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International Tax News

June 2024

Start

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Welcome

Our monthly publication offers updates and analysis on international tax developments around the world, authored by specialists in PwC's global international tax network. We hope you find this publication helpful. For more international tax-related content, please visit PwC.com for more details.

Cross Border Tax Talks

Doug McHoney, PwC ITS Global Leader, hosts PwC specialists who share insights on issues and developments in the OECD, EU, US and other jurisdictions. Listen to the latest:

US Stock Buyback Tax: a funding conundrum

Doug McHoney Doug McHoney is joined by Nita Asher, International Tax Partner in PwC's Washington National Tax Practice and former legislative counsel to the Joint Committee of Taxation during the enactment of TCJA in 2017. Doug and Nita focus on the Stock Buyback Excise Tax enacted under the Inflation Reduction Act. Non-US headquartered companies will be very interested in this conversation!

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Doug McHoney, PwC's Global International Tax Services Leader shares some of the highlights from the latest edition of International Tax News.

In this issue

Legislation

Australia

Update on Australian public country-by-country reporting

Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 containing the proposed public country-by-country (CbC) reporting rules was introduced into Australian Parliament on 5 June 2024. The measures set out in the Bill, which will broadly require large multinational groups to publicly disclose certain tax information on a country-by-country basis and a statement on their approach to taxation, are largely consistent with those proposed in the exposure draft released in February 2024.

The public CbC reporting measures were introduced into Parliament as part of a broader legislative package containing various unrelated matters, so the timing of the Bill's passage by Parliament may be impacted by debate over the other measures. Nevertheless, we do not anticipate material amendments to the proposed rules or the start date before they are enacted. As such, we recommend groups begin to prepare for the new public CbC reporting rules now.

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Legislation

Austria

Austrian Ministry of Finance publishes draft of the Austrian Tax Amendment Act 2024

The Austrian Ministry of Finance (BMF) published a draft of the Austrian Tax Amendment Act 2024 (AbgÄG 2024) on 3 May 2024. The draft includes the following significant amendments:

- The loss utilization rules for a new group parent are intended to become more strict, i.e. tax losses available prior to the formation of the new tax group, which originate from former tax-effective write-downs of book values under tax law, or from disposal losses with regard to investments in corporations that were already members of another tax group at the time of the write-down or disposal, can no longer be offset against the group result at the level of the new group parent. The offsetting prohibition should be temporary and only apply to the new group parent. The draft law lacks detail on how the initial loss restriction is calculated and on any relief from this restriction.
- The available offsetting of losses of foreign group members in the tax group regime is to be embedded as an option (instead of a mandatory tax provision).
- The low-taxation tests for CFC and local anti-hybrid purposes should be extended by national top-up taxes in accordance with Pillar Two.
- The temporary CbCR safe harbour rule is to be extended to include groups of companies that are not obliged to prepare a country-by-country report (CbCR). Changes to the simplified calculation for hybrid structures are also being considered.

For more information see our PwC Alert.

The new law is expected to be finalized in early summer. Numerous minor details will be clarified, and linguistic inadequacies should be corrected.

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Legislation

Barbados

Barbados enacts corporate tax reforms in response to Pillar Two

Barbados has implemented significant reforms to its corporate tax regime through the enactment of the Income Tax (Amendment and Validation) Act, 2024-15 and a new stand-alone Corporation Top-Up Tax Act, 2024-16. Highlights include:

Barbados corporation tax rates

Companies that are members of a Multinational Enterprise (MNE) group, with annual consolidated revenue of EUR750m or more, whose ultimate parent entity or intermediary parent entities are located in a jurisdiction that has not enacted top-up tax legislation now are subject to a 9% rate for the 2025 income tax year (previously 5.5%-1% in 2024)

Reliefs from domestic top-up tax

A top-up tax of 15% has been introduced effective 1 January 2024. The aim of the top-up tax is to establish a 15% minimum tax rate for certain qualifying MNE groups. There are transitional reliefs available to MNE groups where:

- the MNE group is deemed to be in an initial phase of international activity; or
- for the first fiscal year commencing on or after 1 January 2024, the income of a MNE group is not subject to an IIR or UTPR in another jurisdiction.

