BEPS and international tax newsletter

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mazars

Introduction

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

Our thirty-sixth edition deals with the new measures published in January 2024 by the European Union and in 23 countries: Algeria, Belgium, Brazil, Bulgaria, Czech Republic, Denmark, France, Germany, Greece, Greenland, Hong Kong, Ireland, Italy, Luxembourg, Malta, Netherlands, Peru, Poland, Portugal, South Korea, Spain, Sweden and USA.

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

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EU

The Belgian Minister of Foreign Affairs presented the priorities of the Belgian Presidency of the Council of the EU for the first semester of 2024. In the field of direct taxation, the Programme of the Presidency:

- prioritizes measures aimed at curbing tax evasion, tax avoidance, aggressive tax planning and harmful tax competition. To this end, the Presidency intends to update the EU's list of non-cooperative jurisdictions, to drive initiatives to reduce compliance costs and the burden for cross-border investors, and addressing tax abuse related to withholding taxes;
- welcomes the Business in Europe Framework for Income Taxation (BEFIT) package;
- outlines the intention of exploring the usefulness of more unified tax rules in other fields over the longer term, e.g. in relation to mobile workers;
- confirms that the Presidency will support the implementation of the Unshell Directive and will back the SAFE initiative;
- commits to conduct work to ensure greater tax transparency and reinforce the exchange of relevant information within the EU especially concerning the functioning of the minimum tax directive.

The General Court dismissed an action (case T-143/23) brought against Council Directive (EU) 2022/2523 (EU Minimum Tax Directive or the Directive). The challenge was based on Article 263 of the Treaty on the Functioning of the EU (TFEU) and dealt principally with the interaction between the provisions of the Directive on the exclusion of income from shipping activities and Member States' tonnage tax regimes authorized under State aid rules. Article 17 of the EU Minimum tax Directive introduces an exclusion for international shipping income and qualified ancillary international shipping income, provided that the entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where it is located. The plaintiff is a Dutch multinational company carrying out geotechnical services and ship management activities that is subject to corporate income tax in the Netherlands under the Dutch tonnage tax regime. The challenge before the General Court relates to the requirement for a specific location of strategic or commercial management as per Article 17 of the Directive, and the absence of transitional measures for taxpayers who invested based on EU-approved tonnage tax schemes. The applicant held that – in the absence of transitional of grandfathering rules for benefits granted under existing schemes, the application of the EU Minimum Tax Directive will offset the benefits of the tonnage tax regime and will therefore alter the rights it acquired prior to the adoption of the Directive. The Court recalled that, under Article 263 TFEU, individuals and legal entities are allowed to institute proceedings for annulment of the following three types of acts: i) acts addressed directly to that person, ii) acts which are of direct and individual concern to them, and iii) regulatory acts of direct concern which do not entail implementing measures. The Court then noted that, as the EU Minimum Tax Directive is addressed to the Member States (and not to companies) and is not a regulatory but a legislative act, it could only be challenged by the applicant based on point ii) above. Under settled case-law, the two criteria – i.e., direct and individual concern, are distinct and cumulative. Focusing on the second criterion, the Court reiterated the case-law with regards to cases when a person (individual or legal entity) could be considered individually concerned by a measure not addressed to them. Specifically, this occurs when the person is impacted due to specific attributes which are peculiar to them or factual circumstances which differentiate them from all other persons and thereby making them distinct in a similar manner to the person addressed by the measure. In the Court's view, this is not the case of the applicant, since Article 17 of the EU Minimum Tax Directive applies to all economic operators that satisfy certain objective conditions and, in particular, those carrying out an activity in the maritime sector, irrespective of the EU Member State in which those operators are established and of tax scheme they benefit from (general corporate income tax or authorized tonnage tax). The Court also reiterated its case-law based on which, where a measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure in as much as they form part of a limited class of persons. This would particularly be the case when the measure alters rights acquired by those persons before the measure was adopted. However, the Court took the view that the plaintiff was not able to prove that it was part of a limited class of persons affected by the Directive. The General Court emphasized that the applicant did not bring any evidence on the identity of the persons that benefit from the Dutch tonnage tax scheme and are therefore capable of being affected by Directive. Moreover, the Court held that benefits of the tonnage tax scheme are not a required right specific to the applicant or to a limited class of persons. Instead, other taxpayers could benefit from similar schemes in other Member States or could start benefiting from the scheme after the Directive was adopted. The Court thus concluded that the applicant was not individually concerned by the EU Minimum Tax Directive, without further need to analyze the direct concern. The taxpayer has the right to appeal the General Court's ruling before the CJEU.

