The latest on BEPS and beyond – 2023 and beyond in review

A review of key OECD, EU and country developments in 2023 and a preview of 2024

Building a better working world

Introduction

Our annual BEPS and Beyond in Review offers an overview of the most important corporate income tax developments in the past year. 2023 marks the year when Pillar Two of the BEPS 2.0 project made its way into domestic legislation of numerous jurisdictions, including most Member States of the European Union (EU). Also, the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) released significant Pillar Two Administrative Guidance, including important safe harbors, in advance of the earliest entry into force dates. The Inclusive Framework was less successful with Pillar One, which did not make it over the finish line in 2023, leaving the tax world guessing whether this marks a delay or is a sign that in particular Amount A of Pillar One does not have sufficient support. On Amount B, final guidance was released shortly before this publication, on 19 February 2024.

2023 also showed that the development of international tax policy is impacted by the transformational era we live in, adapting to changing directions when it comes to globalization and the worldwide economy. Differences in perspectives on issues such as Pillar Two led to the Global South jurisdictions pushing for a bigger role of the United Nations (UN) in designing international tax policies. On 22 November 2023, the UN General Assembly's Second Committee approved, by a simple majority, a resolution on inclusive international tax cooperation, laying the foundation for an ad hoc committee charged with formulating the details for a UN tax convention framework. Most OECD and EU jurisdictions voted against or abstained.

While the Global South was looking for a more inclusive global policy making body, the European Commission (the Commission) looked to move beyond implementing the global policies of the Inclusive Framework. With the release of draft Directives with catchy acronyms like FASTER and BEFIT, enhancing the attractiveness of the EU internal market became a focal point. At the same time, proposals entered into force with extra-territorial effects aimed at leveling the playing field for European businesses, such as the Foreign Subsidies Regulation (FSR), applying State aid rules to non-EU subsidies, and the Carbon Border Adjustment Mechanism (CBAM).

While Public Country-by-Country Reporting (CbCR) was the main tax transparency focus during and after the BEPS 1.0. project, tax transparency has become more complex. In 2019 public tax reporting was introduced by the Global Reporting Initiative (GRI) as part of their widely used voluntary standard on Environmental, Social and Governance (ESG) reporting. In the EU, although tax not being one of the specifically identified issues on which reporting is required under the Corporate Sustainability Reporting Directive (CSRD), the open-ended provision indicating that other material ESG topics need to be reported if the double materiality requirement is met suggests that tax reporting is required if taxation is considered a material topic. For the type of reporting required, the rules refer to the GRI. 2023 also marks the year when new tax reporting standards were proposed around the globe and agreed in the financial reporting area, with the aim of providing investors with sufficient information to detect and weigh tax risks and with a focus on reporting on Pillar Two.

Overall, 2023 will be remembered as a year when many countries adopted legislation that reflects a directional change in the international tax environment. In addition, 2023 likely will be remembered as the year when many new developments affecting the future international tax environment originated.


January 2023


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BEPS 2.0

Introduction

The project to address the tax challenges arising from the digitalisation of the economy (the so-called 'BEPS 2.0 project') is comprised of:

- **Pillar One** on the development of new nexus and profit allocation rules to assign more taxing rights to market jurisdictions
- **Pillar Two** on the development of new global minimum tax rules

The first section of this chapter provides an update on Pillar One, including the latest developments. The second section discusses the current status of Pillar Two, and jurisdictional and regional perspectives on this topic, including the EU tax-related activity on Pillar Two. Finally, some remarks on the way ahead for BEPS 2.0. project in 2024.

Pillar One: Amount A and Amount B developments

The OECD conducted public consultations for most elements of Pillar One during 2022. Notably, the OECD's July 2022 Progress Report on Amount A projected the completion of the draft provisions for the Multilateral Convention (MLC) by mid-2023, with the intention of hosting a signing ceremony within the same timeframe and the MLC entering into force in 2024 (see EY Global Tax Alert). Likewise, the consultation document on Amount B released in December 2022 reflected the intention of the OECD to align the timeline for Amount B with that of Amount A, allowing for completion of the technical work by mid-2023 (see EY Global Tax Alert). However, neither 2023 target was met.

Amount A

On 12 July 2023, the OECD released a statement (the July statement), reflecting the agreement by 138 of the then 143 Inclusive Framework members on the remaining components of the BEPS 2.0 project (see EY Global Tax Alert). The July statement described the Inclusive Framework deliverables under development in four areas, including one on the MLC to implement Amount A. Further, it provided an update on the unresolved issues related to Pillar One.

Under the July statement, Inclusive Framework members agreed to extend the standstill agreement on newly enacted digital services taxes (DSTs) and similar measures from 31 December 2023 to 31 December 2024 (or earlier if the MLC to implement Amount A were to enter into force earlier). However, this extension was contingent on a "critical mass" of jurisdictions signing the MLC to implement Amount A before the end of 2023 - a condition that was not ultimately met.

On 11 October 2023, a text of the MLC to implement Amount A was released by the Inclusive Framework. Accompanying the MLC was an explanatory statement with further information on the operation of the provisions (see EY Global Tax Alert). Simultaneously, an Understanding on the Application of Certainty for Amount A of Pillar One was released, containing operational details of the tax certainty framework within Amount A. An additional overview document provided a summary of the MLC, its structure and selected issues.

According to the Inclusive Framework, the text of the MLC reflects the consensus achieved so far among Inclusive Framework members, with different views of a few jurisdictions on specific items noted in footnotes. Concurrently with the release, the United States (US) Department of the Treasury announced a public consultation on these documents, providing stakeholders the opportunity to provide feedback until 11 December 2023.

On 18 December 2023, the Inclusive Framework released an updated timeline for Pillar One, reflecting a commitment to agree on the text of the MLC to implement Amount A by the end of March 2024, with the aim of having a signing ceremony by the end of June 2024 (see EY Global Tax Alert).

Amount B

Unlike Amount A, there are no monetary thresholds for Multinational Enterprises (MNE) Groups to be within the scope of Amount B. As a consequence, the new guidance could affect a large number of businesses.

Updates on Amount B were included in the July statement. The July statement noted that to ensure the appropriateness of the scope and pricing framework, further work would be undertaken on specific aspects, such as the balance between quantitative and qualitative approaches for identifying baseline distribution activities.

On 17 July 2023, the OECD released a series of technical documents relating to the BEPS 2.0 project. Among these documents was a public Consultation Document on Amount B (see EY Global Tax Alert).

The approach for Amount B as included in the Consultation Document, presents a simplified and streamlined approach to prevent disputes and effectively resolve any that arise. In addition to the description of the transactions in scope, it outlines the proposed approach to pricing these transactions, including a pricing matrix, and contains proposals on documentation, transitional rules and tax certainty.

The Inclusive Framework indicated it would finalize the Amount B guidance by December 2023, so that it could be incorporated into the OECD TP Guidelines as an appendix providing practical guidance for baseline distribution functions by January 2024.

On 19 February 2024, the OECD published the final report on Pillar One Amount B (the Report), which is intended to simplify and streamline the application of the arm's-length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries (see EY Global Tax Alert).

Unlike other BEPS 2.0 measures, Pillar One Amount B is not subject to a revenue threshold and can be applicable to many multinational businesses.

Jurisdictions can choose to apply the Amount B approach for in-scope transactions of tested parties in their jurisdictions for fiscal years starting on or after 1 January 2025. Jurisdictions that choose to apply Amount B may choose to apply it by either (i) permitting tested parties resident within their jurisdiction to elect to apply the Amount B approach; or (ii) by requiring the use of the Amount B approach in a prescriptive manner by their tax administration and tested parties resident in the jurisdiction. For jurisdictions that do not elect to apply Amount B, the remainder of the OECD Transfer Pricing Guidelines will be guiding for price setting and dispute resolution.

The Report sets out which distributors and sales agents are in scope and how to price their in-scope intercompany transactions. Distribution of non-tangible goods and services and marketing, trading, or distribution of commodities are excluded from the scope of Amount B.

The approach provides a pricing framework whereby a 3-step process determines a return on sales for in-scope distributors.

Furthermore, the Report contains guidance on documentation (specifically the transfer pricing local file), transitional issues, and tax certainty considerations. The Report is incorporated into the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 (OECD TP Guidelines).

Looking ahead

While the OECD made headway in advancing Amount A and Amount B during 2023, the timeline objectives were not achieved.

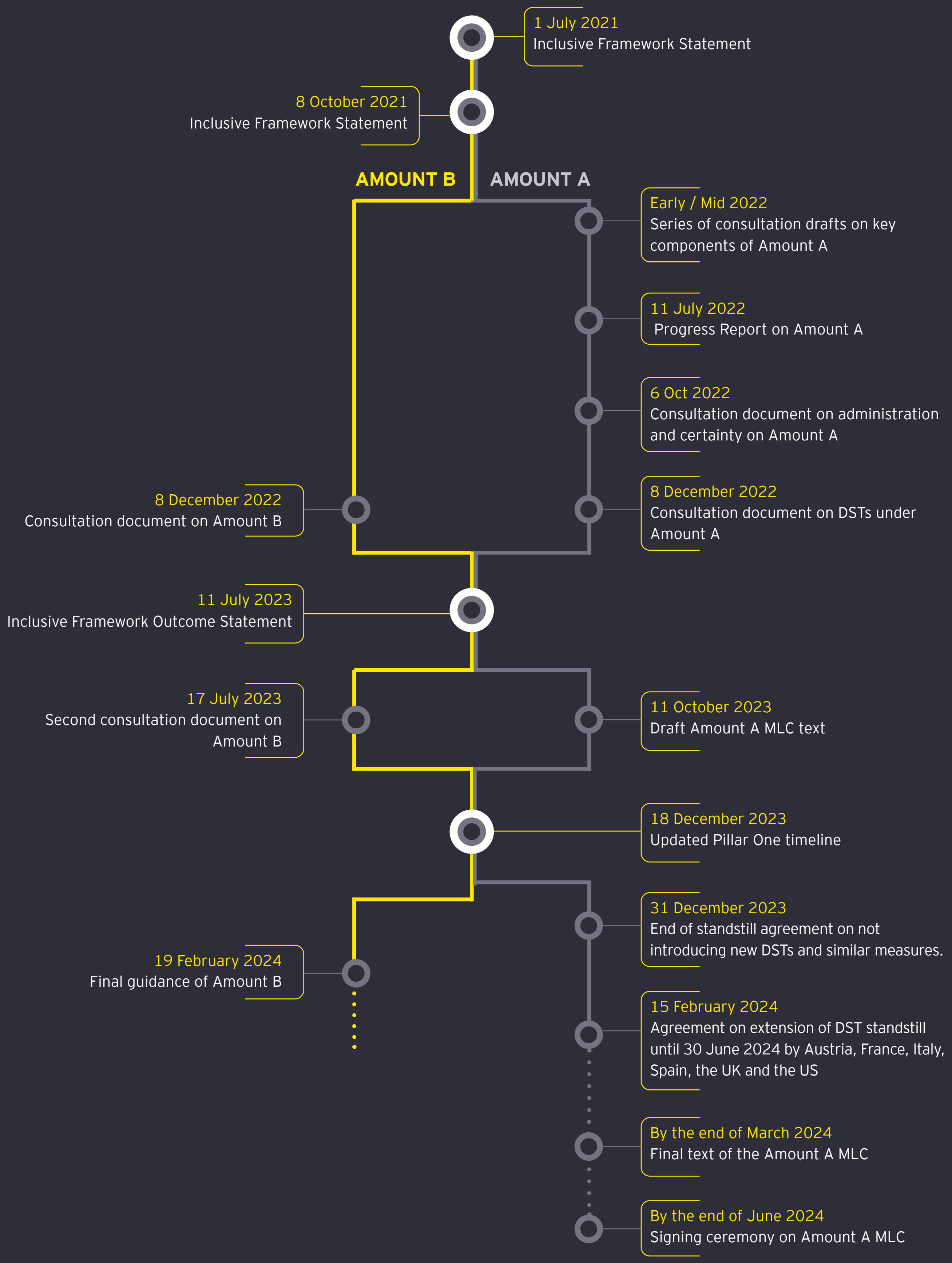
The MLC for Amount A is projected to be completed by March 2024, paving the way for a signing ceremony in June 2024. However, whether a critical mass of jurisdictions will sign the MLC remains uncertain. Moreover, due to the MLC not being ready for signature by the end of 2023, the condition for extension of the standstill agreement on imposing newly enacted DSTs and similar measures beyond 2023 was not met before the end of 2023.

