MACFARLANES

Tax developments impacting private capital managers

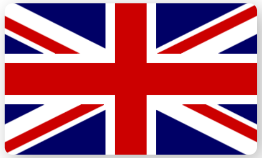
Read on

Introduction

Private capital managers face an ongoing challenge to keep up to date with tax policy developments.

In light of this, we are pleased to present our tax policy monitor aimed at the private capital industry. In this document we set out the key legislative initiatives across the UK, the EU and the OECD. The document summarises the developments and explains the implications for private capital managers.

View tax policy developments in the following jurisdictions



UK

EU

OECD

For each jurisdiction we have colour coded the developments highlighting when action is required to be taken.

- **Action likely to be required**
- **Action should be considered**
- **Monitor development**

We hope that the document provides a useful forward planning function to identify the changes on the horizon in the short, medium and long term in the selected jurisdictions.

Read more

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UK EU OECD

Action likely to be required

- Carried interest
- Foreign Income and Gains (FIG) regime replaces non-dom regime
- BlueCrest case and application of the salaried member rules to LLPs

Action should be considered

- HMRC updated guidance on salaried member rules
- New tax fraud offence commencement date confirmed

Monitor development

- Transfer pricing documentation
- OECD Pillar Two implementation
- Qualifying Asset Holding Company (QAHC) regime
- General UK tax changes
- Stamp duties on shares consultation – transfer of partnership interests
- Consultation on permanent establishment (PE) rules, transfer pricing and DPT (Diverted Profits Tax)
- Corporate re-domiciliation regime
- VAT recovery on sell-side transaction costs
- HMRC review of financial services VAT guidance

UK EU OECD

Action likely to be required

Carried interest

The issue

The UK Government confirmed its new approach to the taxation of carried interest in the 2024 Autumn Budget.

Carried interest tax reform will take effect in two phases.

Interim measures will be implemented from 6 April 2025, which will increase the capital gains tax rate applicable to carried interest gains from 28% to 32%.

More comprehensive reform will be implemented from 6 April 2026 and will see carried interest distributions brought within the scope of the UK income tax regime as trading income (meaning that carried interest will be subject to income tax and national insurance contributions at an effective rate of 47%). Where such carried interest meets certain qualifying conditions, the income tax component will be subject to a 72.5% multiplier, resulting in a bespoke flat effective tax rate of circa 34.1%.

There is no change to the treatment of carried interest between now and 5 April 2025.

Key takeaway

Reform of the taxation of carried interest was expected ahead of the General Election. Qualifying carried interest should be taxed at an internationally competitive circa 34.1% rate, which is considerably lower than the ordinary income tax rate for additional rate taxpayers.

The reformed regime has been described as simpler than the current regime because the new carried interest income tax charge is an exclusive charge which means there will be no need to distinguish between the underlying type of gain under the new regime. However, complexity has been introduced in the move to treat carried interest as deemed trading income and associated with that the treatment for mobile executives.

The conditions for carried interest to qualify for the bespoke rate have not been finalised, but the framework set by the DIMF and IBCI rules will be used. The IBCI rules will also be amended to remove the current exemption for employment related securities (ERS) and the Government has indicated that it will review how the IBCI rules apply to the private credit industry. The new rules are subject to a consultation process which closes on 31 January 2025.

The consultation should be monitored closely to enable proper consideration of the rules when structuring new funds and executive compensation especially if those arrangements involve non-UK residents.

Who is affected?

House and house executives

Timing

Interim measures will take effect from 6 April 2025. Comprehensive reform will take effect from 6 April 2026.

Action likely to be required

Foreign Income and Gains (FIG) regime replaces non-dom regime

The issue

The Government confirmed in their 2024 Autumn Budget that the non-dom regime and the remittance basis of taxation will be abolished from 6 April 2025, and replaced by a new Foreign Income and Gains (FIG) regime.

The FIG regime will be available to individuals who have not been UK tax resident in the 10 tax years immediately preceding their current period of UK residence. The regime provides 100% tax relief on certain categories of foreign income and foreign chargeable gains, without a requirement to retain the relevant foreign income and gains outside of the UK (which was a requirement of the remittance regime). It can apply for up to four consecutive tax years beginning with the first UK resident tax year.

