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Global Tax Alert

The Latest on BEPS and Beyond

December 2019

EY Tax News Update: Global Edition

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Highlights

The end of 2019 reflects a flurry of tax policy developments as summarized in this Alert. Many of these developments indicate that 2020 will be a crucial year in the design history of the international tax system.

With the public consultations on the two pillars of the new OECD project titled "Addressing the tax challenges of the digitalisation of the economy" taking place at the end of November and early December, this project again took center stage in the policy debate. Moreover, this debate took an unexpected turn with the United States (US) Secretary of the Treasury, Mr. Steven T. Mnuchin, sending a letter to the OECD on 3 December, expressing serious concerns, in particular with regard to the proposed mandatory departures from the arm's-length principle and long-standing nexus standards. The OECD's response letter expressed surprise with this unexpected turn. In light of these latest exchanges, it is going to be extremely interesting to see what will come out of the meeting of the 135 countries of the Inclusive Framework on BEPS at the end of January 2020, as this is the meeting where these countries are supposed to reach consensus on a unified approach.

However, 2020 will not only be the year of the new OECD project. It also will be the year where new dimensions will be added to the tax transparency environment. First, because of the new European Union (EU) Mandatory

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Disclosure Directive leading to the reporting of cross-border reportable arrangements as of July 2020. Most of the EU countries have or are in the process of introducing the required legislation, which needs to be in place by the end of 2019. Moreover, other jurisdictions inspired by the EU are following their example. For example, Australia, Japan and Mexico, are also considering the introduction of Mandatory Disclosure Rules (MDR). Besides being the year of introduction of MDR in many countries, 2020 also will be the year of review of the OECD/G20 Country-by-Country (CbC) reporting rules, with a public consultation expected in the first part of the year.

Moreover, it will be important in 2020 to keep abreast of the latest international tax policy developments. We hope the Latest on BEPS and Beyond Global Tax Alert helps readers achieve that. For now, as 2019 comes to a close and 2020 is on the horizon, we wish you happy holidays and a good start of the New Year.

OECD

On 9 December 2019, the OECD hosted a day-long public consultation on the consultation document titled "Global Anti-Base Erosion (GloBE) Proposal – Pillar Two" (the Consultation Document), which was released by the OECD on 8 November 2019 in connection with the ongoing project on addressing the tax challenges of the digitalization of the economy.

The OECD received close to 200 written comment submissions on the Consultation Document. Representatives from business, labor groups, non-governmental organizations (NGOs), and academia participated in the consultation to discuss their perspectives on the specific technical issues covered in the document including: (i) the extent to which effective tax rate (ETR) computations should blend the taxes paid by a multinational entity (MNE) on a global or jurisdictional basis; (ii) whether carveouts or thresholds should be incorporated into the GloBE proposal; and (iii) whether and how financial accounts should be used as the tax base for determining an MNE's ETR. Commentators also expressed their views on other issues, including the objectives of the GloBE proposal and the lack of clarity regarding those objectives and how the elements of the GloBE proposal should be coordinated. Government officials from jurisdictions that are part of the 136-member Inclusive Framework attended the consultation in order to hear the stakeholder perspectives. EY submitted a comment letter and a global team from EY participated in the consultation.

At the opening of the consultation, the OECD Secretariat and the German government official who chairs the Inclusive Framework, addressed the BEPS 2.0 project as a whole in light of the recent exchange of letters between US Secretary of the Treasury Steven Mnuchin and OECD Secretary-General Angel Gurria regarding the US position on the project. The officials stressed that work will continue on the project, noting that the G20 Finance Ministers have pledged to move forward, but a critical upcoming meeting of the Inclusive Framework in late January may very well determine the fate of Pillar One given the change in the US position requesting that Pillar One be viewed as a safe harbor rather than a mandatory change to existing transfer pricing rules. With respect to Pillar Two, the OECD Secretariat laid out a timeline for future work on the GloBE proposal in the near term, including plans to issue an additional and more detailed consultation document on Pillar Two early in 2020. The comments made by stakeholders during the consultation session reflected clear differences in views about the GloBE proposal between the business community and NGOs.

See EY Global Tax Alert, *OECD hosts public consultation on global anti-base erosion (GloBE) proposal under Pillar Two of BEPS 2.0 project*, dated 13 December 2019.

