

The Latest on BEPS and Beyond

November 2019

EY Tax News Update: Global Edition

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Highlights

Will a global minimum effective corporate income tax rate be a key feature of the tax system of the future, and if so, under what conditions? Last week, the OECD published a public consultation document on the Global Anti-Base Erosion (GloBE) proposal under Pillar Two of the new OECD project titled "Addressing the tax challenges of the digitalisation of the economy." Contrary to this working title of the project, all businesses are in scope.

Like the Pillar One proposals released on 9 October, the Pillar Two proposals represent a substantial change to the international tax architecture, developing a set of rules to ensure that the profits of internationally operating businesses are at least subject to a minimum rate of tax. One of the key elements of the project that requires a political consensus is the minimum rate of tax that will trigger application of the rules. Countries have agreed that the actual rate of tax to be applied under the proposal will be discussed once other key design elements of the proposal are finalized, but a minimum rate between 10% and 13% has been mentioned during public debates.

Key design and technical decisions need to be made, such as how to determine the effective tax rate in a globally consistent fashion, whether blending between entities or countries will be allowed and whether there will be carve outs. Based on the number and complexity of the technical issues under discussion and the

policy choices to be agreed by the participating jurisdictions, reaching agreement on the design issues by the end of 2020 remains a challenge.

This Pillar Two proposal shows that the stakes are high both for tax administrations and businesses, reflecting the importance to keep well-informed on the international tax developments summarized below.

OECD

On 8 November 2019, the OECD released a public consultation document on the GloBE proposal under Pillar Two of the ongoing project titled “Addressing the Tax Challenges of the Digitalisation of the Economy” (the Consultation Document). The particular design proposals were prepared by the OECD Secretariat and do not represent the consensus view of the countries participating in the project as members of the Inclusive Framework.

For purposes of the consultation, the OECD welcomes comments on all aspects of the Workplan on Pillar Two, but specifically requests comments on three technical design aspects of the GloBE proposal:

1. The use of financial accounts as a starting point for determining the tax base under the GloBE proposal as well as different mechanisms to address timing differences.
2. The extent to which a group can combine high-tax and low-tax income from different sources taking into account the relevant taxes on such income in determining the effective tax rate on such income.
3. The stakeholders’ experience with, and views on, carve-outs and thresholds that may be considered as part of the GloBE proposal.

Interested parties are invited to submit written comments on the Consultation Document no later than 2 December 2019. The OECD will hold a consultation meeting on 9 December 2019 to give stakeholders an opportunity to discuss their comments with the Inclusive Framework jurisdictions.

See EY Global Tax Alert, [OECD issues consultation document on technical design aspects of Pillar Two](#), dated 14 November 2019.

On 5 November 2019, the OECD released additional guidance to give greater certainty to tax administrations and multinational enterprise (MNE) groups on the implementation and operation of BEPS Action 13 Country-by-Country

(CbC) Reporting (CbCR). Accordingly, the existing guidance on the implementation of CbCR (the Guidance) has been updated to include questions and answers on, among other topics, treatment of dividends, the deemed listing provision, accounting periods other than 12 months, the requirements for and operation of local filing, the use of rounded amounts and the information that must be provided with respect to the sources of data used.

The OECD also published a summary of common errors made by MNE groups in preparing CbC reports (the Summary). The release of this Summary aims at helping MNE groups in avoiding these errors and tax administrations in detecting them when they occur.

See EY Global Tax Alert, [OECD releases additional guidance on Country-by-Country Reporting and a summary of common errors made by MNE Groups in preparing these reports](#), dated 7 November 2019.

On 31 October 2019, the OECD released new guidance titled “Substantial Activities in No or Only Nominal Tax Jurisdictions: Guidance for the Spontaneous Exchange of Information” (the Guidance).

The Guidance addresses the practical modalities regarding the exchange of information requirements of the “substantial activities requirement” for “no or only nominal tax” jurisdictions (the Standard) that was agreed by the Inclusive Framework on BEPS in 2018. It provides guidance on the timelines for the exchanges, the international legal framework under which they may occur and clarifications on the key definitions, in order to ensure that the spontaneous exchanges take place in a coordinated and efficient manner. The guidance also contains a standardized IT format for the spontaneous exchanges, the No or only nominal Tax Jurisdictions (NTJ) XML Schema and the related user guide.

