First published in Tax Journal on 27 October 2023. Reproduced with permission.

Briefing

International review for October

Speed read

As Autumn takes grip it is unsurprising that, yet again, the international tax world is dominated by BEPS 2.0 developments, with both the OECD and national governments racing to finalise as much of the two pillar deal as possible before the end of the year. The Inclusive Framework has released the text for Amount A of the Pillar One multilateral convention, although further work is required before this can be opened for signature. Meanwhile, the subject to tax rule multilateral convention is now open for signature. The OECD has published an implementation handbook for Pillar Two, and I take the opportunity to recap progress around the world in implementing Pillar Two. Finally, Brazil has published the final version of its new transfer pricing rules.

Tim Sarson
KPMG
Tim Sarson is a tax partner at KPMG and the UK head of tax policy. He has worked in the international tax and transfer pricing field since 1998, in both practice and industry. Email: tim.sarson@kpmg.co.uk.

BEPS 2.0 update

New MLC to implement Amount A of Pillar One

On 11 October 2023, the OECD released the text of a new multilateral convention (MLC) to implement Amount A of Pillar One. The MLC is accompanied by an explanatory statement (ES) providing clarification on how each provision is intended to apply. The ES is intended to form part of the context of the MLC, to be used for interpretation purposes under international law. It is also accompanied by an *Understanding on the application of certainty* document which contains further details on how aspects of the Amount A tax certainty framework will operate in practice.

The MLC reflects the current consensus among members of the Inclusive Framework (IF). There are however different views held by a small number of jurisdictions (in particular Brazil, Columbia and India) on a handful of specific items which have been set out in footnotes. These jurisdictions are constructively engaged in resolving these issues to enable the MLC to be opened for signature.

To enter into force the MLC needs to be ratified by at least 30 jurisdictions including the headquarter jurisdictions of at least 60% of MNEs within the scope of Amount A. The US will be a key signatory in achieving this threshold. The US Treasury launched a public consultation on the MLC on the same day as its release by the OECD. With comments requested by 11 December, this may call into question the OECD IF goal of releasing a final MLC for signature before the end of the year. It remains to be seen whether or not the IF can implement the MLC in time to prevent a proliferation of unilateral digital service taxes which have currently been put on hold whilst Pillar One progresses.

Amount B of Pillar One

The October 2023 *OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors* ('the tax report') noted that IF is currently considering the feedback received from the public consultation process on Amount B which ran from July 2023 to September 2023. It will now use the insights it received to further develop the framework for the simplified and streamlined application of the arm's length principle to in-country baseline marketing and distribution activities. No timescales for the completion of this work have been provided.

Pillar Two update

Pillar Two national implementation update: The tax report above states that to date, around 55 jurisdictions have taken steps towards implementing the Pillar Two rules. Autumn seems a good time to take stock of which countries have got as far as publishing draft domestic legislation on Pillar Two (see table right), but readers are reminded that the table is for comparative purposes only and specific details in each territory should be checked as necessary.

Pillar Two implementation handbook: On 11 October 2023, the OECD also released *Minimum Tax Implementation Handbook (Pillar Two)*. The handbook provides an overview of the key provisions of the global minimum tax and considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing their implementation options. A key consideration in preparing the handbook has been the needs and capacity of developing countries and ensuring that all IF members are able to benefit from the rules.

New MLC on the subject to tax rule (STTR): Following the release of the model treaty and commentary detailed in my September article, on 3 October 2023, the OECD released and opened for signature the new MLC to facilitate the implementation of the Pillar Two STTR. The STTR allows source jurisdictions to impose a tax when they otherwise would be unable to do so under the provisions of tax treaties. It applies to certain intra-group payments that are subject to a nominal corporate income tax rate below 9%. The STTR MLC will now allow countries to efficiently implement the STTR in existing bilateral tax treaties.

Brazil: new transfer pricing rules finalised

On 29 September 2023, the Brazilian Federal Revenue (RFB) published the final version of the new transfer pricing rules which align Brazilian transfer pricing law with OECD guidelines. The new rules reflect the comments received during the July 2023 public consultation on the proposed new regime.

