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 thirty-ninth edition deals with the new measures published in April 2024 by the Organisation for Economic Co-operation and Development, the European Union and in 31 countries: Algeria, Australia, Colombia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Honduras, Hong Kong, India, Ireland, Italy, Japan, Kazakhstan, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Poland, Portugal, Saudi Arabia, Singapore, Singapore, Slovakia, South Africa, Spain, Sweden, Thailand.

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

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OECD

In December 2023, the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on BEPS (the Inclusive Framework) outlined an updated timeline for the Pillar One Amount A Multilateral Convention (MLC), anticipating completion of the negotiations by March 2024. This would enable members of the Inclusive Framework to sign the MLC by mid-2024. However, the MLC's expected adoption and unveiling have been delayed, keeping the international tax community engaged with the evolving process.

Similarly, while the February release of Amount B guidance earmarked March 2024 for the finalisation of several critical items, including identifying "low-capacity jurisdictions," additional details have yet to emerge. The attention of the tax community remains sharply tuned for these updates, which will inform Inclusive Framework members' implementation of the new annex to the OECD Transfer Pricing Guidelines.

In parallel, the Inclusive Framework is also progressing on developing additional guidance for the Pillar Two Global Anti-Base Erosion (GloBE) model rules, with expectations for a release in the coming weeks. Furthermore, the international tax community is on the lookout for further developments from Paris regarding the mechanism for exchanging GloBE information return information, anticipated to reduce domestic filing requirements.

The Organisation for Economic Co-operation and Development (OECD) released two sets of documents on the minimum standard under Base Erosion and Profit Shifting (BEPS) Action 6 relating to prevention of treaty abuse: (i) the sixth annual peer review report (the Report) on the compliance with the minimum standard by member jurisdictions of the Inclusive Framework on BEPS; and (ii) the revised Peer Review Documents (pdf) on BEPS Action 6 on the modified process to be used to carry out the peer review beginning in 2024. The peer reviews included in the Report were carried out under the peer review methodology as it was revised in April 2021.

The Report reflects information on the implementation of the minimum standard by the 142 jurisdictions that were members of the Inclusive Framework on 31 May 2023. The Report indicates that more than 1,270 bilateral agreements and two multilateral agreements between members of the Inclusive Framework complied with the minimum standard as of 31 May 2023. The Report also indicates that more than 1,120 agreements concluded between members of the Inclusive Framework are covered by the BEPS Multilateral Instrument (MLI). The Report further provides updates on the progress that jurisdictions have made since 2021 and shows that many jurisdictions have followed the recommendations made in the prior peer review, either by formulating a plan for implementation of the minimum standard or by completing the steps for entry into effect of the BEPS MLI, as applicable. The revised Peer Review Documents indicate that, going forward, comprehensive peer reviews will occur every five years rather than annually. Targeted support also will be offered to any Inclusive Framework member jurisdiction that requires assistance in implementing the minimum standard, including during interim years when no comprehensive peer review occurs. The terms of reference for the Action 6 peer review have not been modified.

The International Monetary Fund released a working paper entitled "Deciphering the GloBE in a Low-Tax Jurisdiction." The working paper analyses the interplay between the GloBE model rules and the design of corporate income tax (CIT) systems, offering insights for policymakers, particularly in low-tax jurisdictions. The main question is how low-capacity countries, in particular, should respond to GloBE. One key message of this working paper is that adopting the Qualified Domestic Minimum Top-up Tax (QDMTT) should not be a jurisdiction's default strategic reaction. Instead, ideally, the QDMTT should serve as a backstop measure within a broader tax system overhaul. The working paper challenges the notion that low-tax jurisdictions would inherently benefit from a minimum tax regime, highlighting potential shifts in tax enforcement and competition dynamics for multinational enterprises (MNEs). The working paper recognises the rationale for implementing measures like the QDMTT, Income Inclusion Rule (IIR), and Undertaxed Profit Rule (UTPR) but suggests that zero-tax jurisdictions should take more definitive action. It proposes the

development of tailored rent-tax systems as an alternative to solely relying on GloBE rules, saying such systems could enhance revenue diversification and withstand future changes in the global tax landscape. The working paper cautions that a stand-alone QDMTT would essentially operate as a limited CIT, requiring significant legal and administrative infrastructure without the flexibility of existing CITs. The working paper emphasises the importance of well-designed CIT regimes with robust legal foundations, international tax provisions and anti-avoidance measures as a strategic response for low-tax jurisdictions. Implementing efficient rent tax systems around a 15% rate could potentially attract some foreign profits, positioning these jurisdictions within the lower range of international profit taxation while reducing profit shifting, the working paper indicates.

