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Briefing

International review for May

Speed read

The tax plans set out by the newly formed Netherlands coalition government this month, and the Canadian and Australian 2024 Budgets, demonstrate how tax policy is increasingly being used to address wider societal and political issues such as net zero, housing and taxpayer residence. The EC has progressed two of its tax files after the text of the FASTER Directive was agreed and the European Parliament adopted its resolution on the Transfer Pricing Directive. Pillar Two implementation continues around the globe and the OECD has released its consolidated Commentary on Pillar Two. We are now also seeing different responses from governments to the regime, with Poland considering lowering its corporate tax rate and the UAE consulting on the introduction of an R&D tax incentive regime. Finally, the US Treasury secretary has confirmed the US would not support a global tax on billionaires.

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Tax announcements from Netherlands new coalition government

Almost six months after Geert Wilder's Freedom Party (PVV) won the Dutch election, on 15 May 2024 it entered into a coalition agreement to form a government with three other parties: the People's Party for Freedom and Democracy (VVD), the New Social Contract (NSC) and the Farmer Citizens Movement (BBB).

The coalition has published its general agreement, *Hope, courage and pride*, which provides insight on its tax plans. Measures of interest to corporates include:

- increasing the generic interest deduction limitation for corporate income tax – currently the threshold is the higher of €1m or 20% of adjusted profit (EBITDA) – the coalition will increase the percentage to 25% (the EU average);
- reversing the measures that would end the share redemption tax relief for listed companies for dividend tax purposes at the end of 2025;
- limiting the donation deduction for corporate income tax in the next few years;
- scrapping the higher CO2 tax announced in the Spring memorandum;
- introducing a circular plastic tax as of 2028; and
- reforming the allowances and tax system in the longer term.

It is interesting that the agreement does not say anything specific about the wealth tax, the business succession scheme, the 30% ruling (expatriate tax concession) and reducing real estate transfer tax – matters that have received a lot of attention recently.

European Parliamentary elections will take place on 6–9 June 2024. It will be interesting to see whether there will be a shift to the political right more generally, which is currently what polls are predicting, and what impact that could have on EU tax policy, particularly for the future of the EU Green Deal and environmental taxes.

Canadian 2024 Federal Budget

Canada delivered its 2024 Federal Budget on 16 April 2024. One of the major themes was increasing the affordability of housing, so headline tax measures included incentives for purpose-built rental housing in Canada, e.g. an elective exemption from the interest deductibility limitation and enhanced capital cost allowance for certain new additions of property. Notable business measures include:

- a reiteration that, in light of delays in implementing Pillar One, Canada will enact a Digital Services Tax: this would begin to apply for calendar year 2024, with that first year covering taxable revenues earned since 1 January 2022;
- an increase in the inclusion rate for capital gains realised on or after 25 June 2024: for corporations and trusts this increases to 2/3 (from 1/2) on the portion of capital gains released in the year that exceed $250,000;
- enabling the Canadian Revenue Authority to waive the requirement for a person who pays a non-resident for services provided in Canada to apply 15% withholding tax, provided certain conditions are met; and
- investment tax credits to promote 'clean economy' activities.

Australian 2024 Federal Budget

The Australian government's continued focus on multinational tax integrity was seen in its 2024 Federal Budget announcement on 14 May 2024. The government announced amendments to the foreign resident CGT regime for events on or after 1 July 2025:

- to clarify and broaden the types of assets on which foreign residents are subject to CGT;
- to amend the point-in-time principal asset test to a 365-day testing period; and
- to require foreign residents disposing of shares and other membership interests exceeding $20m in value to notify the Australian Tax Office (ATO), prior to the transaction being executed.

The expansion of the regime and in particular the requirement to notify the ATO of certain transactions prior to execution is significant and may impact a number of cross border transactions. No further details were provided in the Budget, and the government will consult on the implementation of the measure in due course.

Other notable measures include two new tax incentives targeted at the critical minerals and renewable hydrogen sectors, and extension of the ATO Tax Avoidance Taskforce for two years from 1 July 2026 to pursue key tax avoidance risks, focusing on multinationals, large public and private businesses and high-wealth individuals. The previously announced measure denying deductions for payments relating to intangibles held in low or no-tax jurisdictions will be discontinued, as the perceived integrity issue will now be addressed through Australia's implementation of the Pillar Two rules.

ECOFIN agrees FASTER Directive

On 14 May 2024, the Economic and Financial Affairs Council of the EU (ECOFIN) reached agreement on the proposal for a Faster and Safer Relief of Excess Withholding Taxes (FASTER) Directive (the Directive). This marks a milestone in efforts to implement a more efficient EU Withholding Tax (WHT) system, which has been high on the agenda of the OCED, EC and local tax authorities for more than a decade.

FASTER aims to expedite relief and refund of excess WHT and prevent abusive practices. It harmonises and streamlines WHT procedures in the EU by the introduction of a common

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EU digital tax residence certificate (eTRC); two fast-track procedures (a relief at source system and a quick refund system); and national registers for financial intermediaries to facilitate these fast-track procedures.

