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 fortieth edition deals with the new measures published in April 2024 by the Organisation for Economic Co-operation and Development, the European Union and in 17 countries: Algeria, Argentine, Australia, Belgium, Dominican Republic, Denmark, Ghana, Hungary, Italia, Kenya, Netherlands, Pakistan, Poland, Saudi Arabia, Slovakia, Switzerland, United Arab Emirates.

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

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OECD

The OECD released a consolidated version of the Commentary to the Pillar Two global anti-base erosion (GloBE) Model Rules that incorporates into the initial Commentary released in March 2022 all Agreed Administrative Guidance released by the Inclusive Framework between March 2022 and December 2023. The OECD also updated the Pillar Two to align with the available tranches of Administrative Guidance.

EU

The Council of the EU (i.e., the EU Member States) reached political agreement on the Directive setting forth rules that aim to make withholding tax (WHT) procedures in the EU more efficient and secure for investors, financial intermediaries and Member States (the Directive is also referred to as FASTER). The Commission proposed the Directive on 19 June 20231 and had earlier announced it in the Commission's 2020 Action Plan on the Capital Markets Union.

The Directive prescribes the following key actions:

- A common EU digital tax-residence certificate (for individuals and corporate entities) to be issued by the Member State of residence within 14 calendar days after a request is submitted;
- A choice for Member States between "relief at source" procedure and a "quick refund" system, or a combination of both, to be applied to WHT that a Member State can withhold on dividends from publicly traded shares and, where applicable, interest from publicly traded bonds;
- A standardised reporting process that imposes common reporting obligations on certain financial intermediaries in the chain through a national register of certified financial intermediaries.

The European Parliament, which initially provided its nonbinding opinion on 28 February 2024, will need to be reconsulted given the substantial changes that have taken place on the proposal during the negotiations. Given the nonbinding nature of this advice, EU Member States are expected to formally adopt the Directive after the European Parliament has weighed in. EU Member States will then have until 31 December 2028 to transpose the Directive into national legislation, with the rules applicable for fiscal years starting on or after 1 January 2030.

On 14 May 2024, the Economic and Financial Affairs Council (ECOFIN) of the European Union (EU) met to discuss changes to the EU Value Added Tax (VAT) rules as part of the VAT in the digital age (ViDA) initiative, based on a revised proposal for a Council Directive issued on 8 May 2024. However, the Ministers did not reach an agreement on the changes and discussions will continue with a view to reaching a compromise that all 27 Member States can approve. Nonetheless, an agreement could still be achieved under Belgian presidency (which ends on 30 June 2024). It is expected that there could be a compromise proposal in the short term, as only one Member State was opposed to parts of the package related to the Platform Economy.

On May 13, 2024, the European Free Trade Association Court (the Court) issued a judgement in case E-7/23. The case concerns the compatibility of Norway’s interpretation of the final losses exception in the context of cross-border loss relief with the freedom of establishment provisions under the European Economic Area (EEA) Agreement. The judgment also clarifies the case-law arising from the Court’s judgment in case E-15/16. The plaintiff, a parent company based in Norway, aimed to deduct the losses of its Danish subsidiary from its taxable income. However, the Norwegian tax authorities rejected the deduction, arguing that the subsidiary had not ceased its operations and continued to generate income in the subsequent year. Citing the Court’s judgment in case E-15/16, the tax authorities deemed the losses incurred by the subsidiary as not 'final,' thus denying the cross-border loss relief. Upon appeal by the taxpayer, the Borgarting Court of Appeal sought clarifications from the Court. Specifically, it questioned whether the 'final losses' exception applies if a subsidiary receives even minimal income in the fiscal year following the deduction claim, or if a specific assessment is required to determine if the subsidiary's continued income would indeed reduce its losses, including the portion for which the deduction is sought. Under the Norwegian group contribution regime, the compensation of losses between two group companies is allowed only if both the transferor and the recipient are liable to tax in Norway. Nevertheless, as an exception to this rule, cross-border relief of losses is possible in the case of ‘final losses’ incurred by a subsidiary resident in an EEA state. A difference in treatment between resident parent companies based on the location of their subsidiaries constitutes an obstacle to the freedom of establishment if it makes it less attractive for resident companies to establish subsidiaries in other EEA states. On these grounds, settled EFTA Court case-law had previously held that the Norwegian legislation at hand constitutes a restriction on the freedom of establishment. The Court recalled that based on its judgment in E-15/16, the restriction at hand might in principle be justified. However, as an exception, such restriction would be disproportionate and incompatible with the EEA agreement if the loss was ‘final’, and the non-resident subsidiary had exhausted the possibilities available in its state of establishment to utilise it. The Court clarified that losses incurred by a non-resident subsidiary are considered final only if the subsidiary no longer earns any income in its EEA State of residence. As long as the subsidiary continues to receive even minimal income, there remains a chance that the losses incurred may be offset by future profits in the EEA State where it resides. Based on the above, the Court concluded that the final losses exception does not apply if a subsidiary receives even minimal income in the fiscal year following the deduction claim. The Court also held that Norway’s requirement that a formal liquidation process be decided after the end of the fiscal year of the claimed deduction to show that a loss is ‘final’ is compatible with the freedom of establishment provisions under the EEA Agreement.