On 15 February 2024, Austria, France, Italy, Spain, the United Kingdom (UK) and the United States (US) released an update to the joint statement on a transitional approach to the treatment of existing digital services taxes (DSTs) and other relevant similar measures during the interim period before new Pillar One rules come into effect. In light of the revised timeline for adoption and signature of Pillar One, the participants in the updated joint statement have agreed to extend the interim period set forth in the October 2021 joint statement until 30 June 2024.

2024 will show whether the MLC will be finalized within the new timeline, whether it will be signed and subsequently ratified by a critical mass of jurisdictions, and what the ramifications will be for the introduction of DSTs and similar measures.

While there has been a shift in the approach to Pillar One in the EU, with the Commission no longer pushing for a Directive, European Commission representatives have indicated that the EU should be a frontrunner in implementing Pillar One. Nevertheless, should Pillar One not enter into effect, the EU is expected to consider alternative paths such as an EU digital levy or a single market levy. Similarly, the African Tax Administration Forum (ATAF) released a statement expressing concern about the delay of taxation measures for digital firms until the MLC comes into force and indicating that ATAF will work closely with the African Union to explore interim alternative solutions. The final report on Pillar One - Amount B was published on 19 February 2024. It gives jurisdictions the option to introduce a simplified and streamlined approach to pricing baseline marketing and distribution activities as of 1 January 2025.

Pillar One Timeline



Pillar Two developments

December 2021 marked a significant turning point in international taxation with the release of the Global Anti-Base Erosion (GloBE) Model Rules, followed in early 2022 by its Commentary, both featuring references to **Agreed Administrative Guidance**; a set of guidelines to be issued by the Inclusive Framework for interpreting and administering the GloBE Rules.

2023 saw the release of the first tranches of Agreed Administrative Guidance, clarifying key technical areas of the GloBE Rules. Additionally, the OECD released further documents during that year, including:

- The GloBE Information Return (GIR) providing a clear indication of the amount of data that businesses will need to report for GloBE purposes and the format for such reporting;
- The Minimum Tax Implementation Handbook providing an overview of the key provisions of the GloBE Model Rules and key considerations for governments when assessing their implementation options; and
- The Subject to Tax Rule (STTR) Model Provision and the Multilateral Instrument (MLI) developed to facilitate its implementation.

Agreed Administrative Guidance

During 2023, three sets of Administrative Guidance on Pillar Two were rolled out by the Inclusive Framework. These provide details relevant to the interpretation and operation of the GloBE Model Rules and associated Commentary. The Administrative Guidance comes in the form of additions and modifications to the Commentary, and the Inclusive Framework Members have agreed to apply the GloBE Rules in line with it – subject to any requirements of domestic law.

On 2 February 2023, the OECD released Administrative Guidance focusing on technical areas such as the scope of the GloBE Rules, treatment of GloBE Income or Loss, and specifics of Adjusted Covered Taxes. In addition, this Administrative Guidance introduces a carryforward mechanism for situations of GloBE Loss or when the top-up tax percentage exceeds 15% and clarifies the transition rules and the treatment of pre-existing deferred tax assets, simplifying the method for recasting these assets (see EY Global Tax Alert).

The second tranche of Administrative Guidance, released on 17 July 2023, covers transferable tax credits and general principles for determining whether a domestic minimum tax is “functionally equivalent” to the GloBE Model Rules, thus constituting a qualified domestic minimum top-up tax (QDMTT). It also provides guidance on the Substance-based Income Exclusion (SBIE) and operational details for MNEs with multi-jurisdictional locations of employees or assets. Moreover, this Administrative Guidance introduces two new safe harbors (i) the QDMTT Safe Harbour; and (ii) the Transitional Undertaxed Profits Rule (UTPR) Safe Harbour (see EY Global Tax Alert).

- The QDMTT Safe Harbour is intended to address compliance costs for MNEs and administrative burdens for tax authorities by reducing the need to make separate calculations for the same Constituent Entity under the GloBE Model Rules and the QDMTT rules. Where an MNE Group qualifies for a QDMTT Safe Harbour, Article 8.2 of the GloBE Model Rules prevents the application of the GloBE Rules in other jurisdictions by deeming the top-up tax payable under the GloBE Rules to be zero.
- Under the UTPR Safe Harbour, the top-up tax for the ultimate parent entity (UPE) jurisdiction is deemed to be zero for fiscal years that run no longer than 12 months and begin on or before 31 December 2025 and end before 31 December 2026, if that jurisdiction has a corporate income tax (CIT) that applies at a rate of at least 20%. As such, this safe harbor will benefit certain UPEs in jurisdictions that do not adopt the QDMTT and that maintain a nominal CIT rate of at least 20%.

The Administrative Guidance published in December 2023 covers issues including purchase price accounting adjustments, some technical aspects of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour, and the allocation of blended Controlled Foreign Company (CFC) taxes. Additionally, this Administrative Guidance introduces an anti-abuse rule relating to the treatment of hybrid arbitrage arrangements under the Transitional CbCR Safe Harbour (see EY Global Tax Alert).

GloBE Information Return

The OECD released the GloBE Information Return on 17 July 2023, following a public consultation initiated in December 2022. The GIR, which includes a standardized template, is vital for MNEs to comply uniformly with the global minimum tax rules across all implementing jurisdictions. It comprises a general section with information about the MNE Group and jurisdiction-specific sections for detailed reporting. The GIR requires comprehensive data on tax calculations, enabling tax authorities to assess risk and evaluate the accuracy of a Constituent Entity’s Top-up Tax liability.

The GIR is informational and separate from the requirement to file and pay taxes. Each jurisdiction will have its own procedures for filing and payment, and these may not necessarily align with the deadlines suggested by the GloBE Model Rules. To facilitate the first years of information collection and reporting, a transitional simplified jurisdictional reporting framework is available for all Fiscal Years beginning on or before 31 December 2028 but not including a Fiscal Year that ends after 30 June 2030, allowing MNE Groups to provide information at a jurisdictional level under certain conditions (see EY Global Tax Alert).

However, the compliance burden for businesses remains significant, as the simplifications with respect to the GIR generally are available only in the initial years of the GloBE Rules entering into force. The potentially limited nature of the CbCR Safe Harbour, which is applicable only for jurisdictions for which an MNE meets its criteria, and the UTPR Safe Harbour, which is only applicable for headquarter jurisdictions that meet the agreed nominal tax rate, mean that MNEs likely will not have the benefit of a safe harbor for some jurisdictions where they have compliance obligations. In addition, while the Guidance on Safe Harbours and Penalty Relief released in December 2022 (see EY Global Tax Alert) alludes to the inclusion of a permanent "**Simplified Calculations Safe Harbour**" within future Administrative Guidance to provide relief for MNEs from some of the complex calculations under the GloBE Rules, such a safe harbor has not yet been released. Therefore, it continues to be essential for businesses to evaluate the potential impact of the global minimum tax rules on their tax positions, as well as their data and compliance processes and systems.

Implementation Handbook

Another Pillar Two document released in 2023 by the Inclusive Framework was the "Minimum Tax Implementation Handbook." This document provides an overview of the key provisions of the global minimum tax and pertinent considerations for jurisdictions when assessing their implementation options. Its aim is to provide tax policy and administration officials, and other stakeholders, with an understanding of the minimum tax rules and the anticipated impact. The Handbook supplements a range of other resources and programs designed to assist jurisdictions in implementing the GloBE Model Rules. In the Handbook, the Inclusive Framework also makes reference to the peer review process with respect to the domestic implementation of the rules and determination of their qualified status. As the rules evolve, it is anticipated that the Handbook will receive periodic updates.

Subject to Tax Rule

In addition to the GloBE Rules, Pillar Two also encompasses the STTR which is intended to help developing jurisdictions, particularly those with lower administrative capacities, protect their tax bases. The STTR, initially introduced in the Pillar Two Blueprint of 2020, is a treaty-based rule. It applies to intragroup payments from source jurisdictions that are subject to nominal tax rates below 9% in the payee's jurisdiction of residence, taking precedence over the application of the GloBE Rules. Thus, the STTR either creates a new limited taxing right or supplements an existing one in the source jurisdiction, operating as an exception to the other tax-treaty rules that typically restrict the source jurisdiction's ability to levy taxes.

In 2023 the OECD made significant progress on the STTR. More specifically, in July 2023, the Inclusive Framework released a document containing the model treaty provision for the STTR, together with a commentary explaining its purpose and operation (see EY Global Tax Alert). Following the release of the STTR model treaty provision, the Inclusive Framework launched the STTR MLI on 3 October 2023 and released the STTR MLI, an explanatory statement to the STTR MLI, a summary overview including a roadmap toward signature, and a frequently asked questions document (see EY Global Tax Alert). This MLI provides a streamlined and efficient method for jurisdictions to integrate the STTR into their existing tax treaties. The Inclusive Framework anticipates that the STTR MLI could become effective from 2025 onwards, but by the end of 2023 no jurisdiction had yet signed it.

Businesses need to prepare for tax compliance under the STTR, which may involve self-assessment and filing obligations in the source jurisdiction. Further, businesses may consider reviewing their intragroup structures to understand how the STTR might apply to their specific situations.

Pillar Two Accounting under IFRS and US GAAP

In May 2023, following the Public Consultation on amendments on International Accounting Standard (IAS) 12 to address the IFRS accounting and reporting aspects of Pillar Two (see EY Global CRS Alert - Proposed IAS 12 amendments), the International Accounting Standards Board (IASB) issued International Tax Reform – Pillar Two Model Rules – Amendments to IAS 12 (the Amendments) (see EY Global CRS Alert - IAS 12 amendments). The Amendments clarify that IAS 12 applies to income taxes arising from tax law enacted or substantively enacted to implement the GloBE Model

Rules published by the OECD, including tax law that implements QDMTTs (collectively, GloBE minimum tax).[1]

The Amendments introduce:

- A mandatory temporary exception to accounting for deferred taxes arising from the jurisdictional implementation of the GloBE Model Rules; and
- Disclosure requirements for affected entities to help users of the financial statements better understand an entity's exposure to GloBE minimum taxes arising from that legislation.

These disclosure requirements apply during two phases: firstly, when GloBE minimum tax legislation is (substantively) enacted but is not yet effective for the entity, and secondly once GloBE minimum tax legislation is effective for the entity. The disclosure entails both qualitative and quantitative information. The qualitative aspects may include information about the impact from GloBE minimum tax legislation on the entity and the primary jurisdictions where potential exposure to such taxes may exist. The quantitative information may include an indication of the proportion of an entity's profits potentially subjected to GloBE minimum taxes, the average effective tax rate applied to such profits, or a projection of changes to the entity's average effective tax rate had such legislation been in effect.

In parallel with these developments, in February 2023, the Financial Accounting Standards Board (FASB) addressed inquiries relating to the US GAAP accounting for GloBE minimum taxes (see EY TechLine). The FASB staff stated the GloBE minimum tax is considered an alternative minimum tax as described in ASC 740. Therefore, incremental tax related to GloBE minimum tax is recognized in the period it arises (i.e., a current tax). Deferred taxes are not recognized for GloBE minimum taxes.

Looking ahead

2024 is expected to bring additional Pillar Two releases. The Inclusive Framework will continue to release Administrative Guidance on an ongoing basis, with guidance on the application of deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes such as CFC Tax Regimes anticipated in the first half of 2024. A revised version of the Commentary incorporating the Administrative Guidance released thus far is also slated for 2024.

Presently under development is the Peer Review mechanism including a framework to assess the equivalence of domestic rules implementing the GloBE Model Rules to a QDMTT, a Qualified income inclusion rule (IIR), and a Qualified UTPR. The Inclusive Framework is also planning to enhance the administrative framework and dispute resolution mechanisms for the GloBE Rules.

It is also worth pointing out that guidance addressing the interaction of Pillar One and Pillar Two has not been provided.

Given these ongoing developments, businesses will need to stay up to date with progress in 2024 as they prepare to comply with the domestic implementation of the GloBE Model Rules globally. Jurisdictions are expected to use the GloBE Model Rules and Commentary, including the Administrative Guidance, when implementing the Pillar Two rules into their domestic law. Therefore, it is essential to keep track of how these agreed documents are reflected in relevant jurisdictions in their domestic Pillar Two legislation and guidelines.

[1]Note, the Amendments provide that (substantively) enacted global minimum taxes based on GloBE Model Rules are, for consolidated group purposes, accounted for as income taxes under IAS 12. The IASB did not conclude on the standalone entity accounting for global minimum taxes. Judgment based on relevant facts and circumstances is necessary to conclude on the standalone entity accounting for global minimum taxes.