A de minimis exclusion election is also available and would operate to reduce the top-up tax to zero where:

- the average qualifying revenue of the MNE group is less than EUR10m; and
- the average qualifying income of the MNE group is a loss or less than EUR10m.

Transitional CbCR safe harbour

The filing entity of a Domestic Minimum Top-Up Tax (DMTT) group may make a transitional safe harbour election for a fiscal year. Where such an election is made, all qualifying entities of a DMTT group will be deemed as not having top-up tax liability if a qualifying Country-by-Country

Report has been prepared in relation to Barbados for the fiscal year, and at least one of the three tests on revenue threshold, simplified effective tax rate, or routine profits levels are met.

A key feature of these legislative reforms includes new corporation tax rates and the imposition of a Qualified Domestic Top-Up Tax (QDTT) on qualifying resident companies that are members of an MNE group with annual consolidated revenue of EUR750m or more, to achieve the global minimum effective tax rate of 15%.

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Legislation

Canada

Canada enacts Pillar Two and releases Explanatory Notes for the Global Minimum Tax Act

The Department of Finance released Explanatory Note relating to the Global Minimum Tax Act (GMTA) on 31 May 2024. The Explanatory Notes generally provided references to the corresponding Article of the OECD Model Rules and paragraph in the OECD Commentary and Administrative Guidance that the specific definition or provision in the GMTA was intending to implement.

On 20 June 2024, Canada enacted Bill C-69, An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024. Bill C-69 includes the legislation to implement the GMTA in Canada. The GMTA includes an income inclusion rule and a qualifying domestic minimum top-up tax effective for financial years beginning on or after 31 December 2023. The legislation included in Bill C-69 does not include legislation to implement the undertaxed profits rule, which will not be effective until fiscal years beginning on or after 31 December 2024.

The Explanatory Notes reinforced Canada's intention to mirror the OECD Model Rules as closely as possible in the implementation of the GMTA.

As a result of the GMTA's enactment, MNE groups with Canadian entities will have to consider the impact of the GMTA for purposes of reporting their tax expense for interim and annual periods ending on or after 30 June 2024.

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Legislation

Norway

Norwegian Top-Up Tax Act

The Norwegian Parliament adopted the Norwegian Top-up Tax Act for the Pillar Two income inclusion rule (IIR) and domestic minimum top-up tax (DMTT) on 4 January 2024. The new law takes effect from 1 January 2024 and aims to mirror the OECD Model Rules. The Norwegian rules also apply to purely Norwegian groups.

The Norwegian Top-up Tax Act states that calculations prescribed under the law shall be made in the presentation currency of the consolidated financial statements of the ultimate parent company. If the presentation currency according to the first paragraph is other than Euro, the relevant monetary thresholds in the law shall be converted to Euro. The conversion shall be based on the average exchange rates for the month of December of the preceding fiscal year.

In addition, the Norwegian Parliament developed a secondary law, which came into effect 26 March 2024. The secondary law contains provisions enacted by the Ministry of Finance for the complementation and fulfillment of the Norwegian Top-up Tax Act. The secondary law is designed to mirror the OECD Model Rules and brings the Norwegian legislation even closer to the Model Rules.

The new legislation does not include the implementation of the UTPR. The adoption of the rule is still expected from 2025 in line with the OECD Model Rules.

The secondary law includes both permanent and transitional Safe Harbor-provisions. The Secondary law also provides thorough definitions to the provisions in the Norwegian Top-up Tax Act.

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Legislation

Sweden

Sweden proposes Pillar Two amendments

Following the enactment in Sweden of the Pillar Two legislation in December 2023, amendments were suggested in a pro memoria dated 19 March 2024. These amendments aim primarily at implementing the Administrative Guidance issued throughout 2023.