The OECD announced that Mauritania signed the Multilateral Competent Authority Agreement on the exchange of Country-by-Country (CbC MCAA) reports on 12 February 2024, making it the 101st signatory. The CbC MCAA, which has been open for signature since January 2016, aims to enhance transparency by facilitating the exchange of CbC reports among tax administrations. To activate the agreement, signatories, including Mauritania, must provide the OECD Secretariat with specific notifications at the time of signing or shortly thereafter. These notifications include confirmation of domestic legislation to mandate filing CbC reports, the decision on whether they wish to be listed as nonreciprocal jurisdictions, and a list of jurisdictions with which they intend the agreement to take effect. As of 10 April 2024, Mauritania has not yet completed this required notification process with the OECD.

EU

The European Commission's Directorate-General for Competition (DG COMP) published a policy brief that provides comments on the Foreign Subsidies Regulation (FSR) requirements and first cases the Directorate has addressed in the 100 days since the reporting regime began. The brief provides statistics on the 53 notifications received in that period, as well as clarifications on some recurring issues that have arisen in the context of notifications, such as how to properly categorise relevant advantages provided by non-EU countries, i.e., Foreign Financial Contributions (FFCs), how to report those identified as most likely to distort the internal market, and how to interpret some of the exceptions to the obligation to report certain FFCs. Multinationals are encouraged to perform an in-depth strategic review and develop a compliance roadmap promptly. The FSR gives the European Commission far-reaching powers to potentially delay or block M&A transactions and public procurement bids or impose significant redressive measures. In addition, the FSR gives the Commission wide ex officio investigative powers in all other situations and the same ability to impose redressive measures.

The EU General Affairs Council (acting as the Council of the EU) has approved the recommendations of the EU Code of Conduct Group in relation to the updated list of noncooperative tax jurisdictions. The Council removed the Bahamas, Belize, Seychelles and Turks and Caicos Islands from the list of non-cooperative jurisdictions for tax purposes. With these updates, the EU list now consists of 12 jurisdictions. Why relevant? Being listed may lead to increased withholding taxes on payments to, and non-deductibility of costs incurred in, a listed jurisdiction, CFC issues, or limitations on the participation exemption on shareholder dividends.

Algeria

The Algerian tax authorities have extended the deadline for filing the annual tax declaration to 31 May. Specifically, the General Directorate of taxes has informed all taxpayers that the deadline for filing the annual income declarations (G4 and G11) and the annual personal income declaration (G1) for the fiscal year 2023, along with the attached documents, has been extended until 31 May 2024.

In its efforts to provide more clarity to the taxpayers, the Algerian Ministry of Finance has published two critical orders: the Order of 15 February 2024, determining the content and format of transfer pricing documentation, and the Order of 25 February 2024, aimed at setting the depreciation period for fixed assets, applied to determine taxable income. This Alert highlights key features of both orders.

Australia

The Australian Government released draft legislation on Pillar Two for public consultation alongside an explanatory memorandum and a separate discussion paper on interactions with provisions in Australia's existing income tax law.

The draft legislation includes a Domestic Minimum Top-up Tax (DMTT) and an IIR to apply for fiscal years starting on or after 1 January 2024, as well as a UTPR to apply for fiscal years starting on or after 1 January 2025. The draft legislation is generally in line with the OECD model rules and includes the Transitional Country-by-Country Reporting (CbCR) Safe Harbor as well as a QDMTT Safe Harbor.

Colombia

The Council of State — Colombia's highest tax court — has declined to annul a Colombian tax authority opinion ruling that three double-tax treaties (DTTs) Colombia had executed were not affected by provisions in a later-executed DTT, because most-favoured-nation clauses in the three DTTs were not activated.

