GIBSON DUNN

UK Tax Update – December 2022

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It has been quite a few months in the United Kingdom, with three governments, two budgets (of sorts) and a cost of living crisis not seen since the 1970s. In an age of 24-hour media coverage, tax policy continues to be heavily debated and not always in a constructive way. Consequently, the political climate makes UK tax policy difficult to predict and trying economic times seem set to remain for the next 18-24 months.

This alert contains the key recent changes to, and policy announcements on, UK business taxes, including the latest EU measures which may impact the UK. We have also summarised the latest position on UK implementation of the OECD BEPS 2.0 initiative.

In the new year, we expect that attention will turn to likely policy direction on debt deductibility, corporate and individual taxation consequences of international mobility and cross border changes on intangible taxation – and we anticipate issuing further client alerts on these matters. On debt deductibility in particular, it is worth noting that the EU DEBRA initiative remains under debate, as well as ongoing amendments to domestic interest limitation regimes like the UK CIR, which were introduced following the BEPS 4 action report. However, these regimes were designed in an environment with low interest rates globally. As interest rates increase and such increases seem likely to be for the long term, it may be the case that ratio based regimes need amending to mitigate unintended deductibility issues for third party debt.

In the meantime, on behalf of the Gibson Dunn tax team, we wish all of our readers a happy festive season!

Please do not hesitate to contact us with any questions or requests for further information.

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Table of Contents

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UK TAX UPDATE - DECEMBER 2022

A. Domestic developments

I. Key changes in the Autumn Statement

a. Thresholds

The government delivered its Autumn Statement on 17 November 2022 (the "**Autumn Statement**"), in which it announced the fixing and raising of a number of tax thresholds.

Following the reversal of many of the measures announced in the Growth Plan 2022, the government delivered its Autumn Statement, which provided for the alteration of a number of tax thresholds as part of a plan which aims to repair public finances whilst tackling the cost of living crisis.

The income tax Personal Allowance, the higher rate threshold and the National Insurance contributions (NICs) upper earnings and upper profits limits are to be fixed for a further two years until April 2028. Additionally, the NICs primary threshold, the lower profit limit and the NICs secondary threshold will be fixed until such date. Further, the income tax additional rate threshold will be reduced from £150,000 to £125,140 from April 2023. The government has legislated for the income tax measures in the Autumn Finance Bill 2022 and will legislate for NICs changes in affirmative secondary legislation in early 2023. The government also announced that the dividend allowance will be reduced from £2,000 to £1,000 from April 2023, followed by a further reduction to £500 from April 2024. Similarly, the capital gains tax annual exempt amount will be reduced to £6,000 from April 2023 and £3,000 from April 2024.

Following the decision to proceed with the increase of the main rate of Corporation Tax to 25% from 1 April 2023, as initially announced in the Spring Budget 2021, the government confirmed that the bank Corporation Tax Surcharge will be reduced from 8% to 3%. In addition, it was announced that the rate of Diverted Profits Tax will be increased from 25% to 31%. Further announcements included the fixing of the inheritance tax nil-rate bands for a further 2 years until April 2028, and confirmation that the previous increases to the nil-rate thresholds of Stamp Duty Land Tax for all purchases of residential property and residential purchases by first-time buyers will be reversed from 31 March 2025.

b. Energy Profits Levy

It was announced in the Autumn Statement that the Energy Profits Levy ("**EPL**"), which was introduced on 26 May 2022, will be increased to 35% from 1 January 2023 and will remain in place until 31 March 2028. Additionally, the Investment Allowance ("**IA**") has been reduced from 80% to 29% for all investment expenditure, other than decarbonisation expenditure.

Following the significant hike in oil and gas prices at the end of 2021 and in early 2022, and to help fund more cost-of-living support for UK families, on 26 May 2022 the government announced a new EPL, being a new 25% surcharge on the extraordinary profits made in the oil and gas sector. Subsequently, it was announced in the Autumn Statement that the EPL will increase to 35% from 1 January 2023 and will remain in place until 31 March 2028, representing a change from the initial proposed end date of 31 December 2025. The EPL is in addition to the 30% Ring Fence Corporation Tax and the 10% Supplementary Charge paid by in-scope energy companies, taking the combined rate of tax on profits for such companies to 75%. The aim of this measure is to ensure that oil and gas companies that will continue to benefit from a prolonged period of increased prices will be taxed accordingly. Additionally, the IA, which was initially introduced by the government to provide an incentive for the oil and gas sector to invest in UK extraction, has been reduced from 80% to 29% for all investment other than decarbonisation expenditure. The purpose of this reduction is to ensure that, under the increased levy rate, the existing cash value of the IA is broadly maintained. Decarbonisation expenditure will continue to qualify for an IA rate of 80%, a measure aimed to support the sector's target to reduce carbon emissions by 50% by 2030 and key commitments in the North Sea Transition Deal in the transition to Net Zero.

c. R&D Relief

A number of changes to the R&D tax relief scheme were announced in the Autumn Statement, including the increase in the R&D credit rate and decrease in the small and medium-sized enterprises ("**SME**") credit rate and SME additional deduction.

The government announced in the Autumn Statement that for expenditure incurred on or after 1 April 2023, the R&D credit rate will increase from 18% to 20%, the SME additional deduction will decrease from 130% to 86%, and the SME credit rate will decrease from 14.5% to 10%. These measures have been largely introduced to improve the competitiveness of the R&D scheme and underpin a move towards the development of a simplified, single scheme, the design of which the government intends to consult on. Additionally, the government has stated that, ahead of the Budget, it will work closely with industry to understand whether further support is necessary for R&D intensive SMEs without significant change to the overall cost for supporting R&D. As initially announced in the Autumn Budget 2021, qualifying expenditure under the R&D scheme has been extended to include data and cloud computing costs.

II. Consultations

a. Sovereign Immunity

In July, the UK government published a consultation on potential reforms to the UK's sovereign immunity rules. Currently, sovereigns are afforded exemption from all direct UK tax. The UK government proposes to narrow the exemption to UK-source interest and put the (narrower) exemption on legislative footing. If implemented, the proposals would bring (amongst others) trading and rental income earned by sovereigns (including sovereign wealth funds) within the scope of UK tax.

