Regulatory updates

Recent tax developments

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1 BEPS 2.0/Pillar 2 – Introduction of a global minimum tax rate

The OECD continues to develop the international guidelines for BEPS 2.0/Pillar 2 implementation. Individual countries (including Switzerland) have transposed the international requirements into national legislation, with more expected to follow.

Status:
- 1 January 2024 in many countries, including the EU and Switzerland

1.1 BEPS 2.0/Pillar 2 in summary

Pillar 2 of the OECD’s base erosion and profit shifting (BEPS 2.0) project aims to reduce international tax competition and thus the incentive for unjustified profit shifting within a group by introducing a minimum jurisdictional tax rate of 15%. This global minimum tax would only apply to multinational groups with annual consolidated revenue of more than EUR 750 million with some limited exceptions, such as government entities, international organisations, non-profit organisations, pension institutions and investment funds acting as the top holding entity in a structure.

In summary, the rule set (called ‘GloBE rules’) mainly operates with two parameters: (1) a separate definition of tax expense and (2) a specific GloBE tax base. The relevant tax expense generally includes any tax that relates to income and/or profit, as well as equity/capital. The starting point for determining the GloBE tax base is the financial statements used for consolidation purposes of a group prepared in accordance with an accounting standard accepted for these purposes, such as IFRS, US GAAP or Swiss GAAP FER. However, the OECD also allows the calculation of local top-up taxes to be based on local financial accounting standards if countries choose to do so (further developments in this regard in the various implementing countries will need to be monitored). Mathematically speaking, the ratio of the tax expense (numerator) to the GloBE tax base (denominator) must be at least 15%, calculated on a country-by-country basis. If the effective tax burden in one country does not reach the required minimum tax rate and the GloBE income exceeds a certain substance-based threshold, the difference (called the ‘top-up tax’) may be levied by other countries, primarily the country of the ultimate parent company or an intermediate holding company.

1.2 Recent political developments

The exact timeline of the Pillar 2 implementation depends on when individual countries incorporate the rules into their local laws. In Switzerland, the Federal Council decided on 22 December 2023 – by publishing an ordinance to that effect – to implement the Qualified Domestic Minimum Top-up Tax (QDMTT) for financial years starting on or after 1 January 2024. On 4 September 2024, the Swiss Federal Council decided to introduce the Income Inclusion Rule (IIR) in Switzerland effective as per 1 January 2025 to complement the Swiss Domestic Top-up Tax already introduced with effect as per 2024. With respect to the Undertaxed Payments Rule (UTPR), the Federal Council has postponed implementation for the time being and will decide on this at a later stage.

The EU, UK, Liechtenstein, Japan, South Korea, Australia and Canada are among the jurisdictions that have implemented Pillar 2 as of 2024.

1.3 Recent publications

In June 2024, the OECD released additional 'Administrative Guidance on the Pillar Two Rules' focusing on six specific topics: DTL recapture, divergences between GloBE and accounting carrying values, the allocation of cross-border current taxes, the allocation of cross-border deferred taxes, the allocation of profits and taxes in structures including flow-through entities, and the treatment of securitisation vehicles. Further guidance is expected in the future.

1.4 What you need to do

With Pillar 2 implementation under way, taxpayers must determine whether they are within the scope and plan to meet the relevant global/local reporting requirements expected to be due 15 months from the end of the financial year concerned (18 months for the first filing). To accomplish this, they must conduct a review of the group's CbCR processes and assess whether they can take advantage of the Transitional CbCR Safe Harbours available. In addition, taxpayers must conduct an analysis of entities in the group and be aware of any potentially new filing requirements required by territories implementing QDMTT. It is also imperative for enterprises to determine whether they already have all the data necessary for calculating the GloBE tax base as well as the relevant tax expense, so that a prompt calculation can be made on a global basis as part of the provisioning and future financial closing process. In many cases, adjustments to IT systems or reporting processes to facilitate efficient, automated calculation and ensure compliance will be unavoidable.

For further information, visit https://www.pwc.ch/en/services/tax-advice/corporate-taxes-tax-structures/beps2.html

2 BEPS 2.0/Pillar 1 – Addressing the tax challenges of the digital economy

Work continues on the delivery of BEPS 2.0 Pillar 1 Amount A changes. While Amount A (affecting only the largest and most profitable MNEs) is expected to require more time in order to resolve the technical aspects of how it should apply and the material differences in opinion among certain key countries, there is clear political commitment to have it finalised. The finalised report on Amount B (19 February 2024) introduces target remuneration levels for baseline marketing and distribution functions, which are relevant for a wide variety of MNEs across all industries, and will be implemented as of 1 January 2025.