On 5 and 11 December 2019, Montenegro and Honduras respectively joined the BEPS Inclusive Framework, bringing the total number to 137. As new BEPS members, Montenegro and Honduras 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). Montenegro and Honduras 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 4 December 2019, the OECD Secretary General, Angel Gurria, sent a response letter to the US Treasury Secretary. In his letter, dated 3 December 2019, Mnuchin expressed that the US has "serious concerns" about aspects of the project to address the tax challenges of digitalization and suggested that the goals of Pillar 1 could be "substantially achieved" by making it a safe-harbor regime. In his letter, Angel Gurria thanked the Secretary for his strong support for the OECD discussions and a multilateral agreement on digital taxation and acknowledged that there is clearly a need for greater tax certainty and administrability with respect to the new rules, noting this is why the OECD proposal on a "Unified Approach" contains a very strong tax certainty dimension stating that "without it, there would be no conditions for achieving a consensus."

On 28 November 2019, the OECD released the seventh batch of peer review reports relating to the implementation by Brazil, Bulgaria, China, Hong Kong, Indonesia, Russia, and Saudi Arabia of the BEPS minimum standard on Action 14 (*Making Dispute Resolution Mechanisms More Effective*).

Overall, the reports conclude that five of the seven assessed jurisdictions meet the majority or most of the elements of the Action 14 minimum standard. Russia meets half of the elements of the Action 14 minimum standard, and Saudi Arabia meets less than half of the elements.

See EY Global Tax Alert, *OECD releases seventh batch of peer review reports on BEPS Action 14*, dated 3 December 2019.

On 26 November 2019, the OECD announced that Kenya and Oman signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). At the time of signature, Kenya and Oman submitted a list of its tax treaties in force that they would like to designate as covered tax agreements (CTAs). Together with the list of CTAs, Kenya and Oman also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI positions) with respect to the various provisions of the MLI. The definitive MLI positions for Kenya and Oman will be provided upon the deposit of its respective instrument of ratification, acceptance or approval of the MLI. As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Kenya and Oman did not opt in for mandatory binding arbitration.

On 26 November 2019, the OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). According to this latest update, Tunisia signed the CbC MCAA. The total number of jurisdictions that have joined the CbC MCAA is now 83.

On 21-22 November 2019, the OECD hosted a day and a half-long public consultation meeting on its document titled Secretariat Proposal for a "Unified Approach" under Pillar One (the Consultation Document), which was released by the OECD on 9 October 2019 in connection with the ongoing project on addressing the tax challenges of the digitalization of the economy. The OECD received over 300 written comment submissions on the Consultation Document. Representatives from business, labor groups, NGOs, and academia participated in the consultation to discuss their perspectives. The consultation was chaired by the French and US government officials who serve as co-chairs of the OECD Task Force on the Digital Economy. Numerous government officials from the 135 jurisdictions participating in the project through the Inclusive Framework attended the consultation but did not make public comments during the sessions. EY submitted a comment letter and a global team from EY participated in the consultation.

See EY Global Tax Alert, *OECD hosts public consultation on proposed "unified approach" under Pillar One of BEPS 2.0 project*, dated 27 November 2019.

European Union

At the EU Competitiveness Council (COMPET) meeting on 28 November 2019, ministers representing the 28 current EU Member States failed to reach agreement, in a majority vote, on whether tax and financial information contained within CbC reports should be made available to the public.

Of the Member States, 14 (Belgium, Bulgaria, Denmark, Finland, France, Greece, Italy, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, and Spain) voted in favor of the proposal, while 12 (Austria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Latvia, Luxembourg, Malta, Slovenia, and Sweden) voted against. Germany abstained, while the United Kingdom (UK) failed to vote.

As a result of the vote, amendments to the Directive will not be passed into law. It may, however, be revised and put forward to COMPET for approval a second time.

See EY Global Tax Alert, *EU: Public CbCR fails to move forward in latest European vote*, dated 4 December 2019.

On 26 November 2019, the European Commission published its infringements decisions against Member States for failing to comply with their obligations under EU law for the month of November. These decisions cover various sectors and EU policy areas and they aim to ensure the proper application of EU law.

In the context of taxation, the Commission decided, among others, to send reasoned opinions to Austria and Ireland asking them to transpose into national law the interest limitation rule as required by the EU's Anti-Tax Avoidance Directive (ATAD I). In addition, the Commission also decided to send reasoned opinions to Cyprus, Czech Republic, Germany, Greece, Italy, Luxembourg and Spain for their failure to communicate the national transposition measures on tax dispute resolution mechanisms in the EU (Council Directive 2017/1852) by the deadline of 30 June 2019. At the same time, the Commission decided to close infringement proceedings against Lithuania which has now fulfilled its obligations in this regard.