The European Commission (the EC or the Commission) decided to close infringement procedures against four Member States regarding the failure to (partially) notify national measures transposing Council Directive (EU) 2021/514 (DAC7) into domestic legislation. These Member States are Croatia, Estonia, Portugal and Latvia (the latter with respect to the partial transposition of DAC7). These proceedings were initiated on January 27, 2023 and targeted a total of 14 Member States that had failed to fully or partially notify the Commission of national measures transposing DAC7 into domestic legislation. The Commission subsequently entered into the second stage of the infringement procedure with regards to certain Member States and sent reasoned opinions to Belgium, Greece, Spain, Cyprus, Poland, and Portugal in July 2023. The EC had already decided on October 18, 2023, to close the infringement procedures against Italy, Lithuania, Luxembourg, and Romania. As at the date of this publication, infringement procedures are still active against Belgium, Cyprus, Greece, Spain, and Poland. However, to the best of our knowledge, Poland and Spain are the only two Member States that have not finalized the internal legislative process required for implementation of DAC7.

The European Commission published non-binding "frequently asked questions" (FAQs) on the interpretation of the EU Minimum Tax Directive (2022/2523) that constitute the outcome of informal discussions between the EU Member States and the Commission Services. The FAQs reinforce the reference to the OECD's work under Recital 24 of the Preamble to the EU Minimum Tax Directive and confirm that the Commentary to the OECD Model Rules could be used as a source of illustration or interpretation to ensure consistency in application of the rules across Member States, to the extent that those sources are consistent with the Directive and EU law. Reference to the OECD Model Rules, the Commentary, and the Administrative Guidance is made throughout the FAQs in the context of the interpretation of certain Directive terms and provisions. Since the third tranche of Administrative Guidance was released just a couple of days before the publications of the FAQ, i.e., on December 18, 2023, the FAQs do not refer to those recent supplementary provisions and clarifications. The FAQs also include clarifications in relation to provisions in the EU Minimum Tax Directive that are specific to EU implementation and not derived from the OECD Model Rules (e.g., the deferral option as per Article 50 of the EU Directive and the scope of the Safe Harbor placeholder in Article 32 of the Directive). In addition, the FAQs provide for certain clarifications that relate to specific EU considerations (e.g., Acceptable Accounting Standards in EU Member States, treatment of tax schemes approved under an EC State aid assessment, the treatment of domestic windfall taxes on surplus profits).

Algeria

Article 6 of the Amended Finance Law ("AFL") for 2023 introduces a measure that provides for transfer pricing documentation to be submitted online via the tax authorities' platform "Jibayatic." The measure also requires the tax authorities to make a model available for that effect. The model has not yet been published. As per the measures introduced by AFL 2023, noncompliance with this obligation can lead to a significantly increased fine of 15 million Algerian Dinar (DA 15m), instead of DA 2m (Art. 8 AFL 2023). Previously, the fine only applied when the taxpayer had not submitted the transfer pricing documentation by 30 April of the following year and had not responded to the tax authorities' formal notice to submit a transfer pricing documentation within a 30-day period.

Belgium

The Supreme Court of Belgium (the Supreme Court) issued a decision concerning the application of the EU principle of prohibition of abuse in the context of the EU Parent-Subsidiary Directive ("PSD"). The plaintiff was a Belgian company that distributed dividends to its Luxembourg-based parent company in 2012. No tax was withheld based on the PSD. However, the Belgian tax authorities challenged the applicability the WHT exemption provided by the PSD. Specifically, the tax authorities noted that a series of other transactions, including mergers, capital reductions, and the sale of shares, occurred around the same time as the dividend distribution. In their view, the transactions were deemed to form an artificial arrangement aimed at avoiding the dividend WHT. The Supreme Court upheld the decision of the court of appeal, which ruled that the WHT exemption should be denied based on the EU principle of prohibition of abuse. Key takeaways from the decision include:

When assessing whether there is an abuse, tax authorities can take into consideration not only the relevant transaction but also other transactions that take place with the final motive of avoiding tax (including transactions performed between other parties at the level of the beneficial owner of the income stream).