Status:
- BEPS 2.0 Amount A currently expected to come into force in 2025 or later
- BEPS 2.0 Amount B currently expected to come into force in 2025

2.1 BEPS 2.0 Pillar 1 – Amount A

The technical work on Amount A (formulary apportionment of profits to countries, even where an MNE has no physical presence) continues. Despite dissenting views on certain key topics, political support is strong, and the OECD has confirmed its commitment to carrying forward the technical work and implementation.

A Multilateral Convention (MLC) and an accompanying Explanatory Statement is to be published for signature; the MLC is expected to come into force in 2025.

Key technical aspects and a timeline are still largely undecided, although it is clear that there are numerous disagreements among the countries discussing and negotiating the future Amount A framework. Nevertheless, political support for Amount A remains strong, with the OECD Inclusive Framework proposing a deferral of any local Digital Service Taxes (DSTs) until the end of 2024 (potential extension to the end of 2025).

Critical voices and impatience in certain jurisdictions are growing. New Zealand announced a ‘local’ DST (3% on gross digital service revenues) on 29 August 2023, to come into effect in 2025.

2.2 BEPS 2.0 Pillar 1 – Amount B

In June 2024, the OECD/G20 Inclusive Framework (‘IF’) published a final report on setting the remuneration of baseline marketing and distribution functions within multinational groups – the so-called Amount B of Pillar 1 of BEPS 2.0. The publication of this report is one of the final steps in the long process of developing Pillar 1. The Model Competent Authority Agreement ‘(MCAA’) was also published in September 2024 to facilitate the implementation of its political commitment on Amount B of Pillar 1. The entry into force of the Amount B framework is to take effect in January 2025 – subject to the decision of each country on whether this will be a ‘safe harbour’ approach, a mandatory approach, or will not be implemented at all.

The new guidance outlines how to determine arm’s-length profitability levels for one of the most commonly applied intragroup business activities: the distribution of products by entities operating under a limited risk profile, either through a buy-sell model or using group companies acting as sales agents/commissionaires.

The content of the report will be incorporated into the OECD Transfer Pricing Guidelines (‘TPG’) in the course of 2024/by the beginning of 2025.

Key takeaways

- Unlike for Amount A of Pillar 1 of BEPS 2.0, there are no minimum size thresholds for the application of Amount B. Amount B will therefore apply to a wide range of groups, entities and industries.
- The scope of Amount B rules (now referred to as a ‘simplified and streamlined approach’) is limited to wholesale distribution of tangible goods and does not cover the distribution of services (including digital services).
- The definition of ‘distributor’ covers buy-sell distributors but also sales agents, and commissionaires involved in the sale of goods – these are all common business models applied by Swiss groups.
- A set of rules has been put in place to determine whether a distributor’s activities qualify as ‘baseline’ distribution and marketing activities. The rules require that a functional analysis and an accurate delineation analysis be performed to determine whether an entity is in scope of the new rules or not.
- The guidance includes a pricing matrix outlining the specific profitability levels for different types of entities. The matrix has been slightly updated against earlier drafts, but the overall target reference values still range from 1.5% to 5.5%. Which rate applies depends on the industry, jurisdiction as well as operating asset and operating expense intensity of each qualifying entity.
- The application of the pricing matrix may result in target profit levels above those typically applied by Swiss groups or Swiss-based affiliates of foreign MNEs.

The report specifies that the Amount B ‘simplified and streamlined approach’ is now part of the Annex to Chapter IV to the OECD TPG. Local jurisdictions can then begin to apply this new framework for fiscal years commencing on or after 1 January 2025.

In practice, we observe a number of tax authorities already using the pricing matrix (first published in a July 2023 draft consultation report) as a high-level reference point for the expected EBIT margins to be achieved by baseline distributor entities (for example, in APA/MAP negotiations). The indication from Swiss Federal Tax Authorities is that Switzerland will consider the ‘safe harbour’ approach.

3 Directive on Administrative Cooperation

3.1 DAC6

The Directive includes reporting obligations for taxpayers and their advisers on cross-border tax arrangements within the EU or involving parties in the EU. Although DAC6 will not be introduced in Switzerland, the Directive could impact Swiss groups with branches in the EU or financial services groups that serve clients based in the EU.

Status:	• 1 July 2020

Background

European Union (EU) Member States are concerned that aggressive tax planning arrangements are eroding their respective tax bases and putting pressure on public finances. The EU views that most aggressive tax planning arrangements include a cross-border aspect. In June 2018, the EU therefore extended Directive 2011/16/EU to introduce mandatory disclosure of such potentially aggressive tax planning schemes by taxpayers or their intermediaries (e.g. tax advisers, lawyers) to their local tax authorities.

Directive 2018/822 ('DAC6') aims to ensure that the tax authorities of EU Member States obtain sufficient information to take appropriate steps to counteract such tax planning arrangements. The Directive is broadly drafted and impacts taxpayers in the EU, both in the financial services and non-financial services sectors. Although DAC6 will not be introduced in Switzerland, it may affect groups headquartered in Switzerland that have EU operations, or financial services groups that serve clients based in the EU.