The doctrine of sovereign immunity derives from principles of international law, and is not codified in UK law. Currently, the UK government's interpretation of the doctrine exempts sovereign states (and, potentially, the funds and bodies through which they act) from direct UK tax. As a practical matter, the immunity is typically availed of through bilateral, confidential correspondence between the UK and the sovereign recipient in question, with HMRC considering whether the exemption should apply to particular bodies/entities on a case-by-case basis. Paragraph INTM860180 of HMRC's International Tax Manual notes, however, that a "legal entity that is separate and distinct from the foreign Government [cannot avail of the immunity] even though that government may own the whole of the share capital".

The consultation includes the following proposals:

- **Eligibility**: Governments (including the states of a federation, but not including municipalities) should be eligible for the exemption. Views have been invited as to whether entities controlled by governments should be exempt.
- **Scope**: The exemption would be limited to UK-source interest only, to the extent "not related to trading activities" (a proviso on which no detail is offered). Rebasing to the date the proposals are introduced would apply for non-resident capital gains tax purposes. By way of justification, the consultation: (i) acknowledges the material cost of the exemption (particularly in light of the expansion of the non-resident capital gains tax charge in 2019); and (ii) draws comparisons with other jurisdictions, noting that the proposed limitations "are comparable to the approach taken by other countries such as the US and Australia". Significantly, this comparison is based on an overly broad (and, some might say, simplistic) view of other regimes, in particular the tax exemption afforded by section 892 of the US Internal Revenue Code, which in the context of US real estate investments for example, may allow a qualifying section 892 investor to enjoy tax exemption in relation to certain sales of shares in a US real property holding company or a REIT, and in relation to certain qualifying income from a REIT.
- **Administration**: Each sovereign body would only be granted (the revised narrower) immunity following a formal application to, and approval from, HMRC. Irrespective of whether granted, tax registration, reporting and payment rules would apply to sovereigns in the same way as they apply to non-UK residents currently.
- **Commencement**: It is proposed that the changes would apply: (i) for income and gains recognised, for corporation tax purposes, in accounting periods ended on or after 1 April 2024; and (ii) for natural persons, from 6 April 2024.

Input is also sought regarding difficulties that would be faced if a sovereign's "qualified" or "institutional" investor status elsewhere in the UK tax code was removed e.g. for the purposes of reliefs, such as the substantial shareholding exemption, the UK Real Estate Investment Trust rules and the Qualifying Asset Holding Company regime, which may be dependent on a taxpayer's shareholders having such status. In this context, the consultation notes that "the government is not minded to change how all of these areas of the tax code operate in relation to sovereign persons".

In addition to increasing the tax costs for sovereigns investing in the UK, the proposals may have wider implications for investors into the UK. For example: (i) if a sovereign's status as a qualified or institutional investor was lost, this could impact the tax position of the UK taxpaying groups into which the sovereign invests; and (ii) funds that have feeder funds (or other structural divisions) specific to exempt investors may (absent generous transitional rules) need to restructure to move sovereign capital into non-exempt pools. These concerns have been raised by various respondents to the consultation. The consultation closed on 12 September 2022. The proposals in the consultation pre-date the current government's tenure. However, given the potential tax revenue that the proposals would generate, it is expected that the current government will be similarly interested in taking this forward.

b. VAT on Fund Management Services

In December 2022, the government published a consultation on the VAT treatment of fund management services. The government intends to codify both the existing UK exemptions and retained EU law into UK statute to provide a consolidated single source of law regarding the VAT liability of a supply of fund management services. These legislative changes include a defined criteria to determine which funds are considered Special Investment Funds ("**SIFs**"), the relevant VAT exemption of which is currently provided under EU law.

The government has recently published a consultation on the VAT treatment of fund management services. This forms part of a wider focus towards developing the UK's framework for financial services regulation in order to support a dynamic, stable and increasingly competitive financial services sector.

The VAT treatment of fund management services in the UK is largely derived from EU law. Specifically, Article 135(1)(g) of EU VAT Directive 2006/112/EC (the "**Directive**") provides for the VAT exemption of the management of SIFs, while the management of funds that do not qualify as SIFs are subject to the standard rate of VAT (currently 20%). The Directive was transposed into domestic law, with Items 9 and 10 of group 5 of Schedule 9 to the VAT Act 1994 ("**VATA 1994**") listing specific types of exempt funds. On the basis that there is no definition of a SIF in existing legislation and considering the wider uncertainty that this causes to businesses, the government intends to codify both existing UK exemptions and retained EU law into UK statute. This is intended to provide further clarity in relation to the VAT treatment of fund management in the UK and consequently simplify the decision-making process involved in identifying the VAT liability of a supply of fund management services for stakeholders. These developments also reflect the government's wider agenda to remove retained EU law post-Brexit (see below for further discussion on this).

The government has stated in its consultation that it intends to retain the list of exempt fund types currently comprising Items 9 and 10 of group 5 of Schedule 9 to the VATA 1994 (to ensure the continuity of treatment of existing funds), but also intends to introduce relevant case law and guidance into UK law in order to establish defined criteria to determine which funds fall within the SIF exemption. Notably, it is proposed to break from the criteria set out in the European Commission's EU VAT Committee guidelines by excluding the existing requirement that funds qualifying as SIFs must be subject to "State Supervision". The government's reasoning is that this requirement is unnecessary given that such funds must be intended for retail investors and simplifying the policy is also of wider interest. Additionally, the government intends to ensure the correct interpretation of the requirement that such funds must be a collective investment vehicle by providing a clear definition of "collective investment" in the legislation. It is understood that this definition will broadly mirror that provided within the Financial Services and Markets Act 2000, which the industry is familiar with.

It is clear that the government's approach is intended to broadly maintain the scope of the current VAT exemption. However, it may be disappointing for some stakeholders that zero rating of fund management services has not been considered. This may not be surprising given the current environment. Nevertheless, such a development would further strengthen the position of the UK's financial services sector.

III. Transfer Pricing

Transfer pricing has received significant attention in recent years, and has accounted for an increased amount of the tax take in the UK and other western European countries in recent times. At the EU level, there have been some helpful cases in relation to application of transfer pricing rules by member states but a number of uncertainties remain. In the UK, the focus has shifted to documentation and evidencing arm's length transactions in a context where transfer pricing is expected to be subject to greater scrutiny.

Transfer pricing has been receiving a lot of attention in the last few months. Perhaps most importantly, the Court of Justice of the European Union ("**CJEU**") has given its judgement in the long running '*Fiat*' Case (Case C-885/19).