It is expected that exchanges pursuant to the standard will commence in 2020.

See EY Global Tax Alert, [OECD releases additional guidance on spontaneous exchange of information by no or only nominal tax jurisdictions](#), dated 7 November 2019.

On 30 October 2019, the OECD announced that Bosnia and Herzegovina signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI), bringing the total number of signatories to 90. At the time of signature, Bosnia and Herzegovina submitted a list of its tax treaties in force that it would like to designate as Covered Tax Agreements (CTAs). Together with the list of CTAs,

Bosnia and Herzegovina also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for Bosnia and Herzegovina will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI. Among others, Bosnia and Herzegovina chose to apply a principle purpose test, opted in for the new definition of agency permanent establishment, and did not opt in for mandatory binding arbitration.

On 18 and 29 October 2019, the OECD announced that Mauritius and Latvia respectively had deposited their instrument of ratification, acceptance or approval of the MLI – bringing the total number of jurisdictions to 37. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Mauritius confirmed its MLI positions, but it added the treaties with Cabo Verde, Ghana and Jersey to its list of CTAs. Mauritius also removed the statement of acceptance of the principal purpose test as an interim measure. Latvia confirmed its MLI positions, but it added 11 additional treaties to its list of CTAs (namely Albania, Armenia, Belarus, Kuwait, Kyrgyzstan, Morocco, Tajikistan, Turkmenistan, United Arab Emirates, United States and Uzbekistan) and it removed the reservation of article 35(7)(a) (entry into effect). The MLI will enter into force for Mauritius and Latvia on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by these jurisdictions of their instrument of ratification, i.e., on 1 February 2020.

On 29 October 2019, Jordan became the 135th member to join the BEPS Inclusive Framework. As a new BEPS member, Jordan committed to comply with the BEPS minimum standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Jordan will also participate on an equal footing with the members of the Inclusive Framework on the remaining standard setting, as well as the review and monitoring of the implementation of the BEPS package.

On 24 October 2019, the OECD released the sixth batch of peer review reports relating to the implementation by Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa of the BEPS minimum standard on Action 14 (*Making Dispute Resolution Mechanisms More Effective*). Colombia, Latvia and Lithuania had also requested that the OECD provide feedback concerning their adoption of the Action 14 best practices, and the OECD also therefore released three accompanying best practices reports.

Overall, the reports conclude that five of the eight assessed jurisdictions meet the majority or most of the elements of the Action 14 minimum standard. Latvia meets slightly more than half of the elements of the Action 14 minimum standard, and India meets half of the elements. Colombia meets fewer than half of the elements of the Action 14 minimum standard. In the next stage of the peer review process, each jurisdiction's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, [OECD releases sixth batch of peer review reports on Action 14](#), dated 25 October 2019.

European Union

On 8 November 2019, the Council of the European Union (the Council or ECOFIN) held a meeting where they, among other things updated the European Union (EU) list (the EU List) of non-cooperative jurisdictions for tax purposes and discussed the state of play on digital taxation.

In regard to the EU List, the Council removed Belize from the EU's list of non-cooperative tax jurisdictions. Belize has passed the necessary reforms to improve its tax regime for international business companies that was due to be implemented by end 2018. Belize will therefore be moved from annex I (so-called black list) of the conclusions to annex II (so-called gray list), pending implementation of the country's commitment to amend or abolish the harmful features of its foreign source income exemption regime by end 2019. Also, the Council found the Republic of North Macedonia compliant with all its commitments on tax cooperation following its ratification of the OECD multilateral convention on mutual administrative assistance. The Republic of North Macedonia was therefore removed from annex II of the conclusions.

Furthermore, the Council took stock of the state of play of work during the Finnish Presidency on the ongoing OECD discussions regarding tax challenges arising from the digitalization of the economy and exchanged views on the way forward in this area in the coming months. Among others, Ministers stressed the need to ensure that the various solutions at the international level are compatible with EU law and that their impact is thoroughly analyzed.

