities located in the jurisdiction.
- To avoid minority investors bearing the QDMTT tax charge, QDMTT jurisdictions could also decide to allocate it exclusively to wholly owned Constituent Entities.

These illustrative examples do not limit the ability of jurisdictions to allocate the QDMTT tax charge in any manner they deem appropriate. Importantly, the allocation of the QDMTT tax charge among Constituent Entities is not binding on another jurisdiction for purposes of applying its local tax rules, including CFC Tax Regimes.

Treatment of Stateless Constituent Entities

The July Guidance specifies that a QDMTT does not need to apply to Stateless Constituent Entities to be functionally equivalent to the GloBE Rules. However, in the case of Flow-through Entities that are Stateless Constituent Entities, jurisdictions are free to impose QDMTT on such entities if they are created under the domestic law of the jurisdiction. In the case of Permanent Establishments that are Stateless Constituent Entities, jurisdictions are free to impose the QDMTT on such entities if the place of business (or deemed place of business) is located in the jurisdiction and either (i) there is no applicable tax treaty or (ii) there is an applicable tax treaty and the jurisdiction where the place of business (or deemed place of business) is located has the right to tax in accordance with the treaty. In both cases, the Guidance provides that these entities must be subject to separate ETR and Top-up Tax calculations and are still treated as Stateless Constituent Entities for GloBE and QDMTT purposes, regardless of whether they are subject to a QDMTT tax charge.

Treatment of Flow-through UPEs

Under Article 10.3.2(a) of the Model GloBE Rules, a Flow-through Entity that is the UPE of the MNE Group is located in the jurisdiction where it is created. The GloBE Income or Loss of that UPE is included in the jurisdictional calculations where it was created, except to the extent of any reduction under Article 7.1. The July Guidance provides that QDMTT jurisdictions do not need to impose a QDMTT tax charge on such entities to be functionally equivalent to the GloBE Rules if the entities are not tax residents in the jurisdiction. However, if the jurisdiction imposes the QDMTT tax charge, the QDMTT calculations of the UPE jurisdiction must include the GloBE Income or Loss and Covered Taxes of the UPE, except to the extent of any reduction under Article 7.1. The QDMTT charge can be allocated to other Constituent Entities located in the jurisdiction. However, where the UPE is the only Constituent Entity located in the jurisdiction, the only way to collect the Top-up Tax is by imposing the QDMTT liability directly on the Flow-through UPE or a similar mechanism, such as requiring the owners of the Flow-through UPE to pay the QDMTT liability. If a jurisdiction does not charge the QDMTT in cases where the Flow-through UPE is the only Constituent Entity located in the jurisdiction (to the extent Article 7.1 does not reduce its GloBE Income to zero), the Top-up Tax determined for the jurisdiction may be subject to the UTPR.

Treatment of Flow-through Entities required to apply the IIR

Under Article 10.3.2(a) of the Model GloBE Rules, a Flow-through Entity that is required to apply the IIR is located in the jurisdiction where it is created. For purposes of a QDMTT, the July Guidance provides that entities required to apply an IIR should also be considered to be located in the QDMTT jurisdiction if they are created in such jurisdiction. This means that if the Financial Accounting Net Income or Loss has been allocated to those entities under Article 3.5 and Covered Taxes have been allocated to such Entities in accordance with Chapter 4, the

income or loss and taxes must be blended in the QDMTT jurisdiction. The July Guidance further provides, however, that a QDMTT does not need to impose a tax charge on Flow-through Entities to be functionally equivalent to the GloBE Rules if these Entities are not tax residents in the QDMTT jurisdiction. The QDMTT charge can be allocated to other Constituent Entities located in the jurisdiction. Alternatively, a jurisdiction can decide to impose the QDMTT charge on the Flow-through Entity or introduce a different mechanism to ensure that the tax liability that arises with respect to the entity is enforceable.