To recap, in 2015 the European Commission ("**EC**") concluded that Fiat had been granted unlawful state aid by Luxembourg in respect of a finance company within the Fiat group. The EC's decision centred on the transfer pricing principles used to support the arm's length return received by the finance company from other Fiat group members. Fiat challenged the EC's decision but the General Court of the European Union ("**GCEU**") dismissed the appeal in 2019. On 8 November 2022 the CJEU overturned the 2015 and 2019 decisions.

In doing so, the CJEU's key finding was that the GCEU and the EC had wrongly considered the general objectives of corporate income tax. Rather, they should have considered Luxembourg's application of the arm's length principle solely by reference to Luxembourg's domestic laws and guidance. Implicit in this conclusion is that the arm's length principle is not inherent in the prohibition on state aid itself.

The impact of the CJEU's decision could have wide ramifications for a number of clients. We know of at least three cases pending before the CJEU where the EC has adopted similar reasoning to that which was dismissed by the CJEU in 'Fiat'. There are several others we are aware of which are under investigation by the EC. The impact of the Fiat decision could be helpful to the taxpayers in these cases.

On a related note, the CJEU has also given its decision in another transfer pricing case: *X GmbH* (Case C-431/21). The decision was made on 13 October 2022 and, at first glance, the conclusions appear reasonably innocuous. In summary, the CJEU concluded that German laws relating to transfer pricing record keeping and documentation in respect of cross-border transactions did not violate freedom of establishment principles. These laws imposed penalties and surcharges for non-compliance with transfer pricing documentary requirements which were the subject of the case before the CJEU.

While the legality of the penalties and surcharges is of some consequence, probably the more interesting point for most arising from this case is a reminder of the inherent conflict between transfer pricing and freedom of establishment. Many jurisdictions consider that intra-jurisdiction transfer pricing rules would be redundant and simply an administrative burden. There is some sense in this point of view: there is very little reason for a tax authority to object to returns being artificially increased and taxed in one company in its jurisdiction at the expense of another in the same jurisdiction. In theory, the taxable profit for that jurisdiction should, in the round, be the same notwithstanding a non-arm's length transaction between two entities within that jurisdiction. The result is that many jurisdictions only apply transfer pricing rules to cross-border transactions and this is where the conflict arises. Any rule which applies to (and potentially penalises) taxpayers undertaking cross-border transactions but not domestic transactions is at risk of challenge on the grounds of being an obstacle to freedom of establishment.

The CJEU has had a number of opportunities (including in the case of X) to determine that transfer pricing rules are not contrary to freedom of establishment principles simply by virtue of applying to cross-border transactions only. However, the CJEU has declined to make such a determination and instead has considered whether the measures (the penalties and surcharges in the case of X) are appropriate and proportionate (if they are, they are permissible notwithstanding that they hinder freedom of establishment). The result is that many (if not all) cross-border transfer pricing measures within the EU remain liable to challenge and may need to be shown to be appropriate and proportionate on a case by case basis.

On the topic of transfer pricing documentation, new rules will come into force in the UK to align its documentation requirements with the OECD's recommendations. Current UK rules do not require a 'master file' (containing information required by all members of a multinational group) and a 'local file' (relating to transactions of the UK entity only), while the OECD's guidance requires both. From April 2023, UK taxpayers which are large multi-national businesses (those with turnovers above €750 million) will be required to maintain both and to provide them to HMRC for inspection on 30 days' notice. However, the UK's rules are expected to go further than their OECD equivalents by further requiring evidence of how the local file is prepared. This is referred to as a 'summary audit trail' and further consultation and regulations are expected in due course.

IV. Retained EU Law Bill

From 31 December 2023, any EU law that the government deems should remain in effect will be assimilated into domestic legislation. Accordingly, any EU law not preserved shall cease to have effect in the UK.

"Retained EU Law" refers to law created at the end of the "Brexit" transition period and consists of EU-legislation that was implemented in our domestic legislation in the European Union (Withdrawal) Act 2018, to avoid significant gaps appearing in the UK legal system due to a potential mass exodus of previously applying EU law. However, in order to allow the UK to adapt these "inherited" laws, the Retained EU Law Bill (the "**Bill**") was published, with the principal effect being that any retained EU law contained in EU-derived secondary legislation and retained direct EU legislation will expire on 31 December 2023 (although certain pieces of retained law may be extended to 2026) unless otherwise specifically preserved. This will not impact the Northern Ireland Protocol which shall continue to apply as regards Northern Ireland.

The intention of this is to allow the Government to repeal and replace retained EU Law more easily. Any preserved EU Law that remains in force after the sunset date will be assimilated into the domestic statute book of the UK. Accordingly, the principle of the supremacy of EU law and directly effective EU rights will end on 31 December 2023, meaning that no general principle of EU law will be part of domestic law after 31 December 2023.

The Bill does not impact the current position whereby, when interpreting retained EU law, rulings of the CJEU will be binding when they were made prior to 31 December 2020, and "advisory" (i.e. they can be applied by the courts if the CJEU ruling matches the facts at hand) following this date. However, the Bill does allow lower courts to make references to the higher courts (e.g. the Court of Appeal or Supreme Court) to ask them to reconsider a binding CJEU ruling where they believe it is of general public importance to do so. This will allow lower courts that currently must follow pre-31 December 2020 rulings to effectively draw any inconsistencies to the attention of higher courts to allow a quicker transition away from EU case-law "supremacy". Additionally, Devolved Law Officers will be given a procedure to refer or intervene in cases regarding retained case law.

The full extent of the impact of the Bill is yet to be seen. While there is support for the Bill by allowing the Government to finally move away from EU rules (almost three years after Brexit actually occurred), there is concern that the government has not announced a key list of legislation that it wishes to reform, suggesting that the sunset date of 31 December 2023 may have been an arbitrary date which may be pushed back further.

V. QAHC

The 'Qualifying Asset Holding Company' ("**QAHC"**) regime has been amended to refine and clarify certain elements.

In February 2022 we reported on the new UK tax regime applicable to QAHCs. That report can be found here. The Finance Bill 2023 makes three clarificatory changes to refine the QAHC regime.

The first two changes relate to funds and the genuine diversity of ownership condition. For context, a condition of the QAHC regime is that the company seeking to benefit from the regime is at least 70% owned by 'Category A' investors. A lot of funds which are set up as partnerships will be Category A investors by virtue of being: (i) 'collective investment schemes'; which (ii) meet the 'genuine diversity of ownership' test. Each of these two tests presented a potential problem for some funds.

