

Briefing

International review for April

Speed read

Pillar Two implementation is gaining traction with economies of all sizes publishing draft legislation, releasing consultations or reaffirming their commitment to implement the rules, and there have been recent announcements from Spain, Germany, Sweden, Ireland, the UK, Canada and Vietnam. The Canadian Federal Budget has introduced a range of green tax incentives in an attempt to remain competitive with the US. Australia has released draft legislation to implement elements of its multinational tax transparency and integrity package. This includes public country-by-country reporting which goes beyond other international standards, new thin capitalisation rules, disclosure of subsidiaries tax residence in financial reports and denial of deductions for certain intangibles payments.

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Pillar Two implementation update

Spain held a public consultation on implementation of Pillar Two that ran from 6 March 2023 to 24 March 2023. The consultation was designed to gather feedback from stakeholders in advance of Spain drafting its Pillar Two legislative proposal.

On 20 March 2023, Germany launched a public consultation on its draft Pillar Two legislation. This closed on 21 April 2023. The draft legislation closely follows the text of the EU Directive and also incorporates certain subsequently released OECD guidance. The draft provides for a qualified domestic minimum top-up tax (QDMTT) safe harbour rule in accordance with the EU Directive. It also includes the transitional country by country reporting (CbCR) safe harbour and the simplified calculation safe harbour for non-material constituent entities.

On 23 March 2023, Sweden released a memorandum with proposed additions and clarifications to the draft Pillar Two legislation it released in February. The memorandum takes into account recently released OECD guidance, in particular in relation to the applicability of temporary safe harbours.

The UK Spring Finance Bill published on 23 March 2023 contained the final UK legislation for the IRR and domestic top-up-tax, intended to be the UK's implementation of the QDMTT recommended by the OECD, that will apply from the beginning of 2024. The legislation takes a similar form to the draft UK legislation issued last summer, however there are several new additions. These include incorporation of the OECD's Administrative Guidance as specific provisions; provisions for the transitional safe harbours; provisions for the UK's domestic top-up tax, and some initial reference to the UK's Undertaxed Profits Rule (UTPR).

On 31 March 2023, Ireland launched a consultation on its draft Pillar Two legislation, which closely follows the OECD model rules. The draft legislation does not provide for the calculation of a domestic top-up tax, but

the accompanying feedback statement proposes two possible calculation methods. It is reported that Ireland will implement a QDMTT from January 2024. Provisions relating to administrative procedures and safe harbours will form part of future releases. Feedback on the proposal closes on 8 May 2023, with updated legislation expected to be published in mid-2023.

Outside the EU, Vietnam reaffirmed its commitment to implement Pillar Two as part of its signature of the Convention on Multilateral Administrative Assistance in Tax Matters (MAAC) on 22 March 2023. The Vietnamese government is now working on domestic legislation, including possible revision of its tax and non-tax incentive regimes to ensure the country remains competitive in attracting foreign direct investment.

On 28 March 2023, Canada used its Federal Budget to reaffirm its intention to introduce an IIR and a domestic minimum top-up tax. Draft legislation, that will closely follow the OECD model rules and administrative guidance and will take into account comments received in the 2022 Canadian Pillar Two consultation, will be released for public consultation in the coming months. Draft legislation for the UTPR will follow at a later date. The Budget also reiterated Canada's commitment to work with international partners to implement Pillar One.

With so many jurisdictions now taking action on Pillar Two, the table (right) summarises at a high level the position in those countries that have published draft domestic legislation. This table is for comparative purposes only and readers should check specific details in each territory if required.

Canadian Federal Budget

The main focus of the Canadian Federal Budget was developing Canada's green economy by introducing a range of corporate tax credits to encourage investment in clean energy. In particular, the Budget announces new tax credits for clean electricity, and for clean technology manufacturing. It also provides additional details on other green credits, including the labour conditions required to claim the full 30% rate under the previously announced Clean Technology Investment Tax Credit and 40% rate under the Clean Hydrogen Investment Tax Credit.

Canada is the latest jurisdiction reforming its tax regime in an attempt to remain competitive with the US Inflation Reduction Act: it will certainly not be the last. We wait to see which territories follow suit next.

The Budget also includes more details on the proposed 2% tax on share repurchases by public corporations in Canada, first announced in the 2022 Federal Fall Economic update. This tax will apply in respect of repurchases and issuances of equity that occur on or after 1 January 2024. It will be equal to 2% of the net value of an entity's repurchase of equity, which is defined as the fair market value of equity repurchased less the fair market value of equity issued from treasury.

Another noteworthy measure is the elimination of the dividend received deduction for dividends received by financial institutions on shares that are mark-to-market property, meaning all such dividends received after 2023 will be taxed as business income.

