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# Global Tax Alert

## The Latest on BEPS and Beyond

April 2024

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### Highlights

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

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

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

Concurrently, the latest developments at the OECD, in Paris, may also inform upcoming negotiations at the United Nations (UN) in New York where from 26 April till 8 May, the UN's new Ad Hoc Committee will hold its first session to draft the Terms of Reference for a framework convention on international tax cooperation. During discussions on substantive scoping, the Committee will evaluate whether the UN should extend its purview to encompass both the BEPS initiative and tax matters that fall outside the Inclusive Framework's mandate.

Meanwhile, in Brussels, the focus of policy makers is on enhancing the European Union's (EU's) competitive edge. Expectations are set for the release of Enrico Letta's high-level report on the future of the single market ([to be released on 17 April](#)). This report arrives as EU leaders engage in discussions on how to bolster the single market and complete the capital markets union. Tax policy remains an important piece of the puzzle for EU policymakers, but to gain a comprehensive understanding, they must also keep an eye on the unfolding developments in Paris and New York.

Reporting from New York, Brussels and other capitals, this month's edition provides insights into the latest international tax developments on BEPS and beyond from across the world.

## BEPS 2.0

### Other

#### **International Monetary Fund releases working paper on the design of Pillar Two**

On 22 March 2024, the International Monetary Fund released a working paper entitled "[Deciphering the GloBE in a Low-Tax Jurisdiction](#)." The working paper analyzes the interplay between the GloBE model rules and the design of corporate income tax (CIT) systems, offering insights for policymakers, particularly in low-tax jurisdictions.

The main question is how low-capacity countries, in particular, should respond to GloBE. One key message of this working paper is that adopting the Qualified Domestic Minimum Top-up Tax (QDMTT) should not be a jurisdiction's default strategic reaction. Instead, ideally, the QDMTT should serve as a backstop measure within a broader tax system

overhaul. The working paper challenges the notion that low-tax jurisdictions would inherently benefit from a minimum tax regime, highlighting potential shifts in tax enforcement and competition dynamics for multinational enterprises (MNEs).

The working paper recognizes the rationale for implementing measures like the QDMTT, Income Inclusion Rule (IIR), and Undertaxed Profit Rule (UTPR) but suggests that zero-tax jurisdictions should take more definitive action. It proposes the development of tailored rent-tax systems as an alternative to solely relying on GloBE rules, saying such systems could enhance revenue diversification and withstand future changes in the global tax landscape. The working paper cautions that a stand-alone QDMTT would essentially operate as a limited CIT, requiring significant legal and administrative infrastructure without the flexibility of existing CITs.

The working paper emphasizes the importance of well-designed CIT regimes with robust legal foundations, international tax provisions and anti-avoidance measures as a strategic response for low-tax jurisdictions. Implementing efficient rent tax systems around a 15% rate could potentially attract some foreign profits, positioning these jurisdictions within the lower range of international profit taxation while reducing profit shifting, the working paper indicates.

### Country developments

#### **Australia releases draft legislation on Pillar Two**

On 21 March 2024, the Australian Government released [draft legislation](#) on Pillar Two for public consultation alongside an explanatory memorandum and a separate discussion paper on interactions with provisions in Australia's existing income tax law. The draft legislation includes a Domestic Minimum Top-up Tax (DMTT) and an IIR to apply for fiscal years starting on or after 1 January 2024, as well as a UTPR to apply for fiscal years starting on or after 1 January 2025.

The draft legislation is generally in line with the OECD model rules and includes the Transitional Country-by-Country Reporting (CbCR) Safe Harbor as well as a QDMTT Safe Harbor. The consultation was open until 16 April 2024.

See EY Global Tax Alert, [Australian 15% global and domestic minimum taxes draft law released](#), dated 27 March 2024.

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

On 19 March 2024, the Danish Association of Auditors (FSR) released an announcement from the Danish Ministry of Taxation (DMT) regarding the recent proposal to amend the UTPR legislation in Denmark. In this announcement, the DMT specified that it has always been the intention to align the Danish minimum taxation rules with the EU Minimum Tax Directive, and particularly Article 50.