On February 23, 2024, the Tribunal Judiciaire de Nanterre (the Court) made a referral (C-141/24) to the Court of Justice of the European Union (CJEU). The case concerns the compatibility of the French rules on declaring assets held abroad and related tax consequences with the free movement of capital. French individuals, associations and non-commercial companies domiciled or established in France are required to disclose, together with their income tax return, details of any accounts opened, held, used, or closed abroad. Under the French Tax Procedures Code, if the taxpayer fails to comply with the disclosure obligation at least once in the preceding ten years, tax authorities are allowed to request information or evidence on the origin and manner of acquisition of the asset. If the taxpayer fails to respond or to provide adequate evidence, the assets would be deemed as acquired through donation or succession and taxed at the highest gift tax rate, i.e., 60 percent. The plaintiff was a French individual who, on December 19, 2019, received a request for information from the French tax authorities – in respect of assets held in two bank accounts opened with a Luxembourgish bank during the period 2010 to 2014. Following several exchanges between the taxpayer and the tax authorities, the latter concluded that the taxpayer failed to prove the origin of the assets. Consequently, it assessed gift tax liabilities computed at 60 percent of the value of the assets. The taxpayer challenged the assessment in front of the Court on the grounds that the assets were acquired in Georgia more than 30 years before, period which exceeds the general status of limitation for fraudulent activities under French law. The plaintiff also argued that it was impossible to obtain the banking records due to the political and administrative circumstances of the country during that period. Additionally, the taxpayer expressed doubts as to the compatibility of the rules under dispute with the free movement of capital, citing the CJEU decision in case C-788/19, and asked for a CJEU referral (if needed). The Court noted that the French rules established a statute of limitation for the tax authorities' inquiries that is not connected with the acquisition date of assets held abroad or the years in respect of which the taxation of those amounts was normally due. Whilst the statute of limitation in itself – 10 years, does not appear, by virtue of its duration, to go beyond what is necessary to achieve the intended objectives, it nevertheless allows authorities to inquire about the origin of assets without any time limit. Therefore, the Court raised concerns about the compatibility of the rules at hand with the free movement of capital, as interpreted by the CJEU in case C-788/19, and referred a question regarding this matter to the CJEU.

On February 20, 2024, the First Instance Court of Liège (the Court) referred a question to the CJEU (case C-135/24). The case concerns the local rules implementing the corporate income tax exemption under the Parent-Subsidiary Directive (PSD) for dividends received ('dividends received deduction' or DRD). The PSD was transposed into Belgian domestic law using the inclusion/deduction method – i.e., dividends distributed by the subsidiary are first included in the tax base of the parent company and then deducted from that tax base, provided that certain requirements are met. If the DRD is higher than the company's tax base, the surplus DRD may be carried forward to subsequent periods. In parallel, Belgium has a group contribution regime, whereby profits can be transferred between group companies under strict conditions. In short, if certain requirements are met, Belgian companies that are profit-making are allowed to transfer some or all of their profits to companies in the same group that would have incurred losses during the same tax period. For the company making the transfer, the amount transferred is deductible for corporate income tax purposes. For the company receiving the transfer, the amount transferred is included in the tax base. Nevertheless, the group contribution regime does not allow companies to deduct DRDs for the current year from the intra-group transfer received. The question referred to the CJEU is whether the interaction of the local implementation of the PSD with the Belgian group contribution regime, which results in the inability to offset the DRD against a group contribution received in the same tax year, is allowed under the PSD.

