18 February 2020

Global Tax Alert

The Latest on BEPS and Beyond

February 2020

Highlights

The World Economic Forum meetings in Davos during the third week of January marked the start of a wave of tax policy publications. The Inclusive Framework project on addressing the tax challenges of the digitalization of the economy took center stage, with both a Statement being released by the OECD on Pillar One and Pillar Two of this project, and the first indications on an impact assessment becoming available. The Statement itself mainly brought a new workplan on Pillar One and an update on Pillar Two. The impact assessments interestingly showed that the expectation is that the combination of both pillars will raise tax revenues by 4%, of which the biggest part is generated by Pillar Two.

However, policy developments were not limited to the digital tax issues. The 2020 review of the OECD/G20 minimum standard on Country-by-Country reporting (Action 13) was announced by the OECD and started off with a public consultation.

Moreover, the OECD on 11 February also released the long-awaited final report with transfer pricing guidance on financial transactions. The Report represents the first time that guidance on financial transactions is included in the OECD Transfer Pricing Guidelines.

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our EY Global Tax Alert Library on ey.com.

EY

Building a better working world

Finally, the publication of the 2020 Work Programme of the European Commission shows that the new Commission is up and running and eager to work on business taxation for the 21st century with an action plan to fight tax evasion and make taxation simple and easy. In the fighting of tax evasion, exchange of information is expected to be the key tool. As a first step, on 7 February 2020, a public consultation was opened on the collection and exchange of data from digital platform providers.

All in all, it appears that there will not be many dull moments in the international tax environment during 2020. This Alert will continue to report on all these developments on a monthly basis.

OECD

On 14 February 2020, the OECD released the OECD's Secretary-General Report (the report) to G20 Finance Ministers and Central Bank Governors. The report, which consists of two parts, will be provided to the G20 Finance Ministers and Central Bank Governors meeting in Riyadh, Saudi Arabia on 22-23 February 2020.

Part I is an update of the activities and achievements of the OECD's ongoing tax agenda and future progress needed, specifically through the OECD/G20 Inclusive Framework (IF) on BEPS. Part II is a progress report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes. The report also includes five annexes, including an update on the jurisdictions participating in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the current overall exchange of information on request (EOIR) peer review ratings and the automatic exchange of information (AEOI) commitments.

On 11 February 2020, the OECD released its final report with transfer pricing guidance on financial transactions (the Report). The Report has been published as follow up guidance in relation to BEPS Action 4 and Actions 8-10. It aims to clarify the application of the principles included in the 2017 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG), in particular the accurate delineation analysis under Chapter I, to financial transactions. The Report represents the first time that guidance on financial transactions is included in the OECD TPG, which should contribute to consistency in the application of transfer pricing and help reduce transfer pricing disputes and double taxation.

The Report covers the accurate delineation of financial transactions, in particular with respect to multinational enterprises' (MNEs) capital structures. The Report also addresses specific issues related to the pricing of financial transactions such as treasury functions, intra-group loans, cash pooling, hedging, guarantees, and captive insurance. It also provides guidance on the determination of risk-free rates of return and risk-adjusted rates of return where an associated enterprise is entitled to such return under the guidance in Chapter I and Chapter VI of the OECD TPG. The Report also includes a number of examples to illustrate the principles discussed.

See EY Global Tax alert, *OECD releases final transfer pricing guidance on financial transactions*, dated 11 February 2020.

On 6 February 2020, the OECD released a public consultation document on the review of Country-by-Country (CbC) reporting (the Consultation Document). The Consultation Document is based on the mandate set out in the 2015 BEPS Action 13 final report (Transfer Pricing Documentation and Country-by-Country Reporting) for a 2020 review of CbC reporting. The Consultation Document contains topics concerning the implementation and operation of BEPS Action 13, the scope of CbC reporting, the content of a CbC report, and other aspects of BEPS Action 13 (the master file and local file). The topics discussed in the Consultation Document reflect issues where interpretative guidance has not resulted in a consistent approach to be applied by all jurisdictions and issues that can only be addressed through a change to the minimum standard, which would require agreement in the Inclusive Framework, the group of 137 interested countries and jurisdictions participating on an equal footing in the development of standards on BEPS-related issues.

Interested parties are invited to submit their comments on the questions raised within the Consultation Document and on all aspects of the BEPS Action 13 report by 6 March 2020. The public consultation meeting on the 2020 review of BEPS Action 13 will be held on 17 March 2020.

See EY Global Tax alert, *OECD releases Consultation Document on the review of Country-by-Country Reporting*, dated 11 February 2020.

On 31 January 2020, the OECD released a Statement by the Inclusive Framework on BEPS on the *Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy* (the Statement). According to the Statement, the 137 members of the Inclusive Framework have affirmed their commitment to reach an agreement on new international tax rules by the end of 2020.

Attached to the Statement are more detailed documents, including an outline of the architecture and a revised workplan for Pillar One, relating to revised nexus and profit allocation rules, and a progress update on Pillar Two, relating to new global minimum tax rules. With respect to Pillar One, the Inclusive Framework has endorsed a unified approach as the basis for the ongoing negotiation of a consensus-based solution. With respect to Pillar Two, the Inclusive Framework has welcomed the progress that has been achieved to date.

With respect to both Pillars, the documents include new details on the proposed approaches and identify key issues under consideration and areas where more work is to be done in the coming months.

See EY Global Tax alert, *OECD documents on BEPS 2.0 include new details and identify issues under consideration on Pillar One and Pillar Two*, dated 7 February 2020.

On 29 January 2020, the OECD announced that North Macedonia signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI), bringing the total number of jurisdictions to 94. At the time of signature, North Macedonia 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, North Macedonia 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 North Macedonia 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. North Macedonia did not opt in for mandatory binding arbitration.

On 23 January 2020, Cyprus and Saudi Arabia, and on 6 February 2020, Uruguay deposited their 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, Cyprus confirmed its MLI positions, but it removed the treaties with Germany, Switzerland and the United Kingdom from its list of CTAs and it added the treaty with Saudi Arabia. Cyprus also removed the reservation of article 35(7)(a) on entry into effect. Saudi Arabia confirmed its MLI positions and added the treaties with Albania and Mauritania to its list of CTAs. It also added a reservation for the entirety of Article 5 (application of methods for elimination of double taxation) and article 9 (capital gains from immovable property) not to apply to its CTAs and it removed the reservation of article 17 (corresponding adjustments). Uruguay confirmed its MLI positions without making any changes. The MLI will enter into force for Cyprus, Saudi Arabia and 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 their instrument of ratification, i.e., on 1 May 2020 for Cyprus and Saudi Arabia and on 1 June 2020 for Uruguay.