Various changes were suggested in the pro memoria. Some highlights include that the Swedish QDMTT should be based on a national accounting standard if all Swedish constituent entities (CEs) use the same standard, the introduction of a UTPR Transitional Safe Harbour and a Permanent Safe Harbour for non-material CEs, a QDMTT Safe Harbour, as well as modifications to the foreign tax credit act that enable offsetting foreign QDMTTs against taxes due under the Swedish CFC rules.

The amendments proposed on 19 March 2024 have undergone a public consultation in Sweden and are expected to be adopted, potentially with some modifications, in 2024.

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Legislation

Turkey

Turkish Minister of Treasury and Finance announced plans for Pillar Two

During a press program of the Turkish Minister of Treasury and Finance, on 20 May 2024, the Minister announced, for the first time, plans for a domestic and global minimum corporate tax. Accordingly, one of the future savings packages to be detailed soon will address fairness and efficiency in taxation, including domestic and global minimum corporate tax regulations. As Türkiye is in a development phase, international standards will be considered when implementing domestic and global minimum corporate tax regulations.

Also, during an interview on 28 May 2024, the Minister stated that, in line with the OECD consensus, multinational entities with consolidated revenues exceeding the threshold of 750 million Euros will be subject to global minimum corporate tax at the rate of 15% for their branches, subsidiaries, and permanent establishments located in low-tax jurisdictions. It is inevitable for Türkiye to introduce regulations for collecting minimum corporate tax from multinational entities operating in Türkiye; otherwise, the tax not collected by Türkiye would be collected by other states. Accordingly, alternative models are being worked on to determine how to maintain the tax incentives provided to these entities and how to evaluate them in different areas to encourage investment in Türkiye.

The Law on domestic and global minimum corporate tax has not yet been published and no draft has been shared with the public. However, there have been plenty of discussions and meetings with competent authorities including the contributions of non-governmental organizations. These discussions mainly focus on details in relation to the domestic minimum corporate tax, as well as a global minimum corporate tax with an effective 15% tax rate. Accordingly, Pillar Two rules (QDMTT and IIR) are expected to enter into force for the prospective periods covering FY2024, with UTPR expected to be implemented as of FY2025.

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Administrative

Australia

International Dealings Schedule 2024

The ATO has released the 2024 International Dealings Schedule (IDS) and instructions. Additional information is now required for Section D (thin capitalisation) to reflect the new interest limitation rules. This includes a requirement to provide information if the taxpayer restructured or replaced an arrangement during the income year that would have been subject to the debt deduction creation rules if the arrangement had not been restructured or replaced and had still been in place after 1 July 2024.

Impacted taxpayers should review the new requirements to ensure they can collate the required information to meet compliance deadlines.

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Administrative

Belgium

Countries begin to establish Pillar Two compliance procedures

Countries worldwide have begun enacting procedures that require in-scope groups and entities to register before making Pillar Two payments. Before filing a GloBE Information Return (GIR) or, if applicable, a Qualified Domestic Minimum Top-up Tax (QDMTT) return, certain countries have requested advance registration and assigned taxpayer identification numbers.

