



BEPS and international tax newsletter  
**Edition 34 – November 2023**

## Introduction

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

Our thirty-fourth edition deals with the new measures published in November 2023 by the OECD, the G20 and in 10 countries: Hong Kong, Hungary, Italy, Kenya, Luxembourg, Malta, Salvador, Saudi Arabia, Uruguay, and the USA.

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



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# BEPS and international tax newsletter

## OECD

On 9 and 10 September 2023, at the G20 Summit in New Delhi, India, the G20 Leaders issued a declaration at the conclusion of the meeting, reaffirming their commitment to continued cooperation toward a globally fair, sustainable and modern international tax system appropriate to the needs of the 21st Century. The G20 Leader's declaration welcomed the progress made on Pillar One, including the delivery of a text of a Multilateral Convention (MLC) on Amount A and the work on Amount B as well as the completion of the work on the development of the Subject to Tax Rule (STTR) under Pillar Two. The G20 Leaders called on the Inclusive Framework to swiftly resolve the few pending issues relating to the Amount A MLC with a view to preparing it for signature within the second half of 2023 and completing the work on Amount B by the end of 2023. The declaration also called for the implementation of other initiatives, including the Crypto Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS). More broadly and not specific to taxation matters, the declaration recalls a recent United Nations statement on strengthening multilateralism and international cooperation and notes the necessity of a more inclusive and revitalized approach to multilateralism and reform aimed at implementing the 2030 agenda.

## G20 Finance Ministers meeting communiqué

The communiqué issued at the close of the G20 Finance Ministers 12-13 October meeting reflects the commitment to advance the actions mandated by the G20 Leaders, stating:

We commit ourselves to taking forward the actions mandated by our Leaders in the New Delhi Leaders' Declaration on Finance Track issues. We welcome the upcoming 2024 G20 Presidency of Brazil and look forward to continuing our work on enhancing global economic cooperation to achieve strong, sustainable, balanced and inclusive growth.

The communiqué also welcomes the step taken by the Financial Action Task Force in finalizing guidance on trusts and other legal arrangements and reflects the commitment to effectively

implement the associated revised standard on beneficial ownership transparency.

## October 2023 OECD Secretary-General Report

The Secretary-General Report includes an update on the ongoing work on Pillars One and Two, indicating that implementation of the global minimum tax is now well underway and the rules will come into effect from the beginning of 2024. It indicates that, to date, approximately 55 jurisdictions have taken steps toward implementing the Global anti-Base Erosion (GloBE) rules and some jurisdictions are considering introducing an entirely new corporate income tax regime as a response to Pillar Two. The Secretary-General Report also notes the release of the Pillar Two Implementation Handbook (pdf), which provides an overview of the key provisions of the global minimum tax rules and considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing their implementation options, as well as the MLC to Facilitate the Implementation of the Pillar Two STTR.

Regarding Pillar One, the Secretary-General Report provides an update on the work on Amount B, and it highlights the release of the Amount A MLC package, which includes the text of the MLC, an Explanatory Statement, and the Understanding on the Application of Certainty.

The Secretary-General Report discusses developments with respect to tax transparency, noting recent updates on information reporting for crypto-assets, the implementation of effective information exchange practices, and the release of the three reports in this area in the past year. In this regard, the Secretary-General Report states that further work is needed to foster transparency and exchange of information for tax purposes and to ensure that all interested jurisdictions can reap the benefits of enhanced transparency.

In addition, the Secretary-General Report includes a status update on jurisdictions' implementation of the minimum standards established in the original BEPS project. The Secretary-General Report also contains brief updates on several other areas of ongoing work,



including tax and crime, tax and inequality, and global mobility.

## **Seventh annual progress report of the Inclusive Framework**

The Progress Report describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from September 2022 to September 2023.

With respect to Pillar One, the Progress Report states that all the substantive components required for implementing Amount A through the MLC have undergone public consultations, yielding valuable input from stakeholders. Although a text of the MLC has been made public, it includes footnotes noting where some jurisdictions have raised concerns regarding specific provisions in it. Efforts are currently underway to address these concerns, with the goal of swiftly preparing the MLC for signature.

With respect to Amount B of Pillar One, which is intended to provide for fixed returns for baseline marketing and distribution activities, the Inclusive Framework recently released the Amount B framework for a second public consultation and invited stakeholder input on a number of aspects that will be subject to further work. The objective is to finalize Amount B by the end of the year with a view to incorporating key aspects into the OECD Transfer Pricing Guidelines by January 2024.