Alongside the FIG regime, a Temporary Repatriation Facility (TRF) will also be introduced for three tax years starting from 6 April 2025. This will enable individuals who have previously claimed the remittance basis to designate income and gains to be subject to a TRF charge, with there being no further tax charge if the designated income or gains are then remitted to the UK. For the first two tax years, the applicable tax rate will be 12% and in the third tax year the tax rate will be 15%.

Overseas Workday Relief (OWR) has also been reformed with the relief being extended to a four-year period to align with the FIG regime. Claims for OWR will be subject to an annual limit of the lower of £300,000 or 30% of the employee's net employment income; consistent with the FIG regime, the requirement for the overseas income to be kept offshore will be removed.

Key takeaway

The introduction of the new FIG regime will predominately impact any investors or executives who were previously either non-domiciled and claiming the remittance basis under the current pre-6 April 2025 rules, or who have recently returned to the UK and resumed tax residence after more than 10 tax years outside of the UK.

Investors and executives who have recently moved to the UK or are planning to move to the UK, will benefit from being able to exempt their non-UK income and gains from UK tax without the additional requirement to retain their non-UK income and gains outside of the UK for four tax years.

For those investors or executives who have been UK tax resident for more than four tax years, the changes will result in them being subject to UK tax on their worldwide income and gains from 6 April 2025 onwards. The impact that this will have on investors and executives will depend on their personal portfolios, particularly the tax rates in the countries they realise income and gains in, as credit should be available in the UK in relation to taxes paid in the country the income and gains are sourced.

The TRF facility may provide investors and executives with an attractive opportunity to transfer non-UK income and gains previously exempted from UK tax under the remittance basis to the UK at a lower tax rate.

Who is affected?

Investors, house executives

Timing

The FIG regime will apply from 6 April 2025.

Action likely to be required

BlueCrest case and application of the salaried member rules to LLPs

The issue

On 17 January 2025 the Court of Appeal published its decision in the BlueCrest case, which concerns Condition B of the LLP salaried member rules – the significant influence test.

Key takeaway

The rules have been an area of focus for HMRC recently and we expect them to continue scrutinising taxpayers, looking at all three conditions.

In relation to Condition B, the Court of Appeal departed significantly from the approach of the lower courts, adopting an interpretation of the legislation that had not been advanced by either party.

The judges held that influence is only qualifying for the purposes of Condition B if it is derived from the mutual rights and duties of the LLP and its members as set out in the LLP Agreement. De facto influence derived from other sources is non-qualifying, although the fact that individuals may hold such influence may be relevant to the question of whether another individual's qualifying influence is "significant". Given the Court of Appeal's interpretation of the law differed materially from that of the lower courts, the judges remitted the case to the First-tier Tribunal to re-determine the facts.

The Court of Appeal's decision was a surprising one, and their approach would considerably narrow the circumstances in which LLP members may rely on Condition B. It remains to be seen whether the taxpayer will appeal to the Supreme Court.

Who is affected?

House and house executives

Timing

The Court of Appeal judgment was published on 17 January 2025; the parties have until 14 February 2025 to apply to appeal to the Supreme Court.

UK EU OECD

Action should be considered

HMRC updated guidance on salaried member rules

The issue

HMRC has changed its guidance on the salaried member rules in relation to the application of the TAAR to Condition C.

By way of background, Condition C is met if the capital contribution to the LLP is less than 25% of the disguised salary amount and the TAAR provides that, in determining whether the rules apply to an individual, “no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that [the rules] do not apply [to the individual]”.

The revised guidance includes a new example that indicates the TAAR will be triggered if a member increases their capital contribution in order to avoid meeting Condition C. Previously, the guidance had stated that genuine contributions would not trigger the TAAR.

Key takeaway

Condition C has often been relied upon as the quantitative nature of the test offers greater certainty. In light of the revised guidance (and the BlueCrest case referred to above), LLPs may wish to undertake a review of the arrangements in place and monitor HMRC’s approach going forward to ensure they are not exposed to an unexpected NICs exposure.

Who is affected?

House and house executives

Timing

The guidance was revised on 23 February 2024. We understand HMRC is reviewing its position but there has been no further update.

UK | EU | OECD

Action should be considered

New tax fraud offence commencement date confirmed

The issue

Guidance on the new failure to prevent fraud offence introduced by the Economic Crime and Corporate Transparency Act 2023 (ECCTA) has now been published. The Government has confirmed that the measure will come into effect from 1 September 2025. The regime has much in common with the corporate criminal offence of failing to prevent the facilitation of tax evasion (CCO) which was introduced by the Criminal Finances Act 2017.