A UPE that is a Flow-through Entity and a UPE subject to a Deductible Dividend Regime

The July Guidance provides that to produce outcomes that are consistent with the GloBE Rules, a QDMTT must include provisions similar to Articles 7.1 and 7.2 of the Model GloBE Rules (which address a UPE that is a Flow-through Entity and a UPE subject to a Deductible Dividend Regime). Consequently, income attributable to the UPE cannot be subject to a QDMTT to the extent Articles 7.1 or 7.2 applies. According to the July Guidance, jurisdictions need to have a provision corresponding to Article 7.1 in their QDMTT regardless of whether they have Flow-through Entities. However, jurisdictions that do not have a Deductible Dividend Regime are not required to include a provision corresponding to Article 7.2 in their QDMTT.

Eligible Distribution Tax System

The July Guidance provides that a jurisdiction that has an Eligible Distribution Tax System must include a provision that mirrors Article 7.3 of the Model GloBE Rules in its QDMTT legislation. A jurisdiction that does not have an Eligible Distribution Tax System is not required to include Article 7.3 in its QDMTT legislation.

ETR Computation for Investment Entities

Article 7.4 of the Model GloBE Rules provides a mechanism intended to preserve the tax neutrality of Investment Entities and Insurance Investment Entities by ensuring that Top-up Tax only arises with respect to the MNE Group's Interest in the Investment Entity or Insurance Investment Entity, without imposing a Top-up Tax on the minority investor's share of the income. It does so by computing the ETR and Top-up Tax of these entities based only on income and taxes that are attributable to the MNE Group. The July Guidance provides that a QDMTT may exclude Investment Entities or Insurance Investment Entities from its scope (i.e., it could be limited to other Constituent Entities located in the jurisdiction). In this case, the income of such Investment Entities and Insurance Investment Entities would remain subject to Top-up Tax under the IIR or UTPR if their ETR is below the Minimum Rate. The July Guidance further provides, however, that a QDMTT that applies to Investment Entities and Insurance Investment Entities must compute the ETR and Top-up Tax under Article 7.4 in the same manner as the Model GloBE Rules, except taxes that would be allocated to the entity under Article 4.3.2(c) and (d) (i.e., CFC taxes and taxes attributable to a Hybrid Entity) are not taken into account in the ETR computation. Although jurisdictions are free to allocate the QDMTT liability in any manner that they deem appropriate, the liability for any QDMTT Top-up Tax determined under Article 7.4 should generally be imposed on a Constituent Entity (if any) located in the jurisdiction, rather than on the Investment Entity or Insurance Investment Entity itself. The July Guidance specifies that the Top-up Tax of Investment Entities and Insurance Investment Entities located in a jurisdiction must be reduced by the amount of QDMTT paid in respect of these entities.

Investment Entity Tax Transparency Election

The July Guidance provides that a QDMTT must treat any Investment Entity or Insurance Investment Entity as a Tax Transparent Entity to the extent an election under Article 7.5 of the Model GloBE Rules was made. As a result, a QDMTT must treat the Constituent Entity-owner's share of the income and taxes of any Investment Entity or Insurance Investment Entity that is subject to an election under Article 7.5 as the income and taxes of the Constituent Entity-owner.

Taxable Distribution Method Election

The July Guidance provides that a QDMTT must include a provision similar to Article 7.6 of the Model GloBE Rules (which provides an election to apply the Taxable Distribution Method). Under this provision, a QDMTT will take into account the distributions of the Investment Entity or Insurance Investment Entity to compute the GloBE Income or Loss of Constituent Entity-

owners located in the jurisdiction and impose a Top-up Tax on the Investment Entity or Insurance Investment Entity in respect of any Undistributed Net Income.