Key measures of DAC6

DAC6 introduces the following key measures:

- As of July 2020, certain cross-border arrangements must be reported to the tax authorities by taxpayers or their advisers (intermediaries). The arrangements should be cross-border in nature, and they can include intra-EU transactions or transactions between EU and non-EU parties.
- The information reported is exchanged automatically between the tax authorities of all EU Member States.
- The concept of intermediaries is broadly drafted and can include tax advisers, lawyers, banks, and asset managers, as well as service providers in the arrangements in question.
- Regarding the intermediaries, on 29 February 2024, Advocate-General Nicholas Emiliou delivered his opinion in case C-623/22 Belgian Association of Tax Lawyers that the waiver for third-party reporting requirements for legal professional privileges is applicable to lawyers only and cannot be extended to the activities of professionals such as accountants, auditors and tax advisers. The European Court of Justice will deliver its judgement in the coming months.
- The determination of what is reportable is based on certain 'hallmarks' contained in the directive. These hallmarks are indications/descriptions of potentially aggressive tax planning schemes.
- The hallmarks include arrangements relating to cross-border transactions, the automatic exchange of information and transfer pricing.
- Certain hallmarks apply only if one of the main benefits of the arrangement in question is to gain, or to expect to gain, a tax advantage.
- Relevant disclosures must be filed within a 30-day period.

Each EU Member State has introduced sanctions to encourage correct reporting in accordance with DAC6. These sanctions focus on failures to file required disclosures, and result in punitive financial penalties (e.g. up to EUR 5 million in Poland) and non-financial sanctions. The deadlines for reporting on arrangements arise 30 days from the relevant event that triggers the reporting.

How reports are filed

- There is an inconsistent approach across Member States in terms of the formatting/transmission of reporting, with the following methodologies being the most frequent:
  - Online form
  - XML
- XML (extensible mark-up language) is a mark-up language for representing hierarchically structured data in the form of a text file that is readable by both computers and people. The Member States provide schemes for structuring the information and then exchange these files with the other states.
- The content and language requirements differ across different Member States. Furthermore, despite filing the report in one country, a summary filing in another country may be mandatory in certain other jurisdictions impacted by the reportable arrangement.

Next steps

- Reporting is mandatory in all Member States. It is therefore essential to have a sound DAC6 governance framework in place that details the DAC6-related roles and responsibilities within a group, defines processes for identifying, assessing and monitoring arrangements, and sets out a process for interacting with intermediaries and ensuring that reporting is completed in a timely and accurate manner.
- To avoid fines, particular attention should now be paid to the 30-day deadline for reporting ‘new’ arrangements.

Inquiries from local tax authorities regarding issued DAC6 reports are expected, but tax administrations have not yet been too active on the subject.

3.2 DAC7

- DAC7 (published 19 February 2021) aims at closing the ‘tax gap’ for both VAT and corporate tax generated through the ‘share and gig economy’ by requiring digital platform operators that connect sellers with users to report certain information about the sellers to relevant national tax authorities within the EU.
- The scope of application includes the sale of goods, personal services as well as the rental of immovable properties and any mode of transport – called ‘Relevant Activities’.
- The information to be reported by the digital platform operator will include identification data of the sellers and information related to the profits obtained by those sellers through the platform.
- Both EU and non-EU operators are affected by the reporting obligation if they facilitate a ‘Relevant Activity’ conducted by their sellers with residence in the EU, or the rental involves immovable property located in a Member State, irrespective of the residence of the seller.
- Switzerland will not implement DAC7. The State Secretariat for International Financial Matters (SIF) has also opposed the adoption of the OECD standard, which is almost identical in terms of content.
- However, Swiss entities with subsidiaries or tax residences in the EU might be covered by the regulation.
- DAC 7 was implemented by Member States by 1 January 2023. The first reports were to be published by 31 January 2024 for the year 2023.

- The European Commission has adopted equivalence decisions for New Zealand and Canada. For those two non-EU countries, equivalence will apply as of 2024, when their rules start to apply. For 2023, the two countries' platforms had to report directly to EU Member States because DAC7 was already in force.
- Notably, several Member States have not yet implemented DAC7. The European Commission is currently pursuing legal action against several countries, including Belgium, Cyprus, Greece, Poland and Spain, due to their failure to incorporate the directive into their national laws.

In January 2024, the German Federal Central Tax Office published transitional regulations stating that, for the 2023 financial year reporting, there would be no objection if reporting platform operators notified each provider by 1 April 2024.