CCO looks at the facilitation of tax evasion and applies to all businesses, while ECCTA's focus is on fraud and limited to large organisations only (the definition adopted from the Companies Act 2006). Under ECCTA "fraud" includes the common law offence of cheating the public revenue, but other statutory offences too (e.g. false accounting and false statements by company directors).

Key takeaway

This new regime will apply to all corporate entities in a large organisation (meeting at least two of the following criteria: (i) more than 250 employees; (ii) more than £36m turnover; and/or (iii) assets of more than £18m).

While a robust CCO risk (or bribery risk) assessment should provide a helpful basis for the new tax fraud offence, the scope of this offence is broader.

Who is affected?

House and portfolio companies

Timing

1 September 2025.

Monitor development

Transfer pricing documentation

The issue

Following the April 2023 adoption of new rules prescribing the format in which transfer pricing records should be prepared, HMRC published six documents that together comprise its "Transfer Pricing Guidelines for Compliance" (TP GfC).

The TP GfC are intended to provide best practice guidelines for businesses, including examples of common errors, key compliance risks and helpful supporting records and information. HMRC's stated purpose of the TP GfC is to reduce uncertainty for UK businesses by clarifying their compliance expectations.

Key takeaway

The TP GfC provide examples of best practice for both small and large businesses, which should assist with transfer pricing rules compliance. We would expect that compliance with HMRC's record keeping and compliance principles set out in the TP GfC should materially decrease the likelihood of HMRC challenging a taxpayer or succeeding in such a challenge.

Who is affected?

House, holding companies and portfolio companies

Timing

For accounting periods beginning on or after 1 April 2023.

UK EU OECD

Monitor development

OECD Pillar Two implementation

The issue

The UK implemented its income inclusion rule (also known as the Multinational Top-Up Tax) and a Qualified Domestic Minimum Top-up Tax (QDMTT) broadly in line with the OECD Pillar Two Model rules for accounting periods beginning on or after 31 December 2024.

The UK Government re-confirmed in the 2024 Autumn Budget that it will adhere to the OECD Pillar Two Model rules and introduce the Undertaxed Profits Rule (UTPR) for accounting periods beginning on or after 31 December 2024.

HMRC has also published a series of guidance on the implementation of BEPS 2.0, specifically covering the reporting obligations, registration requirements and transitional safe harbour rules.

Key takeaway

While the rules are primarily aimed at large trading groups, in principle, they can affect any kind of entity that meets the scoping criteria (revenues of at least €750m) including houses, their funds, holding structures and underlying portfolio companies.

The UK regime broadly mirrors the OECD Pillar Two model rules. The effect for investment managers depends on whether the group is caught within the scope of the rules, which is heavily dependent on the accounting treatment for the group and whether there is a consolidated group that meets the revenue threshold of €750m. A number of exclusions may be relevant for investment vehicles that would remove them from the application of the effective tax rate calculation.

As the UK Government has confirmed that the UTPR will apply for accounting periods beginning on or after 31 December 2024 after some delay, any entity within the scope of the rules will be required to consider the implications of any foreign subsidiaries operating in low-tax jurisdictions whose profits could be brought within the scope of UK tax.

Who is affected?

House and portfolio companies

Timing

The UTPR take effect for accounting periods starting on or after 31 December 2024.

UK EU OECD

Monitor development

Qualifying Asset Holding Company (QAHC) regime

The issue

The QAHC regime came into effect on 1 April 2022. The new regime provides an alternative vehicle to hold investment assets in the UK rather than through traditional Luxembourg or Irish structures. The legislation was updated in July 2023 to make it easier for a multi-vehicle fund structure to qualify for the regime. There have been no further changes to the QAHC regime since July 2023.

Key takeaway

The regime has become an established part of the UK tax system with over 500 QAHC elections made to date.

Who is affected?

Fund and holding companies

Timing

The regime came into effect on 1 April 2022.

UK EU OECD

Monitor development

General UK tax changes

The issue

The Government has committed to capping the main rate of corporation tax at 25% for the duration of the parliament. The Government published a Corporate Tax Roadmap alongside the Autumn Budget 2024 which also committed to retaining the full expensing scheme (100% capital allowances); maintaining the generosity of R&D reliefs; and developing a new tax certainty process for major investments.

