

Global Transfer Pricing Insights Newsletter Series - 2023



Newsletter
Feb 2023

CENTRE OF EXCELLENCE

TRANSFER PRICING NEWSLETTER

Dear Reader,

It is our pleasure to present to you with first edition of our PKF Mexico – Centre of Excellence (“COE”) Global Transfer Pricing Newsletter 2023.

We provided an update on recently introduced updated legislations, guidelines, definitions, filing requirements of transfer pricing news curated for you from across the world along with latest OECD updates.

Our global Transfer pricing Insights – Newsletter will be published on Quarterly basis providing you with latest updates.

Sincerely,

Jimmy Cruz Camacho

Transfer Pricing Centre of Excellence Leader

For any further information on PKF Mexico Transfer pricing Center of Excellence - We provide tailored solutions for global companies on their transfer pricing issues and you can learn about what we do in our Center of Excellence in 5 minutes where our Senior Economist Anand Vemuganti speaks on Centre of Excellence value proposition. <https://lnkd.in/ehmRFCZz>

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RECENT OECD UPDATES:

[Public comments received on the draft Multilateral Convention provisions on digital services taxes and other relevant similar measures under Amount A of Pillar One.](#)

On 20 December 2022, as part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the OECD invited public comments on the Draft Multilateral Convention (MLC) Provisions on Digital Services Taxes (DSTs) and other Relevant Similar Measures under Amount A of Pillar One to assist members in further refining and finalizing the relevant rules.

- [Download the comments](#) (Zip file, 8MB - Please open from a desktop computer) **Updated 27 January 2023**

[OECD has published a manual on the handling of multilateral MAPs and APAs.](#)

01/02/2023 – In line with the Forum on Tax Administration's (FTA) tax certainty agenda, the OECD has published a [Manual on the Handling of Multilateral Mutual Agreement Procedures \(MAPs\) and Advance Pricing Arrangements \(APAs\)](#), intended to be abbreviated as the MoMA. The MoMA allows tax administrations to explore whether implementation of these procedures is appropriate considering the circumstances of their own MAP and APA programmes and to consider whether the guidance therein may be incorporated in their domestic guidance on MAP or APA processes to provide additional clarity. The MoMA also outlines the actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally. The MoMA is the result of the work done within the FTA MAP Forum.

[OECD releases technical guidance for implementation of the global minimum tax](#)

02/02/2023 – The OECD/G20 Inclusive Framework on BEPS released today technical guidance to assist governments with implementation of the landmark reform to the international tax system, which will ensure multinational enterprises (MNEs) will be subject to a 15% effective minimum tax rate.

The [Agreed Administrative Guidance for the Pillar Two GloBE Rules](#) will ensure coordinated outcomes and greater certainty for businesses as they move to apply the global minimum corporate tax rules from the beginning of 2024. Together with the December 2022 publication of the [Safe Harbours and Penalty Relief document](#) and public consultations on the [GloBE Information Return](#) and [Tax Certainty](#), today's release finalizes the Implementation Framework as set out in the [October 2021 Statement](#) on the Two-Pillar Solutions to Address the Tax Challenges Arising from the Digitalization of the Economy.

COUNTRY SPECIFIC TRANSFER PRICING UPDATES:

[Austria plans to expand the application on existing treaties under BEPS MLI](#)

On 30 November 2022, the Austrian Council of Ministers approved the extension of the application on existing tax treaties under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

Accordingly, Austria plans to include 34 countries on the list of affected treaties. The treaty countries include Bosnia and Herzegovina, Cuba, Denmark, Egypt, Georgia, Iceland, Iran, Kazakhstan, Kyrgyzstan, Libya, Macedonia, Malaysia, Moldova, Mongolia, Montenegro, Morocco, Nepal, Norway, the Philippines, San Marino, Saudi Arabia, Tajikistan, Thailand, Tunisia, Turkmenistan, Venezuela, and Vietnam. Austria now must deposit a notification to add the new tax treaty country, and new treaty countries must also include Austria as their treaty partner in their notification.

[Azerbaijan joins the inclusive framework on BEPS](#)

On 16 December 2022, the Organization for Economic Cooperation and Development (OECD) announced that Azerbaijan joins the inclusive framework on Base Erosion and Profit Shifting (BEPS). Collaborating on an equal footing with all other members of the inclusive framework, Azerbaijan will participate in the implementation of the BEPS package of 15 measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment.

[Belgium gazettes statute of limitations amendments](#)

The law of 20 November 2022 introduced in Belgium defined significant changes to the investigation, assessment and retention periods in the field of direct taxes (including transfer pricing). The assessment period has been extended to a period of six years (previously three years, in the absence of fraud) for so-called “semi-complex tax returns.” Tax returns of Belgian taxpayers obliged to submit a Local file/Master file or country-by-country (CbC) report are considered to fall under this category. The retention period for accounting and tax-related documentation has consequently also been prolonged from seven to ten years.