If these Member States do not act within the next two months, the Commission may decide to bring the case before the Court of Justice of the EU.

On 25 November 2019, the Council of the EU (the Council) published a report from the Code of Conduct Group (COCG) (the report) that encompasses the work of the COCG in the second half of 2019 under the Finnish Presidency of the Council. Among other issues, the report includes a detailed state of play on the EU list of non-cooperative jurisdictions for tax purposes. The report also includes new guidance, namely on notional interest deduction regimes, treatment of partnerships under criterion 2.2 (existence of tax regimes that facilitate offshore structures which attract profits without real economic activity) for screening jurisdictions, and on defensive measures towards non-cooperative jurisdictions. In addition, the report includes a list of new preferential regimes that the COCG has identified for review. This includes foreign source income exemption regimes that will be reviewed in 2020, based on the guidance issued in October 2019.

The report was endorsed during the Economic and Financial Affairs Council (ECOFIN) meeting of 5 December 2019.

See EY Global Tax Alert, *EU Code of Conduct Group issues update report, including new guidance*, dated 12 December 2019.

Argentina

On 21 November 2019, Joint General Resolutions No. 4632/2019 and 37/2019 (the Resolutions) issued by the Argentine Federal Tax Authority (Administración Federal de Ingresos Públicos, AFIP) and the Tax Collection Agency of the Buenos Aires Province (Agencia de Recaudación de la Provincia de Buenos Aires, ARBA) were published in the *Official Gazette*. The Resolutions regulate the reporting and payment procedure surrounding the Gross Receipt Tax (GRT) on digital services by substitute taxpayers (e.g., banks, credit card companies and other agents facilitating or managing payments) of nonresident parties to the Province of Buenos Aires Tax Authority (ARBA).

These substitute taxpayers will report and pay amounts withheld from the digital services under the forms, terms and other conditions established by General Resolution 2233 (SICORE System).

This general rule is part of a trend of collaboration among AFIP and provinces' tax administrations to collect jointly certain federal and provincial taxes. The Resolutions are in force as of 1 December 2019.

Austria

On 22 October 2019, Austria officially published the *EU-Mandatory Disclosure Act* (EU-Meldepflichtgesetz, referred to hereinafter as EU-MPfG) 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 final text of the Austrian EU-MPfG is broadly aligned with the Directive. In comparison to the Austrian draft bill released in May 2019, there have been no significant changes. The Austrian legislation will be effective from 1 July 2020.

See EY Global Tax Alert, *Austria passes bill to implement Mandatory Disclosure Rules*, dated 20 November 2019.

Belgium

On 26 November 2019, the Belgian Government published draft legislation and explanatory notes 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.

The Belgian draft legislation is subject to the formal legislative process and is unlikely to be amended before final enactment.

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

The newly issued guidance provides clarity on the interpretation of the Belgian MDR legislation and how the Belgian Government anticipates the reporting process to operate.

See EY Global Tax Alert, *Belgium issues draft mandatory disclosure regime legislation*, dated 5 December 2019.

Brazil

On 28 November 2019, the OECD released the seventh batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Brazil was among the assessed jurisdictions in the seventh batch.

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

See EY Global Tax Alert, *OECD releases Brazil Stage 1 peer review report on implementation of BEPS Action 14 minimum standard*, dated 4 December 2019.

Croatia

On 29 November 2019, the Croatian Parliament adopted changes to the Corporate Income Tax Law. Among others, the law implements rules for elimination and neutralization of hybrid mismatches that include double deduction or deduction in the source state and exclusion in the other state. It also introduces an exit tax that may apply when assets are transferred out of the state or when a company transfers tax residency to another state. The amendments will apply from 1 January 2020.

Czech Republic

On 28 November 2019 the Czech Parliament approved the MLI. The Czech Republic submitted its provisional MLI positions at the time of signature, listing its reservations and notifications. The approved MLI includes 52 tax treaties (CTAs) that the Czech Republic wishes to be covered by the MLI.

The Czech Republic now needs to finalize the national formalities and then it will need to deposit its instrument of ratification 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.