The main rate of CGT for higher and additional rate taxpayers has increased from 20% to 24%. The carried interest CGT rate will temporarily increase from 28% to 32% before the regime moves into the income tax framework where it will be taxed at a preferential rate of circa 34.1%.

Key takeaway

The main rate of corporation tax of 25% applies to companies with profits over £250,000. A 19% rate is available for companies with profits less than £50,000 with marginal relief applying to companies with profits between those thresholds.

The full expensing policy is available on most plant and machinery.

The new advanced certainty process will be consulted on in Spring 2025.

The CGT rate change is subject to an anti-forestalling rule which will apply to certain unconditional contracts entered into before 30 October 2024.

Who is affected?

Investors, house, house executives and portfolio companies

Timing

The corporation tax rates apply to accounting periods beginning on or after 1 April 2023. The announcement on capital allowances continues existing policy.

The new main rate of CGT will apply for disposals made on or after 30 October 2024. The new carried interest CGT rate applies from 6 April 2025 to 5 April 2026, before full reform from 6 April 2026.

UK EU OECD

Monitor development

Stamp duties on shares consultation - transfer of partnership interests

The issue

The Government embarked on a consultation in April 2023 to modernise stamp duties on shares. One of the proposals put forward in the consultation is to take partnership interests outside of the scope of stamp duty. It remains unclear whether these proposals will be taken forward by the new Government.

Key takeaway

If the proposal is adopted, this will be welcome news for fund managers engaged in secondary transactions.

Who is affected?

House and fund

Timing

Awaiting Government response from consultation.

UK EU OECD

Monitor development

Consultation on permanent establishment (PE) rules, transfer pricing and DPT (Diverted Profits Tax)

The issue

During the summer of 2023, the Government launched a consultation to update aspects of the PE rules, transfer pricing and DPT to align with international standards and provide better clarity.

The proposed changes to the PE rules bear most significance for the industry, in particular the proposals include changes to the definition of a deemed dependent agent. This would expand the definition to include someone who "habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without modification" rather than someone that has the ability to conclude contracts.

Key takeaway

It will be important to monitor how the PE proposals unfold to ensure that international investors in funds advised from the UK do not inadvertently become subject to UK tax. At the beginning of 2024 the Government issued its response to the consultation and announced it would give further consideration to this issue. It recognised that changes might bring increased uncertainty to the taxation of offshore funds and dent the UK's competitiveness. At the time of writing it is not clear whether the new Government will take forward the proposals.

Who is affected?

House and funds

Timing

Awaiting further announcements.

Monitor development

Corporate re-domiciliation regime

The issue

The Government first set out its proposals to introduce a re-domiciliation regime that would allow non-UK incorporated companies to move their place of incorporation to the UK in November 2021. The policy remains at an early stage, however an independent expert panel report published in October 2024 is likely to pave the way for further consultation.

Key takeaway

If adopted, the proposals will reduce the complexity of administrating corporate migrations to the UK such as inserting a new holding company alongside a business transfer or changing tax residence. The existing routes are costly, contain traps for the unwary and do not represent a true corporate migration. The detailed design of the proposal is not clear however the introduction of an inward re-domiciliation regime would be of benefit to non-UK holding companies, in particular Luxembourg where migrating tax residence can be problematic. This would be beneficial in light of the QAHC regime. The independent expert panel recommend that the Government introduces a regime that allows domicile in and out of the UK.

Who is affected?

Holding companies and portfolio companies

Timing

Ongoing

UK EU OECD

Monitor development

VAT recovery on sell-side transaction costs

The issue

VAT recovery on sell-side transaction costs has been the subject of a recent case considered by the Court of Appeal in the UK, *Hotel La Tour*.

The First-Tier Tribunal and Upper Tribunal found that in circumstances where the sale of shares in a subsidiary was intended to fund future activities giving rise to taxable supplies (in HLT's case the development of a new hotel), and the deal costs were a component of that activity, rather than of the share sale itself, VAT on the costs could be recovered by looking past the sale of the shares to the future taxable activity.

However, the Court of Appeal overturned the decisions of the Upper Tribunal. The CoA's decision accords with the approach most commonly adopted in practice, which is that VAT on costs relating to a sale to a non-UK buyer is recoverable whereas VAT on costs relating to a sale to a UK buyer is irrecoverable.

This may not however be the final word, as it remains to be seen whether the taxpayer has appealed to the Supreme Court.