The problem with using the term 'collective investment scheme' is that it excludes any entity (subject to very limited exceptions) which is a body corporate under its domestic law. With effect from 1 April 2022, bodies corporate, which would be collective investment schemes had they not been bodies corporate, can be treated as collective investment schemes for the purposes of the QAHC rules. What is not clear is whether the intention of the change is to widen the ambit of the definition of a collective investment scheme significantly or to solve for a very narrow technical concern. The technical concern is that certain non-UK (notably Delaware) fund entities can theoretically be both partnerships and bodies corporate under their domestic law. On a narrow reading, this change simply deals with this issue and allows such an entity to be treated as a collective investment scheme. However, the change also potentially brings other corporate fund vehicles (which would not be considered as also being partnerships) and companies which would not traditionally be seen as funds at all within the definition of collective investment scheme. It remains to be seen whether HMRC will clarify the intention either in guidance or amended legislation.

Having established that an entity is a collective investment scheme, in order to be a Category A investor, it must meet the 'genuine diversity of ownership' condition. This condition is broadly that the entity is widely marketed. This presented an issue for funds where investors participated via a number of parallel vehicles which, taken together, met the genuine diversity of ownership condition but, individually, did not. With effect from a date to be confirmed, parallel funds which do not, alone, meet the genuine diversity of ownership condition can be treated as meeting the conditions where the collective investment schemes with which they are associated meet the conditions. The conditions for showing sufficient association with the other fund vehicles are very prescriptive. Broadly there must be a commonality of assets, holding structure, terms of investment and fund management between the various parallel collective investment schemes in order to aggregate them for the purposes of the genuine diversity of ownership test. This is certainly good news in the simplest of scenarios (for example, where some investors invest through a blocked entity while others invest on a flow through basis for US tax purposes but the fund terms and downstream investment structure are otherwise identical). In more complex scenarios where certain investors have enhanced or investor specific fund or side letter terms, it is not clear that all parallel vehicles would benefit from this aggregation.

Finally, with effect from 20 July 2022, the QAHC regime's anti-fragmentation rules have been extended. When testing whether a QAHC has at least 70% Category A investors, the interests of direct investors are aggregated with interests which that same investor holds through another investor in the would-be QAHC. Because a QAHC is itself a Category A investor if it invests in another would-be QAHC, it was possible to dilute the ultimate Category A investor holding below 70% by having the same non-Category A investor holding an interest of less than 30% in both the would-be QAHC and the QAHC investing in it. This change prevents this from happening by treating interests held through other QAHCs as held directly.

VI. Proposed Amendments to the Tax Rules for Real Estate Investment Trusts

It was announced on 9 December 2022 that the tax rules for Real Estate Investment Trusts ("**REITs**") will be amended with effect from April 2023 to remove the requirement for a REIT to own at least three properties, where a single commercial property worth at least £20 million is held and to amend the rule that applies to properties disposed of within three years of significant development activity.

In a statement made by the Chancellor on 9 December 2022, it was announced that the tax rules for REITs would be amended with effect from April 2023. Firstly, the new rules will remove the requirement for a REIT to own at least three properties to qualify as having a tax-exempt business in respect of its property rental business, where the REIT holds a single commercial property worth at least £20 million. This is a welcome measure, particularly for smaller companies and start-ups as it should facilitate their access to the REIT regime. Secondly, the government intends to amend the rule that provides that a property is deemed to be sold in the course of a trade if it is sold within three years of significant development activity, although it has not yet been confirmed what this amendment will be. Where this rule currently applies, the property is treated as having been disposed of in the course of the residual business of the REIT and therefore any gain arising on the disposal is subject to corporation tax. The government has stated that such change is designed to ensure that this rule operates in line with its original intention.

B. International Developments

I. EU Updates

a. BEFIT Consultation

The EC has published a call for evidence and consultation regarding its new proposal for an EU-wide consolidated corporate tax base (the so-called "Business in Europe: Framework for Income Taxation", or "**BEFIT**"). Certain aspects of the EC's thinking appear to borrow from the OECD's Pillar 1 and Pillar 2 proposals.

The intention of BEFIT is to reduce compliance costs, and complexity, by introducing a single, coherent, tax base across EU Member States (with a view to increasing EU competitiveness).

The BEFIT Consultation illustrates that the BEFIT proposal is still in its infancy, and that the EC is still in an exploratory phrase. The BEFIT Consultation notes that potential policy choices open to Member States range from maintaining the status quo (effectively shelving the project) to adopting a Directive mandating the material features of the proposed common tax base (including, following in the OECD's Pillar 1 footsteps, rules for the allocation of taxing rights between EU Member States). If action is to be taken, the BEFIT Consultation posits a number of potential options in formulating a proposal:

- **"In-scope" taxpayers:** The proposal could: (i) mirror the OECD's Pillar 2 proposals by limiting the application of BEFIT to multinational groups with annual global revenues in excess of €750 million; or (ii) adopt a wider scope, so that small and medium enterprises could (either on a mandatory, or an "opt-in" basis) benefit from the enhanced simplicity the proposal aims to offer. The BEFIT Consultation notes, in particular, the EC's preference for any measure not to exclude particular sectors from its scope.
- **Calculation of tax base:** The proposal could: (i) use the consolidated financial accounts as a starting point, and introduce limited adjustments thereto; or (ii) introduce prescriptive and detailed rules for calculating the tax base (akin to the approach adopted by most EU Member States under their existing local rules).
- **Allocation of the tax base:** As with Pillar 1 rules, the BEFIT Consultation contemplates that, once calculated, the consolidated tax base would be allocated between the EU Member States in which the group has a (yet to be defined) taxable presence. It is contemplated that rules determining the "taxable presence"

in this context would "reflect the source of the underlying income generation". The most significant nexuses for this purpose are considered to be the location of labour, tangible assets and sales by destination (although it is noted that intangible assets could present a fourth nexus by reference, for example, to where research and development and marketing costs are incurred).

- **Interaction with non-EU tax systems**: The proposal recognises that transfer pricing rules would still be necessary to the extent that the taxpayer group includes EU and non-EU members that transact with one another. In this respect, the BEFIT Consultation contemplates that existing transfer pricing rules could be maintained, or guidance could be produced for Member States with a view to applying transfer pricing rules on a simplified basis.

