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Global Tax Alert

The Latest on BEPS and Beyond

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EY Tax News Update: Global Edition

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Highlights

Looking forward in 2020 and beyond, it appears that the existing international tax system will face significant pressures. As society changes, taxation has to keep pace. A wave of legislative, regulatory and administrative changes is the result. Businesses must be prepared to manage these developments.

The newest policy challenge in the direct tax area relates to the OECD/Inclusive Framework on BEPS project that is addressing the challenges of the digitalized economy. The 137 countries around the table will have a critical meeting later this month with the aim of coming to a unified approach for adapting the international tax framework in such a way that it can cope with the pressure on the system created by the changes in society. The task at hand is not easy in light of the complex issues, and the varied perspectives and interests of the countries involved. It will be very interesting to see what 2020 brings and whether the OECD will be able to deliver on this project by the end of 2020, as was committed to the G20.

If the adaptation of the international tax framework does not happen in a global fashion, it will happen in a unilateral or regional fashion. We are seeing government actions that clearly go beyond what was proposed by the OECD and other international organizations in the context of the BEPS project. This varies from digital services taxes as an answer to the dissatisfaction with the

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current allocation of taxing rights, to diverted profits taxes and limitations on the deductibility of costs of a commercial nature as an expression of discomfort with the way the existing transfer pricing rules function. To address this issue, governments and international organizations are exploring new ways of providing multilateral tax certainty to businesses. All in all, 2020 and the coming years are promising to mark an era of remarkable transformation in the international tax framework that will also bring new opportunities and challenges to address.

OECD

On 23 December 2019, the OECD released additional guidance which is designed to give greater certainty to tax administrations and multinational enterprise (MNE) groups regarding the implementation and operation of BEPS Action 13 Country-by-Country (CbC) Reporting (CbCR). The new CbCR guidance (the Guidance) makes it clear that, under the BEPS Action 13 minimum standard, the automatic exchange of CbC reports filed under local filing rules is not intended.

The OECD also posted on its website a summary of CbCR notification requirements (the Summary) in Inclusive Framework (IF) member jurisdictions, to help MNE groups comply with the notification requirements in those jurisdictions where the MNE has constituent entities.

See EY Global Tax Alert, *OECD releases additional guidance on Country-by-Country Reporting and a summary of related notification requirements*, dated 13 January 2020.

Also on 23 December, the OECD released the third annual peer review report (the report) relating to the compliance by members of the BEPS IF with the minimum standard on Action 5 for the compulsory spontaneous exchange of certain tax rulings (the transparency framework).

The report covers 112 of the 137 current BEPS IF jurisdictions, including all IF members that joined prior to 30 June 2018 and Jurisdictions of Relevance identified by the IF prior to 30 June 2018. The report assesses the 2018 calendar-year period and contains 52 jurisdiction-specific recommendations. Further, the report indicates that by 31 December 2018 more than 18,000 tax rulings in scope of the transparency framework had been issued by the jurisdictions under review, and around 30,000 exchanges of information had taken place.

The report will be followed by a fourth annual review, to be performed in 2020, which is the end of the current agreed review period. In next year's peer review process, each assessed jurisdiction's efforts to address any shortcomings identified in the current peer review report will be monitored and an update on exchange of information statistics will be provided. The carrying out of reviews after 2020 will be subject to the agreement of the BEPS IF. First discussions on the rulings standard and the future peer review process will also take place in 2020.

See EY Global Tax Alert, *OECD releases third peer review report on Action 5 on the exchange of tax rulings*, dated 13 January 2020.

On 19 December 2019, the OECD announced that Jordan signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI), bringing the total number of jurisdictions to 93. At the time of signature, Jordan 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, Jordan 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 Jordan 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. Jordan did not opt in for mandatory binding arbitration.