On Pillar Two, the Progress Report notes that the implementation package has been released in three stages. The first segment was made public in December 2022 and encompassed guidance on Safe Harbors and Penalty Relief, introducing a transitional safe harbor based on Country-by-Country Reports and a framework for development of permanent safe harbors. In February 2023, a package of Administrative Guidance was released, providing further information on rule operations, including transition rules and the design of Qualified Domestic Minimum Top-up Taxes (QDMTT). In July 2023, another guidance package was issued, which included two new safe harbors, one permanent for jurisdictions implementing QDMTT, and another transitional undertaxed profits rule (UTPR) Safe Harbor providing relief from UTPR application until the end of 2025. This package also included detailed administrative guidance on currency conversion rules, the substance-based income exclusion, and the treatment of tax credits. All this guidance from the

past year will be consolidated into a revised version of the commentary, which will replace the original Commentary issued in March 2022 and is scheduled for release later in 2023.

The Progress Report indicates that the Inclusive Framework will now develop a peer review process that will allow jurisdictions and stakeholders to identify the "qualified" rules of jurisdictions and ensure coordination among implementing jurisdictions. The Inclusive Framework will work on tax certainty and explore frameworks for dispute resolution and also will develop a model competent authority agreement to facilitate the automatic exchange of GloBE information as well as IT-solutions to support the exchange of information, in particular a dedicated XML schema.

Regarding the 15 Actions under the original BEPS project, the Progress Report states that steady progress has continued, in particular on the implementation of the four BEPS minimum standards. Among other things, the Progress Report indicates that 319 preferential tax regimes have been reviewed under Action 5 (Harmful Tax Practices) and almost 50,000 tax rulings have been exchanged among members of the Inclusive Framework. On Action 6 (Tax Treaty Abuse), as of 1 September 2023, the Multilateral Instrument has been signed by 100 jurisdictions and effectively modifies approximately 1,200 treaties concluded among the 83 jurisdictions that have ratified, accepted or approved it. On Action 13 (Country-by-Country (CbC) reporting), the Progress Report notes that more than 110 jurisdictions have already introduced CbC reporting legislation and that work on the 2020 review of BEPS Action 13 is expected to resume in the second half of 2023.

On Action 14 (Mutual Agreement Procedure (MAP)), efforts are ongoing to align tax treaties, MAP policy, and MAP practice of Inclusive Framework member jurisdictions with the Action 14 minimum standard. The Action 14 peer review process, along with the data reported in the MAP Statistics from 2023 onward, aims to promote global compliance with the Action 14 standard.

The Progress Report also notes progress in other BEPS Action items over the past year, with particular attention to Action 1 (Tax Challenges of the Digitalisation of the Economy), noting developments on addressing challenges in collecting value-added taxes (VAT) on digital trade, and Action 11 (BEPS Data Analysis), where the Corporate Tax Statistics database

continues to expand its coverage with more up-to-date CbC report data. The Progress Report indicates that the fifth edition of the Corporate Tax Statistics report, covering more than 160 jurisdictions, will be released in the second half of 2023, feature data from more than 7,400 MNEs based on reporting from more than 50 jurisdictions and include two years of data (2019 and 2020).

As a conclusion, the BEPS 2.0 project contemplates significant changes in the overall international tax architecture under which multinational businesses operate. Although Pillar Two is farther advanced, with new global minimum tax rules set to take effect in some jurisdictions in 2024, work is continuing on both pillars. It is important for companies to follow these developments closely as they unfold in the coming months and to evaluate the potential impact of international tax changes on their businesses. In addition, companies will need to monitor implementation activity in relevant countries.

## Hong Kong

As requested by the European Union, Hong Kong had announced that it will further revise its FSIE regime to extend the scope of foreign-sourced disposal gains to cover a non-exhaustive list of assets. A consultation paper was issued in April and the legislative bill was published on 13 October 2023. The new rules will apply to disposal gains accrued and received starting from 1 January 2024. During its previous engagement sessions with the stakeholders, the government referred to most features of the revised regime, which have now been updated as follows:

- Disposal gains of traders will be excluded from the scope of the FSIE regime without requiring the trader to have substantial business activities in Hong Kong.
- Intra-group transfer relief is available to defer tax charged if prescribed conditions are satisfied. The safeguard requirement is relaxed, whereby the selling and acquiring entities are only required to be within the "charge to profits tax" in Hong Kong for two years (instead of six years).
- Where intra-group transfer relief has been granted for gain on an

intellectual property (IP) disposal and the acquiring entity subsequently sells the acquired IP asset, the extent of tax exemption for the subsequent offshore disposal gain will also be determined by the nexus ratio. For this purpose, the previous expenditures incurred by the selling entity will be included as qualifying and non-qualifying expenditures of the acquiring entity.

