

The Latest on BEPS and Beyond

February 2023

EY Tax News Update: Global Edition

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Highlights

The second month of this year has been marked by a wave of developments on the Pillar Two front. The long-awaited Administrative Guidance on Pillar Two was released by the OECD, on 2 February, providing clarification on several relevant items. Notably, the document establishes that a Qualified Domestic Minimum Top-up Tax (QDMTT) takes precedence over Controlled Foreign Company (CFC) rules. Additionally, the document outlines that Global Intangible Low-Taxed Income (GILTI) will be treated as a CFC by using a formula to allocate the relevant tax per jurisdiction.

According to the same document, the Inclusive Framework plans to incorporate the Administrative Guidance into a revised version of the Commentary that will be released later in 2023. Moreover, the OECD plans to issue further guidance on an ongoing basis. As a result, the guidance will be a living document that may be frequently revised during the initial stages of Pillar Two. These continuous modifications to the guidance may prompt questions regarding the ongoing debate between the static and dynamic interpretation of the law.

At a country level, several countries have already taken steps towards implementing the Global Anti-Base Erosion (GloBE) Rules and/or a Domestic Minimum Top-up Tax (DMTT). In the last month, Qatar included a placeholder in domestic law, while Japan and Sweden released draft legislation in line with

the OECD Model Rules and European Union (EU) Directive, respectively. Singapore also recently announced the implementation of the GloBE Rules and a DMTT, effective for financial years starting on or after 1 January 2025.

A delayed implementation of Pillar Two from Singapore may encourage other countries to follow suit, especially since businesses may find it challenging to comprehend and adhere to the new rules. Although such a move may result in decreased tax revenues for countries, it could foster a more welcoming environment for investors and lead to greater clarity regarding the rules.

Despite progress being made at a country level on Pillar Two, there is also still a political debate in some countries about the implications of its introduction, in particular with some of the Pillar Two rules. In that respect, the United States (US) House of Representatives recently sent a [letter](#) to the OECD, expressing concerns over the use of Undertaxed Profits Rule (UTPR) and its potential to undermine US tax incentives. According to the letter, funding to the OECD may be in danger if no action is taken to protect the interests of the US.

As of today, there have been no reactions from the OECD or any other country on the matter. but it may be reasonable to believe that the political debate on Pillar Two is still live.

Overall, recent activity and political discussions make it clear that Pillar Two is here to stay. As such, businesses and countries must continue to stay informed and adapt to these new rules.

BEPS 2.0

OECD

OECD releases Administrative Guidance for Pillar Two

On 2 February 2023, the OECD/G20 Inclusive Framework released [Administrative Guidance](#) to address issues related to the GloBE Model Rules and Commentary. The guidance, which includes additions and modifications to the Commentary, aims to provide clarification on topics such as the allocation of taxes arising under blended CFC regimes, the design of QDMTT, the interaction between QDMTT and CFC Tax Regimes, and the scope of transactions covered under article 9.1.3.

According to the OECD, a revised Commentary, which will include the guidance, and a set of detailed examples will be released later this year. The document also states that

additional administrative guidance may be needed as issues emerge during the implementation of the GloBE Rules, and that such guidance may include both interpretive and operational guidance.

See EY Global Tax Alert, [OECD/G20 Inclusive Framework releases Administrative Guidance under Pillar Two GloBE Rules: Detailed Review](#), dated 9 February 2023.

OECD releases economic impact assessment of the Two-Pillar Solution

On 18 January 2023, the OECD released a new [revenue impact](#) of the two-pillar solution. According to newly released analysis from the OECD, the revenue increase from the implementation of Pillar One and Pillar Two will be higher than initially anticipated. As for Pillar One, is now expected to allocate taxing rights on about US\$200 billion in profits to market jurisdictions annually. This is expected to bring about an annual increase in global tax revenue ranging from US\$13 billion to US\$36 billion, based on data from 2021.

Pillar Two is now predicted to result in an estimated annual increase of global revenue of around US\$220 billion, or 9% of the global corporate income tax revenues.