On 24 October 2019, the European Parliament (EP) approved a [resolution](#) regarding public CbCR. The resolution is not binding, but it does mean that the European Council will have to respond to it. The EP calls on the Member States to break the deadlock within the Council (based on EU Council of

Ministers voting rules, a deadlock exists when fewer than 55% of Member States vote in favor, or when Member States that are home to less than 55% of the EU's population approve), to conclude their first reading on the public CbCR proposal and to enter interinstitutional negotiations in order to finalize the legislative process as soon as possible. It also urgently calls on the Finnish presidency to recommence and prioritize work on the public CbCR proposal. The EP welcomes the fact that the incoming Commission has reiterated its utmost support for a prompt adoption of the public CbCR proposal. It is unclear yet whether the public CbCR proposal is a tax proposal, which will mean that unanimity will be required for its adoption, or an accountancy proposal, in which case a qualified majority voting will be required.

Also, on 25 October 2019, member states' company law attaches met to discuss this topic. However, there was no change on the countries' respective position, and therefore there is still a blocking minority against the proposal.

Belgium

On 17 October 2019, a Royal Decree (of 2 October 2019) was published in the Belgian *Official Gazette* listing the documentation requirements for taxpayers claiming the Belgian innovation income tax deduction regime. Requirements set out in the Decree include that documentation which evidences the amount of innovation income generated by the taxpayer since 1 July 2016, and the transfer pricing methods used to determine the gross amount of the innovation income must be maintained for seven years.

The Belgian innovation deduction was introduced with effect from 1 July 2016 and complies with the modified nexus approach of BEPS Action 5 (countering harmful tax practices more effectively, taking into account transparency and substance).

Colombia

The OECD released, on 24 October 2019, the sixth batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Colombia was among the assessed jurisdictions in the sixth batch. Colombia requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying best practices report.

Overall, the report concludes that Colombia meets less than half of the elements of the Action 14 minimum standard. In the next stage of the peer review process, Colombia's efforts to address any shortcomings identified in its stage 1 peer review report will be monitored.

See EY Global Tax Alert, [*OECD releases Colombia Stage 1 peer review report on implementation of BEPS Action 14 minimum standard*](#), dated 13 November 2019.

On 22 October 2019, the Colombian Executive Power submitted to Congress a proposal to reenact the 2018 tax reform (Law 1943 of 2018), which was declared unconstitutional by the Colombian Constitutional Court on 16 October 2019, due to procedural flaws.

While the proposal would primarily maintain the 2018 tax reform provisions, the proposal would eliminate provisions that were only effective during 2019 (e.g., the tax amnesty provisions).

The provisions from the 2018 tax reform that would be maintained by the proposal include, among others: (i) amendments to the Colombian controlled foreign corporation regime; (ii) thin capitalization rules; (iii) permanent establishments; (iv) the mutual agreement procedure provided in tax treaties; and (v) rules that mandate credit and debit card issuers to collect value-added tax (VAT) for foreign service providers of digital content.

See EY Global Tax Alert, [*Colombian Executive Power submits proposal to reenact the 2018 tax reform that was recently declared unconstitutional*](#), dated 25 October 2019.

Croatia

On 16 October 2019, a bill implementing the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017 was published in the *Official Gazette*. The law includes, among others, rules for settling tax disputes with taxpayers and EU Member States and treaty partner jurisdictions. The law allows taxpayers to file a dispute resolution application within three years from the first notice of actions that will have consequences which are not in line with international treaties, agreements or conventions. According to the law, Croatian authorities are required to confirm receipt of such application within two months after receipt of the application. The law also provides rules for mutual agreement procedures. The law has effect as of 24 October 2019.

Curacao

The Curacao Minister of Finance issued a decree on 10 September 2019 providing guidance on the term “substance” within the meaning of the Corporate Income Tax Code. The Decree is effective from 13 September 2019 and provides that the substance requirement is deemed to be met if the following cumulative conditions are satisfied: (i) at least 50% of the board members are residents of Curacao; (ii) the board members and employees are “qualified” (as defined); (iii) the management decisions are made in Curacao; (iv) the bookkeeping is kept in Curacao; (v) the company’s seat of management is in Curacao for tax purposes; and (vi) the capital of the company is adequate for the business’ activities.

The substance requirement will also be met if one of the following conditions is satisfied: (i) one of the managing directors has a direct or indirect share interest or profit sharing right of at least 5%; or (ii) the ultimate beneficial owners holding at least 50% of the shares of the entity are residents of Curacao.

Cyprus

The Cypriot Ministry of Finance (MoF), in March 2019, circulated a draft bill (the Bill) to transpose the EU Directive 2018/822/EU of 25 May 2018 on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive) into the Cypriot national legislation. The Bill will amend the existing Cypriot law on Administrative Cooperation in the field of Taxation.