Pillar Two Timeline

1 July 2021
Inclusive Framework Statement

8 October 2021
Inclusive Framework Statement

20 December 2021
GloBE Model Rules

14 March 2022
Commentary to the GloBE Model Rules

20 December 2022
Safe harbor guidance and consultation documents on GIR and tax certainty

2 February 2023
First tranche of Administrative Guidance (incl. transitional CbCR Safe Harbour)

17 July 2023
Second tranche of Administrative Guidance (QDMTT and UTPR Safe Harbours), GloBE Information Return and STTR Model Treaty Provision

3 October 2023
STTR MLI

11 October 2023
Minimum Tax Implementation Handbook

18 December 2023
Third tranche of Administrative Guidance

Pillar Two short-term corporate deadlines (calendar year group)

January 2024
- IIR to come into effect
- First year of Pillar Two CbCR Safe Harbour

January 2025
- Second year of Pillar Two CbCR Safe Harbour
- UTPR to come into effect

31 December 2025
Deadline UTPR Safe Harbour

January 2026
Third year of Pillar Two CbCR Safe Harbour

30 June 2026
Filing first GLoBE Information Return

31 December 2026
Deadline transitional CbCR Safe Harbour

Upcoming

First half of 2024
Guidance on the application of deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes

In 2024
- Revised version of the Commentary
- Peer Review process for evaluation of domestic GloBE implementation
- Procedural mechanisms with respect to GloBE Information Return
- Guidance on dispute prevention and dispute resolution mechanisms

In 2025
STTR MLI to become effective

Pillar Two implementation

As of the end of 2022, the EU Minimum Tax Directive on implementation of the GloBE Rules in the EU had been adopted. 2023 saw numerous jurisdictions announcing the intention to introduce Pillar Two rules, particularly the QDMTT. By the end of 2023, a significant number of jurisdictions around the world had enacted Pillar Two legislation, including most of the EU Member States, with other jurisdictions in the process of advancing legislation.

Another distinct category also emerged, featuring jurisdictions that announced or implemented legislation in reaction to Pillar Two, which cannot be precisely classified as Pillar Two legislation. For example, Zimbabwe released a draft bill for the implementation of a form of domestic minimum top up tax (DMTT). Furthermore, Bermuda passed legislation to introduce a CIT system, which was inspired by the Pillar Two rules but which is not a QDMTT (see EY Global Tax Alert).

Pillar Two: Americas activity

United States

The US has been an active participant in the BEPS 2.0 project from the outset. Since the beginning of the Biden Administration in 2021, the Treasury Secretary has been a vocal advocate of robust Pillar Two rules to end what she has referred to as the race to the bottom on CIT rates. While the Biden Administration has included in its annual budgets proposed changes to the US international tax rules to align more closely with the Pillar Two rules, no changes in this area have been enacted.

The existing US international tax system includes the global intangible low-taxed income (GILTI) rules, enacted in 2017 with the Tax Cuts and Jobs Act. The GILTI rules subject US MNEs to US tax on certain low-taxed foreign income of their CFCs but operate differently than the Pillar Two IIR in several respects. In addition, the US in 2022 enacted a new corporate alternative minimum tax (CAMT), which is based on financial statement income and is applied at a 15% rate, but which also operates differently than the Pillar Two rules (see EY Global Tax Alert). For MNEs subject to the US GILTI and CAMT rules, the interaction of these rules with Pillar Two rules implemented by other jurisdictions creates complexity and potential uncertainty. The Administrative Guidance agreed by the Inclusive Framework and released during 2023 addresses some key aspects of this interaction. The Administrative Guidance also provides significant guidance relevant to the interaction between other aspects of the US CIT and the Pillar Two rules, including the Pillar Two treatment of green energy related tax credits that were enacted in the US in 2022.

The 2022 mid-term elections resulted in a very narrow Republican majority in the House of Representatives and a very narrow Democrat majority in the Senate for the 2023-2024 congressional session. During 2023, Republicans in both the House and Senate voiced significant concern about the BEPS 2.0 project and the Biden Administration's role in the Inclusive Framework negotiations. In June 2023, a congressional Joint Committee on Taxation report estimated that the enactment of Pillar Two rules, particularly the QDMTT, by other jurisdictions would cause a significant reduction in US tax revenue (see EY Global Tax Alert).

A bill aimed at countering implementation of the UTPR (and DSTs) by other jurisdictions was introduced in May 2023, with all Republican members of the Ways and Means Committee as co-sponsors. The bill would increase the US tax rate on certain US income and gains of foreign corporations created or organized in (and individuals who are citizens of) jurisdictions that have a tax that meets the bill's definitions of extraterritorial or discriminatory taxes. The tax rate increase would begin at five percentage points and ratchet up by five percentage points a year, with the increase capped at 20 percentage points (see EY Global Tax Alert). This legislation did not advance during 2023.

The 2023 congressional profile of narrow majorities will continue in 2024, and with both presidential and congressional elections in November, the legislative environment in 2024 will be challenging. Given this environment, legislative action on Pillar Two is not considered likely in 2024.

State as of the end of 2023 - Rest of the Americas

In 2023, a considerable level of legislative activity took place across the Americas region, either in the form of legislation involving components of the Pillar Two rules or legislative proposals that provided an indirect reaction to Pillar Two, such as the introduction of a minimum CIT rate.

In August 2023, **Canada's** Department of Finance released for public comment draft legislative proposals relating to, among others, the implementation of a global minimum tax under Pillar Two of the Inclusive Framework. More specifically, the draft Global Minimum Tax Act (GMTA) is intended to implement the IIR and the QDMTT, while the UTPR is expected to be released at a later date, with effect for fiscal years beginning on or after 31 December 2024 (see EY Global Tax Alert). On the other hand, some jurisdictions opted to focus on only specific components of the GloBE Rules. For instance, on 15 December 2023, **Barbados** released draft legislation proposing the introduction of a QDMTT for fiscal years starting on or after 1 January 2024.

As indicated above, there were also jurisdictions that issued legislation as a response to, rather than in alignment with, Pillar Two. For example, on 15 September 2023, **Argentina's** government sent the draft Budget Law 2024 to the Congress recommending the evaluation of the possibility of enacting a 15% corporate minimum tax applicable to MNEs in order to increase tax revenues (see EY Global Tax Alert). Similarly, in December 2023, **Bermuda's** House of Assembly and Senate, respectively, passed final legislation to enact a 15% CIT that would apply to Bermuda businesses that are part of MNE groups with annual revenue of €750m or more (see EY Global Tax Alert). The bill was published in the Official Gazette on 28 December 2023, and the new rules apply as of 1 January 2025, with some provisions entering into force as of 1 January 2024.

However, there also are jurisdictions that are considering both amending their domestic tax regimes and implementing Pillar Two. One of them is the **Bahamas**, which announced in a public consultation released on 17 May 2023 the potential introduction of a CIT system, and also potential Pillar Two implementation, considering the financial incentive to establish a minimum level of taxation for groups in scope of Pillar Two, possibly in the form of a QDMTT (see the Latest on BEPS and Beyond – June 2023).

Moreover, in mid-December 2022, **Colombia** enacted a law including a domestic minimum tax. Despite the Explanatory Statement indicating that the introduction of the domestic minimum tax was inspired by the BEPS 2.0 project, the provisions are not aligned with the Pillar Two model rules (see the Latest on BEPS and Beyond – December 2022). A new tax reform is expected, and Colombia's position toward Pillar Two remains uncertain.

While many jurisdictions have taken concrete steps as regards Pillar Two implementation, others have expressed their intention to introduce the rules. For example, **Chile** announced in a national broadcast on 1 August 2023 its new tax-reform plan, which includes the incorporation of OECD rules on minimum global taxation of MNE groups (see EY Global Tax Alert).

Finally, **Costa Rica, Mexico, Panama** and **Uruguay** are among the governments that are considering introducing Pillar Two related legislation.

Pillar two implementation table

Jurisdiction or institution	Date of latest development	QDMTT	IIR	UTPR	Expected date of entry into effect	EY Global Tax Alert
Bahamas	17 May 2023	Intended	Unclear	Unclear	QDMTT – 1 January 2024	For more details, click here
Barbados	15 December 2023	Draft legislation	Unclear	Unclear	QDMTT – 1 January 2024	For more details, click here
Bermuda	8 August 2023	No	No	No	Unclear	
Canada	4 August 2023	Draft legislation	Draft legislation	Intended	IIR and QDMTT – 31 December 2023 UTPR – 31 December 2024	For more details, click here
United States	9 March 2023	No	No	No	N/A	For more details, click here

Legend:

- "Intended" means there is a clear expectation based on publicly available information that this measure will be enacted by the jurisdiction.
- "No" means there is a clear expectation based on publicly available information that this measure will not be enacted by the jurisdiction within the next 3 years.
- "Unclear" means that either the jurisdiction has not publicly commented on the measure yet, or the jurisdiction has indicated that it will consider the measure in more detail at a later date.
- "Final legislation" means a legislation approved by the relevant legislative bodies. This term includes both, legislation already enacted or legislation that awaits a procedural formality to achieve official enactment.
- "Draft legislation" means a preliminary version of a proposed law that is still under consideration and development.

Note: Developments Tracker cut-off date - As at 16 February 2024

Pillar Two: EMEIA activity

Pillar Two went live in most Member States

Following the adoption of the Minimum Tax Directive on 15 December 2022 (see EY Global Tax Alert), Member States had slightly over a year to transpose the Directive into domestic legislation, as implementation needed to take effect for fiscal years starting on or after 31 December 2023. Considering the short deadline for implementation and the complexity of the rules, the Commission encouraged EU Member States throughout 2023 to expedite the transposition of the Directive into domestic laws and has facilitated "transposition seminars" for all Member States with the aim of consistent implementation.

By the end of 2023, 17 Member States had enacted legislation, with Hungary being the first Member State that formally adopted the rules. Five Member States (Estonia, Latvia, Lithuania, Malta and Slovakia) opted for delayed implementation of the IIR and the UTPR as allowed under Article 50 of the Minimum Tax Directive. Under this Article, Member States in which there are no more than 12 UPEs of in-scope MNE groups can choose not to apply the IIR and UTPR for six consecutive fiscal years beginning from 31 December 2023. However, according to the original wording of the Directive, entities in these jurisdictions would be subject to the UTPR being applied by other EU Member States as of 2024. The subsequent consent by EU Member States to implementation of the UTPR Safe Harbour, which was agreed by the Inclusive Framework in July 2023, also means that EU Member States that have a nominal CIT rate of 20% or more can benefit from this safe harbor. As a consequence, UPEs in the five EU Member States mentioned above will only be subject to the UTPR as of January 2026, assuming the nominal CIT rates in these Member States in the relevant years is 20% or more. At this stage, Lithuania is the only of these five EU Member States with a nominal CIT rate below 20%.

Cyprus, Greece, Poland, Portugal and Spain missed the transposition deadline of 31 December 2023. A key question regarding these Member States is whether they ultimately will enact legislation that has retrospective effect as of 1 January 2024. The delayed implementation in these Member States may also be taken into account by third jurisdictions in their decision-making on timing for the introduction of Pillar Two (see next sub-section on "Pillar Two developments in the rest of the EMEIA region"). On 25 January 2024, the Commission initiated infringement procedures against nine Member States (Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal, and Spain) by sending letters of formal notice. Infringement proceedings were initiated against Cyprus, Greece, Poland, Portugal, and Spain due to lack of implementation of legislation compliant with the Minimum Tax Directive as a whole. In contrast, Estonia, Latvia, Lithuania and Malta, invoked the delay option provided by Article 50 of the Minimum Tax Directive. Accordingly, the infringement procedures against these jurisdictions are related to their lack of enactment of administrative legislation required according to the Directive.

After the adoption of the Directive and while Member States were working on the transposition of the rules, the Inclusive Framework continued issuing new Administrative Guidance including new safe harbors as set out above. On 9 November 2023, the EU Finance Ministers adopted a Council statement (accompanied by a Commission statement) welcoming the progress on the BEPS 2.0. project (see EY Global Tax Alert). These statements specifically address the compatibility of the Inclusive Framework Administrative Guidance with the Minimum Tax Directive. The Council refers to the Administrative Guidance as "clarifications concerning application of Pillar Two", and also mentions explicitly the QDMTT, the UTPR, and CbCR Safe Harbours. Specifically, the EU Finance Ministers have welcomed the EU Commission's view that Administrative Guidance issued by the Inclusive Framework in December 2022, February 2023 and July 2023 is compatible with the Minimum Tax Directive. The statements did not yet anticipate the guidance of 18 December 2023, nor was reference made to future guidance that is under development by the Inclusive Framework. In addition, at the end of 2023, the Commission Services published a document with frequently asked questions on the Directive.