Taxes allocable to Hybrid Entities or Distributing Constituent Entities

The February Guidance indicated that a QDMTT must exclude taxes paid or incurred by Constituent Entity-owners under CFC Tax Regimes that are allocable to Constituent Entities under Article 4.3.2(c) of the Model GloBE Rules, as well as taxes paid or incurred by Main Entities and allocable to Permanent Establishments located in the jurisdiction under Article 4.3.2(a). The July Guidance provides that, for purposes of computing the ETR, a QDMTT must also exclude the Covered Tax expense of a:

- Constituent Entity-owner on income of a Hybrid Entity that is allocable to a Hybrid Entity located in the jurisdiction under Article 4.3.2(d)
- Constituent Entity-owner (e.g., net basis taxes), other than a withholding tax imposed by the QDMTT jurisdiction, that is allocable to a distributing Constituent Entity located in the jurisdiction under Article 4.3.2 (e)

The July Guidance further provides that withholding taxes that are described in Article 4.3.2(e) imposed by the QDMTT jurisdiction itself on distributions from a Constituent Entity located in the QDMTT jurisdiction are allocated to the distributing Constituent Entity under the QDMTT.

Transition Years

The July Guidance provides that a QDMTT must have a transition rule similar to Articles 9.1.1, 9.1.2 and 9.1.3 of the Model GloBE Rules that applies where the QDMTT becomes applicable to Constituent Entities in the jurisdiction in a Fiscal Year that begins on or before the Fiscal Year that the GloBE Rules first become applicable to those Constituent Entities. To ensure coordinated outcomes where the GloBE Rules come into effect for such Constituent Entities after the QDMTT, the QDMTT must also have a "refreshing" rule that treats the Fiscal Year that the GloBE Rules come into effect for such Constituent Entities as a new Transition Year and resets the following attributes of those Constituent Entities:

- Excess Negative Tax Expense Carry-forward. Any Excess Negative Tax Expense Carry-forward amount under Article 4.1.5 or Article 5.2.1 must be eliminated at the beginning of the new Transition Year.
- Deferred tax liability recapture. Constituent Entities will not be required to recapture any deferred tax liabilities that were taken into account in the ETR computations under the QDMTT prior to the new Transition Year. The rules of Article 4.4.4 will apply only to deferred tax liabilities that are taken into account after the beginning of the new Transition Year.
- GloBE Loss Election. Any GloBE Loss Deferred Tax Asset that arose in a year preceding the new Transition Year must be eliminated. The Filing Constituent Entity may make a new GloBE Loss election in the new Transition Year.
- Article 9.1.1. The deferred tax items previously determined must be eliminated and Article 9.1.1 must be applied at the beginning of the new Transition Year. This allows MNE Groups to bring tax attributes into the GloBE Rules that would not be taken into account if the GloBE Rules had applied in a previous year (e.g., deferred tax assets attributable to tax credits). Any such attributes that arose after the QDMTT came into effect would be lost without the refreshing rule.
- Article 9.1.2. This transition rule must apply to transactions occurring after 30 November 2021 and before the beginning of the new Transition Year. However, if QDMTT was payable due to the application of Article 4.1.5 in respect of a deferred tax asset attributable to a tax loss, the deferred tax asset must not be treated as arising from items excluded from the computation of GloBE Income or Loss under Chapter 3.

The July Guidance indicates that, with respect to Article 9.1.3 of the Model GloBE Rules, there is no integrity concern where the disposing Constituent Entity is subject to the GloBE Rules or a QDMTT in the Fiscal Year in which the transaction occurs. However, coordination is needed for cases where the Fiscal Year in which the disposing Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT is different from the Fiscal Year in which the acquiring Constituent Entity comes within the scope of the GloBE Rules and/or the QDMTT. The July Guidance further provides that for

purposes of Article 9.1.3, the relevant Transition Year is the Transition Year of the disposing Constituent Entity, which is the first year in which its Low-Taxed Income becomes subject to charge either under the GloBE Rules or QDMTT, irrespective of when other Constituent Entities in the jurisdiction are subject to the GloBE Rules. However, the Transition Year referred to in Article 9.1.3 for a disposing Constituent Entity does not include a Fiscal Year in which the Transitional CbCR Safe Harbour applies to the disposing Constituent Entity. Therefore, Article 9.1.3 applies to any transfer of assets between Constituent Entities after 30 November 2021, including transfers after the acquiring Constituent Entity becomes subject to the GloBE Rules, where the disposing Constituent Entity's Low-Taxed Income was not subject to charge under the GloBE Rules or a QDMTT either because it was not within the scope of the GloBE Rules or because it applied a safe harbor. The July Guidance indicates that the Inclusive Framework will consider providing further guidance with illustrative examples to clarify the adjustments that are needed when there is a new Transition Year.