Key takeaway

In the context of private capital, *Hotel La Tour* is most likely to be of relevance in the context of the restructuring of a portfolio business where that restructuring involves the disposal of one or more subsidiaries from the portfolio business's corporate group.

It appears less likely to be of relevance to the outright disposal of an investment, where the disposal is more likely to be viewed as an end in itself (with proceeds paid to investors), rather than a means to raise capital to support an ongoing taxable business.

Who is affected?

Holding companies and portfolio companies

Timing

Ongoing

UK EU OECD

Monitor development

HMRC review of financial services VAT guidance

The issue

HMRC are undertaking an exercise to consolidate all the financial services VAT guidance contained in their Public Notices, Business Briefs and Manuals (currently amounting to hundreds of pages) into around 20 pages.

The stated aim is to simplify and consolidate the guidance, rather than to make any policy changes.

Key takeaway

While the stated aim of the exercise is to simplify and consolidate existing guidance, there have been indications that some of the proposed changes could effectively amount to changes in policy.

At this stage it seems likely that any future changes will be of most interest to those in the banking and retail fund industries, with limited impact on private funds.

However, it would be prudent of managers of non-UK funds to monitor developments, including any changes that could affect the VAT treatment of services they procure from third parties.

Who is affected?

Investors, house, and funds

Timing

Ongoing

UK EU OECD

! Action should be considered

- Public country-by-country reporting (CbCR)

! Monitor development

- ATAD 3: Draft directive to prevent the misuse of shell entities for tax purposes
- FASTER Directive adopted by European Council for streamlined withholding tax procedures
- SAFE - Proposal for a Directive to tackle the role of enablers
- DEBRA – Proposal for a Directive to introduce an allowance to encourage equity rather than debt finance
- BEFIT Business in Europe: Framework for Income Taxation - Proposal for a Council Directive to introduce common corporate tax base
- Proposal for a Council Directive on Transfer Pricing
- EU list of non-cooperative jurisdictions
- OECD Pillar Two implementation and reporting

Action should be considered

Public country-by-country reporting (CbCR)

The issue

Large multinational groups with consolidated revenues of more than €750m that are EU parented or have EU subsidiaries or branches will need to report certain information. CbCR information is required for each EU member state and in any third country that is listed on the EU list of non-cooperative jurisdictions (including the grey list which currently includes territories such as BVI and Turkey). Other jurisdictions can be reported on an aggregated basis.

Key takeaway

There is generally no exemption for investment funds in the adoption of public CbCR. The filing obligation applies either at the level of the management companies or the investment fund if the consolidated revenue test is exceeded. Reporting will be determined by whether or not investment fund entities and portfolio entities are consolidated under accounting standards.

Who is affected?

House and portfolio companies

Timing

The rules should come into effect for financial years beginning on or after 22 June 2024. The report is due within 12 months of the year end.

UK EU OECD

Monitor development

ATAD 3: Draft directive to prevent the misuse of shell entities for tax purposes

The issue

The “Unshell” directive has made limited progress since it was first announced in December 2021. The directive aims to provide EU Member States with greater tools to identify and prevent the use of shell entities through increased reporting requirements and sanctions. The file was reviewed by the Council in June 2024 where it was concluded that further discussions would be needed to find agreement.

The file is currently marked as “blocked” by the Council so it remains to be seen whether the directive will ever be adopted.

Key takeaway

Asset holding vehicles may be caught by the proposals, and as such, it remains important to monitor the rules. Should the rules progress, the scope of the rules is limited to EU entities, therefore the UK QAHC regime may offer a viable alternative as a holding jurisdiction, however the EC has indicated its desire to explore the application of the rules to non-EU entities.

Who is affected?

Holding companies

Timing

It remains unclear whether this directive will be adopted, but the limited progress to date makes it feel unlikely.

UK EU OECD

Monitor development

FASTER Directive adopted by European Council for streamlined withholding tax procedures

The issue

The EC formally adopted the FASTER (Faster and Safer Relief of Excess Withholding Taxes) directive aimed at making withholding tax refund procedures simpler and safer.

The key measures include:

- a common digital tax residence certificate;
- a relief at source system and/or a quick refund process (60 days); and
- enhanced reporting requirements on large financial intermediaries to verify entitlement to treaty benefits with exchange of beneficial ownership information.

Key takeaway

Investors will need to work with financial intermediaries to ensure reporting obligations are met.