Czech Republic-Korea

On 28 November 2019, the Czech Republic – Korea (Rep.) Income Tax Treaty (2018) was approved by the Czech Parliament. This treaty will replace the former Czechoslovakia – Korea (Rep.) Income Tax Treaty (1992) once the new treaty enters into force and becomes effective.

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 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.

Estonia

On 4 December 2019, the Estonian Parliament ratified the MLI. Estonia submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and also including 58 tax treaties (CTAs) that it wishes to be covered by the MLI. Estonia 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.

On 15 November 2019, the law implementing the EU Tax Dispute Resolution Directive (2017/1852) entered into force in Estonia. The new dispute resolution rules (which are aligned to the Directive and aim to ensure effective resolution of disputes concerning the interpretation and application of bilateral tax treaties) include the following measures: (i) definitions of individuals and entities eligible for the dispute resolution mechanism; (ii) rights and obligations of the parties involved; (iii) timeline for the different procedures; (iv) procedures for complaint, appeal, settlement, dismissal, and withdrawal; and (v) establishment of an advisory committee or an alternative dispute settlement committee to resolve disputes.

The Directive applies in Estonia for complaints filed from 1 July 2019 for disputes in relation to tax periods beginning on or after 1 January 2018.

Finland

On 31 October 2019, the Finnish Government issued a government bill accompanied by explanatory notes to the Parliament 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 Finnish draft legislation is subject to the formal legislative process and may be amended before final enactment. If implemented as currently proposed, the Finnish MDR legislation will be broadly aligned to the requirements of the Directive.

The draft legislation is expected to be finalized by the end of 2019.

See EY Global Tax Alert, *Finland publishes draft proposal on Mandatory Disclosure Rules*, dated 26 November 2019.

Germany

On 10 December 2019, a first draft of the German ATAD implementation law was published. Besides the anti-hybrid rules, the draft includes significant transfer pricing driven changes concerning cross-border inter-company financing into Germany, changes to the German controlled foreign company (CFC) law and various other areas.

On 29 November 2019, the German Federal Council approved the draft bill on the implementation of the EU Tax Dispute Resolution Directive (2017/1852). The new German dispute resolution rules are closely aligned to the EU Directive and aim to ensure effective resolution of disputes concerning the interpretation and application of bilateral tax treaties.

Once enacted, the Directive will be applicable in Germany for complaints filed from 1 July 2019 for disputes in relation to tax periods beginning on or after 1 January 2018.

Guernsey

On 1 October 2019, the Guernsey Revenue Service published a Briefing Note on the MDR on Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures (the Note) providing a synopsis of the subject and a status update on Guernsey's implementation of MDR. According to the Note, the MDR will require promoters and service providers of avoidance schemes to disclose information on the arrangement or offshore structure to the Revenue Service, including the identity of the beneficial owner, which will then be exchanged with the tax authorities of the jurisdiction where the beneficial owner is resident. A CRS Avoidance Arrangement is any arrangement where it is reasonable to conclude it is designed to circumvent the CRS, whereas an Opaque Offshore Structure involves a passive entity that does not carry on substantive economic activity and where the identity of its beneficial owners is not clear. In both cases, the Note emphasizes that the arrangement or structure will be disclosed if it is reasonable to conclude that the intention of the arrangement or the structure is to circumvent the CRS or to obscure beneficial ownership, respectively. The Policy & Resources Committee in Guernsey intends to bring a policy letter to the States proposing the introduction of MDR in Guernsey before the end of 2019.

Guernsey-Isle of Man-Jersey

On 22 November 2019, Guernsey, the Isle of Man and Jersey published updated Guidance related to the economic substance requirements. The document provides clarifications on the scope and application of the economic substance legislation across the three jurisdictions and a comprehensive description of the core income generating activities for each relevant sector that must be performed in the jurisdiction to meet the economic substance requirements. The Guidance also includes specific references to the economic substance requirements applicable to insurance, shipping and intellectual property companies, which were not included in the previous version.

Hong Kong

On 28 November 2019, the OECD released the seventh batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Hong Kong was among the assessed jurisdictions in the seventh batch.

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

See EY Global Tax Alert, *OECD releases Hong Kong's Stage 1 peer review report on implementation of BEPS Action 14 minimum standard*, dated 9 December 2019.

Hong Kong-Macao

On 25 November 2019, Hong Kong and Macao signed a tax treaty (the Treaty). The Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements) and Action 14 (making dispute resolution mechanisms more effective).