Also, on the same date, Liechtenstein deposited its instrument of ratification, acceptance or approval of the MLI. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Liechtenstein confirmed its MLI positions, but it removed the treaty with Switzerland from its list of CTAs. The MLI will enter into force for Liechtenstein 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 its instrument of ratification, i.e., on 1 April 2020.

European Union

On 13 January 2020, the agenda highlights of the next Economic and Financial Affairs Council (ECOFIN) meeting, which will take place on 21 January 2020, was published. Among others, the Finance Ministers will discuss tax challenges arising from digitalization and they will take

stock of ongoing negotiations in the context of the OECD on the reallocation of profits of digital businesses and a minimum tax rate for MNEs. Also, another topic of the agenda will be the European Green Deal, i.e., a package of measures for a sustainable green transition.

On 27 December 2019, the Croatian Presidency of the Council of the European Union (EU) adopted its programme. During the first half of 2020, the Croatian Presidency commits, among others, to continue discussions on priorities and further steps to be taken in the area of direct and indirect taxation. The Croatian Presidency acknowledges that the current international tax rules should be adapted to globalization and digitalization in order to ensure fair and just taxation where value is created. Additionally, the Croatian Presidency will actively work towards ensuring tax transparency and security and preventing unfair tax practices, tax fraud and tax evasion. It will also use taxation measures to fight activities that contribute to climate change.

Aruba

On 18 December 2019, the Aruban Parliament approved legislation that implements the three-tiered approach (Master File and Local File and CbC reports) to the transfer pricing documentation requirement, as recommended by the OECD under BEPS Action 13. The rules are applicable for reporting fiscal years commencing on or after 1 January 2019.

According to the rules, all Aruban tax resident constituent entities that are ultimate parent entities (UPEs) of an MNE group with annual consolidated group revenue equal to or exceeding AWG1.5 billion (approximately €690 million) have to prepare and submit a CbC report to the Aruban Tax Inspector. Any other Aruban tax resident constituent entity of an MNE group will have to prepare and submit a CbC report to the Aruban Tax Inspector if the UPE is not resident in Aruba and any of the following conditions are met: (i) the UPE is not obliged to file a CbC report in its country of tax residence; (ii) there is an international agreement which permits automatic exchange of information (AEOI) between the jurisdiction where the UPE is tax resident and Aruba, but there is no competent authority agreement (CAA) which provides for AEOI of CbC reports in effect between these jurisdictions by the time for filing the CbC report; or (iii) the Aruba Tax Inspector has notified the constituent entity that there is a systematic failure to exchange the information by the country in which the UPE is a tax resident. If the MNE group has multiple Aruban tax resident constituent entities, and one or more of the aforementioned conditions are met, the MNE group can designate one of these constituent entities (the designated constituent entity) to fulfill the requirement to submit the CbC report. Notwithstanding the above, local filing of the CbC report will not be required if the multinational group appoints a surrogate parent entity (SPE) and other requirements are met. The CbC report should be submitted to the Aruban Tax Inspector within the 12-month period after the last day of the reporting fiscal year. Failure to timely and correctly submit the CbC report due to intent or gross negligence on the side of the reporting entity may trigger administrative penalties of up to AWG100,000 (approximately €50,000) or can be penalized as a criminal act (monetary penalty or imprisonment). Moreover, an Aruban constituent entity will need to notify the Aruban tax authorities whether it is the UPE, the SPE or a designated constituent entity no later than the last day of the fiscal year of the MNE group. If it is neither a UPE nor an SPE nor a designated constituent entity, it will have to inform the Aruban tax authorities of the identity of the UPE or SPE along with its tax residency no later than the last day of the fiscal year of the MNE group. For the fiscal year commencing on or after 1 January 2019, the notification obligation deadline has been extended by three months to 31 March 2020.

Furthermore, a master file and a local file must be included in the administration of every Aruban constituent entity of an MNE group subject to tax in Aruba, if the total consolidated group revenue of the fiscal year preceding the Aruban profit tax return year exceeds AWG100 million (approximately €50 million). The master file and local file should be included in the administration of the Aruban constituent entity within the term set for submitting the Aruban corporate income tax return. Failure to include the master file and local file in the administration can lead to reversal of the burden of proof and/or can penalized as a criminal act (monetary penalty or imprisonment).