European Union

On 7 February, the European Commission opened a public consultation on the topic of improved exchange of tax information, focusing on the collection and exchange of data from digital platform providers.

The specific objectives of the Commission would be to update the Directive on Administrative Cooperation (Directive 2011/16/EU also known as the "DAC") to include the ability for tax administrations to first collect and then exchange taxpayer data from digital platform providers, delivering a common European Union (EU) reporting standard in this area.

The Commission has asked for public input by 6 March 2020. As with all European Commission public consultations, feedback is given via a web-based survey platform. The Commission hopes to publish a draft directive (i.e., an amending Directive) in the second half of 2020.

See EY Global Tax Alert, *European Commission opens public consultation into collection and exchange of taxpayer information from digital platform providers*, dated 17 February 2020.

On 6 February 2020, the EU Code of Conduct Group (Business Taxation) (COCG or the Group) published its six-month Work Programme (the Work Programme), setting out anticipated activity during the course of the EU's Croatian Presidency.

Among other things, the Work Programme confirms that the COCG will: (i) conclude the screening of the potentially harmful tax regimes (including the Foreign Source Income Exemption regimes) of a number of jurisdictions; (ii) continue the monitoring of commitments made by jurisdictions under the EU's listing of non-cooperative jurisdictions for tax purposes; (iii) continue its work screening the tax regimes of Argentina, Mexico and Russia; and (iv) also schedule a coordination meeting with the Chairs and secretariats of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the Forum on Harmful Tax Practices (FHTP) and Inclusive Framework on BEPS.

The Work Programme also notes that the EU list of non-cooperative jurisdictions for tax purposes will be revised by the Economic and Financial Affairs Council (ECOFIN) on 18 February 2020.

See EY Global Tax alert, *EU Code of Conduct Group publishes six-month Work Programme under EU's Croatian Presidency*, dated 11 February 2020.

On 31 January 2020, the European Commission published the fourth edition of its Tax Policies in the European Union Survey (the report). The report examines how Member States' tax systems perform in terms of fighting tax abuse, promoting sustainable investment, supporting job creation and employment, and mitigating inequalities. To this end, the report presents the main indicators used by the Commission to analyze tax policies in the context of the European Semester and substantiates the tax policy priorities of the Commission's Annual Sustainable Growth Strategy. It also includes an overview of recent tax reforms at both the EU and Member State level.

On 29 January 2020, the European Commission adopted its 2020 Work Programme. The Work Programme, as an accompanying press release notes, sets out the actions the Commission will take in 2020 to turn the Political Guidelines of President Ursula von der Leyen into tangible benefits for European citizens, businesses and society.

Representing the first major document of this type issued by the new executive layer of the Commission, the Work Programme sets out 43 new policy objectives, categorized under six headline ambitions. It outlines two key tax initiatives, both of which would be new plans, including:

- A Communication on Business Taxation for the 21st Century
- An Action Plan to Fight Tax Evasion and make taxation simple and easy

See EY Global Tax alert, *European Commission publishes 2020 Work Programme, including two tax initiatives*, dated 31 January 2020.

On 21 January 2020, ECOFIN held a meeting where they discussed, among others, digital taxation. Finance Ministers had an exchange of views on tax challenges arising from digitalization and acknowledged that the OECD was working against a tight deadline to reach a global consensus by the end of 2020. The Presidency concluded that it would continue attending international meetings on this issue and it will organize technical discussions in ECOFIN to prepare, as far as possible, negotiations taking place at the OECD and address Member States' concerns. ECOFIN also discussed the financial and economic aspects of the European Green Deal.

Argentina

On 14 January 2020, General Resolution 4662 (the Resolution), issued by the Argentine Federal Tax Authority (Administración Federal de Ingresos Públicos, AFIP) and regulating the reporting and payment of the withholding tax on the distribution of profits by permanent establishments (PEs), was published in the *Official Gazette*.

The tax determination must be reported by filing online affidavit F. 1358 through the AFIP's website on a monthly basis where distributions have been made in the relevant month. Payments must be made by electronic transfer. Both filing of the online affidavit and payment of tax must be carried out by the 15th day of the month following that for which the report has been made.

The Resolution, which has been effective since 14 January 2020 applies to distributions made in tax years starting as from 1 January 2018. Accordingly, special deadlines of 27 January 2020 for paying the tax and 16 March 2020 for filing the affidavit were set for facilitating distributions made in the period 1 January 2018 to 31 December 2019.

Australia

On 12 February 2020, the Australian Government introduced into Parliament *Treasury Laws Amendment (2020 Measures No. 1) Bill 2020* to broaden the definition of significant global entity (SGE). Expansion of the SGE definition will impact:

- The multinational anti-avoidance law (MAAL) and diverted profits tax (DPT) integrity laws and CbC reporting as well as general purpose financial statements (GPFS) reporting requirements, from years starting on or after 1 July 2019.
- It also applies to the increased administrative tax penalties regime from 1 July 2020.

Generally, an entity will be an SGE if it is either:

- A global parent entity (an entity that is not controlled by another entity) with annual global income of AU$1 billion or more (including trusts and partnerships); or
- A member of a group of entities that are consolidated for accounting purposes and the global parent entity of that group has annual global income of AU$1 billion or more.

The Bill expands the SGE definition to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company (notional listed company group). If there are no or inadequate consolidated global financial statements for the notional listed company group, the annual global income is the amount determined on the assumption that such statements had been prepared.

Importantly, the Bill introduces slightly different rules for CbC reporting and GPFS with a new definition of a "country by country reporting entity": the SGE definition continues to apply for other purposes. As a result, entities that do not currently meet the SGE definition due to various exclusions from accounting consolidation, including groups headed by individuals, partnerships, trusts, private companies and investment entities may now fall within the expanded definition.

See EY Global Tax Alert, *Australia's Significant Global Entity definition expanded, impacting tax integrity laws (DPT and MAAL), reporting requirements (CbCR and general-purpose financial statements) and related penalty provisions*, dated 13 February 2020.