3.3 DAC8

- Extension of EU reporting duties in relation to cryptocurrencies and e-money. This involves the cross-border exchange of information regarding digital assets.
- Crypto exchanges and brokers will have to provide tax authorities with data on the purchases and sales of cryptocurrencies and e-money.
- The OECD has issued a model agreement in draft for the implementation of the automatic exchange of information relating to Digital Assets early in 2022 (the Crypto Asset Reporting Framework or CARF).
- The Council of the European Union reached a political agreement at the ECOFIN meeting regarding DAC8 to align with the OECD CARF and MiCA. The EU Member States will have until 31 December 2025 to implement DAC8 in local law.
- On 17 January 2024, the European Commission announced that it had recommended updates to the agreements with five non-EU countries, including Switzerland. The recommended updates include rules regarding DAC8 integration.

4 OECD Crypto Asset Reporting Framework (CARF)

4.1 CARF

The OECD has released its new reporting framework for crypto assets (CARF). Any individual or entity that, as a business, provides a service effectuating exchange transactions for or on behalf of customers, including by acting as a counterparty or as an intermediary to such exchange transactions, or is making available a trading platform, will be subject to the new reporting obligations.

Entry into force:	• 1 January 2026

- Extension of reporting duties in relation to cryptocurrencies compared to the existing OECD CRS
- The CARF was published by the OECD in October 2022.
- In November 2023, Switzerland announced, together with about 50 other countries (including, among others, Liechtenstein, Germany and the USA) that it intends to implement the new Crypto Asset Reporting Framework (CARF) as of 1 January 2026.
- Under CARF, Swiss legal entities and individuals that enable the transfer of crypto assets or make available a trading platform will have to report tax-relevant information of their reportable crypto asset users to the Swiss tax administration.

CARF covers and defines (1) service providers or intermediaries who have to perform the reporting, (2) crypto asset users who shall be reported, (3) due diligence procedures to identify reportable crypto-asset users, and (4) reportable information which shall be reported.

In October 2024, the OECD released the first XML schema and the first FAQ.

Subject to parliamentary approval, Switzerland intends to implement the CARF I. On 15 May 2024, the Federal Council decided to initiate the consultation on extending the international automatic exchange of information in tax matters (AEOI). Set to apply from 1 January 2026, the extension concerns the new AEOI regarding crypto assets and the amendment of the standard for the automatic exchange of financial account information.

5 EU Directive on public country-by-country reporting ('public CbCR') and Australian draft public CbCR legislation

Public CbCR is a tax transparency initiative that requires large multinational companies with global revenues of at least EUR 750 million to publicly disclose key financial data for each tax jurisdiction in which they operate, enhancing the public's ability to scrutinise corporate tax metrics.

Status:	• Amendment to the EU Accounting Directive that entered into force on 21 December 2021; EU Member States are in the process of transposing the Directive into national law by 22 June 2023, with implementation planned for 2025, although some EU Member States will implement it earlier (e.g. Romania). • On 5 June 2024, a bill containing the proposed public country-by-country (CbC) reporting rules was introduced into Australian Parliament. If adopted, the first reporting deadline for groups whose financial year is the same as the calendar year will be 31 December 2026.

5.1 What is 'public CbCR'?

- Country-by-country reporting ('CbCR) is part of BEPS Action #13, which requires large multinational companies with global revenues of at least EUR 750 million to disclose aggregated financial and tax data to the relevant tax authorities annually on a country-by-country basis in a non-public report.
- Public CbCR, on the other hand, aims to publish the information previously contained in the CbCR and, consequently, to increase corporate transparency and enhance public scrutiny.
- The EU Accounting Directive with amendments relating to public CbCR (EU Directive 2021/2101 of 24 November 2021) was published on 1 December 2021 and entered into force on 21 December 2021.

5.2 Who is affected by public CbCR?

- The Directive applies to groups and individual companies headquartered in the EU who are active in more than one jurisdiction and whose (consolidated) revenues in two consecutive financial years exceed EUR 750 million.
- It also covers subsidiaries and branches operating in the EU whose parent company has its registered office outside the EU ('third country'), if at least two of the following three conditions apply to a subsidiary:
  - Net revenue of more than EUR 8 million (up to EUR 12 million depending on the Member State)
  - Balance sheet totalling more than EUR 4 million
  - Number of employees on a full-time equivalent basis: 50
- in the case of a branch: net revenue of more than EUR 8 million.

5.3 What must be disclosed?

The public CbCR shall contain the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned and the currency used. Furthermore, a list of all the subsidiary undertakings in the relevant financial year must be published (to reduce the administrative burden, the list of subsidiaries included in the consolidated financial statements may be relied upon). In addition to this, the report should also include the following information:

- Brief description of the nature of the business activities
- Number of employees on a full-time equivalent basis
- Revenues (including the sum of net revenue)
- Amount of profit or loss before income tax
- Amount of income tax accrued during the relevant financial year
- Amount of income tax paid on a cash basis
- Amount of accumulated earnings at the end of the relevant financial year

The above information must be disclosed separately for each country in which the group/company is active if it is a Member State, or is either on the EU list of non-cooperative jurisdictions for tax purposes ('the EU's black list') or listed for two consecutive years on the list of jurisdictions that do not yet comply with all international tax standards but have committed to reform ('the EU's grey list').