Finally, a permanent establishment in Aruba of a foreign entity of an MNE group is also required to keep a master and local file in its administration if the above total consolidated group revenue threshold is surpassed.

Austria

In December 2019, the Austrian Ministry of Finance published guidance on the digital services tax. Among others, the guidance clarifies that: (i) the taxable subject is the online advertising service provider who is entitled to a fee

for the performance of an online advertising service; (ii) the taxable object will be advertisements on a digital interface, in particular in the form of banner advertising, search engine advertising and comparable advertising services; (iii) the 5% tax is imposed on the fee that the online advertising service provider receives from a client; and (iv) the tax claim arises at the end of the month in which the taxable service is provided.

Belgium

On 12 December 2019, the Belgian Parliament adopted legislation 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 Belgian legislation, which was published in the Belgian *Official Gazette* on 30 December 2019, will enter into force and be effective on 1 July 2020.

The final Belgian Mandatory Disclosure Rules (MDR) legislation is broadly aligned to the requirements of the Directive and its text is the same as the draft Belgian legislation was issued on 26 November 2019 as discussed in EY Global Tax Alert, *Belgium publishes draft proposal on Mandatory Disclosure Rules*, dated 17 December 2019.

See EY Global Tax Alert, *Belgium publishes legislation on Mandatory Disclosure Rules*, dated 8 January 2020.

Brazil

On 18 December 2019, the OECD and the Brazilian Revenue Authority (RFB) issued a joint report named Transfer Pricing in Brazil: Towards Convergence with the OECD Standard (the Joint Report), which outlines two potential options for aligning Brazil's transfer pricing rules with the OECD standard:

- Full and immediate alignment: The first option would immediately align the Brazilian transfer pricing rules with the OECD standard, including the arm's-length principle and the guidance for its application contained in the OECD Transfer Pricing Guidelines.
- Full and gradual alignment: The second option would involve the same full alignment, but the process would be structured in stages for gradual implementation. This alternative would allow the RFB to prioritize its needs and receive training and assistance from the OECD.

Alignment of Brazil's transfer pricing rules with the OECD standard is part of the process for membership in the OECD and is described as providing the benefits of increased tax certainty and prevention of double taxation. While there has been no official statement on when the alignment of the Brazilian transfer pricing rules with the OECD standard will occur, it is expected that a new transfer pricing law will be drafted by the RFB and could be voted on by the Brazilian Congress in the next few years.

See EY Global Tax Alert, *OECD and Brazilian Revenue Authority issue joint report on convergence of Brazilian transfer pricing rules with OECD standard*, dated 8 January 2020.

Bulgaria

On 31 December 2019, the *Bulgarian Corporate Income Tax (CIT) Act* was amended to clarify the deduction for the carry-forward of losses by a controlled foreign corporation (CFC). According to the amendments, tax losses from a CFC of a Bulgarian taxpayer will be deductible from any taxable profits for Bulgarian CIT purposes of the same CFC or another CFC in the same jurisdiction for the following five years.

In December 2019, the Bulgarian National Revenue Agency (NRA) circulated a letter announcing interim measures with respect to the temporary status of Bulgaria as a "non-reciprocal jurisdiction" under the Multilateral Competent Authority Agreement on the automatic exchange of Country-by-Country reports (CbC MCAA). As a "non-reciprocal jurisdiction," Bulgaria has committed to send CbC reports but will not receive CbC reports from its exchange partners.

In the letter, the NRA announced that, pending the restoration of the automatic exchange of CbC reports, it will request such CbC reports from its partner jurisdictions by means of the bilateral agreement for administrative cooperation in tax matters. For reporting fiscal year (RFY) 2018, Bulgarian constituent entities of foreign multinational groups will not be required to locally file a CbC report in Bulgaria.