In cases where a person other than an individual is resident in both Hong Kong and Macao (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement, the Contracting State of which the person shall be deemed to be a resident. Furthermore, the Treaty also enables taxpayers to present a case for MAP to the competent authorities of either Contracting State. The Treaty also 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.

The MLI has no effect on the Treaty as Macao has not signed the MLI, and though Hong Kong has signed the MLI, it has not included this Treaty as a CTA. For the MLI provisions to have effect on the Treaty, Macao would need to first sign the MLI, and then both jurisdictions would need to include the Treaty in their respective list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made by that respective jurisdiction.

See EY Global Tax Alert, *Hong Kong and Macao sign income tax treaty*, dated 5 December 2019.

Hungary

On 23 July 2019, the bill accepted by the Hungarian Parliament was published, among others, introducing exit taxation rules in Hungary, in order to align with the EU ATAD.

The Hungarian exit tax rules will not differ from the rules proposed by the Directive, i.e., provide for taxation on capital gains which are generated in Hungary, but are unrealized at the time of transfer in the following scenarios:

I. A transfer of tax residence to another country, with the exception of the assets which remain effectively connected with a permanent establishment (PE) located in Hungary

II. A transfer of assets from a Hungarian head office to its PE in another country, where Hungary loses the right to tax the transferred assets due to the transfer

III. A transfer of assets from a Hungarian PE to its head office or another PE in another country, provided that Hungary no longer has the right to tax the transferred assets due to the transfer

IV. A transfer of the business carried on by a Hungarian PE to another country if Hungary no longer has the right to tax the transferred assets due to the transfer

The exit tax rules provide for a tax of 9% (i.e., standard corporate income tax rate) on the difference between the market value and book value of the transferred assets which can be deferred for a period of five years in cases of a transfer of assets to another EU Member State or to a third country within the European Economic Area in line with the Directive.

The exit tax rules will be effective from 1 January 2020.

Ireland

On 17 October 2019, Ireland's Department of Finance published Finance Bill 2019 (as initiated) which primarily seeks to implement the tax elements of the 2020 Budget measures, clarifies aspects of the Budget announcements and also provides for previously unannounced measures.

The key measures include changes to Ireland's transfer pricing (TP) rules as signaled in the TP Feedback Statement issued last August and the introduction of anti-hybrid rules required by the EU's ATAD. Other proposed measures include the introduction of the new EU mandatory disclosure regime and amendments to the Research & Development regime. A number of additional measures have also been proposed to ensure that there will be no change in the treatment of certain transactions with UK companies in the event of a no-deal Brexit.

The key change for Ireland's TP rules is the application of the 2017 OECD Transfer Pricing Guidelines, superseding the previous 2010 version, which among other provisions updates the definition of the "arm's-length principle" and increases the focus on substance in intercompany transactions.

Other notable changes in the Bill include:

- Documentation – The standard for TP documentation is updated for consistency with Action 13 of the OECD's BEPS project, with Local File documentation compulsory for groups with global revenues over €50 million, as well as Master file documentation for groups with global revenues over €250 million
- Penalties – A new penalty regime for companies unable to provide TP documentation within 30 days of a Revenue request for documentation
- Extension to non-trading transactions – TP rules are extended to non-trading transactions, except for certain domestic transactions
- Extension to capital transactions – TP rules are extended to capital allowances and chargeable gains for transactions that exceed €25 million
- Grandfathering removal – The removal of the "grandfathering" provision for transactions commencing prior to 30 June 2010, which was originally introduced into Irish legislation at the time the 2010 OECD Guidelines were introduced.

The new rules apply for chargeable periods commencing on or after 1 January 2020. For more information see EY Global Tax Alert, *Ireland publishes Finance Bill 2019 – Transfer pricing updates*, dated 23 October 2019.

The Bill contains provisions to give effect to the anti-hybrid rules in the EU ATAD. Broadly speaking these rules are intended to counter tax avoidance strategies relying on a transaction, payment or legal entity being characterized differently in two taxing jurisdictions.

The rules have been the subject of public consultation and discussion with representative bodies. They are intended only to affect tax avoidance strategies where a tax advantage arises out of the "hybrid" feature of the arrangement. However, due to their complexity, it will be important for taxpayers engaged in international transactions to consider these rules, particularly since the US check-the-box regulations are a common source of hybridity and in certain situations can fall within the scope of the new rules.

