

Analysis

International review for March

Speed read

The Biden Administration has released its FY 2025 tax proposals, attracting particular interest in this presidential election year. The US has extended some of its agreements on the withdrawal of Digital Services Taxes in light of the delays to the Pillar One Amount A timetable. The OECD has released detailed guidance on Amount B of Pillar One. Meanwhile, jurisdictions around the world continue Pillar Two implementation. In the EU, Member States have issued formal opinions on the BEFIT proposal, the European Public Prosecutor's Office has issued stark statistics on EU VAT fraud and there have been updates to the EU list of non-cooperative jurisdictions.



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United States

On 11 March 2024, the US Treasury department released the 'Green Book', a 256-page explanation of the tax proposals in the Biden Administration's FY 2025 Budget.

Most of the Administration's revenue proposals are familiar, having been included in previous budgets. However new announcements have been unveiled in a few areas including proposals to increase the Corporate Alternative Minimum Tax (CAMT), limit depreciation and increase certain fuel taxes for some private planes, create a new tax credit for certain first-time homebuyers and modify deadlines for certain information returns.

These proposals, as explained in the Green Book, would increase and reform corporate taxation, as well as increase individual taxes on those with annual earnings exceeding \$400,000 (notably including a 25% minimum tax on those with wealth exceeding \$100m).

The Green Book Business Tax proposals include:

- increasing the corporate rate to 28%;
- increasing the CAMT rate to 21%;
- reforming international taxation by:
 - increasing the global intangible low-taxed income (GILTI) rate to 21%;
 - repealing the deduction for foreign-derived intangible income; and
 - adopting an undertaxed profits rule;
- quadrupling the stock buyback tax;
- denying the deduction for all compensation over \$1m for all C corporations;
- modifying depreciation and fuel tax rules for corporate aircraft;
- eliminating tax preferences for fossil fuels;
- eliminating tax-free treatment of like-kind exchanges; and
- strengthening the limitation on losses for non-corporate taxpayers.

According to the Treasury department analysis, the tax provisions included in the Administration's Budget

raise over \$4 trillion through individual and corporate tax increases. However, the tax proposals are unlikely to become law during this Congress, as Republicans currently hold a majority in the House of Representatives and most of the tax proposals in the Budget do not have Republican support. However, they do provide a snapshot of the Biden administration's tax platform for this year's presidential election.

Longer term, the Green Book is significant because budgetary proposals, once released, never truly disappear. This is especially true as the US approaches a tax cliff with over 25 tax provisions from the Tax Cuts and Jobs Act scheduled to expire at the end of 2025, with an estimated cost of over \$3 trillion.

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BEPS 2.0

Digital services taxes and Amount A

On 15 February 2024, the United States, Austria, France, Italy, Spain and the UK issued a joint statement agreeing to extend their previous political agreement to withdraw all unilateral measures concerning the imposition of digital services taxes once Pillar One takes effect. The extension has been necessary in light of delays to the OECD's timeline for Pillar One, with the text of the Amount A multilateral convention (MLC) now scheduled to be finalised by the end of March 2024, with a view to holding a signing ceremony by the end of June 2024.

The updated joint statement fully incorporates the provisions of the original 21 October 2021 joint statement, other than amending an example incorporating the extension of the agreement from 23 December 2023 to 30 June 2024.

On 12 March 2024, the United States and Turkey confirmed that the same extension would apply in respect of their November 2021 agreement, which adopted the terms of the 21 October 2021 joint statement above.

Amount B

On 19 February 2024, the OECD released a report on Amount B of Pillar One – the optional simplified and streamlined approach to apply the arm's length principle to baseline marketing and distribution activities. The guidance gives jurisdictions the option to apply the Amount B approach to in-scope distributors, sales agents or commissionaires operating in their jurisdiction from January 2025, either as a taxpayer safe harbour or as a mandatory rule.

The report covers, among other things, transactions in scope, transfer pricing methodology to be applied, implementation considerations (including the fact that jurisdictions that do not adopt Amount B are not required to respect its application in other jurisdictions), documentation requirements and transitional issues.

The OECD's work on Amount B is not yet complete and is subject to a number of reservations by India. The OECD is committed to undertake further work on the various outstanding aspects of Amount B, including optional qualitative scoping criteria, which is seen as critical by India. It is seeking to conclude this work by the end of March 2024.

Notably, the report does not specify which jurisdictions

are committed to adopting Amount B – which is critically important given that its implementation is optional. New Zealand is one jurisdiction that has already come out to confirm it will not adopt the Amount B approach. It will be interesting to see what other territories may follow suit.