[Brazilian Government Publishes Provisional Measure to Align with the OECD Arm's Length Principle](#)

Under the proposed decree, Brazil adopts the arm's length principle. It also incorporates transfer pricing concepts such as the delineation of intercompany transactions, comparability analyses, the selection of most appropriate method in introducing both traditional transaction methods and transactional profits methods, broadening the definition of commodities and its application and provides insights on adjustments, financial transfer pricing considerations and documentation requirements.

The PM is a type of Decree, signed and published by the President, with the power of Law that needs to be approved by the Congress and Senate within 120 calendar days from publication to be enacted as law. The Decree becomes applicable from January 1, 2023, only for taxpayers who opt for applying the new rules set out in article 46 of PM 1152. For others, it will be effective from January 1, 2024.

Hungary: Changes to transfer pricing rules, including reporting and documentation

A new transfer pricing reporting obligation was introduced for Hungary, and the Minister of Finance's transfer pricing decree issued on 28 December 2022 provides details on the new transfer pricing reporting obligation, including the information that must be provided in the corporate tax return.

Significant changes to the transfer pricing documentation rules are expected as follows: (i) The threshold of HUF 50 million for transfer pricing documentation is expected to be raised to HUF 100 million. (ii) The penalty for failure to prepare transfer pricing documentation or for incomplete transfer pricing documentation is increased to HUF 5 million per transaction, and an additional HUF 5 million may be imposed for a missing or insufficient master file. (iii) In the case of intra-group services, more detailed information than previously should be provided on the pricing of such transactions.

Ireland Finance bill signed

On 15 December 2022, Michael D. Higgins, the President of Ireland signed the Finance Bill 2022 into Law. The Finance Act contains new tax measures including changes in corporate income tax and transfer pricing related measures. The main tax measures included in the Finance Bill are as follows:

The Finance Bill updates the definition of "transfer pricing guidelines" to require the transfer pricing rules to be construed, as far as practicable, in accordance with the 2022 version of the OECD Transfer Pricing Guidelines. The rules previously referred to the 2017 version of the OECD Transfer Pricing Guidelines. This amendment applies to chargeable periods commencing on or after 1 January 2023.

Malta Publishes formal transfer pricing rules

On 18 November 2022 Malta published subsidiary legislation implementing formal Transfer Pricing Rules (the "Rules"). The Rules will be effective from 1 January 2024 and apply to related party arrangements entered into on or after such date, including any arrangements entered into before that date which would have been materially changed thereafter.

The Rules will apply to arrangements between related parties (associated entities) defined as having 50% or more common direct or indirect participation rights in large multinational groups in scope for Country-by-Country reporting, or 75% in the case of large multinationals excluded from such reporting. SMEs as defined by the EU State Aid Regulations fall outside scope in all cases.

The Rules will apply by reference to transactions or arrangements which are cross-border in nature, in the sense of taking place between a resident company and a non-resident company, or effectively connected to a PE of a company outside of Malta and a resident company, or between a non-resident company and the PE of another non-resident company in Malta to which the transaction is effectively connected.

The Rules provide for a de-minimis threshold for total related party cross-border transactions of EUR 6 million and EUR 20 million revenue and capital respectively measured in the preceding financial year. They also contain a carve out for securitization transactions.

Morocco suspends CbC reporting requirement temporarily

The Moroccan tax authority on 16 December 2022 issued an announcement temporarily suspending the requirement to file a country-by-country (CbC) report in Morocco for companies that are part of multinational enterprises (MNEs) operating in Morocco referred to under the provisions of articles 154 Ter II and 154 Ter III of the Moroccan Tax Code (MTC)—i.e., companies that are part of MNEs whose ultimate parent entity (UPE) is located in a jurisdiction:

- That does not require the filing of such CbC report.
- With which Morocco has not concluded an agreement allowing exchange of information for tax purposes (or has concluded such an agreement but the tax authorities fail to exchange information)

However, the announcement reminds companies whose UPE or surrogate parent entity is a tax resident of Morocco of their obligation to e-file the CbC report for fiscal year 2021 by the 31 December 2022 deadline.

Serbia: MOF release arm's length interest rates for 2022

On 16 December 2022, the Serbian Ministry of Finance published the Rulebook on arm's Length interest rates applicable for 2022 that applies to related parties' loans. The rulebook comes into force on 24 December 2022.

Taxpayers can use the prescribed interest rate for determining corporate income tax in 2022, i.e. when calculating adjustment of expenses and incomes between related parties.

EU CbC Directive implemented by Slovak Republic and Spain

Slovak Republic: The amendment to the Accounting Act No. 407/2022 implements EU Directive No. 2021/2201 requiring qualifying multinational enterprises (MNEs) doing business in the EU to publicly disclose certain information on a country-by-country (CbC) basis, effective for accounting periods beginning on 22 June 2024 or later.