These rules are scheduled to take effect for payments made or arising on or after 1 January 2020.

The draft Finance Bill 2019 is currently in the final stages of the legislative process.

Japan-Ecuador

On 28 November 2019, Japan and Ecuador exchanged the diplomatic notes for the entry into force of the tax treaty (the New Treaty). The New Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits inappropriate circumstances), Action 7 (preventing the artificial avoidance of permanent establishment status) and Action 14 (making dispute resolution mechanisms more effective).

The New Treaty contains the preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. It also contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both Japan and Ecuador (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. The New Treaty has a Principal Purpose Test. In the PE clause, the New Treaty contains an anti-fragmentation rule and the new definition of agency PE. Furthermore, the New Treaty includes the MAP provision.

It is expected that the New Treaty will not be further modified by the MLI, given that the New Treaty already incorporated the treaty-related BEPS minimum standards.

Japan-Peru

On 18 November 2019, Japan and Peru signed a new tax treaty (the New Treaty). The New Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits inappropriate circumstances), Action 7 (preventing the artificial avoidance of permanent establishment status) and Action 14 (making dispute resolution mechanisms more effective).

The New Treaty contains the preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. It also contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both Japan and Peru (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. The New Treaty has a Principal Purpose Test. In the PE clause, the New Treaty contains an anti-fragmentation rule and the new definition of agency PE. Furthermore, the New Treaty includes the MAP provision.

It is expected that the New Treaty will not be further modified by the MLI, given that the New Treaty already incorporated the treaty-related BEPS minimum standards.

Japan-Uruguay

On 13 September 2019, Japan and Uruguay signed a new tax treaty (the New Treaty). The New Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits inappropriate circumstances), Action 7 (preventing the artificial avoidance of permanent establishment status) and Action 14 (making dispute resolution mechanisms more effective).

The New Treaty contains the preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. It also contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both Japan and Uruguay (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. The New Treaty has a Principal Purpose Test. In the PE clause, the New Treaty contains an anti-fragmentation rule and the new definition of agency PE. Furthermore, the New Treaty includes the MAP provision.

It is expected that the New Treaty will not be further modified by the MLI, given that the New Treaty already incorporated the treaty-related BEPS minimum standards.

Latvia

On 22 October 2019, the Latvian *Official Gazette* published the Amendments on the Law on Taxes and Duties implementing the EU Tax Dispute Resolution Directive (2017/1852). The law amendments, which entered into force on 23 October, include 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 double taxation and requires the Latvian authorities to confirm receipt of such application within two months after receipt of the application. The law also provides rules for MAPs.

Malaysia

On 30 September 2019, the Ministry of Finance issued regulations ahead of the 1 January 2020 implementation of a 6% service tax on digital services (SToDS) provided by foreign service providers (FSP) to consumers in Malaysia, businesses and individuals alike. The subsidiary legislation largely serves to formalize a number of SToDS rules that were previously only addressed in a Royal Malaysian Customs Department guide, dated 20 August 2019. In general, any FSP that provides digital services to Malaysian consumers in excess of MYR500,000 (US$120,000) annually is required to register for SToDS, impose a 6% service tax on digital services provided to Malaysian consumers and file quarterly tax returns.

See EY Global Tax Alert, *Malaysia releases service tax guide on digital services*, dated 26 September 2019

Mexico

On 9 December 2019, the economic package submitted by Mexico's President Lopez Obrador on 8 September 2019, which was approved by Congress on 31 October, and signed by the President, was published.

Some of the most relevant approved changes are as follows:

i) Introduction of an interest expense limitation based on profit levels, i.e., taxpayers with a net interest expense of more than MxP$20 million (approximately US$1 million) will be subject to a deduction limitation equal to 30% of their "adjusted taxable income," as defined similar to

EBITDA (earnings before interest, taxes, depreciation and amortization). EBITDA may be considered at an individual level (i.e., company per company) or may be calculated at a "group" level (defined as all entities that are held by 51% or more by the same holding company). Non-deductible interest expense for each year may be carried forward for a period of ten years.

ii) Introduction of a new limitation of deductible expenses, when payments are made directly or indirectly, to residents of low-tax jurisdictions (defined as a jurisdiction with a less than 22.5% income tax rate subject to a business activity exemption) and hybrid entities. Payments derived from a business activity are exempted from this limitation.

iii) Expansion of the definition of PE in line with BEPS Action 7 recommendations.

iv) Anti-transparency rules, by which the fiscal transparency of an entity receiving payments from Mexico will be disregarded and treated as a resident of their country of incorporation.

v) Additional guidance on Mexico's CFC rules, which toughens the determination of the control clauses, as well as other limitations on the determination of "paid taxes" for purposes of assessing an entity as being subject of a low-tax jurisdiction.

vi) Incorporation of a new anti-avoidance rule (GAAR) whereby the Reform deems a business purpose to be lacking if the tax benefit is greater than the reasonably expected economic benefit.