Cyprus

The Cyprus Tax Authority released an additional set of Frequently Asked Questions, addressing a number of aspects relating to the application of the transfer pricing legislation effective as of 1 January 2022. The Cyprus Tax Authority addressed 13 new questions. The FAQs highlight that when a company borrows from a related entity or individual to buy shares, the transaction neither requires documentation in the Local File nor inclusion in the Summary Information Table (SIT) if the incurred interest is not eligible as a tax-deductible expense. Another set of questions clarifies that certain items should not be reported in the SIT or the Local File, nor be taken into account for purposes of assessing whether the applicable Local File threshold is exceeded, including:

- The sale of shares or other securities between related persons that fall under the definition of titles;
- Taxable income arising from a qualifying shipping activity between two related persons who are both subject to tonnage tax;
- Balances of a trading nature (trade receivables and trade payables) However, trade receivable balances or other receivable balances (for example, long-outstanding balances) between related persons that are considered to be balances of financing nature should be reported in the SIT or the Local File and be taken into account for assessing whether the Local File threshold is exceeded.

Finally, the FAQs indicate that the deadline for submitting the 2022 SIT is 30 November 2024, and the SIT should be submitted electronically only through the taxpayer's gate Tax For All. It is the taxpayer's responsibility to complete the SIT that must be submitted by the Statutory Auditor or Tax Consultant.

Czech Republic

The Minister of Finance of the Czech Republic launched a public consultation on the draft bill transposing into domestic law the Directive on Administrative Cooperation implementing the OECD rules on reporting for crypto assets (DAC8). The draft bill proposes an effective date from 1 January 2026, with the exception of provisions related to the taxpayer identification number (TIN) validation, which are to enter into effect as of 1 January 2028. The draft bill aims to introduce a new type of automatic exchange of information (AEOI) reported by crypto asset service providers in accordance with the OECD standard and other measures strengthening and modernising existing instruments of international cooperation and extending the exchange of information to e-money products. The draft law also introduces changes to the AEOI notified by financial institutions and rules on the reporting of the TIN. Stakeholders can submit their input until 17 April 2024.

Denmark

Danish Association of Auditors clarifies amendment to UTPR legislation in Denmark.

France

France published on its Official Journal Decree no. 2024-274 of 27 March 2024 (the Decree) introducing rules for the avoidance of double taxation arising from the application of the rules under the controlled foreign companies (CFCs) regime. According to the Decree, French corporate income tax does not apply to dividends and other participation products distributed by CFCs to French shareholders if the proceeds had been previously considered distributed as per the CFC French regime. In addition, the Decree confirms that this exemption is valid irrespective of the French shareholder's profitability. Moreover, the Decree introduces Article 102 YA, according to which French companies that sell shares in a CFC or a foreign permanent establishment are eligible for an exemption on the proceeds of the sale (such as capital gains). This exemption applies to income earned by the

CFC or permanent establishment that has been previously taxed at the shareholder level in line with the CFC rules. The burden of proof lies with the French company, which should prove that the sale proceeds (partially) correspond to the income that was already taxed in France as per the French CFC regime. The Decree is effective as of 30 March 2024, i.e., the day after it was published in the Official Journal.

A French company managing a marina made payments to foreign companies for the use of their berths. French tax authorities considered that such payments were the consideration for services rendered in France and should be subject to withholding tax. One of the foreign companies relied on the reasoning of the Sofina ruling of the ECJ (C575-17) relating to dividends in order to seek a discharge of the withholding tax. In the Sofina case, a breach of the free movement of capital protected under EU law was recognised as French domestic law, and created a difference in treatment between i) foreign companies taxed immediately and definitively through withholding tax when they receive payments and ii) resident companies taxed on these sums according to their recorded net profit or loss. In the case at hand, the Administrative Court of Appeal of Marseille dismissed the claim since it was grounded on the non-conformity to both the freedom of movement and the freedom to provide services, while only the latter was relevant. The Administrative Supreme Court overruled this decision since the claim referred to the relevant freedom. The case is now referred back to the Court of Appeal of Marseille which will have to decide whether the Sofina ruling can be transposed to the freedom to provide services.