Even if an intermediary structure has been set up for genuine economic reasons, the use of the structure can be devoid of economic reasons and serve to obtain a tax advantage.

The anti-abuse principles developed by the CJEU over the years (e.g., the so-called Danish cases). Prevail on other fundamental EU rules such as the principle of legal certainty and the principle of legitimate expectations and apply regardless of when the abuse took place.

Brazil

Brazilian Government changes rules related to incentives treatment, interest on net equity, and other provisions for 2024.

Bulgaria

Legislation implementing into Bulgarian national law the provisions of the EU Public Country-by-Country ("CbyC") Reporting Directive ("the Directive") was published. Key takeaways include:

The provisions of the Bulgarian legislation are closely aligned with the text of the Directive.

The consolidated net turnover threshold for in-scope multinationals ("MNEs") is BGN 1.5 billion (approximately EUR 766 million), in each of the last two consecutive financial years.

The threshold applicable to branches of non-EU MNEs is a net turnover of BGN 16 million (approximately EUR 8 million), in each of the last two consecutive financial years.

Bulgaria adopted the "safeguard clause" to allow in scope groups to temporarily omit, for a maximum of five years, information that would cause a significant competitive disadvantage to the companies concerned, provided they can justify the reason for the omission.

Bulgaria did not opt for the website publication exemption.

The legislation will apply as of January 1, 2025.

Czech Republic

Czech Republic approves amendment of the Investment Incentives Act.

Denmark

The Danish government released a bill aimed at aligning the list of jurisdictions subject to the Danish defensive tax measures with the October 17, 2023 update of the EU list of non-cooperative jurisdictions. Subject to the adoption of the bill, Antigua, Barbuda, Belize and the Seychelles will be added to the list, while the British Virgin Islands, the Marshall Islands and Costa Rica will be removed. Additionally, the explanatory comments to the bill state that Russia has been added to the list separately following the termination of the Double Tax Treaty, with effect from January 1, 2024. The bill is expected to be adopted in January 2024 and to enter into force on February 1, 2024.

France

List of companies subject to financial transaction tax in 2024

The French tax authorities published the list of French companies whose shares will be in scope of the financial transaction tax in 2024. This list encompasses 121 companies with a market capitalization exceeding EUR 1 billion on the reference date (December 1, 2023). Compared to last year's version, the 2024 list includes two new companies, and the total number of in-scope companies has decreased by nine.

The acquisition of shares issued by in-scope companies is subject to a financial transaction tax levied at 0.3 percent of the acquisition price. The corresponding financial intermediary is responsible for the calculation and the levy of the tax.

For more information on Financial Transaction Taxes in the EU, please refer to the EU Tax Centre's dedicated website.

France enacts Finance Act for 2024

The French Finance Act for 2024 was published in the Official Gazette. In addition to implementing the EU Minimum Tax Directive, the bill includes several direct tax measures that may impact businesses. Key takeaways include:

- New TP rules;
- Tax incentive for green industry: introduction of a new tax credit for companies investing in listed green industries. The credit rate will be in a range of 20 percent to 45 percent of the qualifying expenditures and will be subject to prior approval from the French Tax Authorities. Any excess credit will be refundable to the taxpayer. Relying on the relaxed EU state aid rules, this new incentive has been approved by the EC on January 8, 2024.
- Alignment of the Parent-Subsidiary regime with EU Law: in order to align the Parent-Subsidiary regime with a recent decision from the CJEU on the compatibility of the French tax integration scheme with the EU freedom of establishment, the bill extends for fiscal years starting on or after December 31, 2023, the application of the 99 percent participation exemption to dividends paid by an EU 95 percent-held company to a French company. The exemption is available regardless of whether the latter is a member of a French tax-consolidated group or not, provided that – if the EU-95 percent held subsidiary would have been established in France, both companies could have constituted such a group for at least one year.
- Implementation of a plan to step-up the fight against tax fraud: the French Finance Act for 2024 implements several measures announced by the French Government earlier in 2023. In particular, the bill strengthens the Transfer Pricing documentation requirements and makes them enforceable against taxpayers in the event of discrepancies with the policy applied.
- Postponement of the abolishment of the Business Value Added contribution: this contribution was previously due to be abolished in 2024; however, the Government finally decided to spread it over an additional four-year period, until 2027.