Australia: multinational tax transparency and integrity developments

There have been a number of recent developments in the implementation of the Australian government's multinational

Pillar Two: status

Jurisdiction	Legislation	Income inclusion rule (IIR)	Undertaxed profits rule (UTPR)	Domestic top-up tax (DMTT)
Financial years				
EU	Adopted	Starting on or after 31 December 2023*	Starting on or after 31 December 2024*	Optional
Germany	Draft	Starting after 30 December 2023	Starting after 30 December 2024**	Starting after 30 December 2023
Ireland	Draft	Starting after 31 December 2023	Starting after 31 December 2024	Starting after 31 December 2023 (estimated)
Japan	Adopted (IIR)	Starting on or after 1 April 2024	Starting on or after 1 April 2025 (estimated)	Starting on or after 1 April 2025 (estimated)
Korea	Adopted (IIR and UTPR)	Starting on or after 1 January 2024	Starting on or after 1 January 2024	TBC
Liechtenstein	Draft	Starting on or after 1 January 2024	Starting on or after 1 January 2025	Starting on or after 1 January 2024
Netherlands	Draft	Starting on or after 31 December 2023	Starting on or after 31 December 2024	Starting on or after 31 December 2023
Sweden	Draft	Starting after 31 December 2023	Starting after 31 December 2024	Starting after 31 December 2023
Switzerland	Draft	As of 1 January 2024	As of 1 January 2024 (TBC)	As of 1 January 2024
UK	Final (IIR and DMTT)	Starting on or after 31 December 2023	Starting on or after 31 December 2024 (TBC)	Starting on or after 31 December 2023

*Option to defer implementation to December 2029 if there are a maximum of 12 ultimate parent entities (UPEs) based in the member state.

**The UTPR would apply for financial years starting after 30 December 2023 where the UPE of the group is located in an EU member state that opted for the IIR and UTPR deferral.

tax transparency and integrity package, as announced in the 2022 October Budget.

Public CbCR: Draft legislation was released on 6 April 2023 for public CbCR for certain multinational entities (MNEs) starting from the 2023/24 income year. Consultation on the legislation will run to 28 April 2023. The proposals are far reaching and potentially transformational for many MNE groups.

Scope: The rules will apply to a 'CbC reporting parent', the definition of which is somewhat complex but generally a CbC reporting parent:

- can be a constitutional corporation, partnership or a trust;
- must be a member of a CbC reporting group (being one with annual global income of A\$1bn or more and is consolidated for accounting purposes as a single group (or else is a 'notional listed company group'));
- is an entity that is not controlled by another entity in that group according to Australian accounting principles; and
- can be either Australian or foreign headquartered entity.

Unlike the EU public CbCR rules, there are no limitations on the size of the Australian operations to bring a foreign MNE group in-scope.

Disclosure requirements: In-scope groups will generally be required to provide the following information to the Australian Commissioner of Taxation (the Commissioner) in an approved form:

- names of each entity in the CbCR group;
- description of the CbCR group's approach to tax (essentially a tax strategy); and
- qualitative and quantitative tax information for the income year for each jurisdiction the CbCR group operates in.

This information will then be made publicly available on an Australian government website.

Quantitative disclosures: Most of the data points required are closely aligned to global reporting initiative (GRI) 207 but there are disclosures not required under other global standards, such as international related party dealing expenses and intangible assets. This appears to be aligned to positions taken by the Australian government with the release of the new intangible legislation denying deductions

for royalty payments and the Australian Taxation Office's (ATO) recent rulings.

Another key feature of the legislation is in relation to effective tax rate (ETR) disclosures. EU public CbCR does not (yet) require disclosure of ETRs and, although GRI 207 provides data points for a MNE group to calculate a current tax ETR, the current proposals require the ETR to be determined in accordance with the article 5.1 of the Pillar Two model rules. This would also require groups (including foreign groups) to accelerate preparation of their Pillar Two ETRs for each jurisdiction, with the CbCR disclosures required up to six months earlier than the first Pillar Two GloBE filings.

These provisions have potential to create onerous compliance burdens for in-scope business. I would therefore expect that respondents to the consultation will make strong representations on the need for harmonisation of the Australian rules with other existing reporting standards.

Other measures: Draft legislation has also been released for new thin capitalisation rules that will apply for income years beginning on or after 1 July 2023. This is broadly consistent with the government's 2022/23 October Budget announcement, covered in my November article (*Tax Journal*, 25 November 2022). However, it also includes new proposals, including the denial of interest deductions on borrowings that have funded equity investments in foreign subsidiaries.

The first tranche of draft legislation requiring certain Australian public companies to disclose information on their subsidiaries (including details on tax residence) in their financial reports, has also been published.

Finally, draft legislation has been released which would, from 1 July 2023, deny large multinational taxpayers (with annual global income of AU\$1 billion or more) deductions for payments relating to intangibles to related entities in low corporation tax jurisdictions (with a corporate income tax rate of less than 15%). ■

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► Pillar Two and the GloBE rules
(J Burton, E Birkemeyer, N Lawton & M Fraser, 22.3.23)