On 22 January 2020, the Australian Taxation Office (ATO) issued Taxpayer Alert TA 2020/1 which considers intangibles migration out of Australia (TA 2020/1 "Non-arm's length arrangements and schemes connected with the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangible assets"). In brief, the ATO has identified that Australian companies are entering into various arrangements with (typically related) foreign companies involving the transfer of intellectual property (IP) developed in Australia into foreign jurisdictions using techniques such as:

- Bifurcation of intangible assets where an Australian company transfers the right to use existing IP to develop future IP to a related foreign company (and receives income derived from exploitation of the existing IP). In addition, the Australian company performs contract research and development (R&D) services for the foreign related company, which then owns the new IP and received income from the exploitation of the new IP
- Cost contribution agreements
- Contract R&D for foreign companies

The ATO considers that Australian participants in these arrangements are not properly recognizing Australian obligations under the transfer pricing rules, capital gains tax, outcomes under the capital allowance rules and the general anti-avoidance rule. The Taxpayer Alert provides several examples which highlight transactions that may be challenged from the perspective of the commercial nature of the arrangement not being aligned with OECD guidelines on DEMPE.

Further ATO guidance is expected in 2020 to outline the ATO's perception of risks related to intangibles migration, evidence that the ATO expects taxpayers should maintain and the practical application of the transfer pricing law to those high-risk arrangements.

See EY Global Tax Alert, *Australian Taxation Office issues Taxpayer Alert on non-arm's length arrangements and schemes connected with the DEMPE of intangible assets*, dated 23 January 2020.

Bahrain

In January 2020, the Bahrain Ministry of Industry, Commerce and Tourism (MOICT) published guidance and frequently asked questions (FAQs) on the economic substance requirements for non-regulated commercial activities. The guidance applies to entities engaged in distribution and service centers, headquarters, holding companies, unregulated leasing, shipping and IP activities in Bahrain. The guidance sets out the reporting requirements for entities engaged in such activities, as well as the various tests that will be used to determine whether an entity has the level of substance required under Bahrain's economic substance rules.

See EY Global Tax alert, *Bahrain publishes economic substance guidance for non-regulated commercial activities*, dated 28 January 2020.

Also, in January 2020, the Central Bank of Bahrain (CBB) published a reporting template and guidance notes for economic substance requirements that apply to licensees engaged in regulated activities in line with its November 2018 Directive. The guidance sets out reporting requirements and confirmations to be made by licensees engaged in such activities that will be used to determine whether the licensees have the level of substance required under the CBB's economic substance rules. The CBB guidance applies to licensees engaged in banking, financial leasing, financing companies, insurance, investment business firms, and fund administrator activities in Bahrain. The rules apply to financial periods starting on or after 1 January 2019, and reports must be submitted within three months from the end of the financial year. For licensees reporting based on a calendar year, the first reporting deadline will be 31 March 2020.

See EY Global Tax alert, *Central Bank of Bahrain publishes reporting template for economic substance requirements*, dated 4 February 2020.

On 22 December 2019, Bahrain signed the Multilateral Competent Authority Agreement for Country-by-Country Reporting (CbCR MCAA). The CbCR MCAA is a multilateral framework agreement that provides a standardized and efficient mechanism to facilitate the bilateral automatic exchange of CbC reports.

See EY Global Tax alert, *Bahrain signs Multilateral Competent Authority Agreement for Country-by-Country Reporting*, dated 10 February 2020.

Brazil

On 31 December 2019, the Brazilian Administrative Council of Tax Appeals' (*Conselho Administrativo de Recursos Fiscais* – CARF) decision in Administrative Procedure 16561.720100/2017-97 (*Unilever Brasil Ltda. v. Nacional Treasury*) was published in the Official Gazette. The decision rules on the interpretation and application of the "substantial economic activity" requirement for the purpose of characterization of holding companies in the Netherlands as entities benefiting from a "privileged tax regime" under Brazilian tax legislation.

By way of background to the case, interest paid by a Brazilian subsidiary to a foreign related party located (i) in a low-tax jurisdiction or (ii) subject to a privileged tax regime may be deducted for corporate income taxes purposes only if the interest expense is necessary for the company's activities and certain thresholds are met as proscribed under Brazil's thin capitalization rules (i.e., in short that the amount of indebtedness in relation to all entities located in low-tax jurisdictions or subject to privileged tax regime does not exceed 30% of the equity of the Brazilian borrower).

Under article 2 of Normative Instruction 1,037/2010 (as amended) the list of privileged tax regimes includes the Dutch regime applicable to holding companies which do not develop substantial economic activity.

The CARF's decision stated that holding companies located in the Netherlands which have not evidenced "substantial economic activity" in the year of assessment are entities subject to privileged tax regime. In the case at hand, the CARF concluded that the taxpayer had not demonstrated that the foreign-related entity had factual economic substance in the Netherlands and, therefore, decided in favor of the National Treasury. In addition, the evidence that the Dutch holding company had premises in the Netherlands and other loan contracts signed with entities in China and Sweden was not enough for demonstrating substantial economic activity in the Netherlands.

British Virgin Islands–Isle of Man

On 14 and 22 October 2019, the British Virgin Islands (BVI) and the Isle of Man signed a non-reciprocal Competent Authority Agreement (CAA) to exchange CbC reports, respectively. According to the provisions of the CAA, the Competent Authority of the BVI will annually exchange with

the Competent Authority of the Isle of Man on an automatic basis the CbC report received from each Reporting Entity that is resident for tax purposes in the BVI, provided that, on the basis of the information provided in the CbC report, one or more Constituent Entities of the multinational enterprise (MNE) group of the Reporting Entity are resident for tax purposes in the Isle of Man or are subject to tax with respect to the business carried out through a permanent establishment situated in the Isle of Man. A BVI CbC report is first to be exchanged with respect to fiscal years of MNE groups commencing on or after 1 January 2016. Such CbC report is to be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the MNE group to which the CbC report relates. CbC reports with respect to subsequent fiscal years are to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE group to which the CbC report relates. This CAA will come into effect on the date of the notification provided by the Competent Authority of the BVI that the BVI has the necessary laws in place to require Reporting Entities to file a CbC report.