Germany

Legislation aligning the German interest deduction limitation rules with the EU Anti-Tax Avoidance Directive ("ATAD") was published in the Official Gazette. Key amendments include:

The definition of 'interest expenses' for the purpose of the rules is broadened to include, in addition to remuneration for borrowed capital, economically equivalent expenses and other expenses related to the raising of debt capital (within the meaning of Article 2 of the ATAD). Symmetrical amendments were made to the definition of 'interest income'. Interest expenses and income from the financing of certain public infrastructure projects are excluded from the definition of interest. The interest deduction limitation rules are not applicable when the net interest expense of a company is less than EUR 3 million or in the case of companies which are not affiliated with any other persons within the meaning of Section 1 of the Foreign Tax Act and which do not have foreign permanent establishments. In the event that a partial operation is discontinued or transferred, any unused EBITDA carry-forward and any unused interest carry-forward are proportionately lost. It should be noted that several provisions were initially part of the Growth Opportunities Act, which is yet to be adopted, as some measures are to be further discussed in 2024. The new rules apply for financial years beginning after December 14, 2023 and not ending before January 1, 2024.

Although most countries intend to retain the 31 January 2024 reporting deadline under DAC7, Germany and Luxembourg announced transition rules and postponed deadlines.

Greece

Greece enacts legislation to implement Public Country-by-Country Reporting Directive

The Greek Public Revenue Authority issued a Circular, outlining the jurisdictions identified as having preferential tax regime status for the 2022 tax year. The list is relevant for specific tax regulations, such as limitations on the deductibility of expenses incurred in relation to residents of a jurisdiction on the list. For the fiscal year 2022, the list includes 42 jurisdictions - as listed below, with the only amendment being the addition of Tokelau (as compared to the 2021 list):

Albania, Andorra, Anguilla, Bahamas, Bahrain, Barbados, Belize, Bermuda, Bonaire, Bosnia and Herzegovina, British Virgin Islands, Bulgaria, Cayman Islands, Cyprus, Gibraltar, Guernsey, Hungary, Ireland, Isle of Man, Jersey, Kosovo, Kyrgyzstan, Liechtenstein, Macau, Maldives, Marshall Islands, Moldova, Monaco, Mongolia, Montenegro, North Macedonia, Paraguay, Qatar, Saba, Saudi Arabia, St. Eustatius, Timor-Leste, Tokelau, Turkmenistan, Turks and Caicos Islands, United Arab Emirates, and Vanuatu.

In addition to this, the Greek list of non-cooperative countries for fiscal year 2022 was already published in the Official Gazette on October 25, 2023.

Greenland

As of the income year 2023, it is mandatory for companies to submit transfer pricing documentation in Greenland if they are required to prepare transfer pricing documentation and have intercompany transactions above a certain threshold. More specifically, an executive order issued in Greenland on 17 October 2023 states that companies (company, branch or permanent establishment) must submit transfer pricing documentation within 60 days of the tax return deadline; i.e., companies with a financial year following the calendar year must submit transfer pricing documentation on 13 August 2024. Greenlandic transfer pricing rules apply to transactions between related parties (e.g., intra-group transactions). The rules apply when a company or person directly or indirectly owns more than 50% of the share capital or 50% of the voting rights in another company. Transfer pricing documentation must be prepared if a company, alone or jointly with affiliated parties, has more than 250 employees or an annual balance of more than 125 million Danish Krone (DKK 125m) and an annual turnover of more than DKK 250m. Companies that fall below this threshold but have controlled transactions with foreign affiliated entities where no double tax treaty exists between Greenland and the foreign state in question, must also prepare transfer pricing documentation. Whether the company is obliged to submit transfer pricing documentation depends on the level of controlled transactions. The threshold for FY2023 for all transaction types is DKK 500m (2024: DKK 250m). The threshold will be continuously reduced and, from 2030, all companies with controlled transactions, regardless of transaction amount, will be required to submit transfer pricing documentation every year (if they are required to prepare transfer pricing documentation). Failure to submit transfer pricing documentation in due time may result in penalties. Controlled transactions between Greenlandic entities (i.e., a company, branch or permanent establishment) must also be documented. As there are no rules on joint taxation in Greenland, the likelihood of the transactions between Greenlandic entities being exempted from transfer pricing documentation is limited.

