

Analysis

International review for January

Speed read

We kick off the New Year with the publication of another lengthy tranche of documents from the OECD on Pillar Two. The EU chalks up a success with the adoption of the FASTER Directive, meanwhile in Canada the tax landscape is uncertain following the prorogation of Parliament. The themes of uncertainty and lack of harmonisation continue in our customary look ahead at what to expect in international tax policy this year with, unsurprisingly, the US being the one to watch in 2025.



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OECD: further Pillar Two releases

On 15 January 2025 the OECD Inclusive Framework (IF) on BEPS released a series of documents on the application of the Global Anti-Base Erosion (GloBE) rules. The primary focus is compliance and reporting obligations, although there is also some limited Administrative Guidance (AG) that amends certain aspects of the GloBE Model Rules. A full analysis of the documents is beyond the scope of this article, but in summary include:

- **Updated GloBE information return (GIR):** The publication confirms that, as a general principle, the GIR will be completed based on the GloBE Model Rules and Commentary (as amended by any AG). This is designed to ensure that the GIR is completed using a single data source, and the clarification addresses an area of uncertainty. However it raises some important issues.

The IF has indicated it will continue to issue AG in the coming years: this raises the question of what AG should be used when preparing the GIR. The issue would seem to warrant clarification from the OECD.

Where more than one jurisdiction has taxing rights over another jurisdiction (e.g. in scenarios where the Undertaxed Profits Rule applies) the MNE group will be required to determine whether domestic law diverges from the GloBE Model Rules and, where different, report additional datapoints. This risks creating significant additional compliance burdens, particularly if the Transitional Country-by-Country Reporting Safe Harbour (TSH) does not apply.

The document also clarifies other aspects such as GIR requirements for jurisdictions where no jurisdiction has a taxing right, what group information different jurisdictions will receive and notifications required when an MNE group relies on central filing to fulfil its GIR obligations.

- **GIR multilateral competent authority agreement (GIR MCAA):** This provides a framework for jurisdictions that are signatories to the Convention on Mutual Administrative Assistance in Tax Matters to automatically exchange the GIR. The GIR MCAA represents a step towards the establishment of a legal framework for the coordinated exchange of GIRs, but jurisdictions still need to take further

steps before businesses can be confident that they will be able to file their GIR in a single jurisdiction. The first filings are expected to occur in June 2026.

- **The GIR XML Schema and User Guide for Tax Administrations:** The final version of this new schema and user guide will facilitate the exchange of GIR information in a technical format that is intended to produce more uniform and standardised reporting.
- **Central record of legislation with transitional qualified status:** This document lists jurisdictions whose minimum tax legislation has completed the fast-track process and secured transitional qualified status. It will be updated regularly to include additional jurisdictions.
- **Administrative guidance on Article 9.1 of the GloBE model rules:** This guidance excludes certain deferred tax assets from the computation of an MNE group's effective tax rate (ETR) when they arose before the application of the global minimum tax due to specific governmental arrangements or the introduction of a new corporate income tax. MNEs may need to review the potential operation of these changes, both for the purposes of the TSH and the basic operation of the Model Rules.

Council of the EU adopts the FASTER Directive

On 10 December 2024, the Council of the EU adopted the proposal on the Faster and Safer Tax Relief of Excess Withholding Taxes (FASTER) Directive, which aims to expedite relief and refund of excess withholding tax (WHT) and prevent abusive practices, by harmonising and streamlining WHT procedures in the EU. For more information on FASTER see my May 2024 update. This represents the last step in the adoption process and the FASTER Directive will now be published in the EU Official Journal. Member States have until 31 December 2028 to transpose the Directive into national legislation and the rules will become applicable as of 1 January 2030.

Canada prorogues Parliament: what next?

On 6 January 2025, Canada announced that Parliament would be prorogued until 24 March 2025 and that the Prime Minister would resign once a new party leader is selected. Although no tax bills were on the order paper at the time of prorogation, there are several significant tax changes that were announced and, in some cases, released as draft or proposed legislation but had not yet been included in bills. These include, but are not limited to, proposals to:

- increasing the capital gains inclusion rate;
- introducing certain elective exemptions from the excessive interest and financing expenses limitation (EIFEL) rules
- amending the Global Minimum Tax Act to include provision for the Undertaxed Profits Rule (UTPR); and
- introducing or amending certain clean energy tax credits.

These tax proposals cannot be introduced in a bill until the next session of Parliament, assuming the government still intends to proceed with them. If the current government falls, then it remains uncertain whether these measures will be enacted. Due to the prorogation, the government cannot introduce a federal budget until 24 March 2025 at the earliest, but the exact timing of the budget will depend upon the political landscape in March.

What to expect in 2025

No January update would be complete without a look ahead at the next 12 months – and 2025 looks set to be a seminal year for international tax policy. While the global tax landscape of

the last decade was marked by cooperation and harmonisation, the future is looking more fragmented, setting the stage for more complexity and uncertainty.