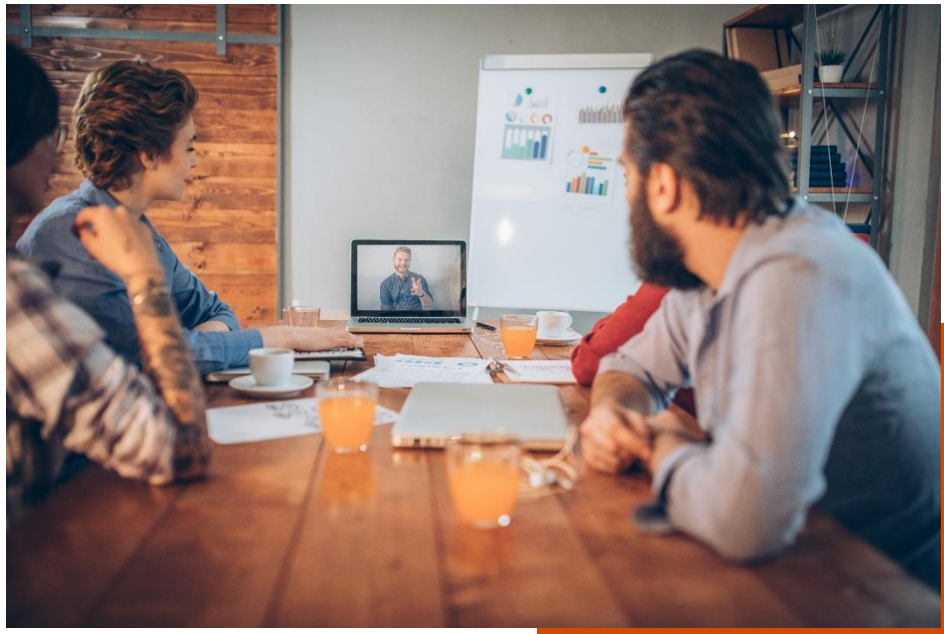
Generally, a GIR and QDMTT return must be filed within 15 months of the end of the GloBE reporting year (extended to 18 months in the first fiscal year that the multinational company and large domestic group is within scope). However, there are local country exceptions to this general timing. In anticipation of these filings, countries have begun to enact internal procedures.

Belgium

Multinational companies and large domestic groups with a Belgian Constituent Entity need to file a notification at the Crossroads Bank for Enterprises regardless of whether the ultimate parent entity (UPE) is located in Belgium or another jurisdiction. In case of multiple Belgian entities, one Belgian entity should be appointed for the filing of the notification form on behalf of the Belgian affiliates.

For more information see our PwC Insight.

Taxpayers should be keenly aware of the varying Pillar Two registration deadlines. For example, those taxpayers who already are subject to Pillar Two in Belgium must register within 45 days of the 'May 15th royal decree' being published in the Belgian Official Gazette on 29 May 2024.



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Administrative

Mexico

Draft proposal modifying general foreign trade rules and criteria issued by Ministry of Economy, published by CONAMER

The National Commission for Regulatory Improvement (CONAMER) published a draft proposal, on 6 May 2024, to modify the agreement on foreign trade rules and criteria issued by the Ministry of Economy (SE) specifically for rules 2.4.11 and 3.2.9.

For reference, the current rule 2.4.11 exempts the importer of record from the obligation to demonstrate compliance with NOM's at the point of entry into the country, among other cases, when various goods are imported through courier and parcel companies registered with the Tax Administration Service (SAT), whose value does not exceed 2,500 USD or its equivalent in national or foreign currency.

The draft proposal seeks to ensure compliance with the corresponding Mexican Official Standards (NOM's) for various merchandise imported through a simplified customs declaration and procedure by courier or parcel companies whose value does not exceed 2,500 USD. The purpose of this is to ensure that such merchandise complies with the requirements and standards of the NOM's in order to promote full consumer protection.

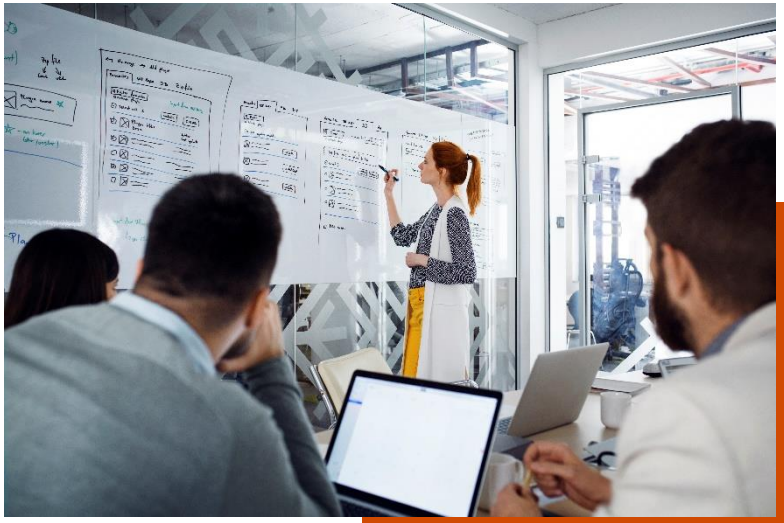
Regarding rule 3.2.9, two paragraphs are added which emphasize that the Ministry of Economy may request any type of information or documentation from the Tax Administration Service (SAT), National Customs Agency of Mexico (ANAM), or other authorities, to verify compliance with the obligations of the Manufacturing, Maquiladora, and Export Services Industry Program (IMMEX).