Cayman Islands

Recently, the Government of Cayman Islands issued draft bills including among others proposed amendments to the economic substance regime. The bills propose the introduction of: (i) a definition of the term "entity" for entities incorporated or registered in the Cayman Islands; (ii) an obligation for all companies to maintain a beneficial ownership register, with the exception of those that are listed on the Cayman Islands Stock Exchange or are exempt under the regulations; and (iii) new responsibilities for corporate service providers, such as beneficial ownership documentation archiving.

Chile

On 29 January 2020, the Chilean Congress approved a tax reform bill. The tax reform process started in August 2018. A tax reform bill was originally passed by the House in August 2019 and then went to the Senate, where it was heavily amended in December 2019. The Chilean Congress approved the content of the bill on 29 January, pending signature by the President and publication in *Official Gazette* prior to full enactment. Once enacted, most of the bill's provisions will be effective in 2020. Among others, the reform bill would define permanent establishment in domestic law following the OECD criteria.

See EY Global Tax alert, *Taking a more detailed look at Chile's recently passed tax reform bill*, dated 5 February 2020.

Colombia

On 15 January 2020, Administrative Regulation 04 of 7 January 2019 (AR 4), which provides the details and administrative procedure for applying Colombia's domestic general anti-avoidance rule (GAAR), was published in the *Official Gazette*.

Among others, AR 4 regulates the following matters related to the application of the domestic GAAR:

- Burden of proof for the tax inspector to show that the artificial transaction or series of transactions lack economic or commercial purpose and that they are aimed at obtaining a tax advantage.
- The scope of the power of the Tax Authority to recharacterize the avoidance transactions.
- It is clarified that avoidance transactions are not subject to a specific tax penalty; however, the effects derived by the recharacterization of the transaction are subject to the general tax penalties provided by the Colombian Tax Code.
- Application of the domestic GAAR in the case of tax treaties.

Cyprus

Following the publication of the Instrument of Ratification and the MLI in the Official Gazette of the Republic on 22 January 2020, Cyprus deposited its instrument of approval with the OECD on 23 January 2020. Cyprus also submitted its MLI positions and a list of 59 tax treaties which Cyprus entered into with other jurisdictions that it wishes to designate as CTAs.

See EY Global Tax alert, *Cyprus deposits MLI instrument of ratification*, dated 31 January 2020.

Cyprus-Kazakhstan

On 17 January 2020, the Cyprus-Kazakhstan double tax treaty (the Treaty) entered into force, with the application of its provisions starting on 1 January 2021. This follows the

vote for approval of the Treaty by the Kazakh Parliament and the signature of the ratification law on 30 December 2019 by the Kazakh President. Cyprus ratified the Treaty on 24 May 2019.

In the permanent establishment (PE) clause, the Protocol includes the new definition of agency PE, an anti-fragmentation rule and the specific activities exceptions subject to the preparatory or auxiliary requirement. The Treaty also includes a principal purpose test.

Both Cyprus and Kazakhstan have signed the MLI but neither of them has included this tax treaty as a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the Treaty already includes a number of the treaty-related BEPS minimum standards.

See EY Global Tax alert, *Cyprus-Kazakhstan double tax treaty enters into force*, dated 23 January 2020.

France

On 10 February 2020, the French tax authorities (FTA) confirmed that payments of the two installments normally due in April and October for the 2020 French Digital Services Tax (DST) can be postponed to a single payment, to be made in December 2020, without the taxpayer facing penalties or late payment interest. This postponement is the result of ongoing discussions at the OECD on the reform of international tax rules. The FTA nonetheless have stressed that payment of the 2019 DST is still due in April 2020 (after deduction of an installment paid in November 2019), as initially planned.

See EY Global Tax Alert, *French tax authorities confirm postponement of Digital Services Tax payments for 2020, but 2019 payments remain due*, dated 11 February 2020.

On 7 January 2020, the FTA published amendments to existing guidelines regarding the reporting obligations for online platform operators. According to this update, for transactions carried out after 1 January 2020, such operators must specify: (i) in the annual summary report to be addressed to the FTA the amount of transactions subject to value-added tax (VAT) in France carried out by their users; and (ii) in the annual document addressed to users, they must slightly amend the information on the identification of the operator, provide additional information on the identification of their professional users and also specify the amount of transactions subject to VAT in France as mentioned in the annual summary report to be addressed to the FTA. This information is not compulsory for transactions carried out after 1 January 2019 and declared before 31 January 2020.

On 19 December 2019, the French Parliament approved the Finance Bill for 2020 (the Bill). Among others, the Finance Bill contains the transposition into French domestic law of the anti-hybrid provisions provided by EU Anti-Tax Avoidance Directives (ATAD 1 and ATAD 2) designed to tackle hybrid instruments as well as hybrid entities. These new rules aim to address both situations of double deduction and deduction without inclusion outcome and would apply to fiscal years starting on or after 1 January 2020, except for those related to reverse hybrids which would apply to fiscal years starting on or after 1 January 2022.

See EY Global Tax Alert, *French Parliament approves Finance Bill for 2020*, dated 20 December 2019.

On 16 October 2019, the French tax authorities published draft guidelines regarding the DST (*Taxe sur les services numériques*) introduced by Law no. 2019-759 of 24 July 2019 (for more details on the French DST, see *The Latest on BEPS and Beyond*, dated 17 September 2019). The draft guidelines mainly include clarifications on the reporting and accounting obligations, recovery, control and litigation. Interested parties have been able to submit comments on the new draft guidelines until 29 November 2019 (included), the final draft of said guidelines should thus be published in the coming months. The FTA have indicated that specific guidelines related to the scope, triggering event, tax base and payment would be published later.

Gibraltar

On 30 January 2020, HM Government of Gibraltar published the Income Tax (Amendment) Regulations 2020, which will amend the *Income Tax Act 2010* in order to implement the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Gibraltar legislation will be effective from 1 July 2020.

The final Gibraltar Mandatory Disclosure Rules (MDR) legislation is broadly aligned to the requirements of the Directive.

See EY Global Tax alert, *Gibraltar enacts final legislation to implement Mandatory Disclosure Rules*, dated 14 February 2020.