The introduction of the Minimum Tax Directive has already prompted the first legal challenges. Early in 2023 two cases were brought to the General Court of the EU against the Council for annulment of the Minimum Tax Directive. Both cases were ultimately declared inadmissible by the Court, one because it was filed too late and the other because the applicant has not shown that it is part of a limited class of persons within the meaning of CJEU's case law (i.e., that the Directive altered rights acquired by the taxpayer prior to its adoption).

Implementation graph: EU Minimum Tax Directive (Updated as of 31 December 2023)

Member State	Status of implementation	Date of development	QDMTT	IIR	UTPR
Austria	○ ○ ●	20 December 2023	31 December 2023	31 December 2023	31 December 2024
Belgium	○ ○ ●	14 December 2023	31 December 2023	31 December 2023	31 December 2024
Bulgaria	○ ○ ●	12 December 2023	31 December 2023	31 December 2023	31 December 2024
Croatia	○ ○ ●	22 December 2023	31 December 2023	31 December 2023	31 December 2024
Cyprus	○ ● ○	3 October 2023	1 January 2025	31 December 2023	31 December 2024
Czech Republic	○ ○ ●	14 December 2023	31 December 2023	31 December 2023	31 December 2024
Denmark	○ ○ ●	12 December 2023	31 December 2023	31 December 2023	31 December 2024
Estonia	→	13 December 2023	Not in 2024	Not in 2024	Not in 2024
Finland	○ ○ ●	28 December 2023	31 December 2023	31 December 2023	31 December 2024
France	○ ○ ●	21 December 2023	31 December 2023	31 December 2023	31 December 2024
Germany	○ ○ ●	15 December 2023	31 December 2023	31 December 2023	31 December 2024
Greece	● ○ ○	No developments	No developments	No developments	No developments
Hungary	○ ○ ●	30 November 2023	31 December 2023	31 December 2023	31 December 2024
Ireland	○ ○ ●	12 December 2023	31 December 2023	31 December 2023	31 December 2024
Italy	○ ○ ●	19 December 2023	31 December 2023	31 December 2023	31 December 2024
Latvia	→	8 December 2023	Not for the moment	31 December 2029	31 December 2029
Lithuania	→	27 October 2023	1 January 2025	31 December 2029	31 December 2029
Luxembourg	○ ○ ●	22 December 2023	31 December 2023	31 December 2023	31 December 2024
Malta	→	30 October 2023	Not in 2024	Unclear	Unclear
Netherlands	○ ○ ●	27 December 2023	31 December 2023	31 December 2023	31 December 2024
Poland	● ○ ○	No developments	No developments	No developments	No developments
Portugal	● ○ ○	No developments	No developments	No developments	No developments
Romania	○ ○ ●	5 December 2023	31 December 2023	31 December 2023	31 December 2024
Slovakia	→	4 December 2023	31 December 2023	31 December 2029	31 December 2029
Slovenia	○ ○ ●	13 December 2023	31 December 2023	31 December 2023	31 December 2024
Spain	○ ● ○	19 December 2023	Unclear	31 December 2023	31 December 2024
Sweden	○ ○ ●	13 December 2023	31 December 2023	31 December 2023	31 December 2024

Pillar Two developments in the rest of the EMEIA region

In addition to the developments in EU Member States outlined above, other jurisdictions within the EMEIA region have made progress in implementing Pillar Two. In July 2023, the **United Kingdom (UK)** implemented legislation introducing a QDMTT and an IIR as of 31 December 2023 (see EY Global Tax Alert), and confirmed in the Autumn Statement 2023, its commitment to introducing the UTPR with effect no earlier than for accounting periods beginning on or after 31 December 2024.

Certain jurisdictions have opted for deferring decision-making concerning the implementation of specific facets of the GloBE Rules to a future date. The most prominent example is **Switzerland**, which on 22 December 2023, officially announced the implementation of only the QDMTT beginning on 1 January 2024, following the favorable vote on full Pillar Two introduction (QDMTT, IIR and UTPR) of Swiss citizens on 18 June 2023. Despite initial intentions to also implement the IIR and the UTPR, the government has currently decided to monitor international developments in this area to determine in due time if and when to introduce these rules, ensuring prioritization of Switzerland's interests (see EY Global Tax Alert).

Several other countries decided to defer implementation of some of the GloBE Rules as well. For example, on 12 January 2024, **Norway** enacted the Supplementary Tax Act implementing the IIR and the QDMTT as of 2024, but indicated its intention to defer UTPR implementation due to the ongoing processes at the OECD in a press release issued on 24 November 2023 (see EY Local Tax Alert).

Another case in point is **Liechtenstein**, which issued a law on the minimum taxation of large corporate groups (GloBE Law), published on the Official Gazette of 22 December 2023, providing for the IIR and the QDMTT to enter into force on 1 January 2024, but leaving the

UTPR's applicability subject to an ordinance to be issued by the government for years beginning on or after 1 January 2025. On 22 July 2022, Mauritius published a bill introducing a QDMTT. The Bill was assented by the President on 2 August 2022; however, the provisions pertaining to the QDMTT will come into effect on a date to be fixed by Proclamation.

Some jurisdictions still need to translate their intention to implement the GloBE Rules into concrete legislative action. For example, the **Channel Islands** (Guernsey, the Isle of Man, and Jersey) agreed on 19 May 2023 on a joint approach to introduce the minimum tax rules, specifically the IIR and a domestic minimum tax to provide for a 15% effective tax rate starting from 2025. **Qatar** enacted on 2 February 2023 a law incorporating an initial provision for the introduction of Pillar Two (see EY Global Tax Alert), but detailed rules have not been released yet. **Gibraltar** announced in December 2023 its plan to introduce a QDMTT compliant with Pillar Two requirements. (see EY Global Tax Alert).

In the same vein, **South Africa**'s Treasury released, on 22 February 2023, the 2023 Budget Review, which confirmed that "during the 2023 legislative cycle, government will publish a draft position on the implementation of Pillar Two for public comment and draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill"; however, to date, no further action has been taken. On 24 November 2023, the **United Arab Emirates** (UAE) released a Decree to implement Pillar Two into domestic legislation including a placeholder for the introduction of a top-up tax; however, the Ministry of Finance has clarified that Pillar Two will not apply in the UAE in 2024 and announced the release of a public consultation in the first quarter of 2024.

The Pillar Two implementation activity taking place in the African continent has been relatively limited. This coincides with the viewpoint of the ATAF that very few, if any, African nations will benefit from the implementation of an IIR or a UTPR. ATAF has contributed to discussions on Pillar Two since the beginning of the BEPS 2.0 project, advocating the priority of the UTPR over the IIR, as well as the precedence of the STTR over the GloBE Rules. While ATAF's stance on the latter issue prevailed, its argument for the former did not. In 2023, ATAF released an approach for drafting QDMTT legislation, which aims to assist African jurisdictions in the implementation of a QDMTT in their domestic framework and is expected to be updated on an ongoing basis to align with future Administrative Guidance. Given these developments, African jurisdictions that decide to take action on Pillar Two implementation may well primarily opt for the introduction of a QDMTT only.

Pillar Two implementation table

Jurisdiction or institution	Date of latest development	QDMTT	IIR	UTPR	Expected date of entry into effect	EY Global Tax Alert
Gibraltar	19 December 2023	Intended	Intended	Intended	QDMTT - 31 December 2023	For more details, click here
Guernsey	19 May 2023	Intended	Intended	Unclear	IIR and QDMTT - From 1 January 2025	For more details, click here
Isle of Man	19 May 2023	Intended	Intended	Unclear	IIR and QDMTT - From 1 January 2025	For more details, click here
Jersey	19 May 2023	Intended	Intended	Unclear	IIR and DMTT - From 1 January 2025	For more details, click here
Liechtenstein	22 December 2023	Final legislation	Final legislation	Final legislation	IIR and DMTT - 1 January 2024 UTPR - 1 January 2025	For more details, click here
Norway	12 January 2024	Final legislation	Final legislation	Intended	IIR and QDMTT - 31 December 2023	
Qatar	2 February 2023	Unclear	Unclear	Unclear	Unclear	For more details, click here
South Africa	22 February 2023	Unclear	Unclear	Unclear	1 January 2025	For more details, click here
Switzerland	22 December 2023	Final legislation	Draft legislation	Draft legislation	QDMTT - 1 January 2024 IIR and UTPR - 1 January 2025	For more details, click here
United Arab Emirates	24 November 2023	Intended	Intended	Intended	2025	For more details, click here
United Kingdom	22 November 2023	Final legislation	Final legislation	Draft legislation	IIR and QDMTT - 31 December 2023 UTPR - 31 December 2024	For more details, click here

For details of the legislation status please consider the ledger on page 15

Pillar Two: Asia Pacific activity

2023 was a year in which several Asia Pacific jurisdictions took action to implement legislation to enact Pillar Two. For example, Japan, Korea and Vietnam have legislated to implement some parts of Pillar Two in 2024. **Japan** will apply an IIR from 1 April 2024 (see EY Global Tax Alert). **Korea** has its IIR in effect from 1 January 2024 (see EY Global Tax Alert), while **Vietnam** activated an IIR and a QDMTT from 1 January 2024 (see EY Global Tax Alert). **Malaysia** enacted legislation to implement Pillar Two, but chose to wait until 1 January 2025 to activate its IIR and QDMTT (see the Latest on BEPS and Beyond – November 2023).

Other jurisdictions in the Asia Pacific region have also taken steps in terms of confirming their commitment to implementing Pillar Two. For example, **New Zealand** has developed draft legislation to implement an IIR and a domestic IIR in 2024, with the UTPR to come into effect in 2025. However, New Zealand has not enacted this legislation yet (see EY Global Tax Alert). **Australia** has publicly announced its intention to implement an IIR and a QDMTT in 2024, with the UTPR to be implemented in 2025 (see EY Global Tax Alert). No legislation has been released in Australia yet.

Singapore (see EY Global Tax Alert), **Hong Kong** (see EY Global Tax Alert) and **Thailand** (see EY Global Tax Alert) have all made public statements affirming their intention to align their domestic law with Pillar Two rules but confirming that they will not implement Pillar Two before 2025. They have all confirmed their intention to implement domestic minimum tax regimes, but only Hong Kong has indicated an intention to apply the IIR.

Other jurisdictions continue to study the Pillar Two rules and to consider their potential impact in relation to their current tax systems and tax incentive regimes. In this regard, **Taiwan** (see the Latest on BEPS and Beyond - September 2023) and the **Philippines** have made no commitments in terms of timing for adopting Pillar Two, but continue to assess their options. **China** and **India** have also not made any public comments in terms of the rules to adopt, nor the timing to implement.

The OECD and its global development partners, along with local development organizations, have been actively engaging with developing Asia Pacific jurisdictions to increase the understanding of Pillar Two. These partnering organizations are conducting consultations and meetings with both members and non-members of the Inclusive Framework to share experiences in establishing Pillar Two legislation and concerns about the impact of Pillar Two on tax incentive regimes. This is a major area of focus for many Asia Pacific jurisdictions that have extensive tax incentive regimes developed to attract MNEs' foreign direct investment. In this regard, many Asia Pacific jurisdictions continue to consider whether to retain their existing tax incentive regimes or develop new ones that are compliant with the GloBE Model Rules and Commentary. For example, Vietnam's Ministry of Planning and Investment has released a draft decree on an Investment Support Fund to counter the impacts of the global minimum tax. This draft decree is outlined in Resolution 110/2023/QH15, referring to. the establishment, management, and implementation of a fund that is developed from taxes collected through Pillar Two top-up taxes. The purpose of this fund is to stabilize foreign direct investment and to continue to attract MNE investment in Vietnam (see EY Global Tax Alert).