The requirement to prepare and publish the CbC report generally applies to the ultimate parent entity (UPE) with consolidated revenue equal to or more than €750 million for each of the last two consecutive financial years, standalone accounting entity with net turnover in excess of €750 million for each of the last two consecutive financial years, large companies controlled by an UPE accounting entity, and branches of foreign entities that meet the size criteria.

Spain: On 22 December 2022, the Spanish government published the legislation implementing the European Union (EU) Directive on Public Country-by-Country (CbC) Reporting (CbCR).

According to the EU Public CbCR Directive, both EU-based multinationals (MNEs) and non-EU-based MNEs operating in the EU through a branch or subsidiary, each with a total consolidated turnover of more than EUR 750 million in those doing business in finance for the last two consecutive years must publicly disclose income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees by country. However, Spain has opted to allow affected groups to defer disclosure of commercially sensitive information for up to five years, under certain conditions.

EU Member States have until 22 June 2023 to transpose the Directive into national law, and the first reporting year is the year beginning on or after 22 June 2024 at the latest. The rules will come into force in Spain on 22 June 2024.

South Africa – Interpretation note for financial transactions

On 17 JANUARY 2023 – The South African Revenue Service (SARS) has today released an interpretation note titled "[DETERMINATION OF THE TAXABLE INCOME OF CERTAIN PERSONS FROM INTERNATIONAL TRANSACTIONS: INTRA-GROUP LOANS](#)" which provides guidance on how SARS will determine arm's length pricing for intra-group loans. The Note also provides guidance on the consequences for a taxpayer if the amount of debt, the cost of debt or both are not arm's length.

UAE – New TP Regime

On 31 January 2022, the Ministry of Finance (MoF) of the United Arab Emirates (UAE) announced that the UAE will introduce a Federal Corporate Tax (CT) on business profits that will be effective for financial years starting on or after 1 June 2023.

The UAE Ministry of Finance on 9 December 2022 released the [Federal Decree-Law No. 47 of 2022](#) [PDF 441 KB] on the taxation of corporations and businesses and updated related "[frequently asked questions](#)" (FAQs) section, which include new transfer pricing rules.

UK – TP Records Regulations 2023

On 21 December 2022, UK Government published a draft statutory instrument (The Transfer Pricing Records Regulations 2023) to introduce new transfer pricing documentation requirements. The draft rules are largely as expected insofar as they apply to Multinational Enterprises (MNEs) with turnover of €750m or more and which have taxable operations in the UK and require the preparation of an OECD-standard Master File (MF) and UK Local File (LF) for each taxable person for Accounting Periods commencing on or after 1 April 2023.

There are two important developments to note. Firstly, the proposal for an accompanying Summary Audit Trail (SAT) will now be delayed pending a public consultation in 2023. Secondly, the draft regulations exclude UK-UK transactions unless one of the parties has elected to the Patent Box or is carrying on a ring fence trade. HMRC are seeking comments by 31 January 2023.

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Jimy Cruz holds a degree in Economics from the Universidad Autonoma Metropolitana. He has studies in Business Analysis and Valuation from the London School of Economics and Political Science in London and completed a master's degree in Philosophy and Social Sciences from ITESO (Jesuit University of Guadalajara).

Jimy Cruz has served for more than 25 years as a consultant economist for national and multinational groups and also for governments. Currently and since 2011 he is a partner of PKF Mexico and a leader in consulting and financial services such as debt structuring and valuation of projects, business and intangibles. He has a strong specialization in transfer pricing in regional and global documentation projects, dispute resolution, advance pricing agreements (APA), competent authority procedures and in general defense of audits.

Jimy Cruz co-founded the Transfer Pricing group at Baker & McKenzie in 2000 and collaborated with the Mexico City, Juarez, Chicago, New York, Palo Alto, Bogota and Caracas offices carrying out projects for leading companies in the region. He began his professional career at KPMG in 1997 and during 1998 he was transferred to the Miami office of that Firm where he worked on projects for large companies with operations in Latin America.

He has been a speaker and lecturer at multiple forums in Mexico, Latin America, Europe, Asia, Canada, and the United States. He is a frequent columnist and commentator in print and electronic media. In 2009 he was appointed as the first Coordinator of the Transfer Pricing Commission of the National College of Economists.



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Anand has close to 10 years of experience as a global transfer pricing professional and is a qualified TP specialist. He worked for several years as a Transfer Pricing manager/technology lead for both PWC and Deloitte in the Middle East and has hands on experience on advising clients on projects such as TP policy design, value chain analysis model reviews, APA filings, documentation.



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Carolina has a degree in economics from the University of the Americas Puebla. She has a course on compliance manual and provisions of the Law to Regulate the Activities of Savings and Loan in Cooperative Societies (LRASCAP), and also participated in research on economic and social approach at international level. Currently, she is a consultant in the transfer pricing area of PKF Mexico, with a transfer pricing course from the University Concepcion of Chile. She has experience in preparing transfer pricing documentation for national and multinational companies.

right people
right size
right solutions