Exclusion from UTPR of MNE Groups in the initial phase of their international activity

Article 9.3 of the Model GloBE Rules provides a transitional exclusion under the UTPR by reducing the Total UTPR Top-up Tax Amount to zero for MNE Groups that are in the initial phase of their international activity. The July Guidance provides that jurisdictions have three options with respect to Article 9.3 in relation to their QDMTT legislation:

- Option one allows the jurisdiction not to adopt Article 9.3 in their QDMTT legislation.
- Option two allows the jurisdiction to include Article 9.3 in their QDMTT legislation but limit it to cases where none of the Ownership Interests in the Constituent Entities located in the QDMTT jurisdiction are held by a Parent Entity subject to a Qualified IIR.
- Option three allows the jurisdiction to adopt Article 9.3 in their QDMTT legislation without the limitation in option two.

The status of the QDMTT will not be affected where the jurisdiction adopts any of these three options.

Currency for QDMTT computations

The July Guidance provides that where the QDMTT is computed based on the financial accounting standard determined in accordance with Article 3.1.2 or Article 3.1.3 of the Model GloBE Rules, the QDMTT must require Constituent Entities to make the QDMTT computations using the presentation currency of the Consolidated Financial Statements. The July Guidance further provides that if the QDMTT legislation requires the computations to be made using the local accounting standard and all Constituent Entities in a jurisdiction use the local currency as their functional currency, the QDMTT must require these computations in the local currency. However, if the QDMTT legislation requires the computations to be made using the local accounting standard and one or more of the Constituent Entities in a jurisdiction uses a currency other than the local currency as their functional currency, the QDMTT must provide a Five-Year Election under which the Constituent Entities may undertake the QDMTT computations using the presentation currency of the Consolidated Financial Statements or the local currency. The Constituent Entities that use a different functional currency must apply the currency translation rules under the financial accounting standard for purposes of the QDMTT computations. The July Guidance specifies that these rules apply without regard to the jurisdiction's rules for converting the QDMTT liability to local currency for purposes of payment.

Multi-Parented MNE Groups

The July Guidance provides that a QDMTT must include a rule similar to Articles 6.5.1(a) through (d) of the GloBE Model Rules to ensure that the same ETR and Top-up Tax computational rules apply to Constituent Entities of Multi-Parented MNE Groups located in the jurisdiction as they apply under the GloBE Rules.

Filing obligations

The July Guidance confirms that the information return used under a QDMTT may follow a different format than the GloBE Information Return. This is also reflected in the GloBE Information Return released on the same day as the Guidance, which does not require that it be used by QDMTT jurisdictions for purposes of QDMTT information collection. However, as a QDMTT would use equivalent datapoints to those provided in the GloBE Information Return, the July Guidance provides that a QDMTT

jurisdiction could choose to use the GloBE Information Return or rely on the information included on it. The July Guidance indicates that the Inclusive Framework will also consider providing further guidance on the information collection and reporting requirements under the QDMTT in the context of the GloBE Information Return.

Definitions

The July Guidance provides that, to avoid coordination issues and provide outcomes that are consistent with the Model GloBE Rules, a QDMTT must incorporate all the outcomes provided by all the definitions and the rules determining the location of an Entity or Permanent Establishment in Chapter 10 of the Model GloBE Rules, except as modified by the Commentary to Article 10.1 on the definition of a QDMTT.