Also, on 30 January, the Government of Gibraltar published legislation to implement the Council Directive (EU) 2017/952 (ATAD 2), which amends Directive (EU) 2016/1164 (ATAD) regarding hybrid mismatches with third countries. The legislation extends the territorial scope of the anti-hybrid mismatch provision to hybrid mismatches with jurisdictions outside the EU. It also includes rules for hybrid PE mismatches, hybrid transfers, imported mismatches and dual resident mismatches. The legislation does not include the ATAD 2's provisions on reverse hybrid entities, as ATAD 2 does not require this to be implemented until 1 January 2021. The legislation does not go beyond the ATAD 2's mandatory "minimum standards" to neutralize hybrid mismatches. Gibraltar also decided to opt in for all possible exceptions provided for by the ATAD 2. The amendments made by the legislation apply in relation to accounting periods commencing on or after 1 January 2020.

See EY Global Tax alert, *Gibraltar implements EU ATAD 2 on hybrid mismatch arrangements*, dated 31 January 2020.

Additionally, the Government of Gibraltar published legislation to implement the exit tax provisions of Council Directive (EU) 2016/1164 (ATAD 1). The exit tax applies at the applicable corporate rate on the difference between the market value of the transferred assets less their value for tax purposes. The legislation applies to accounting periods commencing on or after 1 January 2020.

See EY Global Tax alert, *Gibraltar implements EU Exit Tax provisions*, dated 31 January 2020.

India

On 1 February 2020, the Finance Minister of India presented the Union Budget for tax year 2020-21 (the Budget 2020). Among others, the Budget 2020 includes the following proposals: (i) provisions originally introduced in 2018 to tax foreign companies with a significant economic presence are proposed to be deferred to 1 April 2021, given the ongoing BEPS 2.0 deliberations by the OECD; (ii) the domestic taxable presence rules are proposed to be expanded to tax income earned by nonresidents from advertisements, the sale of data collected from a person residing in India or using an Indian internet protocol address and the sale of goods or services using data collected from a person residing in India or using an Indian internet protocol address; and (iii) the scope of the advance pricing agreement and safe harbor programs is proposed to be expanded to cover the determination of income attributable to a business connection or a permanent establishment of a nonresident in India.

See EY Global Tax alert, *India releases the 2020-21 Union Budget*, dated 4 February 2020.

Ireland

On 4 February 2020, eBrief No. 027/20 was published by Irish Revenue, outlining that Part 20-02-01 of the Tax & Duty Manual has been updated to reflect the amendments made by *Finance Act 2019* to the Exit Tax legislation which came into effect from 10 October 2018 in line with Article 5 of ATAD 1.

The amendments are intended to provide clarity to the existing rules, namely that:

- The deemed disposal and reacquisition of assets on the change of residence is deemed to arise immediately before the change of residence of the company concerned; and
- The charge on the transfer of assets, or the business, of a PE in Ireland arises regardless of the residence of the company concerned.

Also, on 4 February, eBrief No. 029/20 was published by Irish Revenue, outlining that Part 33-01-01 of the Tax & Duty Manual has been updated to include a reference to the EU MDR regime.

Many sections of the taxing statutes include a "main purpose test," particularly in the anti-avoidance sections and Part 33-01-01 summarizes case law in this area. The manual has been updated to include the EU MDR rules which come into operation on 1 July 2020 and feature a "main benefit" test so that where the "main benefit," or one of the "main benefits," of an arrangement is to obtain a tax advantage; these new rules may apply. These rules include a "lookback" reporting requirement that will apply to reportable cross-border arrangements; the first step of which was implemented between 25 June 2018 and 30 June 2020.

It is anticipated that a Revenue Tax & Duty Manual setting out guidance on the practical operation of the regime will be issued in due course.

On 22 December 2019, the *2019 Finance Act* (the Act) was signed into law by the President of Ireland, 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 legislation entered into force on 22 December 2019 and will be effective from 1 July 2020.

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

The final legislation contains no changes to the draft legislation as published last October.

See EY Global Tax alert, *Ireland enacts final MDR legislation*, dated 4 February 2020.

Isle of Man

On 2 January 2020, the Income Tax Division published guidance on "How to Complete Returns for Accounting Periods Ending on or after 31 December 2019." This new guidance details how the returns should be completed, including an overview of the additional disclosure requirements in relation to economic substance.

On 10 December 2019, the Isle of Man Government approved the Income Tax (Mandatory Disclosure Rules) Regulations 2019 (the Regulations) introducing an MDR regime for common reporting standard (CRS) avoidance arrangements and opaque offshore structures. The MDR will require taxpayers or intermediaries to disclose certain information relating to CRS avoidance arrangements and opaque structures to the Assessor of Income Tax. 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. The disclosure is required thirty days after the intermediary: (i) makes the CRS avoidance arrangement or opaque offshore structure available for implementation; or (ii) supplies relevant services in respect of the CRS avoidance arrangement or opaque offshore structure. The disclosure must be made electronically using the Online Information Providers Service, which is accessible through the Income Tax Services' portal. A penalty of £600 for each day will be applied in the case of failure to comply with the disclosure obligation.

On 17 July 2019, the Parliament approved the Income Tax (Substance Requirements) (Amendment) Order 2019 (the Order). Among others, the Order includes: (i) clarifications on the substance requirements for a pure equity holding company and the core income-generating activities required for an IP company; (ii) the amendment of the definitions of a high-risk IP company and an IP asset; (iii) an extension of the definition of a "foreign tax official" so as to include other jurisdictions in addition to EU Member States with which the Isle of Man has concluded exchange of information agreements and where the ultimate beneficial owner of the company assessed is a resident; and (iv) clarifications on the type of information required to rebut the presumption that a high-risk IP company fails the substance requirements.

Isle of Man–Anguilla

On 3 December 2019, Anguilla and Anguilla signed a non-reciprocal competent authority agreement for the automatic exchange of CbC reports. According to the Agreement, the Competent Authority of Anguilla will annually exchange with the Competent Authority of the Isle of Man on an automatic basis the CbC report received from each Reporting Entity that is resident for tax purposes in Anguilla, provided that, on the basis of the information provided in the CbC report, one or more Constituent Entities of the MNE group of the Reporting Entity are resident for tax purposes in the Isle of Man or are subject to tax with respect to the business carried out through a PE situated in the Isle of Man. An Anguilla CbC report is first to be exchanged with respect to fiscal years of MNE groups commencing on or after 1 January 2019. Such CbC report is to be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the MNE group to which the CbC report relates. CbC reports with respect to subsequent fiscal years are to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE group to which the CbC report relates.