Following an announcement of the Cypriot tax authorities on 22 October 2019, the Bill became officially subject to the public consultation procedure and public comments on the proposed draft text were requested by 12 November 2019. The draft legislation will now be subject to the formal legislative process and is expected to be enacted into law by the end of 2019.

Official guidance is expected to be issued by the tax authorities to provide clarification on the interpretation of specific terms and provisions of the Cypriot Mandatory Disclosure Rules (MDR) legislation. The guidance notes will be issued after the enactment of the law.

If implemented as currently proposed, the Cypriot MDR legislation will be broadly aligned with the requirements of the Directive.

See EY Global Tax Alert, [Cypriot draft MDR bill officially enters public consultation procedure](#), dated 24 October 2019.

On 30 October 2019, the Cypriot Tax Department issued an announcement regarding the status of the bilateral competent authority arrangements (CAA) for the exchange of CbC reports between Cyprus and the United States (US) that is currently being negotiated by the Cypriot and US competent authorities. The announcement informs taxpayers that the CAA is expected to be finalized soon and will be effective for Reporting Fiscal Years starting on or after 1 January 2019.

A Cypriot Constituent Entity of a US multinational enterprise group (whose UPE is a tax resident in the US) will have a local filing obligation of the CbC report in Cyprus for its reporting year ending on 31 December 2018, even if a CbC report has or will be submitted in the US. Consequently, in cases where notifications have been filed, such notifications must be revised accordingly before 31 December 2019 for the avoidance of any penalties.

See EY Global Tax Alert, [Cyprus issues announcement regarding bilateral Competent Authority Agreement with the United States](#), dated 8 November 2019.

Denmark

On 6 November 2019, the Minister of Taxation introduced to the Danish Parliament draft legislation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive) into Danish legislation. The draft law will go through the legislative process and once adopted, the law is expected to enter into force on 1 July 2020.

See EY Global Tax Alert, [Denmark publishes draft proposal on Mandatory Disclosure Rules](#), dated 10 July 2019.

Also on 6 November, the Danish Minister of Taxation published a draft bill on international taxation. The draft bill intends to implement the controlled foreign company (CFC) rules of the EU’s Anti-Tax Avoidance directive (the ATAD) by introducing changes to existing Danish CFC laws to bring the laws more in line with the ATAD. The bill also seeks to strengthen Danish transfer pricing rules by introducing more stringent, transfer pricing documentation (along with penalties for non-compliance). Additionally, the draft bill proposes to expand the definition of permanent establishment (PE) under Denmark’s domestic legislation in order to align with the new definition in Article 5 of the OECD Model Income Tax Convention as recommended by BEPS Action 7. The draft bill is expected to be enacted before the end of 2019 resulting in the new rules to be applicable for income years starting on 1 January 2020.

Additionally, the draft bill contains new rules on the deduction for final losses in foreign entities following the judgment of the Court of Justice of the European Union (CJEU) on 12 June 2018 (case C-650/16, *Bevola*). The CJEU ruled that the Danish law was incompatible with EU law because a Danish company could not claim a tax deduction for a final loss in a foreign PE. These new rules, allowing a Danish company to claim a tax deduction for a final loss suffered by a foreign subsidiary, PE or real estate subject to a number of conditions, would be applicable for income year 2019 and onwards.

For more details on the measures included in the draft bill on international taxation, see EY Global Tax Alert, [Denmark publishes bill on international taxation](#), dated 6 November 2019.

Estonia

On 31 July 2019, the Ministry of Finance launched a public consultation on a draft bill implementing Council Directive 2017/952 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD 2). The draft bill has been aligned with the provisions of ATAD 2 and aims to limit: (i) the use of tax optimization practices by way of double non-taxation in two countries at the same time; and (ii) different qualification characterization of financial instruments, payments and entities.

Additionally, the draft legislation amends the provisions of the previously adopted exit tax to align these rules with the Estonian corporate tax system. Under the draft bill, transferable assets must be declared upon the moment of transferring these from Estonia to a PE located outside Estonia, however the tax becomes payable only upon the distribution of the profit that is attributable to the PE by the resident taxpayer.

If the draft bill gets adopted, it will enter into force on 1 January 2020, however the provisions regarding reverse hybrid mismatches will become applicable as from 1 January 2022.