Chile

On 9 January 2020, the Chilean Government announced that the Chilean Chamber of Deputies approved the MLI. Next steps would be the discussion in the Senate and in the Commission of Foreign Affairs. Chile submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and also including 34 tax treaties (CTAs) that it wishes to be covered by the MLI. After the legislative

process is finalized, Chile would need 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.

Colombia–United Kingdom

On 13 December 2019, Colombia and the United Kingdom (UK) confirmed that they had completed the approval process for the Treaty to Avoid Double taxation between Colombia and the UK (the Treaty) to have effect. The Treaty applies from 1 January 2020 for Colombia. For the UK, the Treaty will generally apply from 1 April 2020; however it applies from 1 January 2020 in respect of taxes withheld at source.

The Treaty follows several recommendations of the OECD BEPS project (which the treaty explicitly notes should be interpreted under the OECD commentaries), including:

- A principal purpose clause prohibiting use of the Treaty's benefits when there is no verified business purpose
- Robust rules on cooperation between the tax authorities (e.g., the exchange of information and cooperation in tax collection)
- Updated rules on permanent establishments
- A mutual agreement procedure to resolve residence conflicts for companies

In addition, the Treaty introduces certain thresholds for withholding tax rates (WHT) rates. Under the Treaty, technical services, technical assistance and consultancy services are not taxed in the source state, unless there is a permanent establishment in that source state.

See EY Global Tax Alert, *Colombia-UK tax treaty will enter into force in 2020*, dated 20 December 2019.

Costa Rica

On 18 December 2019, a draft resolution relating to the procedure and requirements for obtaining an advance pricing agreement (APA) from the tax administration was published in the *Official Gazette* of Costa Rica for public consultation. Along with the information and required documentation to be included in the request for obtaining an APA, the draft Resolution establishes, among other items: (i) the definition of an APA and designation of the competent authority; (ii) the minimum requirements to be included in the APA; (iii) the procedure to amend an APA where either circumstances have changed significantly, upon request of the taxpayer or the tax administration; and (iv) a condition that all information related to an APA will be subject to spontaneous exchange of information.

On 13 November 2019, Resolution DGT-R-49-2019 (the Resolution) was published in the *Official Gazette* of Costa Rica. The Resolution stipulates new guidelines for transfer pricing documentation (i.e., master file and a local file) and it repeals Resolution DGT-R-16-2017 (see *The Latest on BEPS*, dated 8 May 2017).

The new guidelines provide that all taxpayers conducting transactions with related companies must retain documentation (for a period of five years if it is required by the tax administration) that supports their position that their intercompany transactions are at conducted at market value, as well as documentation that allows the tax authority to understand the operation and structure of the business group.

The documentation that must be prepared by the taxpayers is based on the recommendations in OECD BEPS Action 13, with some additional requirements that go beyond OECD BEPS Action 13.

The Resolution is effective as from 13 November 2019.

See EY Global Tax Alert, *Costa Rica modifies transfer pricing documentation regulations*, dated 16 December 2019.

On 29 October 2019, the president of Costa Rica signed Law No. 9751 ratifying the MLI. Costa Rica submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and including three tax treaties that it wishes to be covered by the MLI (CTAs). Costa Rica 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.

Denmark

On 17 December 2019, the Fiscal Affair Committee of the Danish Parliament announced a public hearing with respect to the proposed amendments to the Danish CFC rules. The proposal to transpose CFC rules in line with the EU Anti-Tax Avoidance Directive (ATAD) was published on 6 November 2019 but was strongly criticized by Danish companies and trade associations as the new rules would

entail large administrative costs for domestic companies putting them at a competitive disadvantage. The hearing will take place on 15 January 2020 and aims to provide the Fiscal Affairs Committee with a greater understanding of the consequences for businesses and how other EU Member States have implemented the rules in order to achieve a balanced and robust CFC legislative proposal. The proposed legislation has therefore been delayed due to the above developments and will not be implemented as of January 2020 as originally expected.