Germany

The German Bundesrat (Federal Council) passed the ‘Growth Opportunities Act’ on March 22. The legislative action introduces an investment grant for certain investments aiming to achieve energy savings and makes various adjustments to national and international tax law provisions. This tax insight focuses on the significant changes with respect to the rules limiting the interest deduction and changes to the German minimum taxation rules. Stricter rules for determining the arm’s length prices for financing relationships. The Act limits the deduction of interest expenses for cross-border financing within multinational corporate groups to a group interest rate (i.e., any rate exceeding such rate is considered not to be in line with the arm's length principle). Expanded minimum taxation rules for income tax purposes The deduction of a loss carry forward shall now be unlimited up to a total amount of income of 1M EUR, and beyond that, up to 70% (currently 60%) of the total amount of income exceeding 1M EUR can be deducted. The changed rules apply for four years, i.e., from the assessment period 2024 up to and including 2027. The minimum taxation rules for trade tax purposes are not amended, such that there is no longer an alignment between income / corporate tax and trade tax regarding loss utilisation. The Act includes changes to the rules for determining the arm's length price for intercompany financing relationships. These new rules apply from the 2024 tax assessment period onwards. The Act also expands the minimum taxation rules for income tax purposes by making the deduction of a loss carry forward unlimited for income under 1M EUR, and 70% for income exceeding 1M EUR. This rule applies for assessment periods beginning in 2024 and through 2027. Multinational companies should review and evaluate relevant financing and group structures based on the new rules for interest deduction and minimum taxation.

Greece

On 5 April 2024, Greece published Pillar Two legislation in the Official Gazette. Closely aligned with the EU Minimum Tax Directive, this legislation introduces an IIR and a QDMTT applicable to fiscal years starting on or after 31 December 2023. Furthermore, it incorporates the UTPR, which will come into effect for fiscal years starting on or after 31 December 2024.

Honduras

The Honduran Tax Authority (SAR) issued Agreement SAR-653-2023, establishing the obligation for certain entities to file Country-by Country Reports and corresponding notifications.

Hong Kong

In the 2024-25 Hong Kong Budget, delivered on 28 February 2024, the Financial Secretary proposed the following tax measures aimed at boosting Hong Kong’s economic development, supporting businesses and enhancing its co-operation on international taxation:

1. Allowing tax deductions for expenses incurred in reinstating the condition of leased premises to their original condition from the year of assessment 2024/25;

2. Removing the time limit for claiming industrial building and commercial building allowances from the year of assessment 2024/25;

3. Moving forward the implementation of the 15% global minimum tax and Hong Kong minimum top-up tax on large MNE groups under the OECD's Pillar Two proposal, starting from 2025;

4. Introducing a legislative proposal to implement the patent box tax incentive with a reduced profits tax rate of 5%;

5. Introducing a legislative proposal to implement the inward re-domiciliation regime, which will include amendments to the domestic tax law to address transitional matters e.g., fair deduction for trading stock, bad debts impairment losses on financial assets, depreciation etc;

6. Further enhancing the preferential tax regimes for related funds, single family offices and carried interest, including increasing the types of qualifying transactions and enhancing flexibility in handling incidental transactions;

7. Granting a one-off reduction of 100% of profits tax for the year of assessment 2022/23, subject to a ceiling of HK$3,000 per case;

8. Waiving the stamp duties payable on (i) transfer of real estate investment trust units and (ii) jobbing business of option market-makers;

9. Cancelling Special Stamp Duty, Buyer's Stamp Duty and New Residential Stamp Duty for residential properties with immediate effect.

India

India and Mauritius signed a Protocol amending the double-taxation avoidance agreement signed between India and Mauritius. The Protocol proposes to specifically provide that the intention of the tax treaty is to avoid double taxation without creating opportunities of non-taxation or reduced taxation through tax evasion/tax avoidance (including on account of treaty shopping, etc.).

Ireland

Ireland's Department of Finance has published a Feedback Statement on the introduction of a participation exemption for foreign dividends. The Feedback Statement includes a "Strawman" proposal outlining the key features of a potential approach to the exemption. Stakeholders are invited to provide responses to the Feedback Statement with the consultation period, running to the close of business on 8 May 2024.

The Irish Revenue issued a new Tax & Duty Manual (TDM) Part 33-05-01 on Outbound payments defensive measures. The TDM provides guidance on the defensive measures enacted into Irish law in December 2023 that are aimed at the prevention of double non-taxation. This TDM details the implementation of defensive measures through the application of withholding taxes on payments of interest, royalties and the making of distributions in certain circumstances by Irish resident companies, or Irish branches of non-resident companies. The measures apply to payments made to associated entities that are resident, or situated, in specified territories (i.e., EU noncooperative jurisdictions and no-tax and zero-tax territories). Where a payment or distribution is within the scope of the defensive measures, a 20% withholding tax applies to payments of interest and royalties, while distributions are subject to a 25% withholding tax. Further, exclusions no longer apply from the income tax on the non-Irish tax-resident associated entity that receives the in-scope payment or distribution. The provisions apply to payments and distributions made on or after 1 April 2024, with the exception of arrangements existing on 19 October 2023. Payments or distributions made on or after 1 January 2025 that relate to arrangements in place on or before 19 October 2023 will be within the scope of these new defensive measures.