Other developments

FASB addresses Pillar Two questions

On 1 February 2023, at the Financial Accounting Standards Board (FASB) meeting, the FASB staff responded to a [technical inquiry](#) about whether an entity should record deferred taxes for the GloBE minimum tax by recognizing GloBE specific deferred taxes or remeasuring existing deferred taxes at the GloBE minimum tax rate. The staff stated it believes that the GloBE minimum tax, as illustrated in the inquiry, is an alternative minimum tax as discussed in ASC 740, and, therefore, deferred tax assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax.

Therefore, the incremental tax an entity has to pay under the GloBE rules would be recognized in the period it arises and deferred tax assets and liabilities would not be recognized or adjusted for the estimated future effects of the minimum tax. Because a country may enact tax laws that differ from the GloBE rules, entities will need to evaluate provisions of laws enacted in each jurisdiction to determine whether they are consistent with the GloBE model rules to apply the accounting indicated by the FASB staff.

Country developments

Japan releases draft legislation on Pillar Two

On 3 February 2023, the Japanese Ministry of Finance released [draft legislation](#) on Pillar Two. The legislation only includes the Income Inclusion Rule (IIR). The UTPR and QDMTT will not be addressed until the 2024 tax reform at the earliest. The draft legislation follows the OECD Model Rules.

Parliamentary approval is needed for the draft law to take effect, but it is expected to be enacted on 1 April 2023. If passed, the IIR will apply to fiscal years starting 1 April 2024 or later.

See EY Global Tax Alert, [Japan submits draft legislation to implement IIR to align with OECD BEPS 2.0 Pillar Two](#), dated 10 February 2023.

Liechtenstein confirms implementation of Pillar Two

On 16 December 2022, Liechtenstein confirmed that it will introduce Pillar Two into domestic legislation. According to the [press release](#), the implementation in Liechtenstein would be in line with the OECD Model Rules or would make reference to them. Additionally, Liechtenstein would introduce a QDMTT.

A public consultation is planned to be launched in March 2023 with the goal of making the rules effective for tax years beginning in 2024.

Qatar reinforces its commitment to implement Pillar Two

On 2 February 2023, Qatar published in the *Official Gazette* Law no. 11 of 2022 to amend some of the provisions of the Income Tax Law no. 24 of 2018 (ITL). The ITL Article 34 new addition on BEPS notes that “The regulation shows the provisions necessary to address the requirements arising from the digitization of the economy, and sets a minimum tax for entities located in the country on the basis of their excess profits determined in a manner equivalent to the global rules for combating the erosion of the tax base, provided that it is not less than 15%, and the regulation also specifies the scope and conditions.” The ITL Article 34 new text is interpreted as essentially a placeholder reinforcing Qatar’s commitment to BEPS, before the more detailed introduction of the GloBE rules and/or a QDMTT in the future.

The detailed law/regulations on how Qatar will implement the GloBE rules (IIR only or both IIR and UTPR) and/or a QDMTT is expected to follow in the future. Currently there is no official date set for when the further detailed law/regulations will be released.

Singapore confirms the introduction of Pillar Two in 2025

On 14 February 2023, Singapore announced in its [Budget 2023](#) that it will implement GloBE rules and a QDMTT (referred to as the DTT) for fiscal years starting on or after 1 January 2025. The DTT will ensure that the effective tax rate of a Multinational Enterprise (MNE) group in Singapore is increased to 15%. Only MNE groups that operate in Singapore and generate annual revenues of at least €750 million, as stated in the consolidated financial statements of the ultimate parent entity, will be subject to the DTT. The DTT, which is anticipated to be closely aligned with the GloBE rules, will undergo minor changes to correspond with Singapore’s tax regime. Singapore has initiated discussions with industry stakeholders on the DTT’s design and will continue to monitor international developments leading up to the implementation of the GloBE rules and the DTT.

Sweden releases draft legislation on Pillar Two

On 7 February 2023, Sweden released a white paper proposal for [draft legislation](#) concerning Pillar Two. Whereas the proposal generally aligns with the EU Directive, it is still a work in progress, as it has not yet fully incorporated all the provisions of the EU Directive due to time limitations.