On May 7, 2024, the European Commission (EC) launched a public consultation concerning Directive 2011/16/EU, on administrative cooperation (DAC). This consultation forms part of a comprehensive evaluation aimed at assessing the effectiveness, efficiency, and ongoing relevance of the DAC and its subsequent amendments (DAC2 to DAC6). Additionally, it seeks to assess the Directive's alignment with other policy initiatives and priorities, as well as its contribution to the overall objectives of the European Union. The evaluation covers the functioning of the DAC during the period spanning from 2018 to 2022. A such, this assessment excludes DAC7 and DAC8, since the provisions of the two Directives did not yet apply during this period. A first evaluation of the DAC was conducted in 2018, with results published in 2019. The 2024 consultation is split into two sections: a call for evidence on the impact of exchange of information under DAC and a targeted questionnaire which seeks input from stakeholders on the overall assessment of the DAC: its relevance, its contribution to its objectives and its functioning. In particular with regard to the mandatory disclosure rules under DAC6, the evaluation included an assessment of the hallmarks for the exchange of information on potentially harmful cross-border arrangements.

Algeria

Following the introduction of the investment incentives in 2008, investors benefiting from the incentives regime were required to reinvest, within four years, all of their tax savings related to the investment's setup and exploitation phases in Algeria. The Financial Act for 2016 limited this obligation to reinvesting, within four years, 30% of the tax savings related to the exploitation phase. The Financial Act for 2023 introduced a cap to the obligation to reinvest 30% of the tax savings related to exploitation phase — the cap is 30% of distributable income. Consequently, the amount to be reinvested for a fiscal year should not exceed 30% of the distributable income. The remaining amount could be distributed to the shareholders. The distributable income refers to net income after tax and after deduction of the legal reserves, as defined in Article 722 of the Algerian Commercial Code.

Reinvestment timelines

Circular No. 27/MF/DGI/DIVCEF/LF23, dated on 24 March 2024, indicates that the reinvestment should be conducted within a four-year period; the calculation's starting date is the last day of the fiscal year of the income subject to the preferential regime. The Circular clearly specifies that the reinvestment operations should be conducted on one or several fiscal years without exceeding the four-year timeline. Note that if accumulated tax savings to be reinvested relates to several fiscal years, the four-year timeline is calculated separately for each fiscal year.

Form of reinvestments

The reinvestment should take the following forms:

- Acquisition of tangible or intangible assets in connection with the production of goods and services; acquisitions that are part of activities not eligible for tax savings are not considered reinvestment transactions;
- Acquisition of investment securities

- Acquisition of shares or similar securities to participate in the capital of another company involved in the production of goods, public works, buildings or services, provided that the full amount of the benefit to be reinvested is paid up;

- Participation in the capital of a company with the "start-up" or "incubator" label, subject to the full amount of the benefit to be reinvested being paid up.

Effective date:

The new measures introduced by the Financial Act for 2023 have been in force since 1 January 2023. Consequently, they are applicable for the fiscal year 2023 declared in 2024 tax filings.

Argentina

On 6 May 2024, the Argentine National Executive Branch published in the Official Gazette Decree No. 385/2024, amending Decree No. 99/2019 with regard to the tax on purchases of foreign currency ("Impuesto PAIS," in Spanish). Specifically, the amendments apply the Impuesto PAIS to the remittance of profits and dividends abroad at a rate of 17.5%, under the following circumstances:

- Transfers of dividends with access to the official foreign exchange market through item I03 according to the Monthly Accounting Information System for Foreign Exchange Transactions ("Regimen Informativo Contable Mensual para Operaciones de Cambio," in Spanish) of the Argentine Central Bank (BCRA);

- Purchases of foreign currency for the repatriation of non-residents' portfolio investments generated in the collection of profits and dividends in Argentina since 1 September 2019, inclusive. In this case, the financial entity through which the operation is carried out should act as a collection and settlement agent of the applicable Impuesto PAIS;

- Subscription in Argentine Pesos of "Bonds for the Reconstruction of a Free Argentina" (BOPREAL) issued by the BCRA when they are acquired to: (i) pay profits and dividends and/or (ii) repatriate non-residents' portfolio investments generated in the collection of profits and dividends in Argentina received since 1 September 2019, inclusive.