5.4 Who must publish a report?

- The 'ultimate parent undertaking' is subject to the reporting obligations if it conducts activities within the EU.
- If it has its headquarters outside the EU, it is the responsibility of the EU subsidiary or branch to disclose the information.

5.5 Where and how must the report be published?

- On the website of the undertaking concerned. If the ultimate parent undertaking is located outside the EU, but has subsidiaries or branches active within the EU, these subsidiaries or branches should publish and make accessible a report prepared by the ultimate parent undertaking.
- The report must be made accessible to the public for at least five years in one of the official languages of the Union, free of charge, no later than 12 months after the balance sheet date.
- The report must be made accessible to the public in an electronic reporting format that is machine-readable.

5.6 What are the consequences of non-compliance?

Member States may impose sanctions consisting of penalties if undertakings infringe the national provisions in terms of the disclosure requirements.

5.7 Next steps

- With the entry into force of the amendment to the EU Accounting Directive on 21 December 2021, EU Member States were to transpose the minimum standards of the Directive into national law by 22 June 2023 at the latest. However, not all Member States have done so.
- The Directive must be implemented by 2025. However, Member States have the option of implementing it earlier.
- Romania is the first Member State to transpose the EU Directive into national law, effective 1 January 2023 (i.e. first year of reporting on 31 December 2024 for 2023 year-end figures). Groups with a presence in Romania should be preparing for public CbCR disclosure earlier than the EU Directive's timeline. Croatia and Bulgaria

transposed the EU Directive into national law with effect on 1 January 2024 (i.e. first year of reporting on
31 December 2025 for 2024 year-end figures).

On 1 August 2024, the European Commission published a draft Implementation Regulation introducing a common template and electronic formats for the EU public CbCR. Regulation is currently in draft form and is subject to change.

In March 2024, Liechtenstein's parliament passed the legislation on public CbCR. The new rules on public income tax reporting are not yet applicable in Liechtenstein. For the rules to be applicable, the decision of the EEA Joint Committee is required. The EEA Joint Committee has to decide whether the rules on public income tax reporting shall be incorporated into the EEA Agreement. Once the EEA Joint Committee has approved the public CbC reporting, companies with operations in EEA countries (Liechtenstein, Norway and Iceland) should submit their public CbCR accordingly.

On 5 June 2024, the federal government introduced a bill containing the proposed public country-by-country reporting rules in the Australian parliament. The draft rules would require the disclosure of tax and financial information that is not currently included in the confidential CbCR filed with tax authorities and EU public CbCR. A description of a group's approach to tax and the reasons for the difference between income tax accrued (current year) and the amount of income tax due are two important disclosures not currently required under the other CbCR regimes.

- Under the revised draft legislation, CbCR parent entities with annual global income of AUD1 billion or more and AUD10 million or more of Australian-sourced income will be required to disclose certain qualitative and quantitative tax information, disaggregated for Australia and 41 specified jurisdictions.
- The specified jurisdictions list includes Switzerland. Although these specified jurisdictions are based on the current Exposure Draft, and others may be added or removed by legislative instrument, if the draft legislation is enacted on the basis of the current list, multinational groups subject to the Australian public CbCR regime will have to publish information related to Switzerland separately.

Under the current draft, for a December reporting period, the year ending 31 December 2025 would be the first year subject to Australian public CbCR, with reports due by 31 December 2026.

6 Foreign Subsidies Regulation (FSR)

With the FSR, the European Commission is seeking to extend the EU state aid rules outside the EU, to address 'subsidies' granted by non-EU countries. Under the FSR, the European Commission can exclude non-EU companies from engaging in M&A deals or public procurement procedures, in cases where the companies involved – or members of their group – have received financial contributions from non-EU countries.

Status: The FSR was entered into force on 12 January 2023 and started to apply as of 12 July 2023, with mandatory notification obligations effective as of 12 October 2023.

6.1 Background

The European Commission is concerned about subsidies provided by non-EU countries causing distortions to the EU's internal market, including by providing the recipients an unfair advantage to acquire companies or obtain public procurement contracts in the EU to the detriment of fair competition.

While EU state aid rules prevent EU member states from granting subsidies with a distortive effect on the internal market, the EU Commission has no instrument to assess similar subsidies granted by non-EU governments.

The FSR aims to address such distortions and close this regulatory gap.