The RFB gives the taxpayer the option to adopt the new rules in 2023 (i.e. apply retroactively from 1 January 2023) or to mandatorily phase them in by 1 January 2024. Originally, the deadline to elect early adoption was September 2023, however taxpayers can now elect early adoption in the RFBs online portal by 31 December 2023, allowing more time to conduct a detailed impact analysis of early adoption.

Taxpayers will be in one of three categories which will dictate their transfer pricing filing requirements:

- Taxpayers with intercompany transactions exceeding BRL 500m (approximately US$100m) must provide a master and local file. However, the final versions of these are much closer aligned with the OECD models than those previously proposed.
- Taxpayers with intercompany transactions from BRL 15m (approximately US$3m) but below BRL 500m must provide a local file 'light' with basic information.
- Taxpayers with intercompany transactions below BRL 15m are exempt from providing documentation but still have to adhere to the arm's length principle.

Whilst the release provides welcome clarity, it also creates some uncertainty in regard to the impact of compensatory

First published in Tax Journal on 27 October 2023. Reproduced with permission.

Pillar Two implementation update

Jurisdiction	Legislation	Financial years Income inclusion rule (IIR)	Undertaxed profits rule (UTPR)	Domestic top-up tax (DMTT)
EU	Adopted	Starting on or after 31 Dec 2023*	Starting on or after 31 Dec 2024*	Optional
Austria	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Bulgaria	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024	Starting on or after 31 Dec 2023
Canada	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024	Starting on or after 31 Dec 2023
Cyprus	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024	Starting on or after 31 Dec 2023
Czech Republic	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Denmark	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Finland	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
France	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Germany	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024***	Starting on or after 31 Dec 2023
Ireland	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024	Starting after 31 Dec 2023
Italy	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Japan	Adopted (IIR)	Starting on or after 1 Apr 2024	Starting on or after 1 Apr 2025 (estimated)	Starting on or after 1 Apr 2025 (estimated)
Korea	Adopted (IIR and UTPR)	Starting on or after 1 Jan 2024	Starting on or after 1 Jan 2025	TBC
Liechtenstein	Draft	Starting on or after 1 Jan 2024	Starting on or after 1 Jan 2025	Starting on or after 1 Jan 2024
Luxembourg	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Netherlands	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
New Zealand	Draft	Starting on or after 1 Jan 2024 (TBC)	Starting on or after 1 Jan 2025 (TBC)	N/A
Norway	Draft	As of 1 January 2024	Starting on or after 1 Jan 2025 (TBC)	As of 1 Jan 2024
Romania	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024	Starting on or after 31 Dec 2023
Slovakia	Draft	Considering option to defer as likely no more than 12 ultimate parent entities	Considering option to defer as likely no more than 12 ultimate parent entities	Starting on or after 31 Dec 2023
Slovenia	Draft	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024**	Starting on or after 31 Dec 2023
Sweden	Draft	Starting after 31 Dec 2023	Starting after 31 Dec 2024	Starting after 31 Dec 2023
Switzerland	Draft	As of 1 Jan 2024	As of 1 Jan 2025 (TBC)	As of 1 Jan 2024
UK	Legislation adopted (IIR and DMTT)	Starting on or after 31 Dec 2023	Starting on or after 31 Dec 2024 (TBC)	Starting on or after 31 Dec 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 31 December 2023 where the UPE of the group is located in an EU member state that opted for the IIR and UTPR deferral.*
**** 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.*

adjustments. Generally, the most common compensatory adjustment is a year-end transfer price adjustment that ensures the less complex party to the transaction a target margin under a transactional net margin method (TNMM) framework. The wording in the public consultation document left room for interpretation so that it could be read as saying that under specific circumstances a compensatory adjustment would not trigger the adjustment of other taxes. In the final version, this helpful text is gone, and only language that a compensatory adjustment does not automatically trigger an adjustment of other taxes remains. This creates uncertainty for taxpayers that rely on imports and apply the TNMM framework. ■