Consequently, MNE Groups would generally not be required to make a tax provision for UTPR during 2024 unless the Ultimate Parent Entity (UPE) of the Group is located in an EU Member State that has delayed the implementation of the minimum taxation rules in accordance with article 50 in the EU Minimum Tax Directive.

### Greece enacts Pillar Two legislation

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

### Japan amends Pillar Two legislation

On 30 March 2024, Japan promulgated the country's 2024 Tax Reform Laws and Regulations in the *Official Gazette*, including amendments to existing IIR legislation. The amendments intend to reflect the OECD Administrative Guidance released in February, July and December 2023, as well as the OECD document regarding the GloBE Information Return (GIR) published in July 2023. Among other items, the amendments include detailed rules for the Transitional CbCR Safe Harbor and GIR and ensure that MNE groups that are not obliged to file the CbCR are still eligible to apply for the Transitional CbCR Safe Harbor.

The amendments, along with the Japanese Pillar Two law, which has only an IIR, came into effect for fiscal years starting on or after 1 April 2024.

### Luxembourg tax administration publishes FAQs on Pillar Two clarifying disclosure requirements for deferred taxes

On 25 March 2024, the Luxembourg tax authorities published Frequently Asked Questions (FAQs) on the Pillar Two law enacted in December 2023. The FAQs provide details on the recognition of Deferred Tax Assets (DTAs) and Deferred Tax Liabilities (DTLs). It is expected that the FAQs will be further complemented with additional guidance on other topics.

See EY Global Tax Alert, [Luxembourg tax administration publishes FAQs on Pillar Two clarifying disclosure requirements for deferred taxes](#), dated 5 April 2024.

### New Zealand enacts Pillar Two legislation

On 27 March 2024, the New Zealand Parliament approved legislation on Pillar Two. The legislation includes an IIR and UTPR that will come into effect on 1 January 2025. The legislation does not include a QDMTT, but it introduces a Domestic IIR, which has been deferred to 1 January 2026.

To ensure consistency with the OECD GloBE model rules, New Zealand has largely adopted these rules into domestic tax legislation by direct reference.

See EY Global Tax Alert, [New Zealand enacts OECD GloBE \(Pillar Two\) rules effective 1 January 2025](#), dated 1 April 2024.

### Sweden releases amendment to Pillar Two legislation

On 19 March 2024, Sweden released a draft bill for public consultation, aimed at amending the existing Pillar Two legislation. The proposed amendments incorporate provisions from multiple pieces of Administrative Guidance released during 2023. Among other items, the amendments include the addition of anti-arbitrage rules for purposes of the Transitional CbCR Safe Harbor, as well as modifications to the QDMTT calculation to ensure compliance with the QDMTT Safe Harbor rules.

The amendments are expected to come into effect on 1 January 2025. However, it is proposed that a reporting entity should have the option to request that all or some of the new provisions apply for tax years starting on or after 31 December 2023.

## BEPS and other developments

### OECD

#### **OECD updates list of signatories of the CbC MCAA**

On 21 March 2024, the OECD [announced](#) that Mauritania signed the Multilateral Competent Authority Agreement on the exchange of Country-by-Country (CbC MCAA) reports on 12 February 2024, making it the 101st signatory. The CbC MCAA, which has been open for signature since January 2016, aims to enhance transparency by facilitating the exchange of CbC reports among tax administrations.

To activate the agreement, signatories, including Mauritania, must provide the OECD Secretariat with specific notifications at the time of signing or shortly thereafter. These notifications include confirmation of domestic legislation to mandate filing CbC reports, the decision on whether they wish to be listed as nonreciprocal jurisdictions, and a list of jurisdictions with which they intend the agreement to take effect. As of 10 April 2024, Mauritania has not yet completed this required notification process with the OECD.