The tax must be determined on the total amount of the transaction and collected at the time the debit of the subscription is made. The subscriber must pay the tax, but the financial entity through which the subscription is made shall act as collection and settlement agent.

Australia

Australia delivers 2024-25 Federal Budget.

Belgium

On 2 May 2024, the Belgian Parliament approved a bill modernising the existing investment deduction regime. The main objective of the reform is to replace, update and modernise the list of qualifying assets and technologies and corresponding rates. In addition, the bill introduces changes to the Innovation Income Deduction (IID) regime. The enhancement to the regime allows taxpayers to not deduct the full amount of IID from their net taxable basis, but instead, to convert the unutilised amount into a new nonrefundable tax credit available for carry forward. This is particularly relevant for Belgian taxpayers in scope of the recently introduced global minimum tax or Pillar Two rules as the change should enable such companies to more accurately manage their effective tax rate.

On May 2, 2024, the Belgian Parliament adopted the bill on the tax reform of the investment deduction regime with the aim of promoting investments in the green transition. The bill had previously been submitted to the Parliament by the Belgian Government on March 6, 2024.

On May 2, 2024, the Belgian Parliament adopted amendments to the Belgian Law on minimum taxation implementing the EU Minimum Tax Directive (enacted on December 19, 2023). The bill introduces a requirement for mandatory registration in the Belgian Commercial Register for all in-scope groups with Belgian Constituent Entities to receive a unique compliance registration number. Notification for registration is to be submitted within a short timeframe, which was expected to be between May 15, and June 30, 2024. However, the deadline and other details related to the registration requirement will be included in a Royal Decree, which is not yet published and is subject to the publication of the law in the Official Gazette. It is understood that one of the reasons for the short deadline is the advance payment mechanism in the Law on minimum taxation, under which IIR and/or DMTT prepayments need to be made by December 20, 2024, to avoid tax increases. There will be a specific form for the notification for registration, which will require detailed information about the group, the consolidated financial statements, and the ownership structure. With respect to the ownership structure, in-scope groups will have to list group entities and characterise them for GloBE purposes (e.g., Partially Owned Parent Entity, Intermediate Parent Entity). Details of the registration requirement will be provided in a Royal Decree, which is not yet published and is subject to the publication of the law in the Official Gazette. Other changes suggested by the adopted legislation generally correspond to the draft Bill of March 2024.

Dominican Republic

Dominican Republic filing deadline approaches for Country-by-Country Report.

Denmark

The Tax Ministry of Denmark submitted a legislative proposal to amend the Danish Minimum Taxation Act which was adopted earlier in December 2023 to implement the EU Minimum Tax Directive. The purpose of the proposed bill is to ensure that the Danish Minimum Taxation Act fully complies with the OECD Model Rules and the OECD's Administrative Guidelines. Key takeaways include:

- Safe Harbours: the draft includes the permanent Simplified Calculation Safe Harbour for Non-material Constituent Entities. In addition, the draft contains anti-arbitrage rules in relation to the transitional Country-by-Country (CbC) Reporting Safe Harbour that would apply to transactions after December 15, 2022;

- Incorporation of additional Administrative Guidance: the draft bill would incorporate further provisions from the OECD Administrative Guidance (for example, a requirement to refresh the Transition Year and to eliminate or re-state certain tax attributes for local Domestic Minimum Top-up Tax (DMTT) purposes when the GloBE rules become applicable to local Constituent Entities after the entry into force of the local DMTT, clarification on purchase price accounting adjustments in the qualified financial statements);

- Corrections: the draft provides for some amendments to existing provisions with a view to align with the wording of the EU Directive. For example, the draft provides for the application of the Undertaxed Profits Rule (UTPR) for fiscal years starting on or after December 31, 2023, only in cases where the UPE of the group is resident in an EU Member State that has opted for the IIR and UTPR deferral (i.e., Estonia, Latvia, Lithuania, Malta and Slovakia). By contrast, the current law refers to an application of the UTPR from 2024 in respect of low-taxed Constituent Entities that are based in an EU deferring jurisdiction.