US

As if to prove the point, at the time of writing, President Trump issued a memorandum to the Secretary of the Treasury withdrawing US support from OECD tax agreements and giving officials 60 days to draw up retaliatory measures against countries applying levies on US headquartered groups 'that are extraterritorial or disproportionately affect American companies'. It seems that the story of the two pillars still has some distance to run.

Domestically the US priority will be addressing the more than \$4 trillion of tax increases scheduled to take effect at the end of 2025 when the Tax Cut and Jobs Act (TCJA) reliefs, many of which impact individuals, expire. No formal tax plan was published before the election, but on the campaign trail President Trump said he would extend all of the TCJA reliefs and implement new tax cuts.

Either way, these plans will be expensive and how they will be funded is the \$4 trillion question everyone is asking. One thing is for certain: the impact of the Trump Administration seems set to extend far beyond US borders.

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OECD

Pillar One: On 13 January 2025 the IF released a statement advising that, whilst the final text of the Multilateral Convention (MLC) on Amount A (the allocation of taxing rights to market jurisdictions) has been submitted to members, this has not been adopted due to lack of member consensus on the Framework for Amount B (the simplification of transfer pricing rules for certain marketing and distribution activities). Some members want to see Amount B, which is currently optional, tied to the mandatory adoption of Amount A. The statement indicates that the IF intends to continue working to achieve a consensus on the Amount B Framework and so the overall Pillar One package.

With the US withdrawing its support, the failure of Pillar One seems inevitable. If (or possibly when) Pillar One fails, expect to see a steady stream of unilateral Digital Services Taxes (DSTs) and potentially retaliation from the US leading to international tensions and increased complexity and uncertainty for taxpayers.

Pillar Two: Although the exact timing is uncertain, we should see further AG from the IF in 2025. The latest tranche of AG on Article 9.1 states that the IF is currently developing guidance that will clarify how to identify 'Related Benefits' and consider how these impact on the qualified status of a jurisdictions rules and the ETR of MNE Groups that receive such benefits.

Separately the OECD has indicated that it is contemplating the development of further AG covering issues such as the integration of anti-arbitrage rules including the TSH into the full GloBE rules, the application of the Substance-Based Income Exclusion to mobile assets, and the handling of prior year adjustments, among other items.

Further development of the Pillar Two rules will be one

to watch now that US support has been withdrawn and retaliatory action is being considered.

EU

Poland took over the Presidency of the Council of the EU from Hungary on 1 January 2025. In its formal work programme it states its direct tax priorities for its six month tenure are focused on maintaining the competitiveness of the EU by taking action to tackle harmful tax competition. This includes updating the EU list of non-cooperative jurisdictions for tax purposes and continuing to work on the DAC 9 Directive, aimed at ensuring exchange of information on data relating to Pillar Two, ensuring it is fully compliant with the OECD standard.

Member State unanimity is required to agree tax Directives and lack of consensus has stalled several tax files in recent years, e.g. Unshell (preventing the misuse of shell entities for tax purposes); SAFE (Securing the Activity of Framework Enablers); DEBRA (debt-equity balance reduction allowance); BEFIT (Business in Europe: Framework for Income Taxation) and the Transfer Pricing Directive. There was no mention of these Directives in the Polish presidency's work plan so their prospects remain unclear.

The long-running debate on whether agreement of EU tax matters should move to a qualified majority vote (QMV) to avoid such deadlocks rumbles on. But don't expect to see change any time soon: a recent ECOFIN report makes it clear that a large number of Member States remain opposed to QMV.

UN

The UN will continue its efforts in 2025 to have a greater influence in international tax policy making, although not all countries may be fully supportive. On 27 November 2024, the United Nations' Economic and Social Committee (Second Committee) approved terms of reference for a framework convention on international tax cooperation, with 125 countries in favour, nine against and 46 abstentions (notably by EU Member States, the UK and the US).

According to the resolution, an intergovernmental negotiating committee will develop the framework convention and is expected to meet in 2025, 2026 and 2027 for at least three substantive sessions per year. The resolution requests the committee to complete its work and submit the final text of the framework convention to the General Assembly for approval by September 2027.

Taxation of individuals: the next frontier?

With the conclusion of the two pillar journey imminent, international focus is expected to shift from corporates to the taxation of individuals.

Noel Maher, Tax Policy Adviser from the OECD, recently suggested the future focus of the organisation's work will be on addressing the tax challenges arising from the global mobility of workers which have emerged since Covid-19.

A G20 declaration issued on 18 November 2025 includes a commitment on cooperation to ensure the effective taxation of ultra high net-worth individuals and encourages the IF to consider further work in this area. Interestingly, the declaration makes no reference to implementing the blueprint for a 2% 'billionaire tax' that was discussed at the G20 in summer 2024 (for more details, see my July 2024 update). Whilst we expect to see the debate on this issue continue in years to come, lack of international consensus is likely to impede any real progress. ■

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