Finland

On 7 November 2019, the Government of Finland introduced a draft bill to the Parliament regarding exit taxation rules for companies, in line with the exit tax provision of the EU ATAD. The draft law is expected to enter into force on 1 January 2020 and sets out which situations will lead to

the application of exit taxation and also provides a deferral of payment of the exit tax if the immigration state is an EU Member State or a State of the European Economic Area (EEA) that has concluded a Tax Treaty with Finland on the mutual assistance for the recovery of tax claims.

On 31 October 2019, the Government of Finland introduced two draft bills to the Parliament on: (i) implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive); and (ii) introducing new hybrid rules on taxation of certain cross-border hybrid mismatches in line with the EU ATAD and the OECD's BEPS recommendations, to include new rules in respect of: hybrid financial instruments; double deductions; and mismatches created by attributing income between a head office and a PE. Both draft laws are expected to enter into force on 1 January 2020.

France

On 22 October 2019, the French Government published legislation addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

Draft guidance should be issued before the end of the year and subject to public consultation. In addition, an order indicating the information to report will be issued by 30 December 2019.

The French MDR are broadly aligned to the requirements of the Directive.

See EY Global Tax Alert, [France publishes legislation on Mandatory Disclosure Rules](#), dated 23 October 2019.

Germany

On 9 October 2019, the German Federal Government issued an update of the draft legislation on MDR addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). The draft legislation contains some changes compared to the ministerial draft bill that was issued two weeks earlier.

See EY Global Tax Alert, [German Government issues update on draft Mandatory Disclosure Rules](#), dated 10 October 2019.

Iceland

On 21 October 2019, the Icelandic Ministry of Finance and Economic Affairs published an updated draft bill amending the current CFC legislation as a response to the international developments of BEPS and the EU ATAD. Under the proposed amendments, a CFC is defined as any legal person or PE that is tax resident or registered in a foreign state where it benefits from a preferential tax regime leading to an effective taxation that is lower than two thirds of the tax that would have been paid under the laws of Iceland.

However, where the income of the CFC originates from real economic activities (subject to certain exceptions as outlined in the draft law), the CFC rules will not apply. The taxpayers will be obliged to provide the Icelandic tax administration with information about the CFC, including an annual report by 12 March for individuals and by 31 May for legal entities in a predefined format.

India

On 24 October 2019, the OECD released the sixth batch of peer review reports (the Report) relating to the implementation of the BEPS minimum standard under Action 14 (Making Dispute Resolution Mechanisms more effective). The Report covers eight countries, including India.

Overall the Report concludes that India meets half of the elements of the Action 14 minimum standard. India is now working to address several of the noted deficiencies. To be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 minimum standard, India needs to amend and update a certain number of its tax treaties. This is expected to take place either through the MLI or via bilateral negotiations. India also has in place a bilateral Advance Pricing Agreement (APA) program, which enables taxpayers to obtain rollback of the APA.

See EY Global Tax Alert, [OECD releases India Stage 1 peer review report on BEPS Action 14](#), dated 6 November 2019.

Ireland

On 17 October 2019, the Irish Government published draft legislation in Finance Bill 2019 implementing the EU Directive on the mandatory disclosure and exchange of

cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The Irish draft legislation is subject to the formal legislative process and may be amended before final enactment which is expected in late December 2019.

If implemented as currently proposed, the Irish MDR legislation will be broadly aligned with the requirements of the Directive.

See EY Global Tax Alert, [Ireland publishes draft proposal on Mandatory Disclosure Rules](#), dated 5 November 2019.

Italy

On 2 November 2019, the Italian Government presented the draft Finance Bill for 2020 (the Draft Finance Bill) to Parliament. Among others, the Draft Finance Bill includes some amendments to the previously proposed unilateral Digital Services Tax (DST).

As currently proposed, the DST will be levied at a rate of 3% on certain services and builds upon measures that were also proposed in Italy's Finance Bill for 2019 (Law 145/2018). The Draft Finance Bill effectively amends part of the proposed 2018 law, specifically removing the need for an implementing decree (an instrument used in the Italian legislative process) and adding other clarifying rules, which will become new articles in Law 145/2018 once the Finance Bill for 2020 is enacted. The Draft Finance Bill must be approved by both Chambers of the Italian Parliament before the end of 2019.

See EY Global Tax Alert, [Italy's unilateral Digital Services Tax advances](#), dated 8 November 2019.