Isle of Man–Jersey

On 31 December 2019, the Isle of Man and Jersey signed a competent authority agreement for the automatic exchange of CbC reports. According to the Agreement, each Competent Authority will annually exchange on an automatic basis the CbC reports received from each reporting entity that is tax resident in either the Isle of Man or Jersey, provided that, on the basis of the information provided in the CbC report, one or more constituent entities of the reporting entity's MNE group are tax resident in the jurisdiction of the other Competent Authority, or are subject to tax with respect to the business carried out through a PE situated in the jurisdiction of the other Competent Authority. A Jersey CbC report is first to be exchanged with respect to fiscal years of MNE groups commencing on or after 1 January 2016, while an Isle of Man CbC report is first to be exchanged with respect to fiscal years of MNE groups commencing on or after 1 January 2017. Such CbC report is to be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the MNE group to which the CbC report relates. CbC reports with respect to subsequent fiscal years are to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE group to which the CbC report relates.

Italy

On 21 January 2020, the Italian Tax Authorities (ITA) published Law Principle No. 1/2020 to provide clarifications on the VAT reporting obligations for e-commerce platforms that were introduced by Law Decree No. 34 of 30 April 2019. According to these obligations, until 30 December 2020 taxable persons facilitating, using an electronic interface, distance sales of imported goods or distance sales of goods within the EU have a special reporting requirement. The term "facilitating" entails that the platform plays a role in: (i) the determination of the general conditions applicable to the transactions carried out through the platform; and/or (ii) in the collection of the price of the goods sold; and/or (iii) in the management of orders received and the delivery of goods sold. The ITA clarified that the provision of management software that merely enables the creation and management of web stores does not in itself trigger the reporting obligations at issue, unless it allows the software supplier to have part in one of the aforementioned activities. Failing to comply with the above reporting obligations may result in considering the e-commerce platform providers liable for the VAT obligations related to the relevant distance sales.

Japan

On 12 December 2019, Japan's coalition leading parties released the 2020 tax reform outline (the Outline). A tax reform bill (the Bill) will be prepared based on the Outline. The Bill will be submitted to the Diet and is expected to be enacted by the end of March 2020.

Considering the Government's increasing scrutiny on aggressive international tax planning, the Outline includes an anti-avoidance measure for dividends and capital losses. Under the new measure, a parent company's tax basis in the shares of a subsidiary will be reduced if the parent company receives dividends from the subsidiary exceeding 10% of the tax basis of the subsidiary, by the amount of the dividends that are subject to the domestic or foreign dividend received deduction (DRD). It is thought that this anti-avoidance measure was proposed to address tax losses created by a parent company, by way of the payment of a dividend from a subsidiary to a parent prior to the transfer of the subsidiary (where the dividend is subject to the DRD). Certain exemptions are available.

Although the Outline does not contain any specific proposal associated with the recent BEPS development, under the introductory section of the Outline, the Government confirmed their proactive participation on the on-going OECD discussion to support economic growth and globalization of the businesses.

See EY Global Tax alert, *Japan releases 2020 tax reform outline*, dated 17 December 2019.

Japan–Morocco

On 8 January 2020, Japan and Morocco 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. In cases where a person other than an individual is resident in both Japan and Morocco (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 enables taxpayers to present a case for a Mutual Agreement Procedure (MAP) to the competent authorities of either Contracting State. 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 New Treaty.

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.

Korea

On 31 December 2019, Korea enacted the 2020 tax reform bill (the 2020 Tax Reform) after it was passed by Korea's National Assembly on 10 December 2019.

The 2020 Tax Reform includes provisions in line with the patents registered outside of Korea that are used in domestic manufacturing or production activities in Korea, which will be deemed to be Korean source royalty income by recasting such payments as royalties for the use of "other similar properties or rights" under the Korean Corporate Income Tax Law. The 2020 Tax Reform also introduces a new rule on the income classification as "other income" for the compensation paid by a Korean entity to any patent holder for the infringement of a patent registered outside of Korea.

In addition, under the 2020 Tax Reform, if a taxpayer fails to prove that the transaction which reduces the tax liability by an amount specified in the Presidential Decree of the Korean Law for the Coordination of International Tax Affairs (LCITA) has a valid business purpose without the intent of tax avoidance, it would be treated as an abusive transaction and subject to tax in accordance with the "substance over form" principle under the LCITA.

In the transfer pricing context, the 2020 Tax Reform provides an exemption from the requirement to submit the Korean statement of international transactions for taxpayers who are required to file master/local files. The tax authority also has to decide the reasonableness of the application of arm's-length by computing it with the information from taxpayers undertaking a comparable business, if taxpayers fail to file documents to substantiate the arm's-length pricing method by the statutory due date without reasonable cause.

Unless otherwise specified, the 2020 Tax Reform will generally be effective for fiscal years beginning on or after 1 January 2020.

See EY Global Tax Alert, *Korea enacts 2020 tax reform bill*, dated 10 January 2020.

On 10 December 2019, South Korea's National Assembly approved the MLI. After the internal ratification process is completed, South Korea will need to deposit its instrument of ratification to bring the MLI into force for its covered double taxation avoidance agreements. The MLI will generally enter into force for a particular covered agreement on the first day of the month following a three-month period after both parties to the covered agreement have deposited their ratification instrument.

For details of South Korea's Reservations and Notifications, see EY Global Tax Alert, *Korea signs Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 26 July 2017.

Lithuania

On 17 December 2019, the Lithuanian Parliament adopted legislation to amend the Law on Corporate Income Tax to implement the provisions of ATAD 1 and ATAD 2 into domestic legislation. The amendments entered into force on 1 January 2020, and introduce:

- Exit taxation rules for companies in line with the exit tax provision of ATAD 1. The rules introduced: (i) define the situations which will lead to the application of exit taxation; and (ii) provide a deferral of payment of exit tax if the immigration state is an EU Member State or a European Economic Area country that has concluded a tax treaty with Lithuania on the mutual assistance for the recovery of tax claims.
- Rules on the taxation of certain cross-border hybrid mismatches with third countries in line with ATAD 2 and the OECD's BEPS recommendations which aim to include new rules in respect of hybrid financial instruments mismatches, double deduction and mismatches created by attributing income between a head office and a PE.