The new procedures will initially apply to dividends and interest payments from publicly listed shares/bonds paid by EU tax resident entities. It remains unclear if the proposals will be extended to unlisted shares/bonds in the future.

Who is affected?

Investors, house, funds, holding companies and portfolio companies

Timing

The directive must be transposed into domestic legislation by 31 December 2028 to come into effect on 1 January 2030.

UK | EU | OECD

Monitor development

SAFE - Proposal for a Directive to tackle the role of enablers

The issue

The SAFE (Securing the Activity Framework of Enablers) proposals are designed to tackle the role of "enablers" in non-EU jurisdictions that facilitate tax evasion and aggressive tax planning in EU Member States.

Key takeaway

The draft Directive has not been published therefore it is not clear how this framework will develop and the extent of the impact. The points of interests remain the EU's definition of an enabler and how they approach defining "aggressive tax planning".

Who is affected?

House, holding companies and portfolio companies

Timing

A draft Directive has not been published. The file is linked to the Unshell directive therefore limited progress is expected until an agreement is reached.

Monitor development

DEBRA - Proposal for a Directive to introduce an allowance to encourage equity rather than debt finance

The issue

A proposal has been put forward to introduce a Debt Equity Bias Reduction Allowance (DEBRA) with a view to encouraging greater investment through equity rather than debt finance. The allowance is accompanied by an additional interest deduction limitation.

Key takeaway

If these proposals advance, managers would need to evaluate how each entity is financed and the interaction with existing interest restriction rules.

Who is affected?

House, holding companies and portfolio companies

Timing

Work on the file has been suspended pending other work by the EU on corporate tax (for example, BEFIT).

Monitor development

BEFIT business in Europe: framework for income taxation - proposal for a council directive to introduce common corporate tax base

The issue

As part of the EC's pursuit to introduce a unified corporate tax rulebook in the EU, a proposal has been put forward to introduce a common tax base which would be allocated to Member States in accordance with historic taxable results. In the future the regime might expand to some form of formulary apportionment of taxable profits. The rules will allow Member States to flex the allocated tax base through their own domestic incentives or deductions.

The BEFIT rules would follow the scoping criteria of Pillar Two, i.e. broadly groups with consolidated revenues of at least €750m and would be mandatory for groups operating in the EU even if headquartered in a non-EU territory. It is anticipated that Pillar Two rules will continue to apply in addition to the BEFIT regime.

The proposals require unanimous approval by Member States which has not been forthcoming under previous guises of this project (namely the Common Consolidated Corporate Tax Base), however in light of Pillar Two agreement there might be more willingness to consider harmonisation. Negotiations continue.

Key takeaway

Unlike the Pillar Two rules, there is no carveout for certain financial institutions therefore larger houses and portfolio companies that meet the revenue threshold will need to monitor how this unfolds.

Who is affected?

House and portfolio companies

Timing

It is proposed that the rules would take effect on 1 July 2028 however negotiations continue.

UK EU OECD

Monitor development

Proposal for a council directive on transfer pricing

The issue

This proposed directive aims to standardise the application of the arm's length principle and associated OECD guidelines in all EU Member States.

Key takeaway

Codifying the OECD's transfer pricing guidelines should be welcomed by groups and provide additional certainty, however aspects of the proposals should be monitored to see if the EC attempts to change the form of the arm's length principle.

Who is affected?

House, fund, holding companies and portfolio companies

Timing

It is proposed that the rules would apply from 1 January 2026, however negotiations continue.

Monitor development

EU list of non-cooperative jurisdictions

The issue

The EU list of non-cooperative jurisdictions was updated in October 2024. Antigua and Barbuda moved from the blacklist to the grey list.

The blacklist now consists of the following 11 jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

The grey list now comprises of: Antigua and Barbuda, Belize, BVI, Costa Rica, Curaçao, Eswatini, Seychelles, Turkey and Vietnam.

At the earlier February 2024 meeting a number of territories were removed from the blacklist and grey list for fulling their commitments, including Hong Kong.

Key takeaway

EU Member States are encouraged to apply sanctions to transactions involving jurisdictions on the blacklist. Structures may be caught by DAC 6 where it requires disclosure in relation to certain cross-border transactions (Hallmark C) involving blacklisted jurisdictions.

The blacklist and grey list are also relevant for the EU's public CbCR measure as reporting on entities in these jurisdictions will be expected.