Please note that the bill may still be subject to changes in the course of the further legislative process. The proposed bill is expected to enter into force on July 1, 2024.

Ghana

Multinational Enterprises (MNEs) operating in Ghana that meet a particular revenue threshold are required to provide detailed, comprehensive information on their global operations through Country-by-Country Reporting (CbCR).

Hungary

In line with the OECD and European Union (EU) approach to ensure a smooth transition to the Pillar Two, CbCR-based transitional safe harbour rules are available for Hungarian companies. The Hungarian legislation provides the framework for the transitional safe harbour rules, and the details are expected to be published by the Government. MNEs meeting one of the safe harbour tests can be exempt from additional top-up tax liability in the year. Based on the design of the transitional safe harbour rules, qualification in 2024 will affect the applicability of the transitional safe harbour rules in the next two years. There are three different safe harbour tests that can be met in a particular year to qualify for the safe harbour period: (1) the de minimis test, (2) the simplified ETR test and (3) the routine profits test. While MNEs can determine with ease whether they would qualify for the de minimis test, the other two tests should be analysed in detail. Further, failure to qualify based on the simplified ETR test does not necessary mean that the routine profits test cannot be met. While the simplified ETR test is modelling the general Pillar Two logic with a simplified calculation, the routine profits test is based on the substance-based income exclusion rule. Companies with economic substance in a jurisdiction should consider the routine profits test in line with their profit before tax as shown in the CbC Report.

Implications

Because CbC Reports are based on financial accounts, analysing the impact of various GAAP items in time is crucial to secure access to safe harbour. Costs that are recognised for statutory book purposes under local GAAP but disallowed for local corporate income tax purposes may have a beneficial impact. For example, ongoing tax audits resulting in findings — and taxes and penalties payable — during FY24 may have a significant impact on the safe harbour qualification of the MNE. Such expenses include penalties and late payment interest levied by tax authorities, for instance. Both the simplified ETR test and the routine profits test use profit-before-tax figures from the CbC Report. Therefore, findings of the tax authorities regarding cost accounting should be closely monitored, and analysing different scenarios based on any findings that may occur could be helpful. In addition, tax refunds received in current year but concerning previous tax years could have a negative impact for safe harbour test purposes. Hungarian Pillar Two legislation also modified the Hungarian Accounting Act, enabling companies for the first time to recognise DTAs and deferred tax liabilities (DTLs) under Hungarian GAAP in their 2023 year-end financials. Recognition of DTAs and DTLs has a significant impact on Pillar Two calculations and whether the jurisdictional operation could qualify for the transitional safe harbour period. When considering the applicability of the transitional safe harbour rules, the deferred tax balance in the local books or in the consolidated financial statements should be used, but the recognition criteria could vary. Therefore, the recognition criteria of DTAs should be analysed on a case-by-case basis with close cooperation with the statutory auditors. Also, the potential ETR effect should be considered. As the Hungarian statutory income tax rate generally is 9%, DTAs and liabilities may be recognised at 9%. However, the Hungarian legislation — in line with the Pillar Two model rules — provides the opportunity to recast certain DTAs from 9% to 15% for Pillar Two purposes. In analysing DTAs, recognising the DTAs based on the applicability of the recast rule could be helpful, as recasting to 15% has a beneficial ETR effect in the future.

Key takeaway: Several facts and circumstances could have an impact on meeting any of the safe harbour tests — including the simplified ETR and routine profits tests — for transitional safe harbour purposes. Costs recognised for accounting purposes but not recognised for tax purposes could affect the transitional safe harbour tests. Analysing the relevant facts and reviewing strategies available to access a transitional safe harbour is crucial before finalising the FY23 statutory local financials in Hungary.