Furthermore, the draft proposal considers the following activities by the taxpayer as grounds for cancellation of the IMMEX Program:

- Extemporaneous returns to foreign countries of temporarily imported goods.
- Virtual transfers of temporarily imported goods that have exceeded their legal stay period.
- Changes from the temporary importation customs regime to the permanent importation customs regime of goods once these have exceeded the authorized temporality, known as a regularization through code A3 customs declaration.

The proposal aims to ensure compliance with Mexican Official Standards (NOM's) for various goods imported through courier or parcel companies, with a value not exceeding 2,500 USD. Additionally, the proposal allows the Ministry of Economy to request information or documentation from relevant authorities to verify compliance with obligations under the Manufacturing, Maquiladora, and Export Services Industry Program (IMMEX).

Note that the proposal is not yet in effect as it has not been published in the Official Gazette of the Federation (DOF).



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Administrative

UK

Pillar Two registrations

HMRC has launched a new online system for taxpayers to register that they are in the scope of Pillar Two, applicable to both the multinational top-up tax (MTT) and domestic top-up tax (DTT). HMRC also published related guidance.

The filing entity of a group (or a standalone entity) must use the new online system to register that they are in-scope no later than six months after the first accounting period in which the group (or entity) become so, even if they have no Pillar Two liability. The filing entity of an in-scope group is, by default, the group's ultimate parent entity (UPE). The UPE may nominate another group member to be the filing entity, but where a group is subject to both the MTT and DTT, the same entity must be nominated as the filing entity for both taxes.

See our PwC alert for more details.

Only the filing member for the group can use the online service. If the filing member is not UK tax resident, it will need to first register for the UK's Government Gateway in order to obtain the user ID necessary to access the online registration system.

Among the information needed to register is the name and registered address for the UPE and filing member if it is not the UPE. If either of these registrants are a UK limited company or limited liability partnership, the company registration number (CRN) and unique taxpayer reference (UTR) also must be provided.

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Judicial

France

Supreme court denies the offset of tax losses of a foreign branch

Case law of the European Court of Justice (ECJ) provides that a company established in an EU jurisdiction may offset against its taxable profits the definitive tax losses (which cannot be offset or transferred) incurred by its subsidiary or branch established in another EU Member State if such offset would have been allowed in a domestic situation.

In the case at hand, a French company, member of a tax consolidation group, requested that the tax losses generated by its Luxembourg branch be set off against its tax profits, on the basis of this case law.

When rendering their decision, the French Administrative Supreme Court referred to the W AG decision, in which the ECJ held that freedom of establishment does not prevent a Member State from refusing a resident company the possibility to use tax losses incurred by a branch situated in another Member State, where the first Member State has waived its power to tax the profit of that branch pursuant to the relevant tax treaty.

Under France domestic law and the France-Luxembourg tax treaty, profits made by a permanent establishment outside France are not subject to corporate income tax in France. Consequently, the Administrative Supreme Court ruled that domestic and foreign branches are not in a comparable situation. There was no restriction to the freedom of establishment as a result of the French company's inability to set off the losses incurred by its Luxembourg branch against its own profits.

This unfavourable decision regarding foreign branches is not applicable when a French company wishes to use the definitive losses incurred by a subsidiary established in another EU country.