The EU Code of Conduct Group (responsible for the blacklist) are reviewing the criteria and facing calls for the scope to be expanded to include a minimum effective rate of tax and transparency of beneficial ownership. Discussions are ongoing.

Who is affected?

Investors, house, funds, holding companies and portfolio companies

Timing

The new list takes effect from 8 October 2024. The next edition is expected February 2025.

Monitor development

OECD Pillar Two implementation and reporting

The issue

Implementation of the Pillar Two rules is underway in most EU Member States. Infringement proceedings has been initiated against a number of member states that have failed to transpose the rules into domestic legislation.

A proposal has been put forward to amend the Directive on administrative cooperation in tax to standardise Pillar Two reporting (DAC 9). This would enable groups to submit a single report in one member state and allow tax authorities to exchange information.

Key takeaway

The EU Directive implementing the Pillar Two rules broadly follows the OECD model rules. Member States have taken a variety of approaches to implement the Directive into domestic legislation, however the broad principles set out by the OECD apply. Houses with operations or investments in EU Member States are advised to monitor domestic implementation to ensure they can respond to any local divergence from the main rules.

Who is affected?

House and portfolio companies

Timing

The IIR is due to take effect for accounting periods starting on or after 31 December 2023 and the UTPR from 31 December 2024. Some Member States are yet to issue legislation even though the rules have taken effect.

UK EU OECD

Monitor development

- Pillar One
- Pillar Two
- Remote working and global mobility

Monitor development

Pillar One

The issue

The Pillar One proposals are designed to provide new taxing rights to market jurisdictions on residual profits earned by the largest multinational groups with an annual global turnover exceeding €20bn and 10% profitability.

Since the proposals were announced a number of consultations have been undertaken on what is referred to as "Amount A" (the new taxing right) and a draft Multilateral Convention (MLC) has been published. The other strand of Pillar One is "Amount B" which refers to efforts to simplify transfer pricing rules for distributors.

Amount A will be introduced by a new MLC to ensure the legal obligations of the jurisdictions implementing the rules do so in a coordinated and consistent manner. Amount B would be inserted into OECD transfer pricing guidelines.

Key takeaway

As the profit allocation rules will only apply to the very largest global groups, it is very unlikely that asset managers will find themselves within the scope of the rules when it is first introduced. However, the turnover threshold is anticipated to reduce to €10bn after a seven-year review period therefore larger asset managers may want to monitor the design of the financial services exemption to ensure they remain out of scope. The lack of agreement may prompt further digital services taxes.

The Amount B rules do not have threshold criteria but will only be relevant for certain portfolio companies. The rules in this area should be welcomed as a way to reduce compliance and disputes.

Who is affected?

House and portfolio companies

Timing

There is considerable uncertainty as to whether Amount A will be implemented despite the publication of the draft MLC. Entry into force requires at least 30 ratifications and approval from significant jurisdictions including the US .

The OECD published its final report on Amount B in February 2024 which provides jurisdictions with the option to apply the approach for in-scope transactions from 1 January 2025.

Monitor development

Pillar Two

The issue

Following publication of the OECD's GLoBE model rules for the introduction of a global minimum tax, further guidance has been published by the OECD periodically.

Key takeaway

The GloBE rules will apply to groups with entities in more than one jurisdiction and consolidated revenues of at least €750m per annum.

The scope of the GloBE rules turns heavily on how the parent of the group in question prepares its consolidated accounts. An important question in an investment management context will therefore be which parts of the management and fund structure (or both) are required to prepare consolidated accounts and which entities are included in those consolidated accounts.

The rules also provide for an investment fund exemption. This means that both investment and real estate funds are "Excluded Entities". In each case, the exclusion only applies if the relevant entity is an UPE and it is therefore not a panacea for all funds wherever they may be situated in a group.

Who is affected?

House and portfolio companies

Timing

The timing of implementation varies but typically the rules apply from 31 December 2023.

UK EU OECD

Monitor development

Remote working and global mobility

The issue

The OECD is planning to explore the tax issues surrounding remote working and global mobility. We understand this will initially focus on permanent establishments but transfer pricing, corporate residence and the treatment of pensions will also be explored.

Key takeaway

The project should be monitored especially in light of the UK's proposed reforms to carried interest.

Who is affected?

House, house executives and portfolio companies

Timing

Ongoing – no formal announcements have been made.

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