The IIR will be applicable for fiscal years starting on or after 31 December 2023. The UTPR will be applicable for fiscal years starting on or after 31 December 2024.

The consultancy period for the white paper proposal ends on 15 May 2023.

BEPS and other developments

OECD

OECD releases revised methodology for BEPS Action 14 peer reviews

On 24 January 2023, the OECD/G20 Inclusive Framework on BEPS agreed on a [revised Assessment Methodology](#) for the BEPS Action 14 peer review process. Accordingly, jurisdictions without “meaningful MAP experience” will undergo a [simplified peer review process](#), and those with it will undergo a full peer review process, beginning in 2023 and 2024, respectively. A jurisdiction would be considered to have “meaningful MAP experience” on the basis of the following conditions: (i) a threshold of 10 Mutual Agreement Procedure (MAP) cases in its MAP end inventory as reported in its MAP Statistics over the three previous years on average; or (ii) feedback is received from other members of the Forum Tax Administration MAP Forum indicating that the jurisdiction's policy or practice concerning MAP requires improvement.

In the [press release](#), the OECD announced that new data points will be reported by all Inclusive Framework member jurisdictions in their MAP Statistics, including: (i) break down of the average time to close cases in the unilateral and bilateral stages of MAP; and (ii) identification of the age of pending cases.

Additionally, annual statistics with respect to Advance Pricing Arrangements (APAs) will be reported and published on the OECD website in a common format and will be available from 2024 onwards.

Finally, there are also ongoing discussions about changes to the BEPS Action 14 minimum standard.

See EY Global Tax Alert, [OECD releases revised methodology for BEPS Action 14 peer reviews and updates on reporting of MAP and APA statistics](#), dated 17 February 2023.

OECD releases manual on MAP and APAs

On 1 February 2023, the OECD published a [manual](#) on the handling of multilateral MAPs and APAs to provide guidance to jurisdictions on how to handle these cases. The manual provides an overview of the challenges that arise in multilateral cases and the experiences of 19 jurisdictions including Australia, Canada, France, India, Japan, the United Kingdom (UK) and the US, based on responses to a survey circulated in 2020.

The manual includes sections on the definition of a multilateral case, the legal basis for handling these cases, the procedural aspects to consider, examples of multilateral cases, and an ideal timeline for a typical case. The manual aims to provide clarity for tax administrations on implementing multilateral MAP and APA procedures and outlines the actions and cooperation expected from taxpayers.

European Union

ECOFIN adopts revised list of non-cooperative jurisdictions for tax purposes

On 14 February 2023, the Council of the European Union (the Council) held an Economic and Financial Affairs Council (ECOFIN) meeting where Finance Ministers approved the [Council Conclusions](#) on the revised EU List.

During the meeting, the Council decided to add the British Virgin Islands, Costa Rica, Marshall Islands, and Russia to Annex I (also referred to as the “EU Blacklist”). Meanwhile, Barbados, Jamaica, North Macedonia, and Uruguay were removed from Annex II (the “EY Greylist”) due to their pending commitments, while Albania, Aruba, and Curaçao were added. The updated EU List now includes 16 jurisdictions in Annex I and 18 jurisdictions in Annex II. The Council plans to review and revise the list biannually and the next update is scheduled for October 2023.

See EY Global Tax Alert, [ECOFIN adopts revised list of non-cooperative jurisdictions for tax purposes](#), 15 February 2023.

European Commission opens public consultation on the Implementing Regulation on Foreign Subsidies Regulation

On 6 February 2023, the European Commission (the Commission) launched a [public consultation](#) on the draft Implementing Regulation on the Foreign Subsidies Regulation (FSR) with a deadline of 6 March 2023. The FSR assigns to the Commission the power to investigate financial contributions (such as tax benefits) granted by public authorities of a non-EU country that benefit companies engaging in an economic activity in the EU and to redress their distortive effects. The Implementing Regulation provides certain practical and procedural aspects with respect to the application of the FSR. Among others, it clarifies the information required for different notification forms under the FSR and provides the draft notification forms.