It remains to be seen whether BEFIT will gain wider traction. It is notable, for example, that it would require unanimous approval from all Member States and that the EU's previous attempts to create a consolidated tax base, in 2011 and again in 2016, have failed. In addition, developments since the proposal was first mooted in 2021 may encourage caution, including: (i) a worsening economic background (which could render Member States reluctant to cede control over taxing rights); and (ii) the increasing complexities that have mired the OECD's BEPS 2.0 project. Against that background, it remains to be seen whether the BEFIT will succeed where its predecessors have failed. While the EC has indicated that it is targeting Q3 2023 for adoption, it seems likely to be longer before clarity emerges.

b. ATAD III Update

In mid-2021 the EC published a draft directive to tackle the use of shell companies by limiting the tax reliefs available to them (so-called "ATAD III", discussed in our February 2022 Quarterly Tax Alert, which can be found here). The European Parliament's Committee on Economic and Monetary Affairs ("**CEMA**") has subsequently proposed that ATAD III's implementation be deferred by 12 months, in addition to proposed amendments to the scope of the proposal and the substance required to be demonstrated thereunder. However, questions remain as to whether, and (if so) in what form, ATAD III will be implemented.

In May 2022, CEMA recommended that ATAD III's proposed effective date be pushed back (from 1 January 2024 to 1 January 2025, respectively). Other key amendments proposed by CEMA included: (i) widening the exemption applying to "regulated financial undertakings" (to similarly exempt their subsidiaries); and (ii) permitting an entity to outsource day-to-day operations to associated enterprises in the same jurisdiction without this causing the former to be an "at risk" (i.e. an entity that is required to positively confirm, in its annual return, that it meets specified substance requirements).

However, in September 2022, different CEMA members/sub-groups proposed (at times contradictory) amendments to the draft ATAD III directive:

- Some proposed amendments strengthen the scope and requirements of the directive, e.g. by removing the exemption for regulated financial undertakings entirely (in contrast to the approach in May).
- Other amendments ease the practical burden and cost of the directive, e.g. by deleting the requirement that entities should have at least one local director that is not a director of any other unconnected entity (a requirement that would materially restrict the ability to engage local corporate service providers to assist with governance).
- Timing wise, the amendments reflected the proposed effective date of 1 January 2025 recommended in May 2022. However, elsewhere, amendments propose that an entity's substance is assessed over a two year look-back period starting, for the first time, on 1 January 2024 (which may suggest a 1 January 2026 effective

date).

While CEMA was due to vote on the proposed amendments on 30 November 2022, the outcome is yet publicly available.

Depending on the final form of the directive, it is conceivable that an entity's income and activities from 1 January 2023 onwards could determine whether it has sufficient substance and is capable of accessing treaty reliefs (e.g. if the proposed two year look-back is implemented and the directive takes effect on 1 January 2025). It is hoped that greater clarity about the scope of, and timing for implementation of, the rules is available before then, so taxpayers can plan their affairs accordingly.

c. UK-Brazil Double Tax Treaty

On 29 November 2022, the UK and Brazil entered into a double tax treaty ("**DTT**") which shall, once in force (and assuming that no further amendments are made), apply to income tax, corporation tax and capital gains tax in the UK.

Historically, Brazil has been one of very few major jurisdictions that did not have a DTT with the UK. However, on 29 November 2022, following just 3 months of formal negotiations, the UK and Brazil (the "**Contracting States**") entered into a DTT, which will come into force once both countries have complied with their respective domestic procedures to implement such treaty.

Assuming no further amendments are made to the DTT before it is implemented, the DTT shall apply to income tax, corporation tax and capital gains tax in the UK (and federal income tax and social contribution on net profit in Brazil). Generally, the DTT is a comprehensive DTT, and includes a number of bespoke provisions, including an "offshore activities" clause, a limitation of benefits clause and a mutual agreement procedure ("**MAP**").

The treaty will act to reduce, rather than eliminate, withholding tax rates on both interest and royalties (albeit having a greater effect on payments from the UK where the "pre-treaty" headline rate is higher (at 20%) than Brazil (at 15%)). One notable exception to this is for pension schemes, in relation to which interest (and dividends) paid by a company resident in either Contracting State to a pension scheme established in the other state are exempt from tax in the jurisdiction of residence of the payor. Additionally, as a result of the DTT including a non-discrimination article, it brings interest payments made between the Contracting States within the scope of the qualifying private placement ("**QPP**") exemption. The QPP exemption is an exemption from paying UK withholding tax on interest paid on certain unlisted debt securities, but requires the creditor to be resident in a "qualifying territory" (being a territory with which the UK has a double tax treaty). The QPP exemption is particularly useful where a double tax treaty reduces withholding tax on interest, as opposed to eliminating it (as is the case here), providing an alternative method to be able to pay interest free from UK withholding tax.

The treaty also includes provisions relating to withholding tax on dividends, although as neither Contracting State currently imposes withholding tax on dividends, this provision appears to be "future-proofing". That said, article 10(5) of the treaty introduces a bespoke provision, which states that where a resident of a Contracting State has a permanent establishment in the other Contracting State, that permanent establishment may be subject to a tax withheld at source in accordance with the law of that other Contracting State, but at a rate not to exceed 10 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits. Thus, Brazil or the UK would theoretically be permitted to impose tax withholding at source on the after tax profits of a permanent establishment of a resident of the other state, which raises several practical and procedural questions (notably, on how such taxation would be collected in practice).

The “offshore activities” clause expands the scope of a permanent establishment to include activities which are carried on offshore in either Brazil or the UK in connection with the exploration, exploitation or extraction of the seabed and subsoil and their natural resources situated in that state. It is likely this clause was introduced due to the “Blue Amazon”, an area off the coast of Brazil that is known to be abundant in natural and mineral wealth, and an increase in attention that such area is receiving from companies who want to engage in deep-sea mining in international waters. The result of the “offshore activities” clause in the treaty is that any profits that a UK company makes from engaging in such activities will be taxable in Brazil.

Article 9 of the treaty enshrines a customised transfer pricing related provision for associated enterprises in Brazil and the UK, broadly allowing either Contracting State to override non-arm’s length arrangements between associated enterprises in Brazil and the UK and tax their profits accordingly (with express recognition of the need to respect corresponding adjustments in the other Contracting State).