#### **OECD releases sixth annual peer review report and revised peer review documents on BEPS Action 6 relating to prevention of treaty abuse**

On 20 March 2024, the OECD released two sets of documents on the minimum standard under Base Erosion and Profit Shifting (BEPS) Action 6 relating to prevention of treaty abuse: (i) the sixth annual peer review report (the [Report](#)) on the compliance with the minimum standard by member jurisdictions of the Inclusive Framework on BEPS; and (ii) the revised [Peer Review Documents](#) on BEPS Action 6 on the modified process for carrying out peer reviews beginning in 2024.

The peer reviews included in the Report were carried out under the peer review methodology as it was revised in April 2021. The Report reflects information on the implementation of the minimum standard by the 142 jurisdictions that were members of the Inclusive Framework on 31 May 2023.

The Report indicates that more than 1,270 bilateral agreements and two multilateral agreements between members of the Inclusive Framework complied with the minimum standard as of 31 May 2023.

The Report also indicates that more than 1,120 agreements concluded between members of the Inclusive Framework are covered by the BEPS Multilateral Instrument (MLI). The Report further provides updates on the progress that jurisdictions have made since 2021 and shows that many jurisdictions have followed the recommendations made in the prior peer review, either by formulating a plan for implementation of the minimum standard or by completing the steps for entry into effect of the BEPS MLI, as applicable.

The revised Peer Review Documents indicate that, going forward, comprehensive peer reviews will occur every five years, rather than annually. Targeted support also will be offered to any Inclusive Framework member jurisdiction that requires assistance in implementing the minimum standard, including during interim years when no comprehensive peer review occurs. The terms of reference for the Action 6 peer review have not been modified.

See EY Global Tax Alert, [OECD releases sixth annual peer review report and revised peer review documents on BEPS Action 6 relating to prevention of treaty abuse](#), dated 29 March 2024.

### Country developments

#### **Minister of Finance of Curaçao releases update on tax rulings policy**

On 12 March 2024, the Minister of Finance of Curaçao issued an [update](#) on the treatment of requests submitted for granting the status of a transparent entity, a purpose fund, or a Curacao investment company. This follows the release of the [tax rulings policy](#) on 17 October 2023.

On the one hand, for requests involving fiscal year 2019 or earlier and where the Inspector has not responded within the statutory two-month period, the status requested for the fiscal year is granted. These requests will not be substantially assessed and no rulings will be issued.

On the other hand, requests submitted for fiscal year 2020 or later will be processed with the issuance of a ruling. If the Inspector does not respond within two months, the request is automatically granted, followed by an assigned ruling. No further substantive assessment of the request is conducted.

As of August 2023, all requests should be submitted to the following email: [rulingverzoeken@gobiernu.cw](mailto:rulingverzoeken@gobiernu.cw).

## Cyprus releases updated FAQs on transfer pricing rules

On 28 March 2024, the Cyprus Tax Authority released an additional set of [Frequently Asked Questions](#), addressing a number of aspects relating to the application of the transfer pricing legislation effective as of 1 January 2022. The Cyprus Tax Authority addressed 13 new questions.

The FAQs highlight that when a company borrows from a related entity or individual to buy shares, the transaction neither requires documentation in the Local File nor inclusion in the Summary Information Table (SIT) if the incurred interest is not eligible as a tax-deductible expense.

Another set of questions clarifies that certain items should not be reported in the SIT or the Local File, nor be taken into account for purposes of assessing whether the applicable Local File threshold is exceeded, including:

- ▶ The sale of shares or other securities between related persons that fall under the definition of titles
- ▶ Taxable income arising from a qualifying shipping activity between two related persons who are both subject to tonnage tax
- ▶ Balances of a trading nature (trade receivables and trade payables)

However, trade receivable balances or other receivable balances (for example, long-outstanding balances) between related persons that are considered to be balances of financing nature should be reported in the SIT or the Local File and be taken into account for assessing whether the Local File threshold is exceeded.

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

## Czech Republic launches public consultation on draft bill implementing DAC8

On 25 March 2024, the Minister of Finance of the Czech Republic launched a [public consultation](#) on the draft bill transposing into domestic law the Directive on Administrative Cooperation implementing the OECD rules on reporting for crypto assets (DAC8). The draft bill proposes an effective date from 1 January 2026, with the exception of provisions related to the taxpayer identification number (TIN) validation, which are to enter into effect as of 1 January 2028.