Italy

The Vice-Ministry of Economics and Finance issued a Ministerial Decree that implements the provisions for the Investment Management Exemption (IME) on 22 February 2024. Additionally. the Italian Revenue Agency provided guidelines regarding the arm's length remuneration of the asset manager for the purpose of the IME on 28 February 2024. The IME regime aims to exclude permanent establishment (PE) status for asset managers involved in purchasing, selling, or negotiating financial instruments on behalf of non-resident investment vehicles. The main features of the Ministerial Decree include the independence requirements for both the foreign investment vehicle and the asset manager. The IME introduces a non-rebuttable legal presumption that considers the asset manager independent from the non-resident investment vehicle if

certain conditions, including subjective and objective requirements, are met. For sake of clarity, the benefits resulting from applying the IME refer exclusively to the activities of the fund under consideration, while they do not apply with reference to the management company of the fund itself until September 2024. The IME provides that a person, even one with discretionary powers, who habitually concludes purchases or sales, negotiates contracts, or contributes through preparatory or ancillary activities to the purchase, sale, or negotiation of financial instruments, including derivatives and shares, on behalf of a non-resident investment vehicle or its subsidiary, will be considered an independent agent for the purpose of the PE definition, provided that certain conditions are met.

Japan

Japan promulgated the country's 2024 Tax Reform Laws and Regulations in the Official Gazette, including amendments to existing IIR legislation. The amendments intend to reflect the OECD Administrative Guidance released in February, July and December 2023, as well as the OECD document regarding the GloBE Information Return (GIR) published in July 2023. Among other items, the amendments include detailed rules for the Transitional CbCR Safe Harbor and GIR and ensure that MNE groups that are not obliged to file the CbCR are still eligible to apply for the Transitional CbCR Safe Harbor. The amendments, along with the Japanese Pillar Two law, which has only an IIR, came into effect for fiscal years starting on or after 1 April 2024.

Kazakhstan

The President of the Republic of Kazakhstan signed the Law on amendments and additions to certain legislative acts of the Republic of Kazakhstan on transfer pricing. In particular, key changes include:

- Expanded coverage of transactions falling under the transfer pricing control;
- New criteria for related parties based on economic dependence;
- Expanded coverage of companies that are required to submit transfer pricing reports;
- Improved provisions on transfer pricing methods;
- Updated rules for tax adjustments.

These changes will come into the force 60 days after the date of their first official publication.

Liechtenstein

The government of Liechtenstein adopted a consultation report and launched a public consultation on amendments to several acts to improve compliance with AEOI and tax cooperation. In 2016, Liechtenstein adopted the common reporting standard (CRS) for AEOI to increase tax transparency. Liechtenstein's adherence to the AEOI standard is monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) through a peer review process. The final review of Liechtenstein's compliance with the standard is anticipated to conclude in 2025 and will result in a country rating. To ensure a favourable rating in line with the Financial Centre Strategy 2025, Liechtenstein has begun drafting legislation to address issues previously raised under the peer reviews. Key amendments in the legal framework revolve around broadening the registration requirements and launching a legal foundation for financial intermediaries to maintain an internal AEOI organisation. Other changes include enhancing controls and information obligations to facilitate more accurate risk assessments using statistical data for more targeted control measures and updating the CbCR Act to allow parent companies based in Liechtenstein to designate other domestic group entities to submit the CbC report. Stakeholders can submit their input until 31 May 2024.

Luxembourg

The Luxembourg tax administration published frequently asked questions (FAQs) clarifying certain questions around disclosures in the financial statements required to benefit from certain transition rules for Pillar Two purposes.