6.2 Scope

Under the FSR, the EU Commission has the power to investigate financial contributions granted by non-EU governments to companies active in the EU. It is important to note that the FSR is not limited to non-EU companies, but also covers EU companies benefitting from foreign subsidies. If the EU Commission finds that such financial contributions constitute distortive subsidies, it can impose measures to redress their impact.

The regulation grants the European Commission sweeping powers by introducing three tools:

1) An ex-ante **notification obligation of concentrations** where (i) the EU turnover of the company to be acquired, of at least one of the merging parties or of the joint venture is at least EUR 500 million and (ii) the involved aggregate foreign financial contribution is more than EUR 50 million;
2) An ex-ante **notification obligation for public procurement procedures**, where (i) the estimated contract value is at least EUR 250 million and (ii) the bid involves a foreign financial contribution of at least EUR 4 million per non-EU country; and
3) For **all other market situations**, the EU Commission can start investigations on its own initiative (ex-officio), including the possibility to request ad-hoc notifications for smaller concentrations and public procurement procedures.

A foreign subsidy is a direct or indirect financial contribution by a non-EU government, which is limited to one or more companies or industries, and which confers a benefit on a company active in the internal market. Given that the definition is very broad, foreign subsidies within the scope of the FSR can comprise, for instance, interest-free loans, unlimited guarantees, capital injections, preferential tax treatment, tax credits, grants, etc.

In cases where a foreign subsidy that distorts or threatens the distortion of competition in the EU is deemed to have occurred, the European Commission has sweeping powers. In addition to blocking a deal or preventing a company from participating in public procurement procedures, it can impose repayment, behavioural remedies or divestments, or require companies to change their governance structure.

Furthermore, breaches of the FSR can lead to significant penalties. If the parties fail to report a notifiable transaction or breach other obligations imposed by the legislation, the European Commission can impose a fine of up to 10% of worldwide group turnover in the preceding financial year.

6.3 Next steps

According to a policy brief dated 1 February 2024, the European Commission has so far received more than 100 submissions for high-value public procurements and M&A transactions. By the end of January 2024, the EC had already entered into pre-notification discussions for more than 50 cases covering a wide range of sectors. The most common types of foreign financial contributions assessed in the first notifications relate to the sources of financing of the notified transactions. So far, these have included capital injections and equity contributions, but also loans obtained from financial institutions, state guarantees, direct grants for specific projects, as well as tax benefits, notably for R&D expenses and investment projects that could be considered as attributable to a third country.

The European Commission has published a Staff Working Document dated 26 July 2024 providing clarifications on the application of regulations concerning foreign subsidies that distort the internal market, detailing the criteria for assessing distortions, the balancing test and specific considerations for public procurement procedures. This non-binding preliminary guidance will be supplemented as the European Commission gains more practical experience of applying the FSR tools. Further guidance is due to be published by 12 January 2026.

An essential first step towards being ready to operate with certainty under the FSR is to conduct an in-depth strategic review to understand its specific impacts and implications for the business.

7 EU Council Directive on Business in Europe: Framework to Income Taxation (BEFIT)

The European Commission published a new package of proposals on 12 September 2023 to put forward a single set of tax rules for doing business in the EU (Council Directive on Business in Europe: Framework to Income Taxation (BEFIT))

Status:
- Draft
- If adopted, Member States would need to implement the BEFIT rules by 1 January 2028 and apply them to BEFIT groups as of 1 July 2028.

7.1 Background

BEFIT is the European Commission's proposal which is described as aiming to reduce tax compliance costs for large cross-border businesses in the European Union. According to the Commission, the proposal "will make life easier for both businesses and tax authorities by introducing a new, single set of rules to determine the tax base of groups of companies." The proposal replaces the Commission's CCTB (common corporate tax bases) and CCCTB (common consolidated corporate tax base) proposals. If adopted, Member States would need to implement the BEFIT rules by 1 January 2028 and apply them to BEFIT groups as of 1 July 2028. The BEFIT rules would apply on a mandatory basis to groups with annual revenues of at least EUR 750 million (i.e. the same revenue threshold as Pillar 2) and their 75% owned subsidiaries (the 'BEFIT group'). For groups headquartered outside the EU, their EU entities will only be included in a BEFIT group if they totalled at least EUR 50 million of annual combined revenues in the EU in at least two of the last four fiscal years, or if those entities totalled at least 5% of the total revenues of the group. The rules will be optional for smaller groups, which may choose to opt in as long as they prepare consolidated financial statements. The proposal does not include any sectoral exemptions, but sector-specific characteristics are reflected in the calculation of EU revenues.

7.2 Applying the BEFIT rules

1) Computing the tax base at entity level

All members of the same BEFIT group will calculate their tax base using a limited set of tax adjustments to their financial accounting profits or losses. Notably, the adjustments are not fully aligned to the Pillar 2 GloBE adjustments. For instance, the exclusion of dividends and gains from the disposal of shares is limited to 95% of the dividends and gains under BEFIT, with no such limitation under GloBE.