Pillar Two implementation table

Jurisdiction or institution	Date of latest development	QDMTT	IIR	UTPR	Expected date of entry into effect	EY Global Tax Alert
Australia	9 May 2023	Intended	Intended	Intended	IIR and QDMTT - 1 January 2024 UTPR - 1 January 2025	For more details, click here
Hong Kong	21 December 2023	Intended	Intended	Intended	1 January 2025	For more details, click here
Japan	21 September 2023	Intended	Final legislation	Intended	IIR - 1 April 2024 QDMTT and UTPR - Unclear	For more details, click here
Malaysia	28 November 2023	Final legislation	Final legislation	Unclear	IIR and QDMTT - 1 January 2025	For more details, click here
New Zealand	6 December 2023	No	Draft legislation	Draft legislation	Unclear	For more details, click here
Singapore	14 February 2023	Intended	Intended	Intended	1 January 2025	For more details, click here
South Korea	31 December 2023	Unclear	Final legislation	Final legislation	IIR - 1 January 2024 UTPR - 1 January 2025	For more details, click here
Thailand	7 March 2023	Unclear	Unclear	Unclear	1 January 2025	For more details, click here
Vietnam	29 November 2023	Final legislation	Final legislation	Intended	IIR and QDMTT - 1 January 2024	For more details, click here

For details of the legislation status please consider the ledger on page 15

Closing reflections on BEPS 2.0 and looking forward to 2024

Even with Pillar One and Pillar Two in very different stages at the start of the year, 2024 is expected to be a significant year for both.

Pillar One

The target dates for finalizing the Amount A MLC and holding a signing ceremony have been extended to March 2024 and June 2024, respectively. There are technical aspects of Amount A to be resolved before the MLC can be signed. There also are political hurdles to be cleared for the MLC to enter into force. These challenges mean that the path forward for Amount A is complicated and uncertain.

Already the difficulties in advancing Amount A have changed the landscape for DSTs. Because the MLC was not ready for signature in 2023, the conditions that had been set for an extension of the standstill agreement on imposition of new DSTs through 2024 could not be met and the standstill expired at the end of 2023. Canada has DST legislation pending, New Zealand has released draft legislation and other countries are considering new DSTs.

With respect to Amount B of Pillar One, the release of a final report and incorporation into the OECD Transfer Pricing Guidelines was targeted for December 2023 and January 2024, respectively. While those dates were not met, the Amount B report was released on 19 February 2024 and incorporated in the Guidelines, with Amount B to apply from 1 January 2025 (EY Global Tax Alert).

It will be important to monitor activity in 2024 with respect to all these aspects of Pillar One. Amount B affects any MNE with covered marketing and distribution activity and jurisdictions will take different approaches to its application, which creates a significant risk of inconsistencies in the treatment of the same transaction. If Amount A does not advance, jurisdictions may pursue aspects of its approach to reallocation of taxing rights over global business income in an uncoordinated way and without regard to scope restrictions of Amount A. Faltering of Amount A also could lead to a proliferation of new and possibly quite varied DSTs. A common thread to all these potential developments is the risk of multilateral disputes and a future global tax landscape characterized by heightened uncertainty and controversy.

Pillar Two

Substantial activity is expected in 2024 on Pillar Two, both at the jurisdictional level and the global level. Jurisdictions that enacted Pillar Two rules in 2023 have additional work to do in terms of fleshing out the details, establishing the administrative procedures for compliance, and incorporating the Administrative Guidance that has been agreed in the Inclusive Framework. Those jurisdictions that have enacted only some elements of the Pillar Two rules may take further action to enact other elements. And there are a significant number of jurisdictions that have not yet enacted Pillar Two legislation but have indicated that they intend to do so in 2024 or beyond.

At the same time, the global negotiations in the Inclusive Framework will continue. Additional Administrative Guidance is expected in 2024, as is further guidance on the administrative processes and information exchange mechanisms for the GloBE Information Return. The planned peer review process will be activated to evaluate jurisdictions' implemented Pillar Two legislation; given the implications of a determination regarding qualified status, this work is important and urgent. It is expected that the Inclusive Framework will continue to consider approaches for dispute prevention and resolution, although the available avenues for such mechanisms are limited. In addition, these developments in the Inclusive Framework are likely to require responsive action at the jurisdictional level.

MNEs will need to closely watch this Pillar Two activity in 2024 and beyond, as they face potential effects from the Pillar Two rules of every jurisdiction that is part of their business footprint. Moreover, the Pillar Two landscape is likely to be very different in 2025, with UTPRs coming into effect and additional jurisdictions implementing Pillar Two, so as companies prepare for the impact of Pillar Two in 2024, they also need to anticipate the further changes ahead for 2025.

EU tax matters: Overview of key direct tax and transparency developments

Introduction

The EU functions via a unique system of independent, interconnected institutions, each with a defined role that contributes to the overall functioning and development of the EU. The Commission, one of these institutions, plays a central role as the executive body with the authority to propose legislative actions. Each term of the Commission lasts five years, with each new Commission outlining its agenda at the beginning of its term.

The legislative bodies comprise the Council of the EU (the Council), representing Member States, and the European Parliament (the EP). The type of decision-making and involvement of the legislative bodies differ based on the matter at hand. For direct tax issues, the Council is the sole legislative body and decisions need to be taken by unanimity. The EP merely has an advisory role in direct tax matters.

EP elections will be held on 6-9 June 2024, which will also lead to the appointment of a new Commission later in the year. In terms of impact on the tax agenda, proposals that were already announced by the current Commission are expected to be published in 2024, but an election year would typically not produce major legislative action because the outgoing EP has little time to be consulted on new proposals. 2024 will, therefore, mainly be a year in which the Belgian and Hungarian Presidencies may explore which existing proposals can be progressed. The Belgian Presidency, for the first semester of 2024, is expected to make progress on at least some of the files currently under negotiation.

For the Commission, 2023 was a year for advancing its tax agenda by issuing new proposals or finalizing proposals pending from 2022. By the end of the fourth and penultimate year of its mandate, the Von der Leyen Commission managed to publish most of its planned tax proposals, including a draft Directive for faster and safer relief of excess withholding taxes (FASTER) and a framework for business income taxation in Europe (BEFIT). However, EU Member States, which need to unanimously adopt tax proposals, have not advanced the initiatives as much as the Commission had hoped. On the one hand, proposals addressing the use of shell entities for tax purposes have met resistance from some EU Member States. On the other hand, some proposals to facilitate the EU's green transition have advanced well, such as the CBAM Regulation, while a revision of the Energy Tax Directive is still pending.

The following section provides an overview of key EU tax developments in 2023. The EU not only pursued the implementation of internationally agreed standards, but also initiated EU-specific proposals independent of international developments. The proactive stance of the EU has led to a growing recognition that EU decision-making often affects global tax policy as new EU initiatives increasingly have external effects.

EU tax transparency landscape

Public CbCR implementation in the EU progresses with deviations by EU Member States that impact non-EU MNEs

Public tax transparency typically has three different angles: guidance that specifically refers to country-by-country information on corporate tax issues or other specific tax disclosures, reporting linked to ESG standards and financial reporting. This section focuses on EU-related developments on public tax reporting and specifically on EU Public CbCR, which is part of corporate tax reporting. Another EU development is the CSRD, which applies for the first time for financial years in 2024. The CSRD and other topics linked to public tax transparency are covered in the "Other Key Developments" section.

2023 marked a significant year for the introduction of the public CbCR rules as the public CbCR Directive had set the deadline for transposition of the rules as 22 June 2023. Romania already implemented these rules in 2022 and made them effective as of January 2023, opting to accelerate their application ahead of the timeline stipulated by the Directive (i.e., for financial years starting on or after 22 June 2024). However, the majority of EU Member States failed to meet the enactment deadline of 22 June 2023.

The Directive was adopted at the end of 2021 following years of negotiation (see EY Global Tax Alert). The rules require both EU-based MNEs and non-EU based MNEs doing business in the EU through a branch or subsidiary with total consolidated revenue of more than €750m in each of the last two consecutive financial years to disclose publicly the income taxes paid and other tax-related information. Initially adopted to require country-by-country information for the 27 EU Member States, it is expected that per jurisdiction information will also need to be disclosed for all European Economic Area (EEA) countries (27 EU Member States and Iceland, Liechtenstein and Norway). In addition, per-country information will need to be published by in-scope MNE groups for jurisdictions included in Annex I and Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes. For all other jurisdictions, it is sufficient for aggregated data to be disclosed.

As of 22 June 2023, 17 EU Member States had missed the implementation deadline, which subsequently led to the Commission initiating infringement procedures against them. Notable disparities in implementation emerged among the EU Member States that did take action. The Directive grants EU Member States several choices with respect to domestic implementation, while it sets a minimum standard. Some EU Member States have gone beyond what is required and, in some cases, even deviate from the Directive where this does not appear to be permissible. For example, Spain (see EY Global Tax Alert) and Hungary implemented a shorter publication deadline, while Romania (see EY Global Tax Alert) and Croatia chose to apply the rules as of an earlier date. In addition, Hungary and Slovakia chose not to introduce the safeguard clause that allows for a partial reporting delay. Moreover, some jurisdictions like Germany and Poland have introduced significant penalties for non-compliance.

The adoption of alternative options and deviations has a particular impact on non-EU headquartered groups, which generally have reporting obligations in each EU Member State where they have a qualifying presence. To reduce administrative compliance, the Directive gives the option to non-EU headquartered groups to choose to publish the report on their website outside the EU and designate only one of the EU subsidiaries to file the report in the EU Member State where it is located. However, the application and actual use of this option is unclear in cases where EU Member States have made different choices or deviated from the Directive when implementing the rules. The absence of priority rules in the Directive leads to the conclusion that non-EU headquartered groups with presence in multiple EU Member States will need to comply with the requirements of the EU Member State in which it has presence that has opted for the strictest implementation of the rules in order to be compliant with their reporting obligations within the EU.

The anticipated extension to EEA countries means that public CbCR rules will also be relevant in countries outside the EU (see also "Tax Transparency" section below).

In addition, the Delegated Directive adjusting the size criteria for enterprises under Article 3 of the Accounting Directive came into effect on 24 December 2023. This is important as these thresholds determine the classification of businesses and with that affect public CbCR obligations for EU subsidiaries of non-EU groups. The Delegated Directive adjusts criteria by 25%, with new thresholds for balance sheets and net turnover. EU Member States are required to implement these changes within 12 months of enactment, applying retrospectively to financial years starting on or after 1 January 2024 and with optional further retrospective effect for 2023.

The Commission is currently designing the digital reporting template as foreseen in the public CbCR

Directive. It is anticipated that 2024 will see the adoption of an Implementing Regulation, which will establish a standardized template and a digital format for public CbC reports. The Commission has already started informal consultations seeking feedback from stakeholders on the approach envisaged.

Navigating the Evolving Framework of DACs

The EU's Directive on Administrative Cooperation on tax matters (DAC) originally just provided for cooperation between tax authorities of EU Member States and the exchange of information on employment income, pension income and certain other payments. Since its first adoption, the DAC has been amended multiple times to allow for the automatic exchange of information across multiple fields of taxation.

Directive on tax transparency rules for digital platforms (DAC7): Many Member States missed implementation deadline

With the adoption of DAC7 in 2021, DAC was revised to extend EU rules for tax transparency and reporting to digital platforms in relation to information on their sellers (see EY Global Tax Alert). Besides specific provisions for digital platforms, DAC7 also introduces a number of generic changes to DAC, including a legal framework for the conduct of joint audits between two or more EU Member States as of 1 January 2024. The EU Member States had until 31 January 2022 to transpose the amendments (except for the provisions on joint audits) into national law, and the new rules should apply as of 1 January 2023. However, in early 2023, the Commission launched infringement proceedings against 14 Member States that failed to meet the transposition deadline. The deadline for implementing the joint audit provisions was 31 December 2023. Due to Germany and Poland's failure to timely communicate their transposition of these provisions, the Commission opened infringement proceedings against them on 25 January 2024.

In April 2023, the Commission adopted an implementing regulation related to the platform reporting rules, setting criteria to determine whether the information automatically exchanged under an agreement between EU Member States and a non-EU jurisdiction is equivalent to that specified in DAC7. This follows an earlier public consultation on the implementing regulation that took place in January 2023. The implementing regulation entered into force on 8 May 2023 (20 days following its publication in the EU Official Journal).

Directive on tax transparency rules for crypto assets (DAC8) adopted

On 17 October 2023, the Council unanimously adopted another iteration of DAC - DAC8 (see EY Global Tax Alert). DAC8 requires all crypto-asset service providers to report transactions of clients residing in the EU. The Directive also introduces automatic exchange of information on cross-border rulings for high net-worth individuals and the possibility to use information received under the DAC framework for non-tax-related purposes. EU Member States have until 31 December 2025 to transpose the main rules into domestic law, and the new provisions will generally apply as of 1 January 2026 (exceptions apply).

The adoption of DAC8 in October follows a political agreement reached on 16 May 2023 among EU Member States, revising the EU Commission's initial proposal published on 8 December 2022. Revisions include the minimum penalty regime, the exchange of cross-border rulings, elements of the timeline, dynamic interpretation of the OECD Commentaries, and an amendment regarding the notification requirements for intermediaries under DAC6.