Malta

Malta has published the legal notice (regulations) confirming its election for the delayed application of up to six years of the IIR and UTPR under Article 50 of the EU Minimum Tax Directive (beginning from 31 December 2023). Additionally, the Regulations do not introduce a Qualified Domestic Top-up Tax. To ensure the proper functioning of the Directive, through the above-mentioned legal notice Malta transposed a minimum number of provisions of the Directive to enable taxpayers and other States/

jurisdictions to properly comply with and apply the provisions set out in the Directive. The Regulations also transpose into Maltese legislation the following provisions of the Directive:

- Chapter I (subject matter, scope, definitions and location of Constituent Entity);
- Chapter VIII (Administrative Provisions)
- Chapter IX (Transition Rules [in particular Articles 49 and 51]), and
- Chapter X (Final Provisions [Art. 52(1)]).

The Regulations also place certain filing obligations on Constituent Entities located in Malta that are part of an in-scope MNE group. Constituent Entities located in Malta must notify the Commissioner for Tax and Customs of the identity of the entity that is filing the Top-up Tax information return as well as the jurisdiction in which it is located. Given that Malta has elected for the delayed application of the IIR and UTPR, the Top-up Tax information return cannot be filed in Malta. To ensure the proper functioning of the Directive, Ultimate Parent Entities of in-scope MNE groups that are situated in Malta must nominate a designated filing entity in another Member State or a third country, for the latter entity to be able to file such return.

The Netherlands

The Dutch Government has finalised legislation to implement the European Union Public Country-by-Country Reporting (CbCR) Directive in the Netherlands. In line with the deadlines established in the Directive, the first year of reporting in the Netherlands will be the financial year starting on or after 22 June 2024, and publication must take place within 12 months from the end of the reporting financial year.

New Zealand

New Zealand has enacted legislation to adopt the OECD Global Anti-Base Erosion Pillar Two rules into domestic law. Predominantly, the rules apply to fiscal years beginning on or after 1 January 2025. The New Zealand rules apply to all multinational groups operating in New Zealand with consolidated accounting revenue exceeding €750m in at least two of the preceding four years.

Poland

The Polish government released draft legislation implementing Global Minimum Tax in Poland on 25 April 2024. The draft provisions provide for Qualified Domestic Minimum Top-Up Tax (QDMTT) in addition to the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule. According to the draft law, the relevant Act would be in force from 1 January 2025, with optional application of QDMTT Safe Harbor and IIR as of 1 January 2024.

A draft law amending tax exchange regulations to align with EU Directive 2021/514 (DAC7) was presented on 13 February. This bill, the second attempt to implement the directive, proposes 1 July 2024 as an effective date. DAC7 rules pertain to digital platform operators facilitating connections between sellers and customers for remuneration regarding providing access to certain goods and services. Digital platform operators are required to disclose the Head of the National Tax Administration collective data on reportable sellers and conduct due diligence on active sellers. Information on the following activities (‘relevant activities’) will be reported to the Head of the National Revenue Administration:

- provision of real estate, share in real estate or parts thereof, including adjoining premises;
- provision of personal services, including time- or task-based work performed by a natural person acting for or on behalf of an entity via the platform at a user's request online or physically offline after its execution has been enabled via the platform;
- sale of goods;
- rental of means of transport.

The bill foresees penalties up to PLN 1,000,000 for non-compliance with reporting requirements.

Portugal

The recently adjudicated tax arbitration case (Case 400/2023- T) involved a German bank without a permanent establishment (PE) in Portugal, which received interest from a Portuguese source. The gross interest amount was subject to withholding tax at a flat rate of 15% as provided by the applicable tax treaty. The bank considered that such taxation violates Articles 56 (freedom to provide services) and 63 (free movement of capital) of the TFEU, by providing different treatment depending on whether the interest is earned by resident or non-resident entities. This is because non-resident

entities, as a general rule, are not given the opportunity to deduct expenses related to the interest income and thus are taxed on their gross income, unlike resident entities who are taxed on the net amount of interest. The Portuguese tax authority (PTA) argued that since the burden of proof belongs to the taxpayer, it would only be possible to determine the net amount of the interest subject to taxation if the taxpayer, in an ex officio review, had claimed such costs and proved their deductibility. The tax arbitration court confirmed that taxing non-resident financial institutions on the interest income received without giving them the opportunity to deduct business expenses directly related to the activity in question, whereas such an opportunity is given to resident financial institutions, constitutes unequal and discriminatory treatment. This is prohibited by Article 56 TFEU - thus following the ECJ's ruling on Brisal (Case C-18/15), and previous decisions by the Portuguese Supreme Administrative Court (Cases 0298/13, 0165/13 and 08/21). This case opens the door for non-residents without a PE in Portugal to claim the annulment of withholding tax incurred, at a flat rate, on the gross interest income from a Portuguese source. A procedure can be initiated within and up to four years after the tax has been withheld. Based on this decision, it is possible to obtain a reimbursement of the full amount of tax withheld in Portugal. The novelty lies on the burden of proof, as the tax arbitration court ruled that the PTA should carry out the necessary steps to determine the expenses incurred by the taxpayer, even if that includes information that is in the taxpayer's possession, or by means of exchanging information with the German tax authorities. Moreover, the taxpayer does not bear the burden of proving those costs if the PTA considers.