Italy

The Italian tax authorities issued regulations implementing the optional payment of a 15 percent substitute tax. This option was introduced through Legislative Decree No. 209/2023, published on December 28, 2023, and offers an alternative to the application of controlled foreign company (CFC) rules. Under these rules, controlling individuals can choose to pay a 15 percent substitute tax based on the net income before taxes of the non-resident entity, excluding asset write-offs and risk provisions. This option is available if more than one third of the entity's revenues come from qualifying passive income and if its financial statements are certified by authorised auditors in the foreign jurisdiction. Once elected, this option remains in effect for three fiscal years and cannot be reversed. The regulations provide instructions on how to make this election and its conditions and outline the methodology for calculating the substitute tax amount.

Kenya

The High Court of Kenya issued a ruling in favour of the Kenya Revenue Authority (KRA) affirming the applicability of withholding tax on deemed interest. Deemed interest applies where no interest is charged on loans from non-resident persons. The High Court found that the Tax Appeals Tribunal (TAT) erred in its interpretation of the term "all loans" and deemed interest as per the Income Tax Act (ITA). Further, the High Court held the TAT erred in concluding that there should be a fixed charge, interest, discount or premium for an indebtedness to qualify as a loan. The decision reaffirms the applicability of deemed interest and withholding tax on that deemed interest for interest-free loans provided by non-resident persons.

Netherlands

The Dutch Supreme Court on May 17, 2024, held that a financial instrument issued by a French company (i.e., an obligation reimbursable in shares (ORA)) must be treated as equity (capital), and not debt capital (loan), for corporate income tax purposes. The ORA had a term of 50 years after which it would be converted into ordinary shares of the company. The nominal amount of an ORA was the same as the issue price of a new share in the company at the time the ORA was issued. After a period of 12 years following the issuance of the ORA, the company could each year demand that the ORA be exchanged for ordinary shares in the company. After a period of three months after issuance of the ORA, the holder of the ORA could ask to exchange it for shares in the company, but the ORA holder generally did not have any shareholder rights, such as voting rights. Payment on the ORA was the same as the dividend distributed by the company, with a certain minimum and maximum payment. An ORA holder could only demand payment in cash with respect to the ORA upon voluntary or involuntary liquidation of the company, in which case holders of ORAs would have precedence over all shareholders and holders of participating loans provided to the company.

Pakistan

Pakistan implements amendments to tax appeals system.

Poland

The Polish Ministry of Finance issued a draft bill to implement the OECD's Pillar Two Model Rules as set out under the EU Minimum Tax Directive. With the exception of the date of entry into force, the substantive minimum tax rules would closely follow the text of the EU Directive. Key features include:

- IIR / UTPR: The IIR would apply for financial years starting on or after December 31, 2024. As such, the timeline is deferred by one year compared to the EU Directive requirements unless an irrevocable election is made by the taxpayer to apply the rules from January 1, 2024. The UTPR would generally be applicable one year later, i.e., for financial years starting on or after January 1, 2025. The UTPR top-up tax would be collected as an additional top-up tax;

- DMTT: Similar to the IIR, the DMTT would apply for financial years starting on or after January 1, 2025, unless an irrevocable election is made to apply the DMTT from January 1, 2024. The DMTT would generally be calculated in accordance with the regular GloBE rules. However, the DMTT would need to be imposed with respect to 100 percent of the Top-up Tax calculated for local Constituent Entities (i.e., it cannot be limited to the UPE's ownership percentage in the local Constituent Entities). In line with OECD Guidance on qualified DMTTs, foreign covered taxes (e.g., CFC taxes) that would be allocated to local constituent entities under the regular GloBE rules, would also need to be excluded for Polish DMTT purposes. In addition, the draft requires for the DMTT computations to be based on a local financial accounting standard (Polish accountings standards or IFRS) subject to conditions in line with the OECD July Administrative Guidance. Please note that – subject to EU approval – an election would be available to use the financial accounting standard of the ultimate parent entity for a period of up to 5 years (no longer than for fiscal years that end on or before December 31, 2029);