The Commission will examine the feedback received once the consultation is over and shape the final version of the Implementing Regulation, which is expected to be adopted in the second quarter of 2023 and prior to the commencement of the FSR on 12 July 2023.

The Commission issues Communication on a Green Deal Industrial Plan for the Net-Zero Age, including, among others, EU's response to the US Inflation Reduction Act

On 1 February 2023, the European Commission (the Commission) published a [Communication](#) on a Green Deal Industrial Plan for the Net-Zero Age (the Communication). The Communication covers the four following pillars (i) a predictable and simplified regulatory environment; (ii) faster access to sufficient funding; (iii) skills; and (iv) open trade for resilient supply chains. With respect to the second pillar, the Communication proposes that the EU will make use of EU funding, comprising both existing (REPowerEU, InvestEU, and the Innovation Fund) and new ([European Sovereignty Fund](#)) sources of funding. Furthermore, the Commission intends to temporarily relax the State aid Rules to provide Member States with flexibility in granting aid and calls for swift and accelerated implementation of the Commission's legislative proposals implementing the 2020 Capital Markets Union (CMU) Action Plan.

The Communication was discussed during the Special European Council [meeting](#) that took place on 9 and 10 February. In the meeting [conclusions](#), the EU Leaders invited the Commission and the Council to fully deploy available funding, explore the full potential of the European Investment Bank, and accelerate the implementation of the CMU Action Plan. As for State aid relaxation, the conclusions reference tax credits as a means of permissible targeted support in the sectors that are strategic for the green transition.

The Commission is expected to come forward with concrete legislative proposals by mid-March, and EU Leaders may discuss them during the [European Council](#) on 23-24 March.

See EY Global Tax Alert, [European Commission publishes proposal for a "Green Deal Industrial Plan for the Net-Zero Age"](#), dated 7 February 2023.

The Commission opens public consultation on Implementing Regulation introducing criteria of equivalence of information exchanged under agreements between Member States and a non-EU country to that under DAC7

On 20 January 2023, the Commission opened a [public consultation](#) on the draft Implementing Regulation introducing criteria of equivalence of information automatically exchanged under agreements between Member States and a non-EU country to that under DAC7.

DAC7 extends EU rules for tax transparency and reporting to digital platforms in relation to information on their sellers.

Stakeholders could provide their input until 17 February 2023 and the Commission will now take the comments provided into consideration when finalizing the drafting on this initiative.

European Parliament adopts non-binding opinion on Unshell initial proposal

On 18 January 2023, members of the European Parliament adopted in plenary their [opinion](#) on the Commission's proposal Directive for preventing the misuse of shell entities in the EU (Unshell).

The opinion generally supports the proposal as presented by the Commission and suggests to slightly lower the thresholds below which a company is exempt of the reporting requirements of the Directive, and to also provide for penalties to be levied on companies with zero or low revenues.

The European Parliament only has an advisory role in the legislative process on this proposal and the opinion is non-binding. Adoption of any changes to the draft Unshell Directive would require unanimity among the 27 Member States.

Country developments

Argentina updates list of non-cooperative jurisdictions

On 27 January 2023, the Argentine Government published [Regulatory Decree 48/2023](#) that amends the Income Tax Law's Regulatory Decree. The Decree removes the following 15 countries from the list of "non-cooperative jurisdictions": Bosnia and Herzegovina, Botswana, Cape Verde, Eswatini, Jordan, Kenya, Liberia, the Maldives, Mauritania, Mongolia, Montenegro, Namibia, Oman, Paraguay, and Thailand.

To avoid being on this list, jurisdictions need to have an agreement for the exchange of information in tax matters or a tax treaty signed with Argentina and comply with international transparency and exchange of information standards. Taxpayers who do business with entities located in the listed jurisdictions will have to consider the corresponding income tax implications and higher transfer pricing administrative burden. Currently, 80 jurisdictions are still on the list.

The Decree is applicable for fiscal years starting on or after of 27 January 2023.

See EY Global Tax Alert, [Argentine Government updates list of non-cooperating jurisdictions for income tax](#), dated 1 February 2023.