The agreed compromise text includes several amendments to the initial text proposed by the EC in June 2023. Key differences include:

- Timing: application of the new rules have been postponed to 1 January 2030 (initial proposal was 1 January 2027).
- eTRC: Member States can issue the eTRC within 14 calendar days (versus one day in the initial proposal), and they will be valid for a maximum of a calendar year (versus a minimum of a calendar year).
- Quick refund procedure: Member States can refund any overpaid taxes 60 calendar days starting from the second month following the month of the payment (versus 50 calendar days in the initial proposal).
- Exempting WHT relief from the fast-track procedure: there have been significant revisions to the list of circumstances under which Member States may exempt requests for WHT relief from the fast-track procedures. All circumstances are now discretionary and the list has been considerably expanded.
- A European Certified Financial Intermediary (CFI) Portal: will be established to serve as a single electronic access point for financial intermediaries.

The new 60-day deadline for repayment represents a notable improvement compared to the lengthy processing times currently experienced in some Member States. However, the Directive leaves a lot of discretion to Member States and it remains to be seen whether the rules will indeed make WHT procedures less costly and cumbersome in practice.

Once procedural requirements are completed, the final text of the Directive will be sent to the Council for formal adoption. Given there have been further revisions to the text, the European Parliament will be consulted again, although its opinion will not be binding on the Council. Once formally adopted, Member States will have until 31 December 2028 to transpose the Directive into local law.

European Parliament adopts resolution on Transfer Pricing Directive

On 10 April 2024 the European Parliament adopted a resolution which is generally supportive of the EC's initial September 2023 proposal for a Transfer Pricing (TP) Directive, designed to address the lack of harmonisation of TP rules at EU level.

Suggestions the resolution makes include, among other things, how to incorporate future changes to the OECD TP guidelines; how to make use of the Directive on Administrative Cooperation (DAC); and the role of the re-established EU Joint TP Forum. The resolution also suggests that the provisions of the TP Directive should start applying as of 1 January 2025, with Member States required to transpose the provisions into domestic law by 31 December 2024 (one year earlier than initially proposed by the EC).

Per above, the Parliament's resolution is not binding on the Council, but it must be considered by the EC and Member States when proposing or agreeing to new rules.

Pillar Two national implementation update

This month saw a flurry of EU countries progress domestic implementation of the EU Minimum Tax Directive (EU Directive). Greece published its Pillar Two legislation in the *Official Gazette* on 5 April 2024. On 10 April 2024, Estonia approved its domestic legislation, making use of the deferral option under article 50.

On 25 April 2024, Poland published its draft Pillar Two legislation, with a public consultation period that closed on 17 May 2024. Given Poland's delay in implementing the EU Directive, an interesting solution that the Polish Legislature are working on is the possibility of voluntary application of the Act's provisions as early as from 1 January 2024. This would allow Poland to 'retain' the 2024 top-up tax revenues from all groups of companies that opt for 'taking advantage' of this solution.

Elsewhere in Europe, on 16 April 2024 Iceland's Fiscal Strategy Plan for 2025–2029 included implementation of Pillar Two, to be completed in the second half of this year with a planned entry into force in 2025. Further afield, on 9 May 2024 Kenya's Finance Bill 2024 contained proposals to implement Pillar Two effective from 1 January 2025.

In an interesting development on 10 April 2024, the new Portuguese government proposed a reduction in the corporate income tax rate from 21% to 15% over a period of three years, stating the revision would be compatible with Pillar Two. The implementation of such a measure will depend on the government obtaining sufficient support from the opposition, but it might mark an interesting change of direction in travel – rather than a 'race to the middle' on corporation tax rates (with headline rates clustering around 25%) might we see more countries actually lower their headline rates?

Finally, between 19 April and 14 May 2024, the United Arab Emirates (UAE) consulted on the potential introduction of R&D tax incentives. The UAE recently introduced a new corporate tax regime in light of Pillar Two, and this marks the next phase of that project: implementing Pillar Two compliant tax incentive packages to ensure the region remains attractive to investors.

Pillar Two consolidated Commentary

On 25 April 2024, the OECD released a consolidated Commentary that incorporates its March 2022 commentary to the model rules and subsequent tranches of Administrative Guidance into a single volume. It has also released an updated version of its March 2022 report containing examples of the Pillar Two rules to include examples developed in the various tranches of Administrative Guidance.

US Treasury Secretary rejects proposal for a global tax on billionaires

Finally, US Treasury Secretary Janet Yellen has confirmed that the US would not support talks on the issue of a global tax on billionaires. The proposal, added to the agenda of G20 finance ministers earlier in the year, involves a minimum tax of 2% on a group of around 3,000 billionaires that could potentially raise $250bn in additional revenue. It is gaining somewhat surprising momentum, including receiving public support from Brazil, France, Germany, South Africa and Spain.

However, Ms Yellen said that while the US believes in progressive taxation, the billionaire tax is 'something we can't sign on to'. With the policy expected to be discussed at upcoming G7 and G20 finance minister meetings in May and July, it will be interesting to see how the global community reacts to these comments. ■

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- News: EU Council reaches agreement on FASTER Directive (15.5.24)
- Multinational top-up tax: an overview (M Mortimer & T Ruiz, 20.9.23)