Dominican Republic

On 20 December 2019, the Budget Law No. 506-19 was published by the Executive Branch. Its accompanying report mentions the application of an indirect tax on the sale of digital services consumed in the Dominican Republic, as part of the tax policy for the year 2020, to increase tax revenues. Current value-added tax (VAT) regulations already provide legal basis to levy VAT on digital services consumed in the Dominican Republic. It is expected that the Dominican Tax Authority will implement new collection mechanisms to facilitate direct compliance for nonresident providers of digital services, through self-assessment under a simplified procedure.

Estonia

On 13 December 2019, the Estonian President signed the law ratifying the MLI and it was published officially on 18 December 2019. Estonia submitted its provisional MLI positions at the time of signature, listing its reservations and notifications and also including 58 tax treaties that it wishes to be covered by the MLI (CTAs). As the domestic ratification process is now complete, Estonia 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.

Finland

New rules on the taxation of certain cross-border hybrid mismatches and exit tax rules in line with the EU ATAD entered into force on 1 January 2020. The provisions are largely in line with the Directive provisions and will be applicable for the first time for the tax assessment year 2020, i.e., financial years ending in 2020.

Germany

On 11 December 2019, a first working draft of the German law to implement the EU ATAD I and II was published for consultation. The Draft Law includes significant changes to the German taxation of cross-border transactions which partly go beyond those mandated by the EU directives and includes proposed changes in the following areas:

- Anti-hybrid rules
- Cross-border Intercompany financing
- Taxation of cross-border asset transfers/exit taxation
- CFC rules
- General transfer pricing
- APAs

While it was initially expected that bill would be introduced into the legislative process by year end 2019, the adoption of the draft law has now been postponed with the legislative process expected to start in early 2020.

For more information, see EY's Global Tax Alert, *Germany publishes draft ATAD implementation law*, dated 12 December 2019.

Guernsey

On 31 December 2019, the Revenue Service of Guernsey published Bulletin 2019/4 on CbC reporting (the Bulletin). Among others, the Bulletin outlines the legal instruments and resources that establish the current list of jurisdictions having a relevant CAA with Guernsey for purposes of CbC reporting and it also includes guidance regarding the practical aspects of such reporting.

Iceland

On 20 December 2019, the Minister of Financial and Economic Affairs put forward a bill proposing amendments of Article 57 of the *Icelandic Act On Income Tax no. 90/2003* in relation to transfer pricing documentation.

If the bill is adopted, the tax authorities will have authorization to impose administrative fines up to ISK4 million if rules on transfer pricing documentation are violated, i.e., documentation is not in place.

The amendment will come into effect immediately upon adoption.

Indonesia

On 25 November 2019, a regulation on e-commerce trading was issued to regulate several aspects of e-commerce trading including compliance, legal and tax. While it is not a tax regulation, it is likely to have tax implications for international e-commerce business.

Any international e-commerce business that actively offers and/or conducts e-commerce activities to consumers domiciled in Indonesia may be deemed to have physical presence and carry out business activities in Indonesia if they exceed certain thresholds with respect to the number of transactions, transaction value, number of shipping packages and amount of traffic or access. The thresholds are to be set by subsequent regulations. If the thresholds are exceeded, an international e-commerce business is required to appoint a tax representative in Indonesia. Any local and international e-commerce activities in Indonesia are subject to prevailing tax laws and regulations.

There are transitional periods under this regulation, any e-commerce business that has conducted e-commerce activities in Indonesia before the enactment of the regulation must comply within two years after the effective date, i.e., by 25 November 2021.

See EY Global Tax Alert, *Indonesia issues e-commerce trading regulation*, dated 15 January 2020.