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Judicial

Poland

Administrative Courts address share acquisition loans taken by Polish entities

Tax classification of interest and related shares acquisition debt financing costs

Since 2018, corporate income taxpayers are required to qualify their revenues and related costs into one of the two baskets: the 'capital gains' or 'operational activity' basket. Capital gains includes, among other items, income from securities and dividends.

However, the correct classification of costs still creates uncertainty for taxpayers. According to the Polish tax authorities, interest cost from loans/credits taken for shares acquisitions should be allocated to the capital gains basket since, in their view, income from selling shares or dividends falls into the capital gains basket. As a result, such interest, on many occasions, cannot be recognised as tax deductible costs for Polish CIT purposes.

Positive standpoint presented in the recent administrative courts judgments

Recent judgments of administrative courts suggest that loan costs (fees, commissions, interest, exchange currency differences) for share purchases, under certain circumstances, can be included in the operational activity basket (and thus in practice, decrease the taxable basis from operational activities).

The Supreme Administrative Court expressed an opinion that business practice demonstrates that share purchase transactions are not always conducted for generating capital gains from future sale of such shares. They can also serve other purposes related to the operational activities of the purchasing entity. These rulings confirm that the qualification of financing costs connected with shares depends on the overall purpose of the transaction.

Taxpayers in Poland who have taken loans for the acquisition of shares may find an opportunity to properly recognize their interest costs and other debt financing costs, potentially reducing their taxable base within the operational activity basket.

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Judicial

United States

Supreme Court upholds constitutionality of mandatory repatriation tax in Moore

The United States Supreme Court released its **opinion** in Moore v. United States, upholding the constitutionality of the Section 965 transition tax (the Mandatory Repatriation Tax (MRT)) under the Tax Cuts and Jobs Act (TCJA) on 20 June 2024. The decision affirmed the judgment of the US Court of Appeals for the Ninth Circuit.

The majority opinion emphasized that its holding is narrow and limited to entities treated as pass-throughs. The opinion does not suggest Congress must tax all pass-through entities in the same manner. Additionally, the opinion does not address or resolve other issues, such as whether realization is a constitutional requirement for an income tax, whether Congress can tax both an entity and its shareholders on the same income, or whether other kinds of taxes (including those on holdings, wealth, net worth, or appreciation) may raise constitutional issues.

The majority opinion stressed that "Congress has long taxed shareholders of an entity on the entity's undistributed income, and it did the same with the MRT. This Court has long upheld taxes of that kind, and we do the same today with the MRT."
For more information see our PwC Insight.

Taxpayers should reconsider any positions affected by the Court's decision. The Court's emphasis on taxing either the entity or its owners, but not both, may call into question circumstances where income is taxed at both levels (such as when a foreign corporation is engaged in a US trade or business but still subject to a CFC tax).

Taking all the opinions together, four justices (Barrett, Alito, Thomas and Gorsuch) expressed the view that realization is a constitutional requirement for a tax on income; one justice (Jackson) joined the majority opinion but separately expressed the view that realization is not a constitutional requirement for a tax on income; and the four remaining justices (Roberts, Kavanaugh, Kagan, and Sotomayor), all of whom joined the majority opinion, declined to address the issue explicitly, though the majority opinion does state that the foreign corporation in which the Moores were shareholders did realize income. Thus, the potentially important question of whether realization is constitutionally required for a tax on income remains unanswered by the Court.

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EU/OECD

European Union

EC launches public consultation on DAC

Directive 2011/16/EU (directive on administrative cooperation - DAC) lays down the rules and procedures for close cooperation between Member States' tax authorities in the direct tax area to enable the correct assessment of taxes in cross-border situations and to combat tax fraud and evasion. DAC sets up - through regular updates - a common system for cooperation between EU Member States, allowing them to assist each other through exchange of information (on request, automatically, or spontaneously), as well as other forms of cooperation (administrative inquiries, presence in administrative offices and participation in administrative inquiries, simultaneous controls, and joint audits).

The consultation covers the functioning of the DAC during the period spanning from 2018 to 2022. This means that the DAC7 (primarily: digital platforms) and DAC8 (primarily: cryptos) won't be covered by the consultation. The consultation runs until 30 July 2024.