Liechtenstein

On 8 October 2019, the Government of Liechtenstein approved ratification of the MLI, which it signed on 7 June 2017. Liechtenstein submitted its provisional MLI position at the time of signature, listing its reservations and notifications and including 15 tax treaties - CTAs - that it wishes to be covered by the MLI. Liechtenstein now needs to deposit its ratification instrument with the OECD to bring the MLI into force for its CTAs. A definitive list of reservations and notifications will also need to be provided upon depositing the instrument of ratification.

Liechtenstein-Lithuania

On 16 October 2019, the Government of Lithuania approved the convention between Lithuania and Liechtenstein for the avoidance of double taxation with respect to taxes on income and on capital, signed on 15 February 2019 (the Treaty). The treaty contains a number of treaty-based recommendations from the BEPS Project.

Specifically, the Treaty contains the new preamble language which clarifies that the Treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. The Treaty also includes a provision dealing with fiscally transparent entities to tackle potential hybrid mismatches in which certain entities are transparent for tax purposes in one Contracting State, but non-transparent in the other Contracting State (Action 2). Moreover, in cases where a person other than an individual is resident in both Liechtenstein and Lithuania, both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be resident.

The Treaty also includes an anti-abuse provision that is similar to the principal purpose test of the MLI (Action 6) and enables taxpayers to present a case for a Mutual Agreement Procedure (MAP) to the competent authorities of either Contracting State (Action 14). It provides a period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty. In the PE clause, the treaty contains the new definition of agency PE and the specific activities exceptions subject to the preparatory or auxiliary requirement.

Mauritius

On 18 October 2019, Mauritius deposited its instrument of ratification of the MLI with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Mauritius submitted the final list of 44 tax treaties entered into by Mauritius and other jurisdictions that Mauritius would like to designate as CTAs, i.e., tax treaties to be amended through the MLI as well as its list of reservations and notifications. The MLI will enter into force for Mauritius on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by Mauritius of its instrument of ratification, i.e., 1 February 2020.

Under the Mauritian tax laws, the MLI was the subject matter of the Income Tax (BEPS) Regulations 2019 issued on 27 September 2019.

See EY Global Tax Alert, [Mauritius deposits its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS](#), dated 22 October 2019.

Netherlands

Following the approval of the European Commission under the EU State aid rules, a decree (no. 381) was published in the *Official Gazette* on 5 November 2019 regarding the exemption of the public infrastructure projects for the earning stripping rules (30% EBITDA rules). The exemption entered into force on 6 November 2019 and applies retroactively as from 1 January 2019.

On 7 October 2019, the Dutch Government initiated a consultation on the updated list of low-taxed and non-cooperative jurisdictions relevant to the application of the CFC rules and the ability to obtain a tax ruling as of 1 January 2020. Compared to the prior list, the proposed updated list no longer includes the Kingdom of Saudi Arabia and Belize but now includes Barbados and Turkmenistan. Parties were invited to provide comments regarding the updated Dutch list until 8 November 2019.

If adopted, this new list will become relevant for fiscal years starting on or after 1 January 2020. Inclusion on the list could impact multinationals with entities or PEs in one of the jurisdictions and controlled by or engaged in transactions with a Dutch taxpayer.

See EY Global Tax Alert, [Dutch Government starts consultation on updated list of low-taxed jurisdictions to apply for FY 2020](#), dated 11 October 2019.

Norway

On 7 October 2019, the Norwegian Government published its proposal for the 2020 Fiscal Budget (the Budget). The proposal will now go through the legislative process and is expected to be approved in December 2019. In short, no major changes have been proposed in the 2020 Fiscal Budget from an international corporate tax perspective.

Minor amendments and clarifications to the Norwegian interest cap rules are proposed, covering among others which entities fall in scope of the rules as well as certain amendments to the research and development tax incentive regime.

In the Budget, the Norwegian Government has also provided some comments regarding the position of the Government regarding Brexit, the expected introduction of withholding tax on interest and royalty payments and the taxation of the digital economy. No digital tax is proposed in the National Budget for 2020 and the Government announced it will not follow the EU proposal but that it will await the solutions which are expected to be proposed by the OECD during 2020.