(vii) Introduction of MDR in line with BEPS Action 12 for tax advisors and taxpayers.

(viii) An amendment to the Value-added Tax (VAT) Law to require digital service providers to collect VAT on the sale of certain goods and services in Mexico. It would also require income tax withholding on certain transactions with Mexican individuals.

Most of the Reform will be effective 1 January 2020, with exceptions for digital services rules and certain rules on fiscally transparent entities.

See EY Global Tax Alert, *Mexican Congress passes tax reform for 2020*, dated 5 November 2019.

Nigeria

On 21 and 28 November 2019, a bill proposing the introduction of the BEPS Action 4 recommendation on interest limitation was passed by the upper chamber and lower chamber of the Nations Assembly respectively. According to the bill, a 30% EBITDA rule restricting the amount of related-party interest that is deductible will be introduced. The proposed bill does not provide for a group ratio rule option but includes a carry forward option for interest expenditure on a related-party transaction not wholly deducted in an assessment year. However, the carry forward option is limited to five assessment years immediately succeeding the assessment year for which the excess interest expense was first computed. The new rule is expected to apply as of 1 January 2020.

Poland

On 29 November 2019 the Law on settlement of double taxation disputes and advance pricing agreements (APAs) entered into force in Poland.

The Law introduces significant changes in the Polish legislation which should improve the speed and effectiveness of the tax disputes resolution process. The changes also aim at making the law clearer for taxpayers through putting different provisions in one, consistent act.

The Law:

a) Introduces a new dispute resolution procedure in line with EU Council Directive 2017/1852, which should ensure a more effective and quicker resolution process for taxpayers.

b) Clarifies and arranges in a clear way legislation regarding double taxation procedures by putting different binding provisions in one act.

c) Amends and arranges in a clear way legislation regarding APAs; the changes should help make the APA process more efficient and taxpayer friendly.

d) Introduces a cooperative compliance program for the largest taxpayers in Poland.

Saudi Arabia

On 2 December 2019, the General Authority of Zakat and Tax (GAZT) launched an online portal for CbC reporting (CbCR). Taxpayers subject to the CbCR obligations as provided for by article 18 of the TP bylaws (notably every ultimate parent entity or, when applicable, surrogate parent entity of an MNE group as defined by the bylaws) are required to use the GAZT website to create an account and follow the instructions for submitting the required information and CbC report.

On 6 November 2019, Saudi Arabia ratified the MLI by way of Royal Decree No. 29 published in *Official Gazette* No. 97/4805 of 15 November 2019. Saudi Arabia submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and including 53 tax treaties (CTAs) that it wishes to be covered by the MLI.

In the ratified version of its MLI position, Saudi Arabia has made some modifications including the following:

I. The tax treaties with Albania and Mauritania have been added to the list of CTAs.

II. Saudi Arabia reserves the right for the entirety of article 5 (Application of Methods for Elimination of Double Taxation) not to apply to its CTAs.

III. Saudi Arabia reserves the right for the entirety of article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property) not to apply to its CTAs.

Saudi Arabia now needs to deposit its instrument of ratification of the MLI 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 Saudi Arabia on the first day of the month following the expiration of a period of three-calendar months beginning on the date of the deposit of such instrument with the OECD.

Slovenia

On 2 December 2019, the Slovenian tax authorities published guidance concerning the latest amendments to corporate income tax which will become effective as of 1 January 2020. Among others, the guidance provides for a detailed description of the implemented hybrid mismatch rules under the EU ATAD and EU Directive 2017/952 (2017) (ATAD 2).

On 13 November 2019, the Slovenian tax authorities published amendments to the guidance on the implementation and interpretation of tax treaties focusing on the impact that the MLI would have on tax treaties. Among others, the guidance includes explanation of: (i) the principal purpose test under the MLI; (ii) the impact of amended MLI rules on the tax residency of companies; (iii) the application of treaty benefits to PEs; (iv) the application of the beneficial withholding tax rates on dividend payments; and (v) the application of treaty benefits on realized capital gains on shares where the majority of value originates from real property.