Expected review and expansions of DAC

In late January 2023, the Commission launched an evaluation of DAC2-6 and announced a call for evidence and a public consultation to be held later in 2023. The evaluation is to cover the first five amendments of the DAC including mandatory disclosure rules and automatic exchange of information on reportable cross-border arrangements. The aim of the evaluation is to assess the effectiveness, efficiency and continued relevance of the DAC and its amendments, as well as its coherence with other policy initiatives and the EU added value. This initiative is still in preparation and the feedback request and adoption are now expected in 2024.

It is expected that the EU will continue to amend the DAC to introduce new reporting requirements. In particular, additional amendments may be required to facilitate administrative cooperation for new tax rules, such as the Minimum Tax Directive.

Unshell: Member States still disagree on way forward

The Commission's proposal to identify and deny tax benefits to low-substance entities (Unshell) has been under negotiation since December 2021 (see EY Global Tax Alert). In 2022, EU Member States engaged in negotiations on the proposal, but consensus was not reached. Discussions continued during 2023. From reports by the Council Presidencies and tax officials, it became clear that there was insufficient support for the Commission's original proposal.

During the first half of 2023, the Swedish Presidency reworked the draft and planned various meetings in working groups; however, several EU Member States opposed to the revised proposal. While at the beginning of its term (second half of 2023), the Spanish Council Presidency announced Unshell as a priority file, it did not make progress on its adoption. According to the tax report published at the end of its term, the Spanish Council Presidency proposed a new two-step approach which would introduce at a first stage an amendment to the DAC, adding a requirement for EU Member States to exchange information on shell entities, and at a second stage best practices about the use of that information to apply tax consequences at a time to be confirmed. However, there was no agreement on this approach and further discussions will be needed in order to find compromised solutions on outstanding issues.

As EU Member States' positions are apparently not yet moving toward unanimity, it is unclear whether adoption of Unshell will happen in the next semester under the Belgian Council Presidency or whether the whole Unshell proposal will ultimately be dropped.

With the impact of Unshell limited to entities resident in the EU, the Commission announced in 2021 its intention to develop a complementary proposal that would target shell entities outside the EU. This broader initiative is called "SAFE" - Securing the Activity Framework of Enablers. A public consultation took place in July 2022, and the Commission had initially announced the intent to publish a proposal on 7 June 2023. However, the initiative has been removed from the Commission's medium-term agenda given that there is no clarity on the negotiations on Unshell. In a public statement, EU Commissioner Paolo Gentiloni said that "**without Unshell, it is very difficult for the Commission to proceed with SAFE and I personally do not want to overburden the legislative pipeline when there is insufficient progress on Unshell.**"

Toward a more business-friendly internal market

Commission issues BEFIT proposal

On 12 September 2023, the Commission published a proposal for a Directive "Business in Europe: Framework for Income Taxation" (BEFIT) (see EY Global Tax Alert). BEFIT seeks to create more coherence on the tax base in the EU for, in particular, large MNE groups, aims to minimize the compliance burden linked to transfer pricing obligations within the EU and would allow for cross-border loss compensation.

BEFIT would apply to all entities in the EU that belong to an MNE group with consolidated combined revenues exceeding €750m in at least two of the preceding four fiscal years. It would also apply to non-EU-headquartered groups exceeding specific thresholds. The rules on determining the tax base included in the Directive, like in the Minimum Tax Directive, start from financial accounts, though with fewer adjustments required. As under the Minimum Tax Directive the tax base is determined on a per-entity basis and not on a consolidated group basis like the earlier proposal of the Commission on the Common Consolidated Corporate Tax Base. Once the adjusted profits of in-scope entities are determined, these would be aggregated to define the BEFIT tax base, which would allow for cross-border set-off of losses. Finally, the base would be allocated back to the EU Member States, which could make adjustments and would apply their own rates.

With the Common (Consolidated) Corporate Tax Base Directive (C(C)CTB) proposals of 2011 and 2016 reaching a dead-end due to EU Member State opposition, the Commission hopes that BEFIT will be received more favorably as the Commission's proposal anticipates and avoids issues expected to be contentious. BEFIT has moved to the negotiation phase among EU Member States; however, it is unclear at this stage if and when a unanimous agreement can be reached. The Commission proposed that the EU Member States transpose the BEFIT Directive into their national laws by 1 January 2028, for the rules to come into effect as of 1 July 2028.

A public consultation on this proposal ran until 24 January 2024. 52 commentators provided feedback, including EY (see EY Comment Letter). The EY Comment Letter welcomes the BEFIT proposal's aim of reducing administrative burden, thereby enhancing the business climate and facilitating internal market growth. However, it also highlights concerns around the likely overestimation of the proposal's benefits, specifically regarding administrative cost reduction. The letter notes that, depending on the design, the administrative burden for business could actually grow.

Other commentators also particularly questioned the assessment by the Commission that introduction of BEFIT would lower the administrative costs for business by up to 65%, and make the point that any form of alignment that would be created by the BEFIT rules might be nullified by EU Member States, as Article 48, paragraph 2 of the draft Directive gives EU Member States the discretion to add any additional domestic inclusion or deduction to the BEFIT tax base. Moreover, it is also noted that because Pillar Two rules would remain applicable at an entity-by-entity and country-by-country level, transfer pricing rules would remain in place and therefore the associated costs would not be mitigated as indicated in the proposal.

The Transfer Pricing and the Head Office Tax Directives

On the date of publication of BEFIT, the Commission tabled two additional legislative proposals in the area of corporate taxation which will continue to be under negotiation in 2024. If adopted, the Commission proposes that the rules for both Directives come into effect as of 1 January 2026, but timelines may change during the negotiations.

One of them is the Transfer Pricing Directive, which seeks to ensure that the arm's length principle and the latest version of the OECD Transfer Pricing Guidelines are incorporated into Union law and thus the legislation of all EU Member States (see EY Global Tax Alert). Moreover, the intention is to come to a more uniform and clearer implementation of these rules in the EU. The Directive includes the possibility of introducing implementing acts in the future, which would create further clarity and uniformity in relation to transfer pricing practices and compliance in the EU.

A public consultation on this proposal ran until 3 January 2024. Many stakeholders expressed positive feedback regarding the Commission's efforts to increase tax certainty and simplify compliance. Key issues raised include the need to align the proposal closely with the OECD Transfer Pricing Guidelines, re-establish the Joint Transfer Pricing Forum, resolve timing-related concerns, establish a fast-track procedure for recognizing corresponding adjustments, and reconsider the associated enterprises threshold. Furthermore, stakeholders raised concerns about the use of the interquartile range as a benchmark for making adjustments, indicating that this would not be in line with the OECD Transfer Pricing Guidelines and could potentially lead to inconsistent treatment of intercompany transactions involving third jurisdictions.

In addition, commentators recommended the introduction of safe harbors to alleviate the compliance burden, especially for low-risk transactions.

The other proposed Directive seeks to establish a Head Office Tax (HOT) system for micro, small and medium-sized enterprises (SMEs) to simplify corporate tax compliance for SMEs that operate across borders within the EU (see EY Global Tax Alert). According to the Commission, SMEs operating cross-border pay CITs in all EU Member States where they have permanent establishments based on the different relevant national rules. This results in high tax compliance costs, which disproportionately affect SMEs compared to larger firms. The Commission essentially is proposing that SMEs that have a permanent establishment in at least one other EU Member State ("host") could voluntarily continue to apply the tax rules that they are familiar with (those of the "home" EU Member State) and could calculate and report the taxable result of their permanent establishment in the "host" EU Member State to the tax authorities of the "home" EU Member State.

Commission's FASTER proposal seeks to streamline withholding tax procedures

On 19 June 2023, the EU Commission published its Proposal for FASTER Directive (see EY Global Tax Alert). This initiative was earlier announced in the EU Commission's 2020 Action Plan on the Capital Markets Union. Together with the proposal, the Commission also launched a public consultation in which input could be provided in the form of open comments by 14 August 2023 (see EY submission here).

The draft Directive consists of the following three blocks:

- A common EU digital tax residence certificate (for individuals and corporations) to be issued by the residency EU Member State
- A choice for EU Member States for withholding tax relief through a "relief-at-source" procedure, a "quick refund" system or a combination of both. This relief would apply for dividend payments on public shares and interest payments on public bonds
- A standardized reporting obligation through the establishment of a national register of certified financial intermediaries. This register would also be open to non-EU intermediaries on a voluntary basis

In the proposal, the Commission proposes that EU Member States transpose the Directive into their national laws by 31 December 2026 for the rules to come into effect as of 1 January 2027.

The EU Member States are currently negotiating on the proposal. According to the Spanish Council Presidency, significant progress was made by November 2023. In particular, the provision regarding the digital tax residence certificate is broadly supported by EU Member States. Nevertheless, further technical work is required before negotiations on the other aspects can be concluded and a compromise proposal can be considered by the EU's Finance Ministers in Ecofin. One of the principal issues in the negotiations is a request by a number of EU Member States to keep the possibility of maintaining their current systems of relief at source. Given that the FASTER initiative is meant to improve the functioning of the European Capital Markets Union, it is expected that conclusion of the negotiations will be a priority under the Belgian Council Presidency, which is in place in the first half of 2024.

Rationalization of EU's reporting requirements and red tape across the EU

One of the priorities included in the 2024 Commission work programme is the alleviation of administrative burdens and streamlining of reporting requirements within the EU. In her State of the Union speech, Commission President Ursula von Der Leyen also referred to the commitment of reducing reporting requirements by 25% to enhance the competitiveness of the EU. In light of this, on 17 October 2023, the Commission launched a general call for evidence, which ran until 1 December 2023, requesting input on burdensome EU reporting requirements that could be eliminated or rationalized. As indicated above, for 2024 the Commission also announced a "fitness test" of EU tax reporting requirements, examining whether DAC is effective and efficient. The review will look at potential rationalization of the Directive and inform potential amendments to reduce reporting burdens.

New EU own resources package to address the EU budget gap

The budget of the EU and the budgetary discipline imposed by the EU on its Member States have various implications for taxation. First of all, the budget of the EU needs to be paid by EU Member States through their yearly contributions or by the EU's own resources. Due to the agreement on the creation of a €750b recovery fund in connection with the COVID crisis, the need for additional income has gone up relevantly as the loans and interest connected to this fund need to be (re) paid. The interest rates on these loans are higher than anticipated due to the high inflation in recent years. Specific taxes could be introduced to function as an EU own resource in order to cover any budget deficit. On the other hand, if an agreement is reached for the contributions of EU Member States to go up, then these EU Member States will have to raise the funds themselves, which could be done through taxation.

During 2023, the EU was negotiating on the EU budget and its Member States' budgets.

In June 2023, the Commission proposed a mid-term revision of the long-term EU budget (Multiannual Financial Framework /MFF 2021-2027). The revision suggested a budget increase of at least €100b, including for covering increased staff costs and unforeseen costs such as aid to Ukraine and increased interest costs. Following an initial discussion in October, EU Member States' heads of government together with the Presidents of the European Council and the Commission held a follow-up negotiation round on this pressing point during their meeting on 14-15 December 2023. However, they failed to reach the required unanimity due to the opposition of Hungary. EU Finance Ministers reconvened during a Special European Council meeting on 1 February 2024, where they reached agreement on the revision of the MFF and greenlighted additional funding of €64.6b for a number of priority areas. As next steps, the Council and the EP will need to adopt the revision.

EU Finance Ministers also have been discussing the reinforcement and update of the Stability and Growth Pact (the Pact), which sets national deficit and debt ceilings for all EU Member States. The Pact originated from the Maastricht Treaty, which was concluded in 1992 but was suspended in 2020 due to the Covid crisis. The negotiations which were intended to reintroduce the rules intensified in December and an agreement was ultimately reached on 20 December during a virtual meeting of the EU Finance Ministers. As a result, there is more leniency in bringing the debt levels back to acceptable levels for EU Member States that are over the 60% debt ceiling.

To cover costs relating to the EU budget, the EU considers introducing new own resources as the main source of additional revenue for the EU budget. Part of the revenues generated by EU emissions trading, CBAM and in the future Amount A under Pillar One are the proposed sources under consideration. On 20 June 2023, the Commission published an adjusted package for the next generation of such own resources, proposing a new temporary statistical-based own resource on company profits (see EY Global Tax Alert). However, own resources can only be adopted with approval by all EU Member States, in line with their constitutional requirements. This typically requires lengthy negotiations, but the discussions on the adjusted package will need to move swiftly in 2024, given the agreed expansion of the MFF funding in February 2024.