See EY Global Tax Alert, [Norwegian Government issues 2020 Fiscal Budget](#), dated 21 October 2019. Please note that the Alert was published before the EU approved an extension of Brexit until 31 January 2020. Hence, for 2019, the UK will be regarded as an EU/EEA member state for Norwegian tax purposes.

Paraguay

On 25 September 2019, Paraguay enacted tax reform (Law No. 6380/19). Among other measures, the law: (i) introduces new general transfer pricing rules based on OECD standards, which include the international method known as the sixth method, i.e., specific rules are provided under the new transfer pricing rules that commodity transactions must be adjusted to market prices; and (ii) makes substantial changes to the scope of VAT, including a provision to cover digital services rendered in Paraguay and financial derivatives. A digital service is deemed to be rendered in Paraguay when any of the following is located in Paraguay: the IP address of the device used by the customer or country code of the SIM card; the customer billing address; the bank account used for the payment; the billing address of the customer as available to the bank; or the financial institution issuing the credit or debit card with which the payment is made. Where a payment for digital services is made through a financial institution in Paraguay, the financial institution is responsible for withholding and remitting VAT at the standard rate of 10% on the payment.

Paraguay's Executive Power has issued Decree No. 2787/19, which establishes the applicability dates for the recently enacted tax reform (Law No. 6380/19). Under the decree, some of the tax reform provisions are effective immediately. Other provisions are effective as follows: (i) 1 January 2020: Most of the tax reform provisions will be effective 1 January 2020, including the new business income tax, tax on dividends and earnings, personal income tax, nonresident income tax, value-added tax and excise tax provisions; (ii) 1 May 2020: For taxpayers with an April year-end, the

corporate income tax provisions will be effective 1 May 2020; (iii) 1 July 2020: For taxpayers with a June year-end, the corporate income tax provisions will be effective 1 July 2020; (iv) 1 January 2021: The new transfer pricing rules will be effective 1 January 2021.

See EY Global Tax Alert, [Paraguay enacts new tax reform](#), dated 16 October 2019.

Portugal

On 6 November 2019, the President of Portugal signed a law ratifying the MLI. Portugal submitted its provisional [MLI position](#) at the time of signature, listing its reservations and notifications and including 79 tax treaties that it wishes to be covered by the MLI. Portugal now needs to deposit the instrument of ratification with the OECD. A definitive list of reservations and notifications will also need to be provided upon depositing the instrument of ratification. The MLI will enter into force for Portugal on the first day of the month following the expiration of a period of three months beginning on the date of the deposit of the instrument of ratification with the OECD.

Slovakia

On 14 October 2019, the Slovak Government published in the Collection of Laws the final legislation that transposes the Directive on Administrative Cooperation in Taxation (the Directive – also referred to as DAC6) introducing MDR in Slovakia. The legislation had been approved by the Slovak National Council on 11 September 2019 and signed by the President of the Slovak Republic at the beginning of October.

See EY Global Tax Alert, [Slovakia publishes final legislation implementing Mandatory Disclosure Rules](#), dated 16 October 2019.

Slovenia

On 23 October 2019, the Slovenian Parliament adopted the amendments to the Corporate Income Tax Law. The amendments include, among others, the partial implementation of further parts of the EU ATAD 1 and the introduction of an exit tax and the implementation of rules for elimination and neutralization of hybrid mismatches as per the Council Directive 2017/952 amending Directive (EU) 2016/1164 regarding hybrid mismatches with third countries (ATAD 2). The amended rules will apply as of 1 January 2020.

Taiwan

On 6 November 2019, the Taiwan Ministry of Finance (MOF) published the list of countries with which Taiwan has concluded a bilateral CAA on the exchange of CbC reports. The released list comprises three jurisdictions, namely Australia (newly added), Japan and New Zealand. This information is relevant for determining whether an MNE group would be subject to CbCR local filing in Taiwan for reporting fiscal year 2018.