It is also worth noting that the treaty allows for withholding on fees for technical services, which is presumably to accommodate the existing Brazilian domestic withholding tax on payments to non-residents with respect to certain managerial, technical and/or consultancy services. Interestingly, the treaty provision (article 13) institutes a ‘sliding scale’ approach, with the treaty rate of withholding on such fees reducing from 8% to 4% and then to 0% at the end of two years and four years respectively.

As noted above, the treaty also includes a bespoke limitation on benefits clause which must be complied with in order for the benefits of the treaty to apply. Companies that are resident in either Contracting State are only entitled to benefit from the DTT if such person is a “qualified person” (which includes, among others, individuals, the relevant state itself and traded companies). Additionally, a resident of a Contracting State is entitled to benefit from the DTT with respect to income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident in engaged in the active conduct of a business in the first Contracting State and the income is derived from that business. Additionally, there is a carve-out for any transaction if it is reasonable to conclude that obtaining the benefit of the DTT was one of the principal purposes of the transaction.

The DTT also includes a MAP, whereby any taxpayer shall have three years to present any issues that arise as a result of the interpretation of the DTT. Such taxpayer must present their case to the competent authority in the Contracting State in which the taxpayer is resident, following which both Contracting States shall work together to resolve such issue.

II. BEPS 2.0

a. Update on Pillar 1 and Pillar 2 Consultations

There have been further developments relating to both Pillar 1 and Pillar 2 over the past few months. Recently, however, the main focus has shifted towards the implementation of Pillar 2 into domestic law. The main focus of this in the UK was the publication of draft legislation for the new Multinational Top-Up Tax (“**MTT**”) which broadly follows the OECD’s model rules in its implementation. Additionally, in the Autumn Statement, the Chancellor announced the intention to introduce a qualifying domestic minimum top-up tax in the UK.

Pillar 1

As we reported previously, the members of the OECD’s Inclusive Framework on Base Erosion and Profit Sharing have reached high-level agreement for changes to international tax-nexus rules under the so-called “Pillar 1” rules, which provide for a new right for “market jurisdictions” to tax “Amount A” (being 25% of profits that exceed a normal rate of return (10%)), and a new standardised methodology for taxing, on a fixed-return basis, marketing and distribution activities (so-called "Amount B"), although this has received limited consideration since its announcement, up until the release of a consultation in December 2022 (see below).

Since our last update (see here), there have been a number of key developments in relation to "Pillar 1", via a number of consultations:

1. In June 2022, the responses to the consultation on tax certainty aspects (which proposed mechanics for addressing widespread concerns about risks of double taxation and dispute resolution in respect of Amount A) were published. The proposals contemplate the rights for a multinational enterprise ("**MNE**") to seek clearance as to whether it is in scope, and seek advance clearance on the methodology such MNE takes for calculating Amount A (which will apply for future periods). The proposals also provide for an "after the event" multilateral review binding on all relevant jurisdictions in respect of periods that have ended. Respondents generally felt that these were welcome proposals, due to tax certainty being a critical aspect for the Pillar 1 rules. However, concerns were raised as to whether taxpayers will be able to obtain clearances within reasonable time frames, and whether tax authorities will have sufficient resources to meet taxpayer demands in relation to such clearances.
2. In July 2022, the OECD released the "Progress Report on Amount A of Pillar One" (which can be read here), which is a consultation document released for the purpose of obtaining further input from stakeholders on the technical design of Amount A. The Progress Report acts as a general update on the status of Pillar 1, and includes the draft rules thus far. Additionally, the Progress Report introduces three new concepts for Pillar 1: Segmentation (Amount A may apply to certain segments of an MNE if such segment meets both the revenue and profitability test), a Marketing and Distribution Profits Safe Harbour (reducing profit allocable to a jurisdiction where the MNE already has a physical taxable presence), and rules in relation to the elimination of Double Taxation. The consultation was intended to elicit any final comments that stakeholders have in relation to any aspect of the rules, with the intention of finalising the rules in 2023, ahead of implementation in 2024. Generally, respondents expressed concern about the excessive administrative pressure that could be imposed on companies if the approach for computing Amount A is not simplified. Respondents also raised their concerns that the introduction of Amount A as a global concept would deserve a global approach for administration and elimination of double taxation, which does not currently exist, and may lead to uncertainty and potential hardship for companies/groups in scope. In light of these responses, there are still a significant number of specific comments that the OECD will have to consider/address before Amount A is ready for implementation.
3. On 8 December 2022, the OECD released a consultation on the design elements of Amount B (the first consultation released in relation to Amount B). Amount B is intended to provide a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities following inclusive framework members identifying that transfer pricing disputes are common with respect to distribution agreements between related parties. The consultation outlines the proposed scope, pricing methodology, documentation requirements and tax certainty impact of Amount B, and specific questions for stakeholder input and public commentators have been included for each of these topics (for further information on the proposals, see the consultation document here). Responses must be received by 25 January 2023 for review by the OECD, with a summary of the responses received expected to be published shortly thereafter.

Pillar 2

As we have reported previously (see here), the Pillar 2 rules (collectively the "**GloBE**" rules) have been developed extensively over the past few years. Since our last update, additional technical guidance on the model rules has been published (in March 2022 - for the guidance in full, see here). Additionally, in March 2022, the Implementation Framework Secretariat released a call for input on the Implementation Framework of Pillar 2. The responses to the call for input have flagged a few areas where stakeholders feel the rules still need further development. For example:

- Under the penalty regime for non-compliance, there were calls from respondents for a grace period during which honest mistakes will not trigger penalties.
- Respondents have called for standardised returns to minimize the excessive burden that Pillar 2 may impose already, in particular calling for the GloBE returns to be filed with the tax authority of the parent, and each other member of the MNE, within 15 months of the end of the reporting year in question.
- Calls for safe harbours for members of MNEs which are not intended to fall within the scope of the new rules (i.e. members who are likely to be taxed above the 15% minimum rate).

In response to the March 2022 consultation, on 20 December the Inclusive Framework released an implementation package relating to Pillar 2. The implementation package consists of guidance on Safe Harbours and Penalty Relief, a public consultation document on the GloBE Information Return and a public consultation document on tax certainty for the GloBE rules.