Note that the consultation includes an evaluation of the hallmarks for the exchange of information on potentially harmful cross-border arrangements introduced by DAC6.

The purpose of the consultation is to collect views from all stakeholders on the impact of DAC. A public consultation enables the general public to express their views and taxpayers to provide first-hand experience with the impacts of exchange of information under the DAC. Together with the targeted consultation, the results of the public consultation will provide a full picture of the use of information exchanged under the DAC. The European Commission will consider these in its evaluation report.

Although the consultation looks at the past of the DAC, the European Commission made a public announcement last month that a DAC9 to coordinate Pillar Two information exchange between EU Member States would not come before the end of the current Commission's term this summer, because the OECD is continuing to issue administrative guidance.

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EU/OECD

OECD

OECD releases guidance relating to Pillar Two GloBE and Pillar One Amount B

The OECD/G20 Inclusive Framework on BEPS (IF) published the fourth set of Administrative Guidance (the guidance) on the Global Anti-Base Erosion Model Rules (GloBE rules) of Pillar Two on 17 June 2024, intending to clarify the operation of the GloBE rules. The guidance will be incorporated into the Commentary to the GloBE rules, which was updated in April 2024 to reflect the previous sets of Administrative Guidance. While elements of the guidance are helpful, in many cases that is vitiated by a corresponding increase in complexity.

Two separate Pillar Two FAQ documents accompanied the guidance - one general FAQ covering a range of topics, and another focused on the peer review mechanisms for determining the qualification status of countries' GloBE rules.

Also on 17 June, the OECD released supplementary guidance on Amount B of Pillar One (the supplementary guidance) that includes definitions of 'qualifying jurisdictions' to apply the operating expense cross-check and data-availability mechanism. The supplementary guidance also includes a list of 'Covered Jurisdictions' (previously referred to as 'Low-Capacity Jurisdictions') within scope of the political commitment on Amount B.

This package of GloBE guidance sheds light on some areas where businesses and tax authorities have previously sought clarification and simplification: deferred tax liability (DTL) recapture, divergences between GloBE and accounting carrying values, allocation of cross-border current taxes, allocation of cross-border deferred taxes, allocation of profits and taxes in structures including flow-through entities, and treatment of securitisation vehicles.

Further guidance is promised, however, likely not until the end of this year at the earliest. Topics that may be included in future guidance include rules on dispute resolution and a possible extension of the Transitional CbCR Safe Harbour hybrid arbitrage rules to the full version of the GloBE Rules. One or more permanent safe harbours would also be welcome, if not necessarily indicated.

Join our Tax Readiness Webcast on 16 July 2024 11:00AM-12:30PM ET and read our Tax Policy Alert for more information.

The guidance reaffirms the need for advance planning around data identification, classification, and utilisation for GloBE purposes. Businesses should factor in the processes outlined in this guidance in the expectation that jurisdictions will apply these rules both to IIR and domestic minimum top-up taxes. Understanding how the GloBE peer review process will work is helpful, but it seems there is little businesses can do to influence this.

Finally, the Amount B clarifications in the supplementary guidance are helpful for the first phase of implementation, but businesses should monitor which countries decide to adopt it and whether their domestic legislation and administrative practices reduce its significance.

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Glossary

Acronym	Definition
AFIP	Argentine Tax Authorities
ATAD	anti-tax avoidance directive
ATO	Australian Tax Office
BEPS	Base Erosion and Profit Shifting
CFC	controlled foreign corporation
CIT	corporate income tax
CTA	Cyprus Tax Authority
DAC6	EU Council Directive 2018/822/EU on cross-border tax arrangements
DST	digital services tax
DTT	double tax treaty
ETR	effective tax rate
EU	European Union
MNE	Multinational enterprise
NID	notional interest deduction
PE	permanent establishment
OECD	Organisation for Economic Co-operation and Development
R&D	Research & Development
SBT	same business test
SiBT	similar business test
VAT	value added tax
WHT	withholding tax

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