QDMTT payable

A QDMTT jurisdiction may be prevented or restricted from applying the QDMTT to a Constituent Entity located in the jurisdiction due to constitutional provisions or tax stabilization agreements (or similar agreements between the QDMTT jurisdiction and the MNE Group). This will generally mean that the Top-up Tax payable under the QDMTT will not reduce the GloBE Top-up Tax to zero and thus will be collected by another jurisdiction under the GloBE Rules, either the IIR or the UTPR. In cases where the jurisdiction disputes an MNE Group's claim to a constitutional or other limitation on the application of its QDMTT, the MNE Group's financial accounts may include an expense for the QDMTT, notwithstanding that the MNE Group is challenging the applicability of the QDMTT. In those cases, the MNE Group would not have any Top-up Tax under the GloBE Rules if the QDMTT is considered payable under Article 5.2.3 of the Model GloBE Rules, which the July Guidance notes could create an integrity risk under the GloBE Rules. To mitigate this risk, the July Guidance provides that any amount of QDMTT that the MNE Group directly or indirectly challenges in a judicial or administrative proceeding must not be treated as QDMTT payable under Article 5.2.3 if the challenge is based on constitutional or other superior law grounds. The same treatment must apply in the case of a challenge based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group's tax liability, such as a tax stabilization agreement, investment agreement, or similar agreement. This rule also applies where a taxpayer indirectly challenges its liability for the QDMTT by simply claiming that it is not liable for any tax in the jurisdiction or that it is entitled to compensation or reimbursement for any tax paid in the jurisdiction. The July Guidance indicates that the Inclusive Framework will consider further Administrative Guidance to clarify the meaning of paid or payable in the context of this guidance and to address cases where the QDMTT is not paid within four Fiscal Years or not payable under the GloBE Rules and develop a mechanism of recomputation to provide guidance that minimizes the potential for double taxation and double nontaxation under the GloBE Rules.

Safe harbors

QDMTT Safe Harbour

The July Guidance indicates that Inclusive Framework members have observed that the requirement to undertake separate Top-up Tax calculations in respect of the same Constituent Entity under the GloBE Rules and the QDMTT rules will result in increased compliance costs for MNE Groups and administrative burdens for tax authorities. The QDMTT Safe Harbour is intended to provide a practical solution to address this issue. Where an MNE Group qualifies for a QDMTT Safe Harbour, Article 8.2 of the Model GloBE Rules excludes the application of the GloBE Rules in other jurisdictions by deeming the Top-up Tax payable under the GloBE Rules (i.e., the IIR and the UTPR) to be zero. The July Guidance provides that to qualify for the QDMTT Safe Harbour, a QDMTT must meet the QDMTT Accounting Standard, the Consistency Standard and the Administration Standard. The QDMTT Accounting Standard requires that the QDMTT be computed based on provisions that are equivalent to Articles 3.1.2 and 3.1.3 of the Model GloBE Rules or Local Financial Accounting Standard Rule. Under the latter, the QDMTT must be computed based on the Local Financial Accounting Standard, which must either be an Acceptable Financial Accounting Standard or Authorised Financial Accounting Standard (adjusted to prevent Material Competitive Distortions) required or permitted in the QDMTT jurisdiction by the Authorised Accounting Body or pursuant to the relevant domestic legislation. In addition, the Local Financial Accounting Standard Rule requires that all of the Constituent