Saudi Arabia

Subsequent to the publication of the Regional Headquarters Tax Rules in February 2024, the ZATCA published guidelines to clarify the tax and zakat provisions applicable to regional headquarters' activities in Saudi Arabia. The guidelines aim to further explain the provisions set out in the Regional Headquarters Tax Rules and clarify ambiguities in the tax and zakat treatment of regional headquarters' activities.

Singapore

The finance minister, through the 2024 Budget Statement, announced that Singapore will proceed to implement two components of Pillar Two – the Income Inclusion Rule (IIR) and Domestic Top-up Tax (DTT) - for in-scope businesses from their financial years starting on or after 1 January 2025. However, the last component, the undertaxed profits rule (UTPR), will be considered at a later stage, as the present focus will be to ensure a smooth roll-out of IIR and DTT for affected businesses. The IIR will apply to Singapore-parented in-scope MNE groups in respect of the profits of their low-taxed Constituent Entities outside Singapore. The DTT will apply to foreign-headquartered in-scope MNE groups in respect of the profits of their low-taxed Constituent Entities in Singapore. With Pillar Two Top-up Taxes taking effect in home countries of MNEs, any benefit they may derive from tax incentives will be negated as taxes forgone in Singapore will be collected elsewhere. To address this, the finance minister proposed enhancing Singapore’s investment toolkit with a new Refundable Investment Credit (RIC) scheme to complement the many other factors that encourage companies to anchor substantive and high value economic activities in Singapore. The RIC is a tax credit with a refundable cash feature, which may be used to offset corporate tax payable or be refunded in cash within four years from when the company satisfies the conditions for receiving the credit. The RIC is awarded on a case-by-case approval basis by the Economic Development Board (EDB) of Singapore and Enterprise Singapore. The RIC amount will be up to 50% of the expenditure incurred on a qualifying activity during a qualifying period. The rate will depend on the merits of the qualifying activity for which the application is made. Introduction of the RIC will offer another avenue for Singapore to remain competitive and continue to attract quality investments.

Slovak Republic

The Ministry of Finance of the Slovak Republic launched a public consultation on the draft law transposing DAC8 into domestic law. The draft law should be based on the agreed global framework for the automatic exchange of information on crypto assets (CARF) and the revised CRS for information, as approved by the OECD in 2023. Stakeholders were invited to submit their initial input via a public consultation by 5 April 2024. The draft legislation is expected to be published around November 2024, at which time stakeholders will have an additional

opportunity to submit their suggestions and feedback to the draft wording through the legislative procedure. In accordance with DAC8, the draft law will introduce an obligation for crypto asset service providers to report to the tax administration information about crypto assets used for payment and investment purposes, which will be automatically exchanged with the other EU Member and treaty States. The scope of automatic exchange of accounts is also extended to include e-money products and Central Bank Digital Currencies in accordance with the revised CRS. The deadline for reporting the information to the tax administration is in line with the deadline for the automatic exchange of financial account information, and the exchange between the relevant tax authorities will take place within nine months after the end of reporting period. Furthermore, the draft law will contain additions and clarifications resulting from DAC8 in the areas of other types of tax information exchanges, as well as adjustments resulting from the experience of application practice and the peer review process of the Slovak Republic within the OECD in the field of tax transparency and exchange of tax information. The changes resulting from DAC8 will also need to be implemented in Decree no. 446/2015 Coll., which establishes the details of the verification of financial accounts by reporting financial institutions.