Luxembourg

On 24 January 2020, a Grand-Ducal Regulation on CbC reports was published, updating the list of cooperating jurisdictions that have concluded an agreement with Luxembourg on CbC reporting. This updated list includes the following countries (in addition to countries listed in the Grand-Ducal regulation published on 13 February 2018 as amended on 9 July 2018 and 12 March 2019):

- For fiscal year starting on or after 1 January 2017 (Argentina, Chile, China, Iceland, Uruguay and Saudi Arabia)
- For fiscal year starting on or after 1 January 2018 (Andorra, Monaco, and Seychelles)
- For fiscal years starting on or after 1 July 2018 (Mauritius)
- For fiscal year starting on or after 1 January 2019 (Hong Kong and San Marino)

The Regulation is effective as of 31 January 2020.

On 14 January 2020, the Luxembourg State Council, a constitutional institution mandatorily called on to issue an opinion on all government and parliament draft laws and regulations, published its views on the draft law (Draft Law)1 implementing the EU Directive on the mandatory disclosure and exchange of information on cross-border tax arrangements (DAC6 or the Directive). Under DAC6, intermediaries (including tax consultants, banks and lawyers that have a defined EU nexus) and in some situations, taxpayers, are required to report certain cross-border arrangements (reportable arrangements) to the relevant EU member state tax authority.

The State Council's opinion contains a number of recommendations and suggestions to clarify certain concepts of the Draft Law as well as interpretations that the legislator is invited to confirm or invalidate. Most importantly, the opinion contains formal oppositions against, inter alia, two measures, being: (i) the exemption from reporting that the Draft Law proposes to grant only to lawyers registered with the Luxembourg Bar; and (ii) the access given to the Luxembourg tax authorities, in the framework of their verification procedures, to certain information.

It is expected that the text of the Draft Law will undergo some amendments in order to consider and address the points raised by the State Council, specifically with respect to the lawyers' reporting exemption. Possible options include requiring all intermediaries, including lawyers, to report (i.e., including all those professions covered by a legal professional privilege) or the extension of the lawyers' exemption from reporting to further professions that are subject to professional secrecy in tax matters, implying a shift, in many cases, of the reporting obligation to the taxpayer.

See EY Global Tax alert, *Luxembourg State Council issues opinion on draft MDR legislation – Application of legal professional privilege to be revised*, dated 28 January 2020.

Malta

Malta's Minister for Finance published, on 17 December 2019, the Maltese regulations implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Maltese legislation will be effective from 1 July 2020.

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

See EY Global Tax alert, *Malta enacts legislation to implement Mandatory Disclosure Rules*, dated 14 February 2020.

Morocco

The Finance Bill for 2020 (the Budget) entered into force on 1 January 2020 and introduced the CbC reporting requirements in Morocco. According to the legislation, the CbC reporting obligation would apply to all entities that are subject to Corporate Income Tax (CIT) and meet a certain number of criteria.

In particular, Moroccan ultimate parent entities would be required to file a CbC report if they meet all the following criteria ("primary mechanism"):

i) The entity holds directly or indirectly shares in one or more companies or establishments outside Morocco, which renders the company liable to the preparation of consolidated financial statements, or would be required to do so if the shares it owns were listed in Morocco stock exchange

ii) The entity annual consolidated turnover is equal or exceeds MAD8,122.5 billion (approximately €750 million) in the fiscal year preceding the year of the report obligation

iii) There is no other Constituent Entity of such MNE group that owns directly or indirectly an interest described in subsection (i) above

Thus, Moroccan constituent entities of MNE groups would not be required to file a CbC report if their ultimate parent entity has filed a CbC report in its jurisdiction and there are information exchange mechanisms in place between Morocco and that jurisdiction.

In addition, a constituent entity subject to CIT in Morocco may be required to locally file the CbC report in one of the following cases:

- The Ultimate Parent Entity of the MNE group is not obligated to file a Country-by-Country report in its jurisdiction of tax residence.
- Morocco and the country of tax residence of the Ultimate Parent Entity do not have an international agreement in place or when having an international agreement, they do not have a Qualifying Competent Authority Agreement (QCAA) in place.
- There has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity (i.e., the jurisdiction has failed consistently to automatically exchange information with Morocco or has suspended automatic exchange of information) that has been notified by the tax authorities to the constituent entity resident for tax purposes in Morocco.

Where there are more than one constituent entities of the same MNE group that are resident for tax purposes in Morocco and one or more of the conditions set out above apply, the MNE group may designate one of such constituent entities to locally file the CbC report.

Notwithstanding the above, local filing will not be required in Morocco if the MNE group appoints a surrogate parent entity in Morocco or abroad provided that other requirements are met.

The CbC report should be submitted electronically within the 12-month period after the last day of the reporting fiscal year of the constituent entity. Failure to submit the CbC report or submitting an incomplete declaration will trigger a penalty of MAD500,000 (equivalent €46,000). The rules are effective for reporting fiscal years starting on or after 1 January 2021.

Poland

The Polish MDR regulations, which require reporting of tax arrangements by promoters/beneficiaries/service providers, also provide for periodic reporting obligations for the entities using tax arrangements subject to MDR (i.e., the beneficiaries). Specifically, management board members of Polish entities whose fiscal year corresponds to a calendar year may be required to file a separate Form MDR-3 by March 2020 with respect to CIT-based tax arrangements. Furthermore, in some cases, the applicable deadline for submission of Form MDR-3 may fall on an earlier date, depending on the taxes covered under the arrangement.

According to the Polish Tax Code, a beneficiary who made any actions in a tax arrangement in a given reporting period or derived a tax advantage from that arrangement shall file an information return (Form MDR-3) with the Director of the National Tax Administration Office, within the deadline for filing a tax declaration for that reporting period. Form MDR-3 includes in particular the amount of the tax advantage derived from the tax arrangement, if the beneficiary derived such advantage in a given reporting period.

These reporting obligations are incumbent on the beneficiary, regardless of whether the tax arrangement the beneficiary was using or is using was reported in the past by that beneficiary.

The obligation to sign Form MDR-3 rests with all members of the board and there is no possibility to grant a proxy.

Failure to comply with the obligations may result in significant sanctions.

See EY Global Tax alert, *Poland: New Form MDR-3 to be submitted by management boards by early 2020 for fiscal year 2019*, dated 23 January 2020.

Romania

On 9 January 2020, the Romanian Government circulated draft 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 draft legislation was subject to public consultation. The Romanian draft legislation is now subject to the formal legislative process and is likely to be amended before final enactment.