The reception among taxpayers to the latest proposals has been at best lukewarm. Amount B was originally proposed as a simplification, but the optionality in the proposals and the loss of any kind of one size fits all approach threatens to add rather than remove compliance complexity from international transfer pricing.

Pillar Two: national implementation update

Singapore's Budget on 16 February 2024 outlined plans for an Income Inclusion Rule and Domestic Top up Tax for financial years starting on or after 1 January 2025.

Following the EC's January 2024 letter of formal notice for failure to transpose the EU Minimum Tax Directive, Malta and Greece have taken remedial action. On 20 February 2024, the regulation to implement the EU Minimum Tax Directive in Malta was published in the *Official Gazette*. On 23 February 2024, Greece launched a public consultation on its domestic rules that closely follow the text of the EU Directive. The consultation closed on 6 March 2024.

On 21 February 2024, South Africa published a draft Global Minimum Tax Bill, with a Qualified Domestic Minimum Top-up Tax and Income Inclusion Rule generally applying retroactively for financial years starting on or after 1 January 2024. No Under Taxed Profits Rule provisions have been included in the Bill, which is open to consultation until 31 March 2024.

On 29 February 2024, the Thai Revenue Department published an 18-page consultation paper on draft legislation to implement Pillar Two. The consultation closed on 15 March 2024.

Europe

Member States issue formal opinions on the BEFIT Directive proposal

In February 2024 several EU Member States submitted reasoned opinions to the European Commission (EC) or adopted statements raising concerns with respect to the BEFIT proposal. The Czech Republic, Ireland, Germany, Malta, Poland and Sweden expressed a range of concerns, with common themes being the principles of subsidiary and proportionality, Member States sovereignty in matters of direct taxation, and the risk of increased complexity and compliance burdens. The Netherlands and Finland have previously raised similar concerns with the proposal.

Given that unanimity is required for the BEFIT proposal to be adopted, expect to see protracted discussions in Council working groups on the timing, merits and technicalities of the initiative.

VAT fraud estimated at €11.5bn

On 29 February 2024 the European Public Prosecutor's Office (EPPO) published its annual report for 2023, announcing the launch of 1,371 investigations during the year and €19.2bn in overall estimated damages, with 59% of that amount (€11.5bn) linked to serious VAT fraud – a 71% increase from the 2022 report.

The EPPO is an independent public prosecution office of the EU. It is responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU. It undertakes investigations, carries out prosecutions and exercises the functions of prosecutor

in the competent courts of the participating Member States.

The amounts at stake and increase in serious VAT fraud identified by the EPPO will likely drive EU member states to further advocate for the implementation of electronic invoicing (e-invoicing) and digital reporting mandates. Tax authorities view these tools as effective means to enforce VAT obligations. Italy, being the most advanced Member State in this area, recently made such an announcement. Other Member States, including Belgium, France, Poland, and Spain, plan to introduce e-invoicing mandates in the near future. Additionally, at the EU level, the European Council is considering a proposal to mandate an e-invoicing mechanism for transactions within the EU, as part of the VAT in the Digital Age package.

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Update to list of non-cooperative jurisdictions

On 21 February 2024, the Council of the EU adopted conclusions on the list of non-cooperative jurisdictions. Readers should refer to my November 2023 update for a full explanation, but as a reminder, the list comprises Annex I (the 'blacklist') and Annex II (the 'grey list' – used for jurisdictions whose commitments to improve tax governance are being monitored by the EU). EU Member States have committed to implement defensive measures against countries on the blacklist. The approach of Member States to countries on the grey list varies, but these too could be subject to local defensive measures.

The Council agreed to remove the Bahamas and Turks and Caicos Islands from the blacklist and move Belize and Seychelles from the blacklist to the grey list. Following this latest revision, the blacklist now consists of the following 12 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the U.S. Virgin Islands and Vanuatu.

In addition, the following six jurisdictions were removed from the grey list, having fulfilled their previous commitments: Albania, Aruba, Botswana, Dominica, Israel and Hong Kong. As a result, the EU grey list now consists of the following ten jurisdictions: Armenia, Belize, the British Virgin Islands, Costa Rica, Curaçao, Eswatini, Malaysia, Seychelles, Turkey and Vietnam. ■

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- ▶ OECD pillar talk: Pillar Two looming; Pillar One a step closer (B Rajathurai, J Burton & M Fraser, 28.7.23)
- ▶ The saga continues: implementing Pillar Two in the UK (C Sanger and J Gifford, 11.5.23).
- ▶ News: New guidance published on Amount B of Pillar One (23.2.24)