South Africa

The 2024 Budget Review documentation, published on 22 February 2024, announced that the Pillar Two rules, in the form of an IIR and DMTT, would enter into force in South Africa for fiscal years starting on or after 1 January 2024. No mention was made of the UTPR. To give effect to this, the Draft Global Minimum Tax Bill and Draft Global Minimum Tax Administration Bill were published on the same day, together with an Explanatory Memorandum. The legislation is expected to be finalised and enacted following a process of public consultation, where amendments may arise. The draft legislation is stated as incorporating the OECD Model Rules, Commentary and Administrative Guidance issued by the OECD, on an ambulatory basis, subject to certain specified departures.

Spain

The Spanish Constitutional Court has declared certain measures introduced by Royal Decree-Law 3/2016 as unconstitutional. These measures, which came into effect 2 December 2016, imposed stricter conditions on large companies concerning the offsetting of tax losses and the application of double taxation deductions. Additionally, the measures mandated that companies reverse any impairment losses on shareholdings that had been deducted in the past. More specifically, the Court found three measures to be unconstitutional:

• The implementation of stricter limits on the offset of net operating losses for large companies. Based on this rule companies with revenues of at least EUR 20 million would be subject to the following limits on the offset of net operating losses: 50% in the case of revenues between EUR 20 million and 60 million and 25%, in the case of revenues of at least EUR 60 million;

• The introduction of an extra limit on the application of deductions for the avoidance of both domestic and international double taxation for large companies. Based on this rule companies with revenues of at least EUR 20 million would be subject to a limit on the use of tax credits of 50% of the gross tax payable per year;

• The requirement for companies to include a minimum annual reversal in their tax base for the years 2016-2020 for previously deducted impairments of shareholdings.

The judgment states that settlements not contested by the time of the judgment, along with self-assessments for which no rectification has been sought, are not subject to review. This means that only companies that have appealed settlements or requested the rectification of self-assessments before the publication of the judgment can benefit from the annulment. Obligations definitively settled by a final judicial or administrative decision as of the ruling date are also excluded from reconsideration. As a result, if you have not taken an action, you cannot benefit from the effects of the judgment. Based on this rule impairment losses on shares that would have been considered tax deductible prior to 2013 and which were pending reversal were to be included, at least in equal parts, in the tax bases for each of the first five tax periods commencing as of 1 January 2016. The Court's decision is based on the premise that these measures exceed the regulatory scope of the Spanish decree. The Court also emphasised that the measures have significant tax implications, as they reduce the compensation of negative tax

bases and limit deductions for double taxation, thus affecting the corporate income tax, which is a fundamental component of the tax system.

Sweden

Sweden released a draft bill for public consultation, aimed at amending the existing Pillar Two legislation. The proposed amendments incorporate provisions from multiple pieces of Administrative Guidance released during 2023. Among other items, the amendments include the addition of anti-arbitrage rules for purposes of the Transitional CbCR Safe Harbor, as well as modifications to the QDMTT calculation to ensure compliance with the QDMTT Safe Harbor rules. The amendments are expected to come into effect on 1 January 2025. However, it is proposed that a reporting entity should have the option to request that all or some of the new provisions apply for tax years starting on or after 31 December 2023.

Thailand

The Thai Revenue Department (TRD) published its public consultation paper as a draft law for implementing the Pillar Two global minimum tax rules for Thailand on 1 March 2024. The draft law closely follows the OECD guidance under the GloBE Pillar Two Model Rules and proposes to include three charging mechanisms: (i) Domestic Top-up Tax (DMTT), (ii) Income Inclusion Rule (IIR), and the (iii) UTPR for Thai taxpayers in scope.

UAE

The UAE Ministry of Finance (MoF) launched a digital public consultation on the Pillar Two rules based on the OECD Model Rules on 15 March 2024. The MoF states that the objective of this consultation is to gather stakeholder views with respect to the potential policy design options to respond to the implementation of the GloBE Rules worldwide. Responses to the public consultation are expected to help the UAE MoF arrive at the policy options that could be adopted as part of the UAE's GloBE Rules, considering aspects such as domestic implementation issues, interactions with the UAE's corporate tax system, and ways to minimise compliance costs. Alongside the consultation questionnaire, a separate Guidance Paper provides details on specific aspects of the GloBE Model Rules. This provides an overview of the GloBE Model rules in accordance with the OECD Model Rules, i.e., scope, GloBE calculation criteria, collection mechanisms, safe harbours, etc. The consultation questionnaire also provides a number of policy options that the UAE may consider as it designs the Pillar Two Rules.

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