On 12 November 2019, Indonesia ratified the MLI by way of Presidential Decree No. 77 of 2019. Indonesia submitted its provisional MLI positions at the time of signature in June 2017, listing its reservations and notifications and included 33 tax treaties that it wishes to be covered by the MLI (CTAs). In the ratification, Indonesia listed 47 CTAs and some changes to reservations. As the next step, Indonesia 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. As of 14 January 2020, the deposit procedures have not been performed by Indonesia but these are expected in early 2020, such that the MLI changes are likely to enter into effect in Indonesia as of 1 January 2021.

Ireland

On 23 December 2019, guidelines for requesting mutual agreement procedure (MAP) assistance in Ireland were published by the Irish tax authorities. The guidelines reflect Ireland's ratification of the MLI, which entered into force for Ireland on 1 May 2019 and covers the process through which taxpayers can request assistance from the Irish tax authorities to resolve tax disputes. The guidance addresses the following:

- Legal basis for a MAP request
- How to make a MAP request
- Resolution of a MAP request
- Correlative adjustments

One of the more significant updates is that MAP requests can now be made to the Competent Authorities of either country where that treaty partner has adopted this MAP provision and has ratified the MLI. Furthermore, the guidelines provide clarification that audit settlement agreements between tax authorities and taxpayers do not preclude access to a MAP.

For more information, see *The Latest on BEPS and Beyond*, dated 17 December 2019.

On 22 December 2019, the President of Ireland signed the Finance Bill 2019 into law. Along with the transposition of the DAC6 into national legislation, the most significant measures from a corporate tax perspective are: (i) the introduction of new EU ATAD-compliant anti-hybrid rules effective for payments made on or after 1 January 2020; (ii) the modernization of transfer pricing rules in line with the OECD 2017 Transfer Pricing Guidelines; (iii) the increase of the rate of dividend WHT from 20% to 25% (there are extensive exemptions available); (iv) an amendment to the rules on the amount of tax deduction available for foreign taxes on income under domestic law (this amendment is intended to codify the Irish tax authorities' view on this matter and does not change the relief available under a tax treaty); and (v) clarifying amendments to the current exit tax rules which have been effective in Ireland since 10 October 2018.

Italy

On 27 December 2019, the Italian Parliament approved the 2020 Budget Law, which was published in the *Official Gazette* of 30 December 2019 (the Law). The Law amends, among others, the rules on digital services tax (*imposta sui servizi digitali*, DST), which were introduced by Law No. 145 of 30 December 2018 (the Budget Law for 2019).

The Law introduces a 3% indirect tax applicable to the revenues derived from the provision of certain digital services (Italian DST) by building on the Italian DST measure already contained in the 2019 Budget Law but never entered into force in the absence of a required implementing decree.

The new Italian DST is effective as of 1 January 2020 without the need of any implementing decree.

See EY Global Tax Alert, *Italy approves 2020 Budget Law*, dated 9 January 2020

Lithuania

On 12 November 2019, a proposal to amend the CIT Law was issued by the Lithuanian Ministry of Finance. Among other measures, the proposal contains amendments to the CIT Law to implement the anti-tax avoidance measures related to hybrid mismatches and exit taxation under the EU ATAD.

The new rules in the Lithuanian CIT Law considering, among other measures, the anti-tax avoidance measures related to hybrid mismatches and exit taxation under the EU ATAD were already implemented and came into force starting 1 January 2020.

Luxembourg

On 19 December 2019, the Luxembourg Parliament voted and adopted the Luxembourg budget law for 2020 (Budget Law 2020). The law was published on 23 December 2019 in the Luxembourg *Official Gazette*. The Budget Law 2020 introduces a new provision pursuant to which rulings obtained before 1 January 2015 cease to have binding legal effect at the end of Fiscal Year 2019. This new provision also foresees the possibility of submitting a new ruling request in order to replace an expired ruling provided that this ruling submission is in line with current requirements applicable in Luxembourg for ruling requests.

See EY Global Tax Alert, *Luxembourg Government submits draft Budget Law 2020 to Parliament – Pre-2015 tax ruling to expire with tax year 2019*, dated 15 October 2019.