Belgium issues guidance on interest limitation deduction rule

On 12 January 2023, Belgium released [guidance](#) on the interest deduction limitation rule (the Guidance), in view of the transposition of the Anti-Tax Avoidance Directive. According to Belgian domestic legislation, excess borrowing costs are deductible up to the highest of 30% of the taxpayer's earnings before interest, taxes, depreciation and amortization (EBITDA) or €3 million.

Among other items, the guidance clarifies that certain financial undertaking, standalone entities, and, under conditions, taxpayers with activity limited to long-term public infrastructure project, are exempt from the rule. In addition, the guidance sets out a number of items that are considered equivalent to interest, such as compensation owed by the taxpayer to a related foreign company. The guidance also defines a number of items that are excluded from the EBITDA, such as income exempt under the participation exemption or under a tax treaty. Finally, the guidance provides clarity on the application of the rules for groups and restructurings with a couple of illustrative examples. The clarifications with respect to restructurings provide for new insights, whereas the other administrative comments basically confirm positions that were already well established in practice.

Bulgaria's Minister of Finance issues updated list of jurisdictions with preferential tax regimes

On 13 January 2023, the Bulgarian Minister of Finance issued Order [ZMF-33](#) updating the list of jurisdictions with a preferential tax regime. The updated list contains the following jurisdictions: (i) US Virgin Islands; (ii) Guam Island (US); (iii) Christmas Island; (iv) Pitcairn; and (v) Republic of Palau.

Order ZMF-33 entered into effect on 1 February 2023, replacing Order [ZMF-1303](#) of 21 December 2016, which contained a total of 26 jurisdictions with a preferential tax regime.

Danish Supreme Court issues rulings on beneficial ownership

On 9 January 2023, the Danish Supreme Court issued a [ruling](#) regarding two beneficial ownership cases involving holding companies in Luxembourg and Cyprus in favor of the Danish Ministry of Taxation, both cases addressing issues on determining beneficial ownership, including the application of tax treaties. The underlying issue in the cases was whether dividend payments were exempt from withholding tax when the payments were made from a Danish company to a company resident within the EU, which then fully or partially made payments to an ultimate parent company residing in a third country.

The Supreme Court relied on the notion of "beneficial ownership" referring to paragraph 12.2 of the Commentary on Article 10 of the OECD Model Income Tax Convention from 2003 to determine the cases. The Court found that the Luxembourg and Cyprus parent company did not qualify as the beneficial owners and that the Danish subsidiaries acted negligently by not applying withholding tax and accordingly, the subsidiary was not liable for payment thereof. The Danish Supreme Court held that the tax authorities were entitled to claim interest on late payment of dividend withholding tax, including compound interest, albeit it was not a possibility for the taxpayers to deposit the contested tax claim to avoid interest from accruing. The interest amount was about double the dividend tax amount itself.

The rulings in the pending interest withholding tax cases are expected to be delivered in April 2023.

See EY Global Tax Alert, [Danish Supreme Court issues rulings on beneficial ownership](#), dated 9 January 2023.

France updates list of Non-Cooperatives States and Territories

On 5 February 2023, the French Minister of Finance published in the *Official Gazette* the [updated list](#) of Non-Cooperatives States and Territories (the NCST list) (Decree of 3 February 2023). Following the latest update of the EU list of non-cooperative jurisdictions in October 2022, France added Bahamas and Turks and Caicos Islands to the updated NCST list with effect from 1 May 2023. The updated list includes the following jurisdictions: American Samoa, American Virgin Islands, Anguilla, Bahamas, British Virgin Islands, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, Turks and Caicos, and Vanuatu.

German Parliament approves act ratifying exchange agreement with the US

On 9 February 2023, the First Chamber of the German Parliament approved in its second reading the Act ratifying the international agreement on the exchange of Country-by-Country (CbC) reports with the US (the agreement). A bilateral agreement is necessary for the exchange of CbC reports given that the US has not signed the multilateral competent authority agreement on the exchange of CbC reports.

If the law is passed, the agreement will enter into effect on 31 March 2023.