If additional own resources cannot be agreed, the EU budget gap needs to be addressed by either reducing the expenditures, which may be difficult, or increasing the EU Member States' contribution to the EU.

Leveling the playing field and competition

For the EU, a key objective in standard-setting is to ensure that it can implement its policy aims while also achieving a level playing field. Not only are rules intended to apply consistently throughout all 27 EU Member States, but often these rules are also given extraterritorial effects. While the underlying reasoning behind these extraterritorial effects may also be that the EU is convinced about its values and policies, actions to ensure external application are primarily put in place to guarantee that stricter regulatory measures do not have a negative effect on the competitive position of the EU.

New Foreign Subsidies Regulation (FSR) effectively expands EU State aid rules to third jurisdictions

On 12 July 2023, the EU's new FSR on foreign subsidies distorting the internal market entered into effect (see EY Global Tax Alert). It provides the Commission with the power to investigate financial contributions (such as tax benefits) granted by public authorities of a non-EU jurisdiction that benefit companies engaging in an economic activity in the EU and to redress their distortive effects. As of 12 October 2023, the Commission will be able to investigate (i) concentrations involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired (or of at least one of the merging parties) is at least €500m and combined aggregate financial contributions from foreign countries amount to at least €50m, and (ii) bids in public procurements involving a financial contribution by a non-EU government, where the estimated value of the procurement is €250m or more and the foreign financial contribution is equal to or greater than €4m per third country.

Before its entry into effect, the Commission adopted rules for implementing the FSR (see EY Global Tax Alert). The Implementing Regulation sets out procedural aspects and contains templates for the mandatory notifications. In 2023, the Commission also published a non-binding Q&A on various aspects of the FSR, which is periodically updated.

Revising the EU list: Evolving criteria and scope

Since its establishment in 1997, the EU Code of Conduct Group on Business Taxation (CoCG) has had a significant influence over corporate tax frameworks.

Initially, the CoCG reviewed EU Member States' tax systems. Such reviews continued in 2023 including, for example, the review of Poland's holding regime. In 2022, the EU Member States agreed on a revision of the Code of Conduct (CoC) (see EY Global Tax Alert). The update expands the scope of the CoC for EU Member States from preferential measures to tax features of general application that create opportunities for double non-taxation or that can lead to the double or multiple use of tax benefits for the same amount of income. The expanded scope applies from 1 January 2024 and covers general features introduced or amended after 1 January 2023. Similar conditions have already been applied by the CoCG in the assessments of non-EU country regimes.

Since 2016, one of the CoCG's main tasks has been the review of non-EU jurisdictions, including the development of the EU list of non-cooperative jurisdictions for tax purposes. In 2023, the EU list of non-cooperative jurisdictions was updated twice, once on 14 February 2023 (see EY Global Tax Alert), and once on 17 October 2023 (see EY Global Tax Alert). Shortly before this publication, the EU updated the list on 20 February 2024 (see EY Global Tax Alert).

EU list of non-cooperative jurisdictions and jurisdictions with pending commitments (as per 20 February 2024)

Annex I	Annex II
American Samoa (added on 5 December 2017)	Armenia (added on 4 October 2022)
Anguilla (added on 4 October 2022)	Belize (added on 20 February 2024)
Antigua and Barbuda (added on 17 October 2023)	British Virgin Islands (added on 17 October 2023)
Fiji (added on 12 March 2019)	Costa Rica (added on 17 October 2023)
Guam (added on 5 December 2017)	Curaçao (added on 14 February 2023)
Palau (added on 18 February 2020)	Eswatini (added on 4 October 2022)
Panama (added on 18 February 2020)	Malaysia (added on 5 October 2021)
Russia (added on 14 February 2023)	Seychelles (added on 20 February 2024)
Samoa (added on 5 December 2017)	Turkey (added on 5 December 2017)
Trinidad and Tobago (added on 5 December 2017)	Vietnam (added on 24 February 2022)
US Virgin Islands (added on 13 March 2018)	
Vanuatu (added on 12 March 2019)	

In October 2023, the CoCG published its multiannual work package (2023-2028). The document indicates that the group could explore how to facilitate the proper functioning of the Pillar Two rules by making use of the EU listing process. The CoCG will also continue to discuss the new beneficial ownership criterion (criterion 1.4 of the review framework) and the further extension of the geographical scope of its list screening process, which now encompasses about 95 non-EU jurisdictions. In its 2023 meetings, the CoCG agreed to add Brunei Darussalam, Kuwait and New Zealand to the geographical scope of the EU listing exercise.

The year ahead

As a significant election year, 2024 will include key democratic events in the EU and its major trading partners, including the US, the UK and India. Elections for a new EP will occur across the 27 EU Member States, swiftly followed by assignments to key EU leadership roles, including presidencies of the Council, and the Commission.

This is not expected to significantly impact the tax files under negotiation. For example, discussions on FASTER will carry on, with the Belgian Council Presidency aspiring to bring the negotiations to a successful conclusion during its term. The fate of Unshell remains to be seen, while the EU Member States will also consider the BEFIT, Transfer Pricing and HOT proposals.

As historically observed, new legislative proposals are generally limited in an election year, while as mentioned above, most tax agenda initiatives have already been rolled out by the Commission. However, the implementation of the Minimum Tax rules may prompt legislative action, such as embedding administrative requirements in the DAC. Tax policymakers may also begin work on easing tax reporting obligations and reassessing the tax implications for cross-border workers, but the focus this year will likely be on preparatory measures rather than finalizing concrete proposals on those two topics.

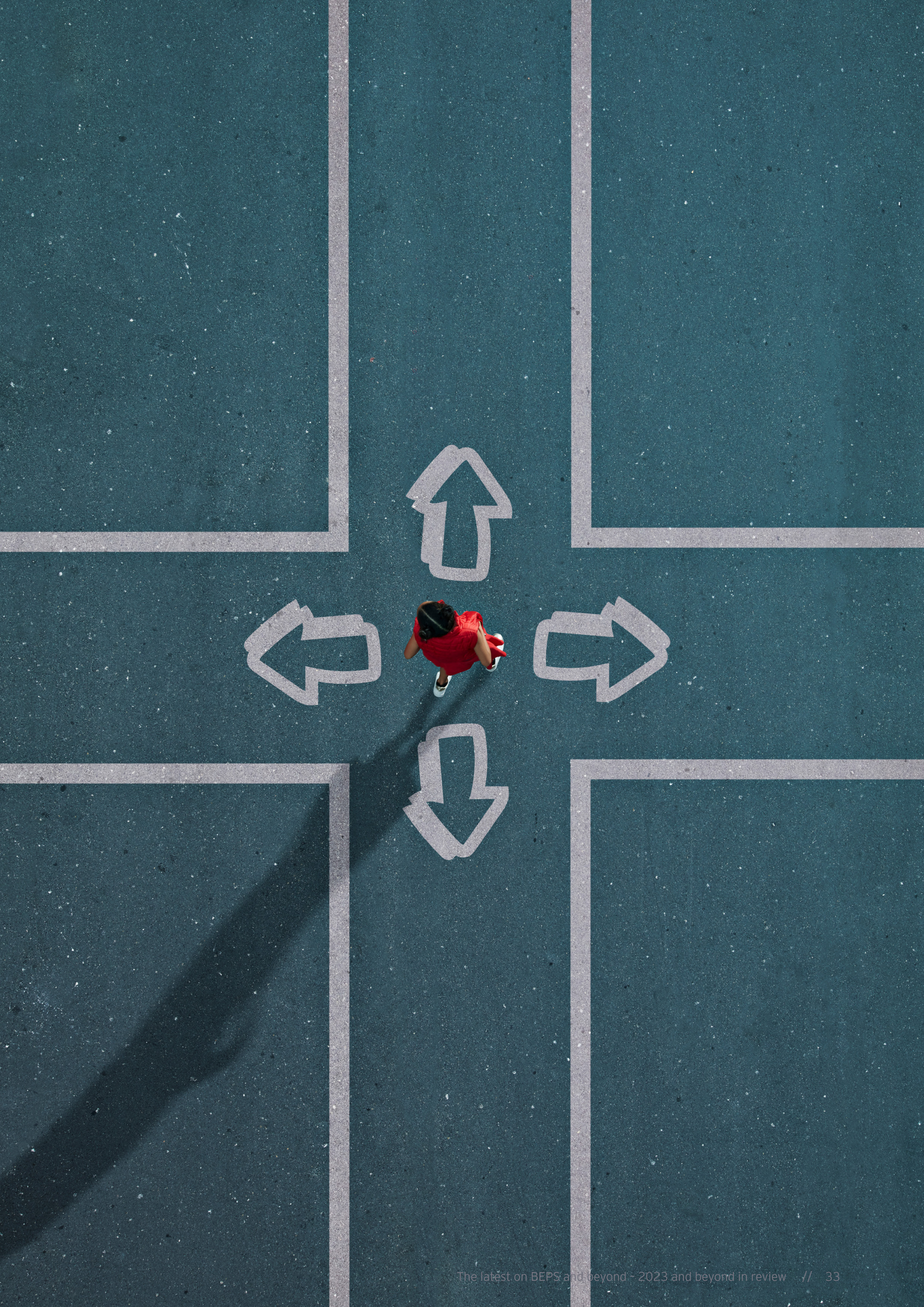
The imminent European elections may also hasten EU policymakers to wrap up several ongoing negotiations. The "own resources" discussion noted above has particular significance. Belgian Prime Minister Alexander De Croo spotlighted this urgency in an interview with the press, arguing that the EU is in serious need of more funds, calling June 2024 a "political deadline." This means that by mid-2024 we may have more clarity on the chance of more EU-wide tax matters in 2024.

For EU Member States, the "own resources" discussion will also be an important consideration for the way forward on the Pillar One negotiations. As also mentioned above, the EU has tentatively reserved part of the Amount A revenues for the EU budget. If the MLC to implement Amount, A is not ratified, the EU will need to look at other potential sources. As mentioned, the EU may return to earlier plans for an EU digital levy or a single market levy.

Finally, by the end of 2024, the EU will have a new Commission that will have presented the priorities for its five-year mandate. It is expected that the next Commission will stay the course with the EU Green Deal and answer the European Council's repeated calls for bolstering EU's competitive edge and investment potential. The resulting tax policy ramifications could be significant, underscoring 2024 as a crucial year in defining the trajectory of the EU's future tax agenda.

EU developments: Stage of the legislative process

Anticipated initiatives	Wealth Taxes	Windfall taxes	Lifestyle taxes
With the Commission	SAFE	DAC2-6 review	DAC9 (Pillar Two)
Under negotiation in Council	BEFIT Energy Tax Directive (revision)	TP Directive Unshell	HOT Directive FASTER
Adopted / In transposition	Foreign Subsidies Regulation Minimum Tax Directive CBAM	DAC8 (crypto) Public CbCR	Solidary Contribution CSRD



Other key developments

United Nations

In 2023, against the backdrop of the Pillar Two process, a shifting geopolitical landscape tending toward deglobalization, and increasing demands from the Global South for more inclusive tax governance, the UN took steps aimed at enhancing its role in international tax policy. The year was pivotal, reflecting growing dissatisfaction among some jurisdictions with the OECD as the primary setter of global tax standards, which led to a push for the UN to assume a more central role.

On 23 November 2022, at the 77th General Assembly, UN member states acknowledged the need for a universally inclusive international tax framework, by adopting a resolution put forth by African nations. This was followed by Resolution 77/244 on 30 December 2022, initiating intergovernmental talks aimed at crafting a framework that prioritizes inclusivity and bolsters global tax cooperation, in alignment with existing mechanisms.

Concerns were raised early on about potential overlap with the OECD's initiatives, including ongoing work in the OECD/G20 Inclusive Framework. Nevertheless, the UN Secretariat proceeded with a public consultation in February 2023 to gather stakeholder input (see the Latest on BEPS and Beyond – March 2023). In August 2023, the UN Secretary-General released a report on the "Promotion of Inclusive and Effective International Tax Cooperation", which proposed three alternative avenues for establishing a more inclusive tax framework: (i) a multilateral convention on tax; (ii) a framework convention on international tax cooperation; and (iii) a framework for international tax cooperation. Each proposal underscored the importance of continuity and inclusiveness in the evolution of international tax systems and required UN-facilitated engagement of member states for its development and eventual ratification (see the Latest on BEPS and Beyond – September 2023).

On 22 November 2023, the UN General Assembly's Second Committee approved, by simple majority, a resolution to support inclusive international tax cooperation, laying the foundation for an ad hoc committee charged with formulating the details for a UN framework convention (see the Latest on BEPS and Beyond – December 2023). On 22 December 2023, the UN General Assembly adopted Resolution 78/230 embodying this commitment, and establishing a work plan that aligns with the UN's sustainable development goals. Resolution 78/230 was adopted under a vote by simple majority, with 111 jurisdictions voting in favor, 46 against and 10 abstaining. The votes against the resolution were largely from OECD and EU Member States, with the exception of Chile, Colombia and Switzerland, which voted in favor, and Costa Rica, Iceland, Mexico, Norway and Turkey that abstained. In addition, the resolution directs finalization of the deliverables by August 2024, with the results set for submission during the 79th session of the General Assembly, which will open on 10 September 2024.

To support this broad-reaching project, the UN Secretary-General was requested to allocate sufficient resources, quantified in an additional resolution, Resolution 78/657, as an estimated US$1,495,500 required for the year 2024.

Looking ahead to 2024, the stage is set for further advancement of the UN role in international tax cooperation. The groundwork laid in 2023 will drive forward the ambitious agenda of drafting a framework convention for addressing global tax challenges with equity and inclusiveness. The ad hoc intergovernmental committee is expected to develop terms of reference for the framework convention. As this process unfolds, this development is on the agenda for the UN's 79th General Assembly session, with the potential to shape a new paradigm for international tax and economic collaboration.

Tax transparency

Tax transparency has seen a series of significant initiatives and legislative actions throughout 2023. Both jurisdictions and international organizations have advanced policies and frameworks aimed at shedding light on the tax operations of MNEs. This global trend, significantly influenced by the introduction of public CbCR in the EU (see above section "EU tax transparency landscape"), has crossed regional borders and brought about changes within and outside the EU.

This section is has two principal areas of focus: firstly, we discuss reporting to governments and Exchange of Information (EoI). This includes updates on new guidance for government reporting, the Global Forum on Transparency and EoI's efforts to implement this guidance, and Action 13 CbCR requirements.

Secondly, we turn to public tax reporting, where we examine developments around public CbCR beyond the EU, and the link to tax transparency and the broader ESG themes through the lens of the revised OECD Guidelines for MNEs. This section concludes with an overview of recent changes in financial reporting standards, notably those by the IASB and FASB.

Tax reporting to governments

The OECD has been a long-standing advocate for advanced tax transparency, offering analyses and guidelines to help jurisdictions adopt and implement effective tax reporting systems. In 2023, the OECD released a series of progress reports on tax transparency in the geographical contexts of Latin America and Africa. The Latin American report, published in June together outcome statements from the Punta del Este Declaration initiative, highlighted advancements and future collaboration prospects for improving EoI practices (see EY Global Tax Alert). The African report, published in July, showcased capacity-building endeavors and revenue collection enhancements realized through the Africa Initiative (see EY Global Tax Alert).

The OECD Secretary-General issued two reports to the G20 in 2023. The October report addressed contemporary developments such as crypto-assets and the overall need for embracing transparent EoI mechanisms (see EY Global Tax Alert). The July edition, on the other hand, referenced three key documents that were produce in response to a request from the Indian G20 Presidency: (i) Enhancing International Tax Transparency on Real Estate, (ii) Update on the Implementation of the 2021 Strategy on Unleashing the Potential of Automatic Exchange of Information for Developing Countries and (iii) Facilitating the Use of Tax-Treaty-Exchanged Information for Non-tax Purposes (see EY Global Tax Alert).

In 2023, the OECD also published the sixth annual peer review of the minimum standard on Action 13 (Transfer Pricing Documentation and CbCR) of the BEPS project. This latest compilation covers 136 jurisdictions and reflects a finding that implementation of CbCR is largely consistent with the Action 13 minimum standard (see EY Global Tax Alert). In addition, the BEPS Action 13 Final Report included a mandate to review the minimum standard by the end of 2020. Following work initiated in late 2018, a public consultation document, including an analysis of 15 issues related to the scope of CbC reporting and the content of CbC reports was released in February 2020 and an online public consultation meeting, which included government, business and civil society participants, was held in May 2020 (see EY Global Tax Alert). However, the work on the 2020 Action 13 Review was suspended in 2021 to allow Inclusive Framework members to give priority to the implementation of Pillars One and Two and to assess any implications that this work may have on CbCR. According to the OECD, work on the 2020 review of BEPS Action 13 was expected to resume in the second half of 2023.

The UN, recognizing the importance of tax transparency for developing nations, continued deliberations through its tax committee. A dedicated subcommittee was established and tasked with examining the current landscape of tax transparency and coming up with strategic initiatives and guidelines. The subcommittee's objectives were wide-ranging, from identifying gaps and challenges in the current exchange of information frameworks to proposing concrete solutions that could be implemented by developing jurisdictions to enhance their tax systems' transparency and efficiency.

During 2023, the subcommittee focused on key thematic areas relating to the improvement of EoI capabilities. The subcommittee presented the following topics to the committee for its approval as the priority issues for the subcommittee's workplan moving forward in preparing draft guidance on increasing tax transparency: (i) overview of EoI; (ii) practical guidance for jurisdictions that are new to EoI; (iii) limitations and challenges faced in addressing tax transparency; (iv) use of exchanged information for non-tax purposes; and (v) assistance in collection. It was also proposed that the subcommittee consider the relationship and complementarities between the Common Reporting Standard (CRS) and the Foreign Account Tax

Compliance Act (FATCA). Additionally, it was suggested that on the topic of Automatic EoI, other aspects of Automatic EoI like CbCR and exchange of tax rulings, should be addressed.

Public tax reporting

In 2023, Australia began action on tax transparency reforms. After earlier communications, the Australian Treasury in March presented two Exposure Draft Bills for public consultation (see EY Global Tax Alert), addressing the transparency of financial reports of both listed and unlisted public companies. One of the drafts involved a requirement for companies to include in their annual financial reporting a consolidated entity disclosure statement with detailed information about the number of subsidiaries and their jurisdictions of tax domicile. Stakeholders were given the opportunity to submit comments by 13 April 2023.

In April 2023, the Treasury released a draft legislation proposal to require certain large MNEs to publish specified tax information on a CbC basis (see EY Global Tax Alert). This was an extension of the government's broader tax integrity package, following the earlier proposal for subsidiary disclosure. Under this proposal, certain CbC reporting entities would be required to present tax data, including descriptions of their business activities, numbers of employees, and detailed financial information across various jurisdictions of operation, for publication on a designated Australian government website. This proposal had a public comment deadline of 28 April 2023.

On 22 June 2023, legislation on various tax integrity matters was introduced into the Australian parliament. The Bill included provisions on disclosing information on subsidiaries of Australian public companies, effective for financial years starting on or after 1 July 2023, but no reference to the public CbCR measures (see EY Global Tax Alert). However, on 9 August 2023, the House of Representatives (the Senate) negatived the second reading vote and the bill did not progress further. On 12 February 2024, Australia's Treasury released for consultation the revised exposure draft of the proposed Australian public CbCR measures. As expected, the measures are proposed to apply to financial reporting periods commencing on or after 1 July 2024 and the information required to be disclosed is reduced compared to the previous draft. The revised draft also restricts the scope of application of the rules by introducing a threshold providing that an entity is only subject to reporting if at least AU$10m of its aggregated turnover for the income year is Australian-sourced. Finally, aggregation of information is allowed for countries, unless the selected tax information relates to Australia and 41 other jurisdictions specified by the Minister on a country-by-country basis. Stakeholders are invited to provide feedback by 5 March 2024 (see EY Global Tax Alert).

In addition, in 2023, Moldova took steps to align its laws with the EU public CbCR standards, even though it is not an EU Member State. Moldova's parliament considered draft legislation, after a consultation period from late July to early August 2023, that aimed to introduce public CbCR for corporations meeting specific revenue thresholds. In November 2023, Moldova public CbCR legislation, with conditions mirroring EU Directives, and effective for financial periods beginning on 1 January 2025.

ESG factors are increasingly a factor in corporate practices and the investment landscape, with tax transparency a key consideration. In 2023, this trend was reflected in the OECD update to its Guidelines for MNEs, with an emphasis on the correlation between tax transparency and the reliability of a nation's tax system. This followed the OECD adoption of the revised G20/OECD Principles of Corporate Governance with a 2023 Ministerial Council Meeting statement, which, among other matters, encouraged the exploration of enhanced access to CbCR for developing jurisdictions and further improvements in tax transparency. In the EU, although tax is not one of the specifically identified issues on which reporting is required under the CSRD, the open-ended provision indicating that other material ESG topics need to be reported if the double materiality requirement is met suggests that tax reporting is required if taxation is considered a material topic. For the type of reporting required, the rules refer to the GRI.

The series of tax transparency enhancements across various jurisdictions and organizational standards in 2023 reflect an increasing focus on tax transparency. Further developments will continue in 2024 as these initiatives come into force.

Looking ahead to 2024, stakeholder engagement with company boards regarding the transparency of tax practices, including public CbCR, can be expected to continue. We can also expect more investor focus on corporate tax strategies, with the possibility of divestiture from companies that fall short of their tax transparency expectations. This trend aligns with the broader narrative of ESG principles, where tax transparency is becoming more entwined with the social responsibility and governance performance of organizations. As advocates for ESG continue to push the envelope, we can anticipate that transparency in tax affairs will increasingly be perceived not just as a legal compliance issue, but as a component of sustainable business practices.

Looking ahead and beyond

With elections coming up in jurisdictions around half of the world's population in 2024, including in important economic blocks such as the US, the EU and India, the tax policy environment will likely stay in flux in 2024 and beyond. These elections come at a transformative point in time where the newly elected policymakers are expected to make fundamental decisions on key policy issues involving challenges and opportunities relating to geopolitical positioning, climate change, digitalization, demographic developments and the economic and political consequences of de-globalization.

Fundamental changes in societies and economies are typically mirrored by fundamental changes in the tax environment. These changes will impact international tax policy developments in various ways. There will be an effect on which institutions will design the international tax policies of the future, and the consistency of these policies around the world. The desire of in particular the Global South to be less dependent on the OECD when it comes to designing international tax policies has led to a proposal for the UN to take a more active role in international tax policy making. 2024 will be a pivotal year in that respect, as the UN is expected to decide on the design of the governance structure and the agenda setting. On the other hand, de-globalization and the impact of the green and digital transitions have led and will likely continue to lead to more bespoke regional and national tax policies with cross border effects, including the introduction of new forms of taxes with the aim to change behavior.

For the new European Commission, set to take office in the second half of the year, the attractiveness of the EU for investment is expected to be high on the agenda, in particular investment in innovation connected to the industries of the future. The new Commission will have the challenging task of balancing the interest of the Member States and EU citizens with the vocal message from business organizations that less fragmentation, reduced red tape and a more fertile environment for innovation are needed in the EU's internal market. The agenda of the new Commission is expected to be disclosed by the end of the year, setting the stage for 2024 being a year of concluding previously released proposals that are promising or necessary, putting on hold proposals that are connected to the future policies, and foreseeing no new proposals except those linked to already adopted legislation or addressing ad hoc issues. As a consequence, the expectation is that BEFIT, DEBRA (Debt-Equity Bias Reduction Allowance), Unshell and SAFE will not progress, while the negotiations on the proposed Transfer Pricing Directive will take time and yield substantive changes to the current proposal. New proposals are expected relating to the administration and reporting of public CbCR and Pillar Two. Finally, FASTER may reach the finish line in 2024 should EU Member States manage to find a compromise, recognizing that it represents one of the key action points identified in the Capital Markets Union Action Plan.

In the meantime, policy development in the area of Pillar Two will continue, driven by (i) questions that have come up in jurisdictions that have introduced the rules as of 1 January 2024, (ii) a growing number of jurisdictions introducing the rules in 2024 and (iii) the design of a peer review mechanism. In relation to Pillar One, 2024 will show which countries will elect to introduce the Amount B approach to pricing baseline distribution activities. It will also show which countries are willing to sign the Amount A MLC.

Thus, 2024 will be a very busy year when it comes to international tax policy developments. For businesses, staying abreast of all these developments may be more important, but at the same time more complicated, than ever. This complexity stems from the fact that regulatory tax risks more frequently are high-impact and high-likelihood risks for companies, and the international tax policy landscape is becoming more fragmented. With the Latest on BEPS and Beyond monthly updates and our global tax alerts on the latest developments, EY aims to assist businesses in staying up to date.

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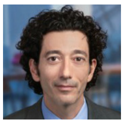

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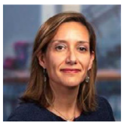

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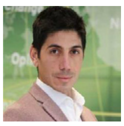

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