In addition, note that a number of legislative amendments concerning the tax rules in Greenland were adopted; these included rules relating to on account taxation, limiting interest deductions/thin capitalization and reducing withholding tax on interest.

Hong Kong

Hong Kong Court rules sub-licensing income is Hong Kong-sourced taxable income

Hong Kong issued a consultation paper on the implementation of Pillar Two GloBE Rules (i.e., Income Inclusion Rule and the Undertaxed Profits Rule ("UTPR")) and the domestic minimum top-up tax in Hong Kong ("HKMTT") starting from fiscal years beginning on or after 1 January 2025. The consultation paper explains the policy considerations and the design features of the GloBE Rules and invites views on administrative framework of the GloBE Rules as well as the design and administration of HKMTT. Hong Kong will closely follow the OECD model rules and related guidance with limited local adaptions as far as practicable. The government also reiterates that Hong Kong will uphold its simple tax regime and has proposed businessfriendly measures to minimize the compliance burden. The related legislation will be submitted in the second half of 2024.

Ireland

The Irish Revenue updated its Tax and Duty Manual – Registration Guidelines for EU Directive 2021/514 ("DAC7"). The manual now offers guidance on how to register for complying with the reporting obligations for platform operators, as well as entailing general guidance on filing a DAC7 return. The relevant reporting tool will start to operate in January 2024.

The DAC7 rules became effective on January 1, 2023, with initial registration required by November 30, 2023. The first reporting deadline is January 31, 2024.

Ireland enacted the Finance Act 2023. The Act, which also implements the EU Minimum Tax Directive, include several direct tax measures that may impact businesses. Key takeaways include:

- Research and Development Tax Credit ("RDTC"): Increase in the rate of the RDTC from 25 percent to 30 percent. In addition, the amount of RDTC that can be refunded as part of the first year RDTC instalment is doubled (i.e. from EUR 25,000 to EUR 50.000). It should be noted that the RDTC was already amended by the Finance Act 2022 with the aim of making it a qualified refundable tax credit for Pillar Two purposes.

- Defensive tax measures: Inclusion of defensive tax measures in respect of outbound payments of interest, royalties and distributions to associated entities resident in jurisdictions on the EU list of non-cooperative jurisdictions or no-tax / zero tax jurisdictions. These new provisions, that will generally apply to payments from April 1, 2024, restrict the operation of certain domestic withholding tax exemptions in respect of in-scope payments, in addition to requiring reporting of such.

- Bank Levy: A revised bank levy will be introduced for 2024 and apply to banks which received financial assistance from Ireland during the banking crisis. It is expected to generate approximately EUR 200 million in revenue and will be revised during 2024 to ensure it remains calibrated for future years.

Italy

Legislation implementing a reform of the domestic rules relating to international taxation was published in the Official Gazette. The reform provides a number of direct tax measures and amendments including:

- implementation of Pillar Two;

- introduction of a new tax residency criteria;

- extension of capital gain exemption regime to EU and EEA companies;

- temporary incentive for certain activities relocated to Italy, featuring a temporary 50 percent exemption for CIT and regional tax purposes;

- amendments to CFC rules to align the computation of the effective tax rate with Pillar Two provisions.

Luxembourg

Pillar 2 minimum taxation rules in Luxembourg voted and gazette.