Ireland updates guidance on the Interest Limitation Rule

On 2 February 2023, the Irish Revenue updated the [Irish Tax & Duty Manual](#) (TD&M) on the Interest Limitation Rule (ILR) to reflect the amendments made to Irish tax legislation under *Finance Act 2022*. At a high level, the updates include the following:

- Clarifications to the definition of “interest equivalent” for the purposes of the ILR
- Outlining which portion of debt should be treated as paid in priority where a debt repayment includes a mixture of legacy debt and non-legacy debt
- Updates in relation to the calculation of “relevant profit” or “relevant loss” and the interaction with group relief/non-trade charges

- Updates to the definition of “Large-scale assets” in the context of qualifying long-term public infrastructure projects which are exempt from the ILR under Irish tax legislation
- Updates regarding the relief available in an accounting period in respect of a deemed borrowing cost and interest carried forward under Ireland’s tax amortization regime
- Changes with respect to the application of the carry-forward of total spare capacity

Ireland updates guidance in relation to Country-by-Country Reporting (CbCR)

On 25 January 2023, the Irish Revenue issued [e-Brief No. 018/23](#) (the Brief) outlining the updates to the TD&M for CbCR.

As indicated in the Brief, the figures on CbCR agreements in place have been updated. Ireland is among the 95 jurisdictions that have signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports as of January 2023.

The Brief also indicates that the timeframes for exchanges of the CbC reports have been updated, i.e., the exchange of CbC reports must take place no later than 15 months after the last day of the fiscal year to which the CbC report of the MNE group relates.

Moldova releases law introducing transfer pricing regime and general anti-abuse provision

On 30 December 2022, Moldova published in its *Official Gazette* [Law No. 356 of 29 December 2022](#) (the Law), introducing a transfer pricing regime and a general anti-abuse rule.

The transfer pricing legislation includes several provisions, such as requiring related party transactions to comply with the arm’s-length principle; specifying the criteria for identifying related parties; outlining transfer pricing methodologies; and establishing guidelines for disclosure and documentation, as well as penalties. As for the general anti-abuse rule, the Law indicates that the State Tax Services will disregard or reclassify a (series of) transaction(s) that is considered being undertaken with the aim of acquiring a tax benefit, such as a tax refund or a reduced tax rate, and do not reflect the economic situation presented by the taxpayer.

The Law entered into force on 1 January 2024.

The Netherlands issues Decree clarifying application of transfer pricing anti-mismatch rules

On 24 January 2023, the Dutch State Secretary of Finance published a [Decree](#) clarifying the scope and application of the transfer pricing anti-mismatch rules in the case of, among other things, contributions and distributions of an asset to a Dutch corporate taxpayer.

In particular, the State Secretary of Finance clarifies that the transfer pricing anti-mismatch rule (Art. 8bd CITA) does not apply if a Dutch taxpayer acquires an asset by means of a capital contribution from an affiliated entity that is subjectively exempt from a profit tax or resides in a jurisdiction in which the entity is not subject to a profit tax if for both the legal form of the capital contribution, and in the annual financial statements of the transferor and the Dutch taxpayer, the fair market value is applied to the capital contribution. The Decree clarifies that such financial statements should be prepared under Dutch law (Book 2, title 9 of the Civil Code) or similar foreign regulations.

The above similarly applies to the transfer of an asset to the Dutch corporate taxpayer by means of a profit distribution, return of paid-up capital, liquidation distribution, or a similar legal act.

See EY Global Tax Alert, [The Netherlands issues favorable Decree clarifying application of transfer pricing anti-mismatch rules for asset transfers to Dutch corporate taxpayer through contributions and distributions](#), dated 24 January 2023.

Dutch State Secretary of Finance submits letter to the Parliament on conduit companies

On 8 February 2023, the Dutch State Secretary of Finance submitted a [letter](#) on conduit companies. This letter comes in response to discussions that took place within the Parliamentary Committee (the Committee) debate on conduit companies on 7 December 2022.