The guidance on Safe Harbours and Penalty Relief includes the agreed terms of a Transitional Country-by-Country Reporting Safe Harbour that broadly removes the obligation of calculating the GloBE effective tax rate for an MNE's operations in lower-risk jurisdictions during the initial years of implementation of the rules, therefore providing relief to MNEs in respect of their compliance obligations as they are coming to terms with the operation of the rules. The guidance also sets out a framework for the development of Simplified Calculations Safe Harbours that would reduce the number of computations and adjustments an MNE is required to make under the GloBE rules or allow the MNE to undertake alternative calculations to demonstrate that no GloBE tax liability arises in relation to a particular jurisdiction. Lastly, the guidance outlines the Transitional Penalty Relief Regime, which requires a jurisdiction to give careful consideration as to the appropriateness of applying penalties or sanctions in connection with the filing of a GloBE Information Return where a tax administration considers that an MNE has taken "reasonable measures" to ensure the correct application of the GloBE rules.

The second document in the implementation package, a public consultation on the GloBE Information Return, seeks input from various stakeholders on the amount and type of information that MNEs should be expected to collect, retain and/or report under the GloBE rules, possible simplifications to the GloBE Information Return, as well as the ability of the MNE Group to provide alternative data points.

The final document in the implementation package, a public consultation on tax certainty for the GloBE rules, seeks input from stakeholders in relation to various scenarios where differences in interpretation or application of the GloBE rules between jurisdictions may arise and whether such stakeholders would suggest other mechanisms for ensuring the consistent and coordinated application of the GloBE rules, which are not currently being considered.

Nevertheless, subject to further tweaks to reflect the above, the Pillar 2 rules are essentially finalised. Accordingly, the responsibility now turns to inclusive framework members to implement domestic rules in accordance with the model rules in time for implementation in 2024.

b. UK Implementation and Autumn Statement

On 20 July 2022, draft legislation to implement the new MTT in the UK was released (see here). The MTT, the UK's version of Pillar 2, works as follows:

> It must first be determined if the group in question is a consolidated group. A consolidated group includes an entity in which no other entity has a controlling interest (and which has a controlling interest in other entities) (i.e. the parent company), and the entities whose assets, liabilities and income are included in the financial statement of the parent. The consolidated group must contain members in multiple territories, or in the alternative at least one member must have a permanent establishment outside the UK.
>
> Next, any "excluded entities" must not be considered part of the consolidated group. Excluded entities include:
>
> a. qualifying service entities (an entity that is 95% owned by one or more excluded entities, and either only carries out activities that are ancillary to the activities of its owners, or almost all of its activities consist of the holding of assets or the investment of funds for the benefit of its owners);
> b. qualifying exempt income entities (an entity that is 85% owned by one or more excluded entities, and almost all of the entity's income is excluded dividends or excluded equity gains);
> c. a governmental entity;
> d. an international organization;
> e. a non-profit organization; and
> f. a pension fund.

Additionally, if the ultimate parent entity of the group is an investment fund, a UK REIT or an overseas REIT, a governmental entity, an international organisation, a non-profit organisation or a pension fund, that entity will be an excluded entity too.

> Next, to determine if the consolidated group is a qualifying multinational group for the purposes of the legislation, in at least two of the previous four accounting periods the non-excluded members of the group must have had revenue that exceeds €750 million (or equivalent pro rata revenue if the accounting period is shorter than 1 year).
>
> Next, the responsible member of the qualifying multinational group must be determined. In most circumstances, the ultimate parent will be the responsible member (if it is subject to Pillar 2 tax under the income inclusion rule). However, if the ultimate parent company is not subject to Pillar 2 tax under the income inclusion rule, an intermediate parent member may be the responsible member. The responsible member will be the member that is liable to pay the top-up amount for the group for the territory in which it is located.
>
> Once a qualifying multinational group has been determined, the effective tax rate ("**ETR**") of the group must be determined as follows:
>
> a. The adjusted profits (or losses) for each member of the group in the accounting period in question must be determined.
> b. Next, the total losses of those members that made a loss in the accounting period in question should be subtracted from the total profits of those members who made a profit in the accounting period in question. If the result is less than 0, the ETR shall be

treated as 15% for these purposes.

c. Next, the "combined covered tax balance" for the standard members of the group must be determined. The "covered taxes" for these purposes are very broad, but generally include any taxes on profits of that member in the territory in which it is located. The covered tax balance for a member is the tax expense incurred by the member for that period (taking into account any adjustments under the legislation, including the allocation of taxes from one member to another under the MTT legislation). If the combined covered tax balance is 0 (i.e. no covered tax has been paid by any members) the ETR shall be 0% for these purposes.

d. Lastly, the combined covered tax balance shall be divided by the combined profits and losses of the members (under "b" above), and multiplied by 100, to give the ETR for the qualifying multinational group.

Assuming that the ETR calculated above is less than 15%, the top-up amount under the MTT for the territory that the responsible member is incorporated in must then be calculated. To calculate the top-up amount for a territory:

a. The ETR of the standard members of the group (as calculated above) should be subtracted from 15%.

b. Next, the losses for the members that made a loss should then be subtracted from the profits of the members that made a profit in the period in question.

c. Then, the substance based income exclusion should then be deducted from the profits of the group (these are carve outs for payroll expenses and tangible assets for the period in question).

d. Lastly, the profits after such deductions shall be multiplied by the difference between the ETR and 15%, which gives the top-up amount for the territory in question.

The responsible member is then responsible for paying such top-up amount to the tax authorities in the jurisdiction in which it is located.

The MTT rules are still in draft form, and therefore are not yet finalised. As noted above, from the draft legislation it appears that investment funds and UK REITs will be excluded under the MTT rules by virtue of being an excluded entity. Additionally, subsidiary holding companies will likely fall within the definition of qualifying service entities to the extent that they are simply holding companies, meaning the only non-excluded entities in such structures for the purposes of the draft legislation will likely be portfolio companies, being the only companies whose main activity is not simply holding assets (i.e. companies who will not be "qualifying service entities").

It is possible in certain scenarios where there is a master holding company, under an investment fund structure, holding a number of portfolio companies, that the master holding company would be an excluded entity, thereby meaning that there is no "responsible member" (as there is no entity that (i) is not an excluded entity, and (ii) holds a direct or indirect ownership interest in a member of the group that has a top-up amount) for the purposes of the MTT draft legislation. Accordingly, in such circumstances, it appears from the draft legislation that no top-up tax payment would be required in light of there being no responsible member. However, it is important to note that if there are portfolio company groups under the master holding company, there could be a responsible member for these purposes (being the holding company of the portfolio company group that engages in business and also holds interests in other portfolio companies), and the MTT could still apply in that case.