Also on 19 December, the Luxembourg Parliament voted and adopted the Luxembourg law implementing Council Directive 2017/952 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD 2). The law was published on 23 December 2019 in the Luxembourg *Official Gazette*. The new law covers hybrid mismatches not yet covered by Luxembourg's current anti-hybrid provisions, such as imported mismatches, hybrid transfers, tax residence mismatches, and reverse hybrid mismatches. Most of the provisions included in the new law apply as from fiscal years starting on or after 1 January 2020, with the exception of the provision targeting reverse hybrid mismatches which will apply as from fiscal years closing starting on or after 1 January 2022.

For more information, see EY's Global Tax Alerts, *Luxembourg Parliament adopts draft law implementing EU ATAD 2 on hybrid mismatch arrangements*, dated 19 December 2019 and *Luxembourg implements EU ATAD 2 – A detailed review*, dated 14 January 2020.

On 11 December 2019, the Luxembourg Parliament voted and adopted the Luxembourg law implementing the EU Tax Dispute Resolution Directive (2017/1852). The law was published on 23 December 2019 in the Luxembourg *Official Gazette*.

The new dispute resolution rules aim to ensure effective resolution of disputes concerning the interpretation and application of bilateral tax treaties and include among things: (i) rules for the establishment of tax dispute settlements with EU Member States or tax treaty states; (ii) a description of the initiation procedure for the first notice of double taxation and the documentation to be sent within three years; (iii) timeline for the tax administration to complete the required steps; (iv) procedures for establishing an advisory commission to resolve disputes; and (v) information on the scope of the application.

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

Malta

On 24 December 2019, Malta transposed the provisions of the EU Council Directive 2017/952 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (ATAD 2) into domestic law. The adopted rules do not go beyond the minimum requirements set forth in the Directive. The Regulations entered into force on 1 January 2020, with the exception of the rules relating to reverse hybrid mismatches, which will come into effect as from 1 January 2022.

Netherlands

On 27 December 2019, the enacted 2020 Budget Day Proposals and several accompanying legislative proposals were published in the Dutch *National Gazette*. These enacted proposals include, among others, legislation implementing DAC6 and the hybrid mismatch rules as part of ATAD 2.

The enacted legislative proposals are effective as of 1 January 2020. However, the hybrid mismatch rules with respect to reserve hybrid entities will come into effect as of 1 January 2022.

For more information, see *The Latest on BEPS and Beyond*, dated 15 October 2019.

On 20 December 2019, a Decree on the MAP-tiebreaker rule for dual resident companies was published in the Dutch *National Gazette*. The Decree is effective as of 21 December 2019 and reflects the application of MAP regulations under the MLI which in general came into effect as of 1 January 2020. It covers the process through which taxpayers can request assistance from a Competent Authority to resolve tax disputes in accordance with the MAP-tiebreaker rules in the relevant tax treaty and clarifies that the MAP request can be initiated in both treaty states and the timeline under which the Netherlands aims to finalize MAP procedures (i.e., within six months).

Furthermore, the Decree includes the approval that no new request for a mutual consultation procedure is required for legal entities of which the place of residence has already been determined based on the corporate-tiebreaker, on the condition that the facts and circumstances did not change in the meantime.

On 17 December 2019, the Dutch Senate approved the Dutch draft legislation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Dutch legislation entered into force on 1 January 2020 and will be effective from 1 July 2020, following publication in the *Official Gazette* on 27 December 2019.

The final Dutch MDR legislation is broadly aligned to the requirements of the Directive.

See EY Global Tax Alert, *Netherlands passes Act to implement Mandatory Disclosure Rules*, dated 7 January 2020.