The draft bill aims to introduce a new type of automatic exchange of information (AEOI) reported by crypto asset service providers in accordance with the OECD standard and other measures strengthening and modernizing existing instruments of international cooperation and extending the exchange of information to e-money products. The draft law also introduces changes to the AEOI notified by financial institutions and rules on the reporting of the TIN.

Stakeholders can submit their input until 17 April 2024.

## France adopts rules for avoidance of double taxation arising from application of CFCs regime

On 29 March 2024, France published on its *Official Journal* [Decree no. 2024-274 of 27 March 2024](#) (the Decree) introducing rules for the avoidance of double taxation arising from the application of the rules under the controlled foreign companies (CFCs) regime.

According to the Decree, French corporate income tax does not apply to dividends and other participation products distributed by CFCs to French shareholders if the proceeds had been previously considered distributed as per the CFC French regime. In addition, the Decree confirms that this exemption is valid irrespective of the French shareholder's profitability.

Moreover, the Decree introduces Article 102 YA, according to which French companies that sell shares in a CFC or a foreign permanent establishment are eligible for an exemption on the proceeds of the sale (such as capital gains). This exemption applies to income earned by the CFC or permanent establishment that has been previously taxed at the shareholder level in line with the CFC rules. The burden of proof lies with the French company, which should prove that the sale proceeds (partially) correspond to the income that was already taxed in France as per the French CFC regime.

The Decree is effective as of 30 March 2024, i.e., the day after it was published in the *Official Journal*.



## Irish Revenue issues Tax & Duty Manual on outbound payments defensive measures

In March 2024, the Irish Revenue issued a new [Tax & Duty Manual \(TDM\) Part 33-05-01 on Outbound payments defensive measures](#). The TDM provides guidance on the defensive measures enacted into Irish law in December 2023 that are aimed at the prevention of double non-taxation.

This TDM details the implementation of defensive measures through the application of withholding taxes on payments of interest, royalties and the making of distributions in certain circumstances by Irish resident companies, or Irish branches of nonresident companies. The measures apply to payments made to associated entities that are resident, or situated, in specified territories (i.e., EU noncooperative jurisdictions and no-tax and zero-tax territories). Where a payment or distribution is within the scope of the defensive measures, a 20% withholding tax applies to payments of interest and royalties, while distributions are subject to a 25% withholding tax. Further, exclusions no longer apply from the income tax on the non-Irish tax-resident associated entity that receives the in-scope payment or distribution.

The provisions apply to payments and distributions made on or after 1 April 2024, with the exception of arrangements existing on 19 October 2023. Payments or distributions made on or after 1 January 2025 that relate to arrangements in place on or before 19 October 2023 will be within the scope of these new defensive measures.

## Amendments to Kazakhstan transfer pricing legislation

On 25 March 2024, the President of the Republic of Kazakhstan signed the [Law](#) on amendments and additions to certain legislative acts of the Republic of Kazakhstan on transfer pricing.

In particular, key changes include:

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

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

## Liechtenstein opens public consultation on amendments to comply with automatic exchange of information standards

On 26 March 2024, the government of Liechtenstein adopted a [consultation report](#) and launched a [public consultation](#) on amendments to several acts to improve compliance with AEOI and tax cooperation.

In 2016, Liechtenstein adopted the common reporting standard (CRS) for AEOI to increase tax transparency. Liechtenstein's adherence to the AEOI standard is monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) through a peer review process. The final review of Liechtenstein's compliance with the standard is anticipated to conclude in 2025 and will result in a country rating.

To ensure a favorable rating in line with the Financial Center Strategy 2025, Liechtenstein has begun drafting legislation to address issues previously raised under the peer reviews. Key amendments in the legal framework revolve around broadening the registration requirements and launching a legal foundation for financial intermediaries to maintain an internal AEOI organization. Other changes include enhancing controls and information obligations to facilitate more accurate risk assessments using statistical data for more targeted control measures and updating the CbCR Act to allow parent companies based in Liechtenstein to designate other domestic group entities to submit the CbC report.