2) Aggregating the tax base at EU group level

The tax bases of the BEFIT group members will be aggregated into one single tax base. The profits and losses of related parties that are not members of the BEFIT group (e.g. because they are not in the EU) will not be aggregated in the group tax base.

3) Allocating the aggregated tax base

The BEFIT tax base will be allocated to members of the BEFIT group by using a transitional (seven-year) allocation rule. For each fiscal year between 1 July 2028 and 30 June 2035, at the latest, a percentage of the aggregated tax base will be allocated to a BEFIT group member based on the average taxable results in the previous three fiscal years. EU Member States would be allowed to apply additional post-allocation adjustments (i.e. apply their national corporate tax base rules) in areas not covered by the common framework. Pillar 2 (domestic) legislation is relevant at this stage, as EU Member States need to ensure that the effective tax rate is at least 15%.

The transitional allocation rule is intended to pave the way for a permanent allocation method that can be based on a formulary apportionment using substantive factors.

4) Facilitating transfer pricing compliance

For transactions with associated enterprises outside the BEFIT group, the proposal aims to simplify compliance with transfer pricing by introducing a common risk assessment tool. Under this 'traffic light system', based on an interquartile range of a public benchmark (which will be based on a transactional net margin method approach), transactions of limited risk distributors and contract manufacturers would fall in a low, medium or high-risk zone. EU Member State tax administrations would be expected to focus their efforts on the high-risk zone. This common risk assessment does not interfere with the substantive rules that determine whether a certain transaction has been priced at arm's length.

7.3 Administration and procedures

A one-stop shop will allow the filing entity (in principle, the ultimate parent entity) to file the group's BEFIT information return with the tax administration of one EU Member State. This administration will share the information with the other Member States in which the group operates. Tax audits and dispute settlements will remain at the level of each Member State.

8 Carbon Border Adjustment Mechanism (CBAM)

CBAM entered into force on 1 October 2023. CBAM is a milestone of the 'Fit for 55' package and is intended to price the emissions contained in products imported into the EU accordingly. Furthermore, the mechanism shall encourage greener and cleaner production in non-EU countries. Businesses impacted by CBAM will face additional reporting obligations and a financial impact once the mechanism is fully operational.

Status	• Transitional period entered into force on 1 October 2023 • Operational CBAM will enter into force on 1 January 2026

8.1 Background

Initially, the CBAM was announced as part of the European Commission's 'Fit for 55' package. This initiative aims to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels. The CBAM is designed to contribute to this objective by reducing carbon leakage. In this specific context, carbon leakage occurs when the EU's efforts to reduce carbon emissions are offset by increasing emissions in non-EU countries. This may happen when businesses relocate their production to non-EU countries with less ambitious carbon policies and/or increase their imports of carbon-intensive products from those countries. The mechanism is therefore supposed to prevent carbon leakage. Practically speaking, the CBAM will be a tax on the importation of carbon-intensive products from outside the European Union.

8.2 Who will be affected?

Under Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing the CBAM, importers of products and customs brokers acting as indirect representatives established in the European Union will be subject to the CBAM (so-called 'CBAM declarants'). Non-EU established importers must appoint a representative established in the EU to take over the compliance obligations according to the CBAM Regulation.

The Regulation applies to goods listed in Annex I of Regulation (EU) 2023/956 and which originate from a non-EU third country. Goods originating from Switzerland, Liechtenstein, Norway and Iceland are currently exempted from CBAM.

The proposed product categories for the scope of CBAM are aluminium, iron and steel, mineral products, fertiliser, electricity, hydrogen, and precursors and downstream products made of steel and iron. An extension to further categories, for instance products made of polymers or chemicals, is possible in the near future.

8.3 What do I need to know?

The CBAM has two phases: the transitional (or 'start-up') phase and the effective incentive phase. During the transitional phase, the CBAM is already in force but does not yet require importers to purchase CBAM certificates and pay the CO2 price on emissions that are embedded in the imported products.

Importers must prepare and lodge CBAM reports on a quarterly basis from 1 October 2023 in which so-called 'embedded emissions' (a defined term) are reported. Embedded emissions mainly concern direct emissions (i.e. emissions released during the production of goods) and, in certain cases, also indirect emissions (broadly, emissions from the production of electricity consumed during production processes).

The CBAM report also requires any carbon prices paid out in non-EU countries to be disclosed (in the transitional period purely for information purposes and therefore with no credit offset).