Norway

With effect from 1 January 2020, the previous non-statutory general anti-avoidance rule (GAAR) was codified. The new statutory GAAR is similar to the previous GAAR with respect to scope, content and threshold for application with some exemptions. The statutory GAAR will, e.g., apply for both direct tax and VAT purposes. The statutory GAAR will apply if it is: (i) determined that the main motive of the transaction or arrangement is to achieve tax effects; and (ii) whether the transaction giving rise to the tax benefit is abusive. In this respect, items such as the following will be assessed:

- The value and effects of the transaction
- The value of the tax benefit
- Whether the transaction is appropriate to achieve the financial purpose of the transaction
- Whether the outcome of the transaction could have been achieved via other means
- The applicable tax rules and whether the goals of the rules are circumvented

If the GAAR can be applied, the transaction shall be taxed as if the transactions had been completed in a manner that reflects the financial substance.

Panama

On 31 December 2019, Resolution No. 201-9411 (the Resolution), issued by the Ministry of Economy and Finance for Panama, was published in the *Official Gazette*. The Resolution extends the CbC reporting deadline for MNE groups with a reporting fiscal year ending between 31 December 2018 and 31 January 2019 to 31 January 2020.

The Resolution is effective as from its date of publication.

For more information on the establishment of Panama's regulatory framework for CbC reporting see our previous edition of *The Latest on BEPS*, dated 28 June 2019.

Romania

On 23 December 2019, the Romanian Ministry of Finance published a draft bill implementing the Council Directive 2017/952 amending Directive (EU) 2016/1164 regarding hybrid mismatches with third countries (ATAD 2). The rules on hybrid mismatches (including the ones in the original ATAD Directive) have not been transposed in the Romanian legislation up to now. If approved, the measures will be effective once the law is published in the *Official Gazette*.

Sri Lanka

On 17 December 2019, Sri Lanka's Inland Revenue Department (IRD) issued a notice listing requirements for filing of CbC reports by MNE groups in Sri Lanka (the notice).

According to the notice, all Sri Lanka tax resident constituent entities that are UPEs of a multinational group with annual consolidated group revenue equal to or exceeding LKR115 billion (approximately €575 million) have to prepare a CbC report. Any other entity of the group that is resident in Sri Lanka will have to prepare and submit the CbC report if the UPE is not resident in Sri Lanka and any of the following conditions are met: (i) it is not obliged to file a CbC report in its country of residence; (ii) there is an international agreement which permits automatic exchange of information between the jurisdiction where the UPE is resident and Sri Lanka, but there is no QCAA in effect between these jurisdictions by the time for filing the CbC Report; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. Notwithstanding the above, local filing will not be required if the MNE group appoints an SPE and other requirements are met. The CbC report should be submitted within the 12-month period after the last day of the RFY. Failure to submit the CbC report will trigger an immediate penalty of LKR250,000. Moreover, a Sri Lanka constituent entity will need to notify the tax authorities whether it is the UPE or SPE no later than 31 December 2019 if the fiscal year of the MNE group starts from 1 April 2019 and by 31 December 2020 if the fiscal year of the MNE group starts from 1 January 2020. If it is neither a UPE nor an SPE, it will have to inform the tax authorities of the identity of the UPE or SPE along with its tax residency within the same deadlines. The notification should be submitted via a specific form and be sent either by e-mail or by post.

United Arab Emirates

On 5 January 2020, the United Arab Emirates' (UAE) Ministry of Finance published frequently asked questions (FAQs) on the application of economic substance regulations (ESR), enacted on 30 April 2019. For more information on the ESR see *The Latest on BEPS and Beyond*, dated 15 October 2019.

The FAQs address (among other items) the following matters:

- The scope of the regulations (clarifications on the persons subject to the ESR, including foreign entities and offshore entities, as well as persons that do not realize any income during the reporting year)
- A "substance over form" approach is used in determining whether an entity performs a Relevant Activity
- Specific aspects of how substance can be demonstrated in the UAE including clarification on the rules for specific types of businesses such as holding companies and high-risk IP companies
- Clarification on the deadlines for notification requirements and applicable penalties

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