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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

Just before this issue of BEPS and Beyond was released, the COVID-19 outbreak led to far-reaching measures in Europe and the United States (US), including countries being shut down and public life being reduced to what is essential for the functioning of communities and for public health. It is clear that the current unprecedented minimalization of physical human interaction will disrupt many processes, including policy making on international tax issues by the OECD, United Nations (UN) and the European Union (EU). On the one hand, policy makers are giving the highest priority to addressing COVID-19 and the economic and social consequences of the measures that must be taken to keep the world safe. On the other hand, the ban on large physical meetings makes it impossible for international organizations to continue bringing their stakeholders together to come to common directions and solutions.

All in all, the measures in this BEPS and Beyond issue must be put into the perspective of a world that is addressing a crisis. However, the measures announced before the crisis do show some very interesting ambitions on the part of international organizations, specifically by the new European Commission which