CBAM reports need to be filed within a month of the end of the reporting quarter. The first CBAM report (covering the fourth quarter of 2023) was due by 31 January 2024. The last CBAM report of the transition period (for the last quarter of 2025) must be submitted by 31 January 2026. As of 1 January 2026, when the operational mechanism starts, the quarterly reporting changes to an annual obligation. The annual report, verified by an accredited verifier, and the CBAM declaration must then be filed by 31 May following the respective reporting period, i.e. the first report for the reporting period 2026 will need to be lodged no later than 31 May 2027.

CBAM declarants would also be required to purchase the CBAM certificates. The CBAM certificates that correspond to the declared embedded emissions are to be surrendered for the respective reporting period. The price of the CBAM certificates will be linked to the weekly average carbon price in the European Union Emission Trading System.

The CBAM report must be prepared and submitted digitally through an IT system which is still to be fully implemented. If a company has not imported any CBAM goods during a quarter, no report needs to be submitted.

8.4 What affected businesses should do now

For the transitional phase, affected businesses 'only' have to worry about collecting the data from suppliers and submit the CBAM returns each quarter. This requires full visibility in terms of the quantity of these imported products and the carbon price that may have already been paid in the country of origin. Furthermore, the affected businesses and their suppliers should know what direct and indirect emissions are embedded in the products, and how to calculate these in a CBAM-compliant manner.

In summary, the CBAM will likely affect businesses in three ways:

- It will increase the risk of non-compliance if affected businesses are not familiar with the rather complex process.
- It will increase the time (and associated costs) required to collect and to process data from suppliers.
- It will increase costs through the additional carbon price to be paid as of 2026.

Additionally, as the CBAM declarant must be an entity established in the European Union, non-EU-established importers might need to think about appointing a representative in order to fulfil their CBAM obligations. Goods produced in Switzerland, Iceland, Liechtenstein and Norway are exempt from the CBAM. It is therefore worthwhile to verify that the country of origin is correctly documented when exporting the listed products to the EU from these countries.

9 Amended Swiss VAT law

As per 1 January 2025, the amendments in the Swiss VAT law and the corresponding VAT ordinance law will enter into force. Most changes are industry-specific, but some may have effects for companies in several sectors.

Entry into force:	• 1 January 2025

9.1 New rules for e-commerce platforms

As of 1 January 2025, electronic platforms enabling the sale of goods will always be deemed to be supplying the goods in their own name, i.e. the ‘real’ supplier will be deemed to be selling to the platform and the platform to the client. The first sale will be without VAT (place of supply abroad or exempt with credit); the platform will have to function as the importer of record (in cross-border supplies) and invoice Swiss clients with VAT. Businesses that are running a platform or are selling via a platform will need to adapt their current processes.

9.2 New VAT exemption for distribution and management of investment groups in the field of old age pensions

A new VAT exemption is being introduced that will have the effect that supplies to investment groups in the field of old age pensions will benefit from the same VAT treatment as that currently enjoyed by Swiss collective investment schemes, meaning that they can receive certain services without VAT. All service suppliers providing services to such investment groups may need to check whether their services fall under the new VAT exemption and will have to adapt their invoicing and input VAT recovery models.

9.3 New rules for travel agents

Travel agents’ services are now deemed to take place where the travel agent is based. All the services of are now VAT-exempt without credit. While travel agents still may deduct input VAT on all the sold travel arrangements that take place abroad, they will have to opt voluntarily for all travel arrangements taking place in Switzerland to be able to deduct Swiss input VAT incurred.

9.4 New place of supply rules

As of 1 January 2025, the place of supply for some services has been changed. Educational, cultural, scientific and entertainment (sports and arts) services will only be provided at the place where they are performed if the audience or participants are physically present. If they are provided via the internet or other means of communication, the place of supply will be where the recipients are based, Businesses either providing or receiving such services need to ensure that they are qualified and reported correctly (e.g. reported as reverse charge VAT), as the VAT treatment may differ from the current rules.

9.5 VAT reporting and communication with Federal Tax Administration

Smaller businesses may under certain circumstances report VAT annually, meaning that they have to file only one VAT return annually, but will still have to make quarterly on-account payments. Furthermore, VAT returns, corrections and VAT registration is now only possible electronically. Meaning that paper-based reporting is no longer accepted.

9.6 Substantial changes for net tax rate and flat tax rate rules

The rules applicable for the net tax rate and also to certain extent the flat tax rate will change quite substantially. The changes include the option of changing from one of these methods to the effective tax method in principle every year, but at the same time input VAT corrections on capital assets can or must be made when changing from one method to another. For businesses with several activities, the number of net tax rates will potentially increase. Businesses currently applying the net tax rate must check the new obligations to avoid any negative VAT consequences.

9.7 Various other changes

Other than the changes mentioned above, new measures have been introduced to safeguard against criminal serial defaulters, the declaration of emission rights, the application of the reduced VAT rate for monthly hygiene products and the definition of subsidies for public bodies.