Entities located in the QDMTT jurisdiction have financial accounts based on that Local Financial Accounting Standard and either (i) are required to keep or use these accounts under a domestic corporate or tax law, or (ii) these financial accounts are subject to an external financial audit. Where a QDMTT jurisdiction adopts the Local Financial Accounting Standard Rule, it must require its use where the conditions are met and must not give MNE Groups the ability to choose which standard to use. The Consistency Standard requires the QDMTT computations to be the same as the computations required under the GloBE Rules, except where the QDMTT Commentary explicitly requires the QDMTT to depart from the GloBE Rules or the Inclusive Framework decides that an optional variation still meets the standard. Currently, the QDMTT Commentary identifies two mandatory variations and three optional variations. The first mandatory variation requires the QDMTT not to take into account the allocation of cross-border taxes. The second mandatory variation requires the QDMTT to be computed using local currency in certain situations. The optional variations that the Inclusive Framework considers to be acceptable currently include having no, or a more-limited, SBIE, having no, or a more-limited, De Minimis Exclusion, and having a minimum tax rate above 15% for purposes of computing the Top-up Tax Percentage for the jurisdiction. The Administration Standard requires the QDMTT jurisdiction to meet the requirements of an ongoing monitoring process similar to the one applicable to the GloBE Rules. The ongoing monitoring process will include a review of the information collection and reporting requirements under the QDMTT to ensure that they are consistent with the equivalent requirements under the GloBE Rules and the approach set out in the GloBE Information Return. The July Guidance acknowledges that in some cases, a QDMTT jurisdiction could be subject to certain restrictions on imposing the QDMTT with respect to a particular Constituent Entity or corporate structure. To strike the right balance between having a QDMTT Safe Harbour and avoiding those restrictions, the Inclusive Framework agreed that specific cases should not affect a QDMTT's ability to meet the Consistency Standard (the so-called Switch-off Rule). The specific cases include, for example, a QDMTT jurisdiction that decides not to impose a QDMTT on Flow-through Entities or Investment Entities subject to Articles 7.4, 7.5 and 7.6 of the Model GloBE Rules. The July Guidance indicates that to determine whether a minimum tax can be considered a QDMTT, a Peer Review Process will be developed under the GloBE Implementation Framework. The Peer Review Process will incorporate transitional and permanent review processes to determine whether a QDMTT meets the standards of the QDMTT Safe Harbour.

Transitional UTPR Safe Harbour

The July Guidance indicates that the operation of the rule order under the GloBE Rules means that the UTPR effectively operates as the primary mechanism for imposing Top-up Tax in the UPE jurisdiction where that jurisdiction has not introduced a QDMTT. MNE Groups that are exposed to the potential application of the UTPR in the UPE jurisdiction have limited ability to change their ownership structure to bring the UPE's profits within the scope of an IIR. Therefore, the July Guidance provides for a transitional UTPR Safe Harbour under which the UTPR Top-up Tax Amount calculated for the UPE Jurisdiction shall deemed to be zero for Fiscal Years that run no longer than 12 months and begin on or before 31 December 2025 and end before 31 December 2026 if the UPE Jurisdiction has a corporate income tax that applies at a rate of at least 20%. The corporate income tax rate is the nominal statutory tax rate generally imposed on in-scope MNE Groups on a comprehensive measure of income. This rate may take into account sub-national taxes provided these taxes are structured so that, in the case of all sub-national jurisdictions, the combined rate generally applicable to in-scope MNE Groups will be equal to or greater than 20%. The July Guidance further provides that an MNE Group that qualifies for more than one transitional safe harbor may choose which safe harbor to apply for that jurisdiction. When an MNE qualifies for both the Transitional CbCR Safe Harbour and the UTPR Safe Harbour in a jurisdiction in a Fiscal Year, the MNE may elect to apply the Transitional CbCR Safe Harbour, rather than the UTPR Safe Harbour to avoid losing the benefit of the Transitional CbCR Safe Harbour in a subsequent Fiscal Year under the "once out, always out" approach.

European Union

On 1 July 2023, Spain took over the EU Council presidency from Sweden. During its six-month presidency, negotiations on tax initiatives will be

continued, including Pillar One, BEFIT and Unshell. According to the presidency program, in the tax area, the Spanish Presidency will aim to:

- Ensure tax justice in Europe, combat tax evasion, and establish minimum EU-wide taxation standards
- Streamline tax processes to reduce burdens and promote renewable energy, energy efficiency, and sustainable transportation
- Support revising decision-making procedures to improve efficiency and expanding qualified majority voting
- Design a competitive and autonomous EU strategy, including regulatory reforms, strategic projects, and territorial development

On 3 July 2023, the Commission released the "Annual report on taxation 2023" assessing the recent trends in EU tax systems, and identifying how tax policy, implementation and compliance could be improved.