Malta

The Commissioner for Tax and Customs issued a notification providing for an immediate deduction with respect to expenditure of a capital nature on intellectual property or intellectual property rights against royalty income derived therefrom. The Income Tax Act already provides for a deduction of expenditure of a capital nature on any intellectual property or intellectual property rights over a minimum number of three years. Following the notification by the Commissioner for Tax and Customs, such deduction may, at the option of the taxpayer, be accelerated by claiming the said deduction in full in the year in which the expense has been incurred or in which the intellectual property or intellectual property rights are first used or employed in producing the income. When a taxpayer started claiming a deduction over a minimum of three years in the past and still has unclaimed deductions as at year of assessment 2023, these may be claimed in full in year of assessment 2024.

Netherlands

Legislation implementing into Dutch national law the provisions of the EU Public Country-by-Country Directive ("the Directive") was published in the Official Gazette. Key takeaways from the new legislation include:

- The provisions of the Dutch public CbyC bill are closely aligned with the text of the Directive.
- The bill provides the possibility to apply the “safeguard clause”.
- Companies would be required to publish the reports on their website, as the Netherlands did not grant an exemption from publication where the reports are made available free of charge on the website of the local commercial registry.
- The threshold applicable to branches of non-EU MNEs is a net turnover of EUR 12 million.

The public disclosure rules will apply to financial years starting on or after June 22, 2024.

An updated list of jurisdictions that have a statutory corporate income tax rate of less than 9 percent or are on the EU’s list of non-cooperative jurisdictions was published in the Official Gazette. As part of the update, the United Arab Emirates were removed from the list while Antigua and Barbuda, Belize, Russia and Seychelles were added. The list now includes the following jurisdictions:

American Samoa, Anguilla, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Fiji, Guam, Guernsey, Isle of Man, Jersey, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, U.S. Virgin Islands, Vanuatu.

The update entered into force on January 1, 2024.

The Netherlands enacted the 2024 Tax Plan along with a number of separate legislative (tax) proposals. Key amendments in the field of corporate income tax include:

- Interest deduction limitation rules: amended by removing with effect from January 1, 2025, the EUR 1 million threshold, which is available as an alternative to the EBITDA test. The interest expenses of real estate entities will therefore only be deductible within the limit of 20 percent of the EBITDA, irrespective of the resulting amount.
- Dividend-stripping rules: tightened by requiring a ‘registration date’ (also called a ‘record date’) for dividends on shares traded on a regulated market (e.g. a stock exchange), with the aim to establish who is entitled to a credit, reduction or refund of dividend tax on the legally set record date. Another measure entails changing the division of the burden of proof in favor of the tax authorities. The proposed changes mean that the burden of proof rests on those who invoke a concession (for example, a refund or credit) to convincingly demonstrate that they are the ultimate beneficiary. For the interpretation of the term ‘ultimate beneficiary’ the OECD Model Convention, the corresponding OECD Commentary and the case law of the Court of Justice of the European Union (CJEU) are deemed relevant.
- Mutual funds and comparable foreign entities will no longer be subject to corporate income tax from 2025.

The Dutch tax authorities published a position paper addressing the dividend withholding tax (WHT) treatment with respect to share repurchases, applicable in cases where the relevant double tax treaty (DTT) does not allocate the taxing right over such repurchase to the Netherlands. In the case presented, a company bought back shares from a number of individuals that had substantial shareholdings and were residents in another jurisdiction. Under the Dutch tax law, the amount paid on a repurchase of shares in excess of the average capital paid on such shares is included in the proceeds for dividend tax purposes and subject to WHT. The transaction was deemed a capital gain for the purposes of applying the DTT, which gave rise to the question whether the absence of a taxing right under the DTT should be considered when levying dividend withholding tax. The Dutch tax authorities took the view that the distributing company is not required to withhold dividend tax due to the fact that the taxing right over the repurchase of shares is not allocated to the Netherlands under the Capital gains article of the DTT. Moreover, the position paper specifies that if dividend tax was nevertheless withheld, an objection, or a request for an ex officio reduction can be submitted.

Peru

Peruvian Tax Authority changes official interpretation of capital gains tax on indirect transfers under Peru-Chile DTT.