Tunisia

On 16 October 2019 the Tunisian Minister of Finance issued his decision, which was published in the *Official Gazette* dated 25 October 2019 no. 86/2019. The decision introduces master file and local file requirements in Tunisia. According to the decision, a master file and local file must be maintained by every Tunisian entity for transactions occurring on or after 1 January 2020 if its annual gross turnover exceeding TND20 million (approximately US\$7 million). The master file and local file should be submitted to the tax authority upon request at the commencement of an advanced tax audit procedure. Where the required documentation supporting the transfer pricing policy is not submitted to Tax Inspectors on the starting date of the comprehensive tax audit, or in case of incomplete communication, Tax Administration notifies the taxpayer, to produce or complete the documentation supporting the transfer pricing policy within 40 days, and this is, with the specification of the nature of the expected documents or complements. Delays observed in the communication of the documentation supporting the transfer pricing policy are not counted in the maximum period of the tax audit. Any company that did not communicate the documentation supporting the transfer pricing policy to tax authorities or that presents incomplete or inaccurate documents within 40 days after the notification are exposed to a tax fine equal to 0.5% of the amount of the concerned transactions for the missing or inaccurate documents with a minimum of TND50,000 per year covered by the tax audit.

Turkey

On 24 October 2019, the Turkish Government submitted an initial bill which introduces a DST into Turkish tax legislation. The initial bill was first discussed by the Planning and Budget Commission of the Turkish Parliament and was passed as a result of the discussions held in the sessions

on 30-31 October and 1 November 2019. Currently, the latest version of the bill is on the agenda of the Parliament for enactment. After the enactment, the Law will enter into force once it is published in the *Official Gazette*.

According to the bill, revenues derived from the provision of the following services are subject to DST: (i) All kinds of digital advertising services; (ii) The sale of any audio, visual or digital content in digital media, and services provided in digital media for listening, viewing, playing or recording or using them in digital media; and (iii) Services for the provision and operation of digital media in which users may interact with each other. The bill proposes the DST at the rate of 7.5% on revenue derived from the provision of the respective services during the related tax period. The President has the authority to reduce the rate down to 1% or double the rate of 7.5%, based on service type, separately or altogether. The taxation period for the DST is one-month periods of the calendar year. The provisions of the bill regarding the DST will be effective in the beginning of the third month following publication of the Law in the *Official Gazette*.

See EY Global Tax Alert, [Turkey introduces Digital Services Tax](#), dated 25 October 2019.

On 17 October 2019, the Turkey Presidency of Revenue Administration realized the English version of "Guideline on the Mutual Agreement Procedure for the Elimination of Double Taxation Agreements" (the [Guideline](#)). All of the double taxation agreements Turkey has concluded, contain provisions related to the MAP. The aim of the Guideline is to inform taxpayers on the MAP included in the Double Taxation Agreements as well as on the application of the treaty MAP provision. Among others, the Guideline includes information on who can make a MAP request, the relevant competent authority, the cases for which a MAP request can be made, timing limitations, the information to be included in the MAP request, and the process after the request has been submitted.

United Kingdom-Gibraltar

On 15 October 2019, Gibraltar signed the convention between Gibraltar and the United Kingdom (UK) for the elimination of double taxation with respect to taxes on income and on capital gains (the Treaty). The UK signed the Treaty on 1 October 2019. The treaty is not yet in force. This will happen when both jurisdictions have completed their legislative procedures and exchanged diplomatic notes.

This is Gibraltar's first Double Taxation Treaty. The treaty contains a number of treaty-based recommendations from the BEPS Project.

More specifically the Treaty contains the new preamble language which clarifies that the Treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. The Treaty also includes a provision dealing with fiscally transparent entities to tackle potential hybrid mismatches in which certain entities are transparent for tax purposes in one Contracting State, but non-transparent in the other Contracting State (Action 2). Moreover, in cases where a person other than an individual is resident in both Gibraltar and the UK, both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be resident.

In the PE clause, the Treaty contains an anti-fragmentation rule and the new definition of agency PE. It also contains the specific activities exceptions subject to the preparatory or auxiliary requirement. The Treaty also includes an anti-abuse provision that is similar to the principal purpose test

of the MLI (Action 6) and enables taxpayers to present a case for MAP to the competent authorities of either Contracting State (Action 14). It provides a period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty.

United States

On 31 October 2019, the United States (US) Internal Revenue Service (IRS) updated the [website](#) that includes an up-to-date listing of the jurisdictions with which the US Competent Authority has entered into a CAA for the automatic exchange of CbC reports and the jurisdictions that are in negotiations for a CAA. In this update, the IRS added Singapore to the list of countries with which the US is in negotiations for a CAA for the automatic exchange of CbC reports. The IRS is in the process of negotiating CAAs with another eight countries (namely, Argentina, Bulgaria, Curacao, Cyprus, France, Germany, Israel and Monaco) and is expected to update this database as other agreements are concluded.

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