- Safe Harbours and additional OECD Guidance: The draft incorporates the transitional CbC Reporting Safe Harbour, the QDMTT Safe Harbour, the transitional UTPR Safe Harbour and the Simplified calculation for Non-Material Constituent Entities Safe Harbour, as agreed in the OECD Administrative Guidance. The draft bill further incorporates into the legislative text key elements of the February, July and December Administrative Guidance that adapt the OECD Model Rules / EU Directive provisions;

- Administration: The GloBE Information Return (GIR) would need to be filed within 15 months after the end of the Reporting Fiscal Year (18 months for the transitional year). In addition, self-assessment tax returns would need to be filed within 18 months after the end of the Reporting Fiscal Year (21 months for a transitional year). Penalties for non-compliance with the administration of the GloBE rules would vary depending on the type of violation and may in certain cases reach significant amounts;

- Tax certainty: The draft bill provides for the possibility to apply for advance rulings on the application of the Polish Pillar Two rules, subject to initial fees of PLN 25,000 (approximately EUR 5,850) and final fees of PLN 75,000 (approximately EUR 17,500).

The public consultation on the draft bill will continue until May 17, 2024.

Saudi Arabia

The Saudi tax authorities published guidelines on the new Regional Headquarters (RHQ) program adopted in February 2024.

Key elements covered in the guidance include:

- a general overview of the RHQ program, detailing eligibility requirements, mandatory and optional activities to be performed by RHQs, available incentives, and the registration mechanism;
- a thorough description of the economic substance requirements;
- examples of when incentives apply and when they do not;
- clarifications on tax residency and permanent establishment provisions in relation to the RHQ program, as well as information on how double tax treaties apply to cross-border transactions of RHQ;
- precisions on the application of withholding tax, VAT, Zakat (religious net-worth tax imposed on Saudi and Golf Cooperation Council nationals), transfer pricing, and real estate transaction tax to RHQ;
- tax procedures applicable to RHQs, including tax registration, return filing and tax payment, record keeping requirements, tax assessments as well as penalties for non-compliance.

Slovakia

The Ministry of Finance released guidelines on the content of transfer pricing documentation for 2023. The guidelines envisage three types of transfer pricing documentation:

- Full-scope documentation: Master file and Local file (in which taxpayer must demonstrate that the applied transfer prices are in line with the market conditions);
- Basic documentation: Master file (but not as complex and detailed as the full-scope requirement) and Local file (but not mandatory to demonstrate the market setting of transfer prices);
- Simplified documentation: Information according to a structured form.

Transfer pricing documentation is due within 15 days of receipt of a request from the tax authority or financial directorate. Such a request may be sent no earlier than the first day following the tax return filing due date, which for calendar year taxpayers is April 2, 2024.

Switzerland

Several cantons have changed their tax rates, or launched projects aimed at improving their attractiveness as a location, in response to enactment of the Pillar Two global minimum tax in Switzerland effective 1 January 2024.

- The Canton of Schaffhausen, which had applied a corporate tax rate of less than 13.8% in 2023, introduced a progressive corporate tax rate from 2024. Profits higher than CHF 15 million will be subject to an effective tax rate (including federal taxes) of 15% from 2024;
- The Canton of Geneva raised its effective corporate tax rate (including federal taxes) from 14% to 14.7% and eliminated the municipal business tax in exchange;
- The Canton of Grisons submitted a draft bill for consultation that seeks to reward companies whose activities (1) increase added value created within the canton, (2) strengthen

research, development, and innovation, or (3) improve environmental sustainability;

- The Canton of Zug announced its intention to support companies directly through a system of subsidies with extensive delegation powers afforded to the government council.

UAE

The Ministry of Finance launched a public consultation on the potential introduction of research & development (R&D) tax incentives in the United Arab Emirates (UAE). As outlined on the consultation webpage, the government is contemplating the introduction of an R&D tax incentive under corporate tax law and is seeking input from stakeholders to assist in its design. The consultation comprises two components: a questionnaire and a Guidance Paper detailing internationally recognised R&D principles, including the definition, characteristics, and typical activities of R&D functions.

Key design elements being considered for the potential R&D tax incentive include:

- definition of R&D;
- qualifying businesses, R&D activities and expenditure;
- type(s) and form(s) of incentive;
- how unutilised benefits will be treated; and
- administrative measures.

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