The letter includes, among other things, a response to the [recommendations](#) provided by the Committee, and examines the interaction of the legislative proposal for a Directive setting forth rules to prevent the misuse of shell entities for tax purposes (Unshell) with tax treaties. In addition, the letter states that a multilateral rather than a national approach is preferable in relation to the establishment of measures against the misuse of shell entities, and in that regard welcomes the Unshell proposal.

In the letter it is furthermore stated that the Swedish Presidency aspires to discuss the progress or even approve the Unshell Directive in the ECOFIN Meeting of 16 May 2023.

Poland launches public consultation on DAC7 implementation

On 8 February 2023, the Minister of Finance of Poland issued a [public consultation](#) on the draft domestic legislation implementing the EU Directive on Administrative Cooperation in the Field of Taxation to extend its scope to reporting obligations of digital platform operators (DAC7) in Poland. Under DAC7 digital platforms are obliged to collect, verify and report information on sellers who use their platform to sell defined goods or to provide services. DAC7 also aims to enforce the exchange of information and cooperation between the EU Member States' tax authorities, for example, through a joint audit framework or data breach procedures.

The public consultation will run until the 1 March 2023.

Romania enacts DAC7 implementation

On 31 January 2023, the Government of Romania enacted domestic legislation ([Ordinance No. 16](#)) implementing DAC7 (reporting obligation for digital platforms) through amendments to the Romanian Fiscal Procedure Code.

The first annual DAC7 report will be due by 31 January 2024.

Spain issues draft List of Non-Cooperative Jurisdictions for Tax Purposes

On 9 February 2023, the Spanish Ministry of Finance published a [Ministerial Order](#), which sets forth a new list of countries, territories and harmful tax regimes that will be considered as non-cooperative jurisdictions for tax purposes.

The list consists of 24 jurisdictions, 10 of which correspond to the countries and territories listed on the EU [List of Non-Cooperative Tax Jurisdictions](#) (last updated on 14 February 2023). Notwithstanding, the Spanish list does not include jurisdictions which appear in the aforementioned "EU blacklist," while it includes jurisdictions listed on the "EU grey list." Furthermore, the Spanish list includes two jurisdictions (Barbados, and Trinidad and Tobago) that have a tax treaty in force with Spain.

The updated list includes the following jurisdictions: Anguilla, Bahrain, Barbados, Bermuda, Cayman Islands, Dominica, Fiji, Gibraltar, Guam, Guernsey, Isle of Man, Jersey, Falkland Islands (also called Malvinas Islands), Mariana Islands, Palau, Palau, Samoa (only with respect to its harmful tax regime for offshore business), American Samoa, Seychelles, Solomon Islands, Trinidad and Tobago, Turks and Caicos Islands, British Virgin Islands, US Virgin Islands, and Vanuatu.

This list is final and applicable as follows:

- ▶ Since 11 February 2023 with respect to taxes without an accrual period (e.g., non-resident income tax)
- ▶ For taxable years starting on or after 11 February 2023 with respect to taxes with an accrual period (e.g., Corporate Income Tax)

However, for any new non-cooperative jurisdictions not previously listed in the original Spanish list, the effects from their inclusion in the list will be postponed for a six-month period from the above referred dates.

See EY Global Tax Alert, [Spain releases final List of Non-Cooperative Jurisdictions for Tax Purposes](#), dated 16 February 2023.

United Kingdom (UK) amends Mandatory Disclosure Rules

On 17 January 2023, His Majesty Revenue and Customs (HMRC) released a policy paper on the amendment of the Mandatory Disclosure Rules (MDR). The proposed revisions aim to bring the MDR in line with the Model MDR agreed at the OECD level, replacing the existing reporting obligations based on DAC6 in view of the end of the “transition period” after UK’s EU exit.

The new regime will establish reporting obligations for promoters and advisors involved in certain types of arrangements, define deadlines for reports, and introduce penalties for non-compliance and rights of appeal. A reportable arrangement is an arrangement that entails the use of opaque offshore structures or circumvents reporting under the Common Reporting Standard (CRS).

The information received by the HMRC will be shared and exchanged with other tax authorities implementing the rules. HMRC will use information received from these reports to help identify and challenge potential cases of offshore tax evasion.

The new rules are expected to enter into force on 28 March 2023.

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