Poland

The Polish Supreme Administrative Court (“the Court”) rendered its judgment in a case concerning the applicability of the Polish research and development ("R&D") tax incentive. Under Polish law, the incentives apply in cases where the activities are 'carried out directly' by that taxable person. The Court rejected the approach taken by the Polish tax authorities, which denied the applicability of the incentive due to the fact that R&D activities were conducted by a team of developers engaged by the taxpayer's contractor. In the Court's view, the term 'carried out directly' is to be interpreted as prohibiting the use of other (intermediary) entities through which the taxpayer would run its activities. Moreover, the Court noted that in many cases, the very nature of R&D work requires team cooperation involving several or even more entities, including, first and foremost, individuals.

Portugal

The Portuguese Supreme Administrative Court ("the SAC") issued a decision in which it held that Portuguese transfer pricing rules did not allow for a recharacterization of a transaction, but only for a re-quantification. The case concerned a Portuguese company ("PortCo") which transferred a dividend receivable from its subsidiary to an indirect shareholder for the acquisition of other companies. The Portuguese tax authorities ("PTA") recharacterized the transfer of the dividend receivable into a loan, for which PortCo should have received arm's length interest. The Administrative and Tax Court of Porto dismissed the PTA's position in 2021, which led the PTA to appeal to the SAC. The SAC considered that the intra-group financing cannot be compared to the financing of a company by a third-party bank, and that the Portuguese transfer pricing rules did not allow for a recharacterization of a transaction, but only for a re-quantification. As per the SAC, a recharacterization of the transaction would only be possible under the Portuguese general anti-abuse clause, which requires the PTA to prove that the arrangement was put in place for securing a tax advantage. The SAC considered that the PTA did not present evidence allowing the Court to conclude that securing a tax advantage was the purpose of the transaction. As a result of the above, the SAC upheld the position of the taxpayer and dismissed the appeal.

South Korea

On 31 December 2023, Korea enacted the 2024 Tax Reform Bill ("the 2024 Tax Reform") after it was passed by Korea's National Assembly on 21 December 2023. Unless otherwise specified, the 2024 Tax Reform will generally become effective for fiscal years beginning on or after 1 January 2024. Significantly, the supplementary rules for income inclusion (known as Undertaxed Profits Rule ("UTPR")) will be postponed by one year, extending the effective date to 1 January 2025.

Spain

The Spanish Tax Agency has published a list of Spanish companies whose shares are in scope of the financial transaction tax in 2024. This list encompasses 51 companies that have a market capitalization exceeding EUR 1 billion on the reference date (December 1, 2023), and are listed on a regulated Spanish or EU stock market, or on an equivalent stock exchange in a third country. The acquisition of qualifying shares issued by in-scope companies is subject to a financial transaction tax of 0.2 percent of the consideration for the transaction. The levy of the tax is due regardless of the residency of the purchaser.

Sweden

Sweden passes legislation on the implementation of the Global minimum tax.

The Supreme Administrative Court ("HFD") held that a rule denying deductions for interest incurred to finance an intra-group acquisition of shares that was not "commercially justified" was contrary to EU law.

The Ministry of Finance on 22 January 2024 issued a memorandum proposing amendments (to be effective 1 January 2025) to the rules on deducting prior year losses in order to facilitate changes in ownership:

- The deductible amount of prior year losses after a change in ownership would be increased to 300% (from the current 200%) of the cost of acquiring control of a loss-making company.
- An exception to the rule would be introduced if a natural person (or certain other entities) gains direct control over a loss-making company, if they already had indirect control prior to the ownership change.
- The "herd rule" would be simplified to provide the deduction limitation applies when several independent natural persons acquire shares with at least 20% (currently 5%) of all votes in a loss-

making company over three (current five) tax years and collectively acquire shares with more than 50% of all votes.

- The provision regarding capital contributions leading to a change in ownership when the acquirer has received a valuable asset through the capital contribution would be changed to refer only to capital contributions made to a company within the same group as the loss-making company.

USA

US Treasury adds Chile to the list of treaty countries that meet the requirements of IRC Section 1(h)(11), removes Russia and Hungary.

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