In addition to the MTT, at the Autumn Statement, the Chancellor announced the intention to introduce a qualifying domestic multinational top-up tax ("**QDMTT**"). The new QDMTT will require large groups, including those operating exclusively in the UK, to pay a top-up tax where their UK operations have an effective tax rate of less than 15%. No further detail has been released into this proposed QDMTT, although the government have stated that the QDMTT will be legislated for in the Spring Finance Bill 2023.

c. EU/ROW Implementation

In March 2022, the EC released a draft directive for the implementation of Pillar 2 in EU member states. Generally, the EC directive mirrors the model rules as set out by the OECD. However, in order to comply with other EU rules, the directive, as drafted, would apply equally to wholly domestic groups as it would to MNEs (as defined in the OECD rules). The draft directive was initially vetoed by Poland, and then vetoed by Hungary (while Poland later withdrew its veto). On 12 December 2022, it was announced that EU member states had finally reached agreement to implement a minimum 15% tax rate on multinational and domestic groups or companies with a combined annual turnover of at least €750 million as the Committee of Permanent Representatives reached the required unanimous support. It was later announced on 14 December 2022 that Poland had vetoed the agreement again, but this veto was quickly withdrawn later that same day.

Other countries are undertaking a similar process to the UK to begin domestic implementation of Pillar 2. For example, Australia has confirmed that an implementation framework is due to be completed by the end of 2022 to support domestic implementation in Australia of the model rules, with consultations being published to obtain input from interested parties on how Australia can best engage with the Pillar 2 rules. Additionally, on 12 August 2022, the U.S. Congress passed the new Inflation Reduction Act which imposes a 15% corporate minimum tax rate on certain large corporations (effectively targeted at companies that report significant income but pay minimal US federal income tax). The new corporate minimum tax will apply to tax years beginning after 31 December 2022 (for more information on the corporate minimum tax, see our client alert from 29 July 2022 here).

As we move into 2023, we expect to see further domestic top-up tax regimes being announced. It is yet to be seen how such differing regimes will interact, but there is certainly a risk that such competition may create a "race to the bottom", possibly causing countries to lose sight of the OECD's end-goal, and ultimately diminishing the effectiveness of such regimes.

III. Mandatory Disclosure

Recent developments illustrate a trend towards increased mandatory reporting to, and exchange of information between, tax authorities. Such developments include additional OECD rules for reporting on cryptoassets, UK consultations on the adoption of OECD Model Mandatory Disclosure Rules ("**MDR**") and Model Reporting Rules for Digital Platforms, and the UK becoming a signatory to two new multilateral treaties for the exchange of information between tax authorities.

Following the success of the Common Reporting Standard ("**CRS**") developed by the OECD in 2014 (providing for the collection by intermediaries, and exchange, of financial account information), the OECD has been a significant source of model mandatory disclosure rules:

	Reporting obligation	UK status
Mandatory Disclosure Rules (2018)	· Intermediaries required to report on: (i) arrangements designed to counteract CRS reporting and/or (ii) certain offshore arrangements to	· Jan 2021: UK announced its limited implementation of DAC6 (mirroring the scope of the MDR) and its intention to replace DAC6 with the MDR (see our May 2021 Client Alert here).

	disguise beneficial ownership. · Information reported is exchanged upon request / spontaneously (if foreseeably relevant to recipient tax authority).	· Nov 2021: UK published, and consulted on, draft rules implementing the MDR (in place of DAC6). The draft contemplated that reportable arrangements implemented on or prior to 29 October 2014 would need to be disclosed. · Nov 2022: Response to consultation published. UK government announced reporting of historic reportable arrangements would be limited to those implemented on or after 25 June 2018. · Nov 2022: UK signs a multilateral agreement for automatic exchange of information reported under the MDR (together with 15 other jurisdictions, incl. Cayman, Bermuda and Isle of Man). · Early 2023: MDR intended to be implemented in the UK.
Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (2020)	· Digital platform operations required to report (annually by 1 January) on persons selling goods/services via platforms (e.g. those offering accommodation), including where the seller is established and the income it earns. · Information reported will be exchanged with seller's home tax authority.	· Mar 2021: EU adopts DAC7 which broadly implements OECD rules (but extends scope to sale of goods, and transport services e.g. Uber). · Jul 2021: UK publishes consultation on implementation of the rules. · Jul 2022: Responses to UK consultation published. UK government confirms that: (i) following DAC7, scope will extend to the transport platforms; (ii) there will be no exclusion for smaller platforms and (iii) no reporting will be required regarding sellers not profiting from payments received, or making <30 sales (for which they receive <€2,000) in a reporting period. · Nov 2022: UK (together with 22 other jurisdictions, including Luxembourg, Netherlands, Spain and Estonia) signs a multilateral agreement for automatic exchange of information reported under the rules. · 1 Jan 2022: Rules to take effect.
Crypto-Asset Reporting Framework ("CARF") (2022)	· Obligation for intermediaries (e.g. exchanges, wallet providers) to report on transactions in crypto-assets undertaken by customers. The standard is akin to CRS for crypto-assets. · Proposal to expand scope of CRS to include electronic money products and Central Bank Digital Currencies.	· Mar 2022: OECD consults on proposed CARF. · Oct 2022: CARF is published in final form. · UK government has not announced whether it intends to implement CARF, but is widely expected to. While HMRC already has significant powers (under domestic laws and treaties) to request information from third parties relating to crypto-assets (and is widely reported to have exercised such powers), CARF would automate and expediate the process.

Despite a large proportion of the OECD's resources being directed toward the progression of the Pillar 1 and Pillar 2 projects (discussed further above), it is notable that the OECD continues (at the urging of the G-20) to expand the scope of its model mandatory reporting rules. Such regimes represent a significant tool in tax authorities' efforts to minimise tax avoidance, tax evasion, and the so-called resultant "tax gap". The scope of such rules is therefore expected to expand in the coming years, as tax authorities seek to increase tax revenue. When the UK left the EU, HMRC lost automatic access to the information gathered by Member States under DAC6 and DAC7. However, the UK's adoption of two of the OECD's mutual exchange conventions in November 2022 (to which some EU Member States are signatories) indicates that any Brexit-related impact on the information automatically exchanged by, and in favour of, HMRC is likely to be short-lived.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. For further information, please contact the Gibson Dunn lawyer with whom you usually work, any member of the Tax Practice Group, or the authors in London:

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