The European Commission released a Progress Report with a brief assessment of the state of play of the negotiations at the OECD on BEPS 2.0 and Pillar One, in particular. On Amount A, the OECD Secretariat aims to finalize the technical work by 10-12 July 2023 and present the package of the Multilateral Convention (MLC) and the Explanatory Statement. The signing ceremony of the MLC is expected to take place at the end of 2023. It is also expected that the Inclusive Framework will update its commitment to the DST standstill. In addition, the OECD Secretariat anticipates a preliminary agreement in the Inclusive Framework this month on the main components of Amount B with the aim to have a final version by the end of 2023. In particular, the OECD aims to reach an agreement on the following elements of Amount B:

- The scope, to better define the list of excluded activities and the pricing methodology for digital goods
- The opening of a validation phase on the pricing framework that will run till the end of the year and that will entail the launch of a new public consultation

Amount B is expected to be included in the OECD Transfer Pricing Guidelines in January 2024, with a review to take place after three years of implementation.

ATAF

The African Tax Administration Forum (ATAF) issued a statement in response to the outcome statement released by the OECD on the progress of Pillar One and Pillar Two. The statement highlights ATAF's concerns regarding the potential delay of the DST standstill and emphasizes their commitment to collaborate with the African Union at the policy level to explore taxation options for digital firms. The aim is to ensure that African countries do not miss out on tax revenues from the profits earned by these firms, both before and after the Multilateral Convention takes effect. Moreover, ATAF affirms its commitment to working closely with the Inclusive Framework to secure the inclusion of Amount B in the forthcoming January 2024 edition of the OECD Transfer Pricing Guidelines. Furthermore, the statement notes the successful negotiation between ATAF and African countries within the Inclusive Framework, whereby all payments related to service provisions fall within the scope of the STTR. Additionally, during the STTR negotiations, priority was established for applying the STTR over the GloBE rules, thereby disregarding any tax under an Income Inclusion Rule (IIR), Undertaxed Profits Rule (UTPR), or Domestic Minimum To-Up Tax. According to the statement, ATAF's involvement in the negotiations of the BEPS 2.0 project has allowed Africa to have a stronger voice in shaping the global tax rules, and they will continue to work towards a fairer international tax system.

Australia

Australia amends accounting standard to align it with Pillar Two disclosures.

Bulgaria

Bulgaria intends to introduce a domestic top-up tax.

Canada

Canada's new mandatory disclosure rules now in effect.

Canada releases statement on DST standstill.

Cyprus

Cyprus confirms agreement with Pillar Two transitional CbCR Safe Harbour.

Denmark

Denmark releases draft legislation on Pillar Two.

Egypt

The Egyptian Government published Law No. 30 of 2023 (Amending Law) in the Official Gazette. The Amending Law introduces significant amendments to the provisions of Income Tax Law No. 91 of 2005 (Tax Law of 2005).

Key amendments relate to the following areas of taxation:

- Corporate tax
- Permanent establishment (PE)
- Financing (offshore loans) and deductibility limitations
- Capital gains tax (CGT)
- Dividends withholding tax (WHT)
- Salary tax

The amendments are effective from 1 July 2023 for salary tax, and for items (a) to (e) above, the amendments are applicable on the taxable period that ends after the issuance date of the Amending Law.

France

France implements Public CbCR.

Germany

Germany enacts Bill implementing EU Public CbCR Directive into domestic law.