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

See EY Global Tax alert, *Romania issues draft mandatory disclosure regime legislation*, dated 24 January 2020.

Spain

On 23 December 2019, the Ministry of Finance launched a public consultation on the draft Royal Decree proposing amendments to Royal Decree 1794/2008, of 3 November 2008, which regulates and develops the MAPs included in the tax treaties signed by Spain. The draft amendments aims to implement the EU Tax Dispute Resolution Directive (2017/1852) into Spanish law. Interested parties were invited to submit comments by 31 January 2020 to the e-mail address observaciones.proyectos@tributos.hacienda.gob.es.

Turkey

On 5 February 2020, the Draft General Communiqué on the Implementation of the Digital Services Tax (Draft Communiqué on DST) was published on the website of the Turkish Revenue Administration. The Draft Communiqué on DST introduces explanations, procedures and principles regarding the implementation of the DST regulated in Articles 1 to 7 of the Law No. 7194.

See EY Global Tax alert, *Turkey publishes Draft General Communiqué on Digital Services Tax*, dated 6 February 2020.

On 5 December 2019, the Turkish Parliament enacted Law no.7194 which provides for a DST. This law was published in the *Official Gazette* on 7 December 2019 and the DST will enter into force as of 1 March 2020. The DST is levied at a rate of 7.5% on in-scope revenues generated in Turkey by the provision of certain digital services. The President of Turkey may reduce the rate to 1% or increase it to 15%, either per type of digital service separately, or for all types of digital services together. It applies only to companies with global, in-scope revenues of at least €750 million and generating revenues of at least 20 million Turkish Lira (approximately US$3.3 million) in Turkey from in-scope services. The law authorizes the President of Turkey to reduce the revenue thresholds to as little as zero or to increase them to up to triple the specified levels.

See EY Global Tax Alert, *Turkey's 7.5% Digital Services Tax to be effective 1 March 2020*, dated 15 January 2020.

United Arab Emirates

On 4 February 2020, a flowchart overview and key information on the scope of the United Arab Emirates (UAE) Economic Substance Regulations (ESR) enacted in April 2019 and which apply to Licensees that carry out certain "relevant activities" (to include among others; banking, insurance, investment fund management, shipping, headquarters and IP activities) was published by the Ministry of Finance on its website. The UAE economic substance regulations apply to Licensees with a financial year commencing on or after 1 January 2019.

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

United Kingdom

On 3 February 2020, the European Commission (EC) published the "Recommendation for a Council Decision authorizing the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland." With this Recommendation, the EC invited the Council of the EU to: (i) authorize the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland (UK); (ii) nominate the Commission as Union negotiator; (iii) address directives to the Commission (as negotiator); and (iv) designate a special committee in consultation with which the negotiations must be conducted.

In the field of taxation, the EC's Recommendation states that "the envisaged partnership should recognize and commit the Parties to implementing the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the OECD standards against Base Erosion and Profit

Shifting (BEPS)." According to the Recommendation, the envisaged partnership should ensure that, following the end of the transition period, the UK keeps applying the common standards applicable with the EU concerning the exchange of information on income, financial accounts, tax rulings, CbC reports, beneficial ownership and potential cross-border tax planning arrangements in addition to ensuring common standards are applied to the fight against tax avoidance practices and public CbC reporting by credit-institutions and investment firms.

Finally, the Recommendation stated that the envisaged partnership should reaffirm the Parties' commitment to curb harmful tax measures as outlined in the BEPS Action Plan and should ensure that the UK reaffirms its commitment to the Code of Conduct for Business Taxation.

On 20 January 2020, HM Revenue & Customs (HMRC) published a policy paper regarding the draft Regulations to implement the EU Tax Dispute Resolution Directive (2017/1852). Subsequently, on 22 January 2020, the UK published the Double Taxation Dispute Resolution (EU) Regulations 2020. The Regulations will enter into force on 14 February 2020 and will have effect retrospectively for tax disputes in matters relating to income earned, or capital gained, in respect of tax years commencing on or after 1 January 2018. The Regulations introduce new mechanisms to resolve tax disputes that arise from the interpretation and application of tax treaties between the UK and any other EU Member State which results in double taxation for that person.

On 13 January 2020, the UK Government laid the legislation (The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (Regulations)) 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) before Parliament. The UK legislation will enter into force on 1 July 2020 and will be effective from this date.

On the same day, the UK tax authority, HMRC published a summary of responses to the consultation document which it issued last summer covering aspects of the UK Government proposed approach to DAC6 implementation. HMRC is working on detailed guidance on the UK rules which it plans to publish before the first reporting deadlines and the date the Regulations come into force on 1 July 2020.

Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020 with the first reporting deadline being 31 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The UK legislation largely follows the draft legislation which was published in the summer of 2019. There are a few differences of emphasis and additional clarifications on certain points from the draft legislation, as set out below.

The summary of responses to the consultation document provides more clarity on the interpretation of the UK MDR legislation and how the UK Government anticipates the reporting process to operate. The UK Government will continue to consult stakeholders, including many of those who responded to the consultation, to draft the detailed HMRC guidance referred to above. This is expected to provide further help to intermediaries and taxpayers, so they can meet their obligations under the Directive.

In a separate paper issued by HM Treasury, it was noted that, depending on the progress of the UK's exit from the EU, amendments may be needed to the regulations in due course. HMRC confirmed that leaving the EU will not diminish the UK's resolve to tackle tax avoidance and evasion, and HMRC will continue to work internationally to improve tax transparency.

See EY Global Tax alert, *UK mandatory disclosure rules come before Parliament; HMRC releases consultation responses*, dated 4 February 2020.

Uruguay

On 31 December 2019, Resolution No. 234/2020 (the Resolution), issued by the Tax Administration of Uruguay, was published in the *Official Gazette*. The Resolution extends the CbC reporting deadline for MNE groups with a reporting fiscal year ending between 1 January 2019 and 28 February 2019 to 15 March 2020.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP (United States), Global Tax Desk Network, New York

- Gerrit Groen gerrit.groen@ey.com
- Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- Deirdre Fenton deirdre.fenton1@ey.com
- Nadine K Redford nadine.k.redford@ey.com

Ernst & Young Belastingadviseurs LLP, Rotterdam

- Marlies de Ruiter marlies.de.ruiter@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 000793-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com