## Tax-certainty enhancement scheme for onshore equity disposal gains

Hong Kong had proposed safe harbor rules in May 2023 under which onshore disposal gains on equity interests would be considered nontaxable capital gains in Hong Kong if at least 15% of the total equity interest in the investee entity was held for a continuous period of at least 24 months prior to the disposal. The related legislative bill was published on 20 October 2023 and the rules are in line with previous proposals. The bill and the related guidance published by the tax authority clarify certain definitions for determining the equity holding conditions and the circumstances in which the safe harbor rules will not apply, such as where an equity interest is classified as "trading stock" or an investee entity is engaged in property-trading business. The safe harbor rules will apply for eligible equity disposal gains that occur on or after 1 January 2024 and are accrued starting from the year of assessment 2023/2024 (e.g., year beginning on or after 1 April 2023). An eligible investor entity may make an election in the annual profit tax return after the transaction.

## Hungary

The Hungarian Ministry of Finance published on the draft legislation for public consultation to implement EU Directive 2022/2523 on the global minimum tax on 18 October 2023. The Ministry of Finance then introduced the draft legislation to the Parliament on 31 October 2023.

An Income Inclusion Rule (IIR) and a Qualified Domestic Minimum Top-up Tax (QDMTT) will be introduced from 1 January 2024, and an Undertaxed Profits Rule (UTPR) will apply from 1 January 2025. A transitional Country-by-Country Reporting (CbCR) Safe Harbor and QDMTT Safe Harbor will be available. Covered taxes will include not only corporate income tax but also local business tax, innovation contribution and energy suppliers' tax. A Substance-Based

Income Exclusion will be available, and a deferred taxation/tax accounting concept will be introduced for Pillar Two purposes.

A Hungarian holding regime (providing full exemption for dividends and capital gains) will remain in place. Until 24 February 2024, taxpayers may elect to make shares/participations eligible for exempt treatment if they had not previously opted-in to the capital gains exemption regime.

Hungary will not introduce domestic withholding taxes; thus, no withholding tax will apply to any kind of payments that Hungarian entities make to foreign corporate entities.

A new R&D tax incentive regime will be introduced as a qualifying refundable tax credit potentially resulting in a cash refund.

## Italy

The Italian Revenue Agency issued the draft guidelines (draft TP Guidance), in public consultation until 3 November 2023, containing transfer pricing guidelines in connection with the implementation of the Investment management exemption regime (IME). The IME was introduced by Law No. 197 of 29 December 2022 (2023 Italian Budget Law) through amendment of Article 162(6) and 162(7) of the Italian Income Tax Code (Art. 162). Further, the Italian Ministry of Economy and Finance issued a draft Decree of 16 October 2023, available for public consultation until 27 October 2023, which mainly addressed the definition of a foreign investment vehicle and detailed certain independence requirements within the IME. Under the new IME, which was enacted effective 1 January 2023 but is still missing detailed provisions, a foreign investment vehicle and its direct or indirect subsidiaries should be able to claim that they have no Italian dependent agency permanent establishment if the asset or investment manager, or an advisor operating in Italy on their behalf or for their benefit, can be assumed to be acting independently from them under the specific independence requirements that will be finally enacted once the consultation results are processed and a delegated decree is issued. The draft TP Guidance addresses the requirement in Article 162, paragraph 7-quater (d) according to which one of the conditions for the application of the IME is that the Italian tax resident asset/investment manager or advisor, or the permanent establishment of the non-Italian tax resident entity (hereinafter briefly referred to as

"asset/investment manager or advisor"), which carries out activities under agreement with an affiliated nonresident entity, receives, for the activity performed in Italy, remuneration supported by compliant transfer pricing documentation. The draft TP Guidance provides guidelines for transfer pricing method selection for two broad categories of services that are generally performed within multinational asset/investment managers:

- Investment management services
- Services related and instrumental to investment management activities

## Kenya

In a recent ruling, the Tax Appeals Tribunal (TAT) held that a company is considered as tax resident based on where management and control is exercised if there is no demonstrable economic substance in the country of incorporation. The TAT ruled in favor of the Commissioner of Domestic Taxes (Respondent), meaning that the Respondent could demand taxes from the company (Appellant) in relation to a transaction that was conducted by an indirect holding company (HoldingCo) registered in Mauritius.

## Luxembourg

Luxembourg publishes draft legislation approving protocol amending tax treaty with Germany, improving taxation of funds.

## Malta

The Finance Minister has announced that, in 2024, Malta will not be introducing any component of the Organization for Economic Co-operation and Development (OECD) Pillar Two Initiative. The Minister added that Malta will be applying the derogation afforded by Council Directive (EU) 2022/2523 of 14 December 2022 — more commonly known as the Minimum Tax Directive — and therefore will not be introducing the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) in 2024. Similarly, Malta will not be introducing a qualified domestic top-up tax (QDTT) in 2024. The Minister said that Malta will be following global developments closely and will make other decisions when the need arises. No major changes to the existing tax system are expected and therefore the existing tax system (the full imputation system especially) will continue to apply. Meanwhile, work on creating grants and Qualified Refundable Tax Credits compatible with rules imposed by the European

Union (EU) and the OECD continues. The Minister said that while, in the transitory phase, an increase in the tax burden of certain companies may not be entirely excluded, the Government of Malta will ensure that Malta remains attractive to foreign investors.