As stipulated in the explanatory notes to the draft bill, the German legislature acknowledges that under case law of the German Federal Fiscal Court, the arm's length interest rate for cross-border loans is generally determined based solely on the financial strength of the borrowing entity. According to the German MoF, this results in tax structuring opportunities to shift profits to low-tax foreign countries. Hence, the introduction of an interest-rate limitation rule is proposed to prevent arrangements involving lending entities without substance. This would limit the deduction of interest expenses in such cases to a "reasonable" amount in the view of the German legislature. According to the proposed rule, interest expenses are not deductible to the extent that they are based on an interest rate that exceeds the maximum interest rate, defined as the base interest rate according to the German Civil Code plus 200 basis points. The German Central Bank publishes the base interest rates on a bi-annually basis (on 1 January and 1 July). As of 1 July 2023, the current base interest rate amounts to 3.12%, resulting in a maximum interest rate of 5.12%. The proposed rule only applies in business transactions between related parties as defined in the German Foreign Tax Act (FTA) and covers cross-border and domestic intercompany financing transactions. Two alternative "escape clauses" are available that would allow the application of a higher (arm's length) interest rate. First, if the taxpayer can demonstrate that both the lender and, in the case of a group of companies, the ultimate parent company could only obtain the funds (with otherwise equal conditions) at an interest rate higher than the maximum interest rate defined by law, the maximum interest rate shall be deemed to be the interest rate these parties could have obtained in the most favorable case. Second, the interest-rate limitation rule would not apply if the lender were engaged in a "substantial economic activity" in the state in which it has its registered office or management (substance exception). Regarding the interpretation of the term "substantial economic activity" the draft law explicitly refers to the German controlled foreign company (CFC) rules in the FTA. These CFC rules were amended in 2021 through the implementation of European Union (EU) Anti-Tax Avoidance Directive (ATAD) Implementation Law. To fulfill the "substantial economic activity" requirement, the lender must have appropriate operating substance and human resources necessary for the activity. The requirement is to be met in a qualitative, not quantitative way. Moreover, the lender's personnel must be qualified and perform the activities independently and autonomously; outsourcing of activities is viewed negatively with regard to qualifying for the exception. It should be noted that the substance exception does not apply if the lender is resident in a jurisdiction that is not obliged to provide administrative assistance to Germany in accordance with the OECD standard for transparency and does not ensure effective exchange of information upon request. Based on the current draft bill, the proposed interest-rate limitation rule will apply from 1 January 2024 onward and does not grandfather existing financing arrangements. The draft bill is scheduled to be discussed within the entire government in mid-August. On this basis, a legislative process could be completed by end of 2023. The effect of the rule should be limited to denying the "excessive" portion of interest, and not lead to recasting the debt into equity, nor to a withholding tax obligation. Potentially affected

taxpayers should note the proposed introduction of an interest-rate limitation rule and closely monitor further developments during the legislative process.

The German Ministry of Finance has published a draft decree regarding the application of German anti-hybrid rules. The rules were enacted in 2021 through the European Union (EU) Anti-Tax Avoidance Directive (ATAD) Implementation Law. The anti-hybrid rules generally apply to all expenses accruing after 31 December 2019 focusing on a potential whole or partial denial of deductibility for expenses in Germany to the extent the resulting earnings are not taxed at all or — in the case of financing transactions — are "low taxed" due to a hybrid-mismatch or deductions taken twice (Deduction/Non-Inclusions, Double-Deductions, Imported Mismatches). The draft decree does not provide detailed guidance on all currently unclear issues. The examples it provides mostly cover basic structures, but do not include a comprehensive overview on the tax authorities' view on questions that are highly relevant in practice (e.g., for certain disregarded US-outbound structures).

Germany releases revised draft bill on Pillar Two.

Gibraltar

Gibraltar announces implementation of Pillar Two.

Ireland

Ireland releases public consultation on new taxation measures for outbound payments.

Ireland brings Public CbCR requirements into effect.

Liechtenstein

Liechtenstein submits Pillar Two legislation to Parliament.

Lithuania

Lithuania transposes rules implementing Public CbCR into domestic law.

Lithuania fully transposes anti-hybrid rules by amending the definition of hybrid entity.

Luxembourg

Luxembourg publishes draft law on modernization and expansion of the investment tax credit.

Romania

Romania amends Public CbCR legislation.

The United Kingdom

United Kingdom enacts Pillar Two legislation and releases guidance on Pillar Two.

UK launched a public consultation on reform in transfer pricing, permanent establishment, and Diverted Profits Tax.

UK HM Treasury & Customs removes ancillary notification requirement under CbCR regulations.

Contacts

Gertrud Bergmann,
Partner, Transfer Pricing
Mazars in Germany
gertrud.bergmann@mazars.de

Frédéric Barat,
Partner, Transfer Pricing
Mazars in France
frederic.barat@avocats-mazars.com

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