Taiwan

On 10 December 2019, the Taiwan Ministry of Finance amended the safe harbor rules of the CbCR local filing requirement. According to the amended rules, the Taiwan entity will not be required to submit a CbC report if it meets either one of the following: 1) Taiwan entity's sum of the net operating revenue and non-operating revenue is lower than NTD3 billion; or 2) Taiwan entity's aggregated amount of cross-border controlled transactions is lower than NTD1.5 billion. This threshold is in line with master file and can be applied retroactively for reporting fiscal year 2017.

United Arab Emirates

On 4 December 2019, the United Arab Emirates (UAE) Ministry of Finance launched a website for CbCR. Pursuant to Article 3 of the Council of Ministers resolution no. 32 of 2019, any constituent entity of an MNE group that is resident for tax purposes in the UAE shall notify the competent authority of whether it is the ultimate parent entity (UPE) or the surrogate parent entity no later than the last day of the reporting fiscal year (RFY) of such MNE group.

Where a Constituent Entity of an MNE group that is resident for tax purposes in the UAE is not the UPE nor the surrogate parent entity, it shall notify the competent authority of the identity and tax residence of the reporting entity, no later than the last day of the RFY of such MNE group.

Ukraine–United Kingdom

On 30 October 2019, the Ukrainian Parliament passed a draft law ratifying the amending protocol, which was signed on 9 October 2017, amending the convention between Ukraine and the UK for the avoidance of double taxation with respect to taxes on income and on capital signed in London on 10 February 1993 (the Treaty).

The amending protocol is not yet in force. This will happen when both jurisdictions have completed their legislative procedures and have exchanged diplomatic notes.

The amending protocol contains the new preamble language that clarifies that the tax treaty is not intended to be used to create opportunities for non-taxation or reduced taxation through tax evasion and avoidance. Moreover, the Treaty 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). In cases where a person other than an individual is resident in both Ukraine 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.

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

The US Treasury Department (Treasury) and the Internal Revenue Service (IRS) have issued final and proposed regulations on the base erosion anti-abuse tax (BEAT) under Internal Revenue Code Section 59A (the final BEAT regulations and the 2019 proposed regulations, respectively). Both sets of regulations were published in the Federal Register on 6 December 2019.

The final BEAT regulations are largely consistent with the proposed BEAT regulations released on 13 December 2018 but adopt several significant changes. Most notably, and subject to certain exceptions, the final BEAT regulations generally exclude from the base erosion payment definition stock transferred to a foreign-related party in certain specified nonrecognition transactions. The 2019 proposed regulations would also allow taxpayers to elect to forego a deduction so that it is not taken into account as a base erosion tax benefit so long as the deduction is waived for all US income tax purposes.

See EY Global Tax Alert, *US final and proposed BEAT regulations provide some relief for taxpayers*, dated 9 December 2019.

On 3 December 2019, US Treasury Secretary Steven Mnuchin told the OECD that the US has "serious concerns" about aspects of the project to address the tax challenges of digitalization of the economy and suggested that the goals of Pillar 1 – which focuses on a new nexus concept and an approach for new and revised profit allocation rules –could be "substantially achieved" by making it a safe-harbor regime.

See EY Global Tax Alert, *US Treasury Secretary tells OECD that United States has "serious concerns" over Pillar 1*, dated 5 December 2019.

On 26 November 2019 and on 5 December 2019, the IRS released joint statements on the Exchange of CbC Reports which were signed between Germany and the US and between France and the US respectively. The joint statements explain that the two countries are negotiating a Competent Authority Agreement with the US to allow for the automatic exchange of CbC reports. The Joint Statement indicates that with respect to fiscal years of MNE groups commencing on or after 1 January 2018, the Competent Authorities intend to spontaneously exchange CbC reports for fiscal years of MNE groups commencing on or after 1 January 2018 and before 1 January 2019.

Uruguay

On 18 September 2019, Uruguay ratified the MLI by way of Law No. 19814. Uruguay submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and also including 20 tax treaties (CTAs) that it wishes to be covered by the MLI. Uruguay now needs to deposit its instrument of ratification of the MLI 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 Uruguay on the first day of the month following the expiration of a period of three-calendar months beginning on the date of the deposit of such instrument with the OECD.

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