### **Salvador**

Salvadoran Congress approves brief tax amnesty program.

### **Saudi Arabia**

Saudi Arabia issues drafts of new Income Tax Law and Zakat and Tax Procedures Law for public consultation.

### **Uruguay**

Uruguay and United States sign exchange-of-information agreement.

### **USA**

On November 8, 2023, an IRS official announced that the agency is actively hiring individuals to work in its Advance Pricing and Mutual Agreement (APMA) program.<sup>1</sup> Peter Rock, a field operations director in the IRS's Large Business & International (LB&I) division, said at a conference sponsored by the Tax Executives Institute and San Jose State University that he "expect[s] to see a lot of growth" in the program as a result of additional funding from the Inflation Reduction Act, which was originally nearly \$80 billion. In 2022, taxpayers filed 183 APA requests, which increased from the 145 APA requests filed in 2021. This increase continued the trend from the last several years. Since 2019, the number of APA requests filed in a year has either remained steady or increased annually. Additionally, APMA has faced an increased backlog of APA requests. At the end of 2022, 564 APA requests were pending, over 100 more requests than were pending at the end of 2021. The increased backlog could be due to a decrease in APMA employees between 2021 and 2022. The hiring announcement was not the first from the IRS regarding APMA in 2023. In April, the IRS released interim guidance on updates to its procedure for reviewing and accepting APA requests into the program. The interim guidance came just over a month after the then-Acting Deputy Commissioner for the IRS's LB&I Division said that the prefiling process for APAs would be modified in a forthcoming update to Revenue Procedure 2015-41, which provides procedural instructions for APA requests. While

these announcements, particularly the interim guidance, were viewed as efforts to make the APA program more selective, the IRS also indicated that the changes are not meant to limit the number of APA requests. The IRS's announcements regarding APMA demonstrate that the agency is aware of taxpayers' interest in advance tax certainty and achieving that certainty through the APMA program. An increased number of employees working at APMA will hopefully decrease the average amount of time it takes to close APA and mutual agreement cases. Taxpayers should continue to work with their tax advisors to identify intercompany transactions that would be good candidates for an APA.

The IRS announced on October 20, 2023, that it plans to send compliance alerts to approximately 150 US-based subsidiaries of foreign-owned corporations that distribute goods in the United States. The alerts stem from the companies' alleged use of certain transfer pricing strategies, which the IRS deems improper. The IRS also said in the news release that it plans to expand the Large Corporate Compliance program in 2024 to audit 60 additional large corporate taxpayers, which will be selected with the help of artificial intelligence. The Inflation Reduction Act, enacted on August 16, 2022, allocated nearly \$80 billion in new funding for the IRS. Of that \$80 billion, more than \$45 billion was earmarked for enforcement, more than \$25 billion for operations support, nearly \$5 billion for systems modernization, and over \$3 billion for customer service. However, \$1.4 billion of funding was rescinded under the Fiscal Responsibility Act of 2023 and another \$20 billion is supposed to be reallocated during 2024 and 2025. The IRS's intensified focus on transfer pricing appears to be a result of the increased IRA funding. This funding boost, outlined in the IRS's strategic operating plan to spend the funds over the next 10 years, enables the agency to allocate more resources toward transfer pricing cases. By bolstering its capabilities, the IRS aims to strengthen its ability to identify and address instances of improper transfer pricing practices. The IRS's transfer pricing initiative is a proactive approach to addressing tax compliance for large foreign-owned corporations. Given the increased focus on transfer pricing, taxpayers should consider enhancing their transfer pricing documentation so they can support their intercompany tax positions with reliable and consistent data in each jurisdiction to support

their transfer pricing. Taxpayers with inadequate transfer pricing documentation risk an increased likelihood of controversy and transfer pricing adjustments.

On 15 November 2023, the Chilean Senate approved the Convention between the United States and Chile for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital (Treaty). As a next step, the Treaty must now be ratified by the Chilean President, which will likely occur soon. Double tax treaty with United States inches towards Chilean ratification, dated 8 November 2023, and U.S. Senate approval of U.S.- Chile tax treaty brings treaty closer to entering into force, dated 25 June 2023. The Treaty shall enter into force once respective diplomatic notes are exchanged between the United States and the Republic of Chile.



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## About Mazars

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