Stakeholders can submit their input until 31 May 2024.

## Dutch Minister of Finance submits letter to Parliament on Tax Treaty Negotiations

On 14 March 2024, the Dutch demissionary (i.e., provisional) State Secretary of Finance (the State Secretary) submitted its annual [letter](#) to the Parliament on Tax Treaty Negotiations, listing the tax treaties negotiated and signed in 2023, the Netherlands' tax treaty negotiation plan for 2024 and the status of current negotiations.

In 2023, the Netherlands negotiated 13 tax treaties and signed four with Andorra, Belgium, Kyrgyzstan, and Moldova (amending protocol). Compared to 2023, three new countries added to the negotiations plan: Benin, Ecuador and Sweden. Eight countries have been removed from the negotiations plan, six of which because the negotiations were no longer necessary as the treaties are in their final phase (Bahrein, Bangladesh, Barbados, Curacao, Moldova, and Sint Maarten) and two because a negotiations round in 2024 does not seem realistic (Kenya and Rwanda).

In 2024, the Netherlands has signed a tax treaty with Bangladesh and remains open to signing tax treaties with other countries. Among its priorities, the Netherlands will focus on continuing (update) negotiations with Aruba, Belgium, Germany, Morocco, Mozambique, Uganda, Portugal, Romania and Suriname. Each quarter, the Minister of Foreign Affairs releases an overview of the countries with which the negotiations are ongoing.

In addition, there are tax treaties in the final phase. Negotiations for these treaties are finalized at the technical level, but the tax treaties have not yet entered in effect. One example is the tax treaty with Curaçao, which is currently being discussed in the Dutch Parliament. The State Secretary's annual letter clarifies the considerations for each country, whether there has been an occasion to start treaty negotiations and what the current status is.

A new tax treaty with Belgium was signed on 21 June 2023. The State Secretary indicates that he aims to request approval for this treaty from the House of Representatives in the first half of 2024. In the run-up to signing the tax treaty, the Netherlands and Belgium were discussing the situation of frontier workers and teleworking (i.e., whether home working employees would trigger a permanent establishment for the foreign employer in their jurisdiction). It was decided not to wait for these discussions to be finalized before signing the tax treaty and to further discuss potential amendments for cross-border workers in 2024. The State Secretary indicates that negotiations also started in 2023 with Germany on an amending protocol mainly aimed at reaching an agreement on teleworking for cross-border workers. These negotiations will continue in 2024.

## **Slovak Republic launches public consultation on draft law implementing DAC8**

On 21 March 2024, the Ministry of Finance of the Slovak Republic launched a [public consultation](#) on the draft law transposing DAC8 into domestic law. The draft law should be based on the agreed global framework for the automatic exchange of information on crypto assets (CARF) and the revised CRS for information, as approved by the OECD in 2023. Stakeholders were invited to submit their initial input via a public consultation by 5 April 2024. The draft legislation is expected to be published around November 2024, at which time stakeholders will have an additional opportunity to submit their suggestions and feedback to the draft wording through the legislative procedure.

In accordance with DAC8, the draft law will introduce an obligation for crypto asset service providers to report to the tax administration information about crypto assets used for payment and investment purposes, which will be automatically exchanged with the other EU Member and treaty States. The scope of automatic exchange of accounts is also extended to include e-money products and Central Bank Digital Currencies in accordance with the revised CRS.

The deadline for reporting the information to the tax administration is in line with the deadline for the automatic exchange of financial account information, and the exchange between the relevant tax authorities will take place within nine months after the end of reporting period.

Furthermore, the draft law will contain additions and clarifications resulting from DAC8 in the areas of other types of tax information exchanges, as well as adjustments resulting from the experience of application practice and the peer review process of the Slovak Republic within the OECD in the field of tax transparency and exchange of tax information. The changes resulting from DAC8 will also need to be implemented in Decree no. 446/2015 Coll., which establishes the details of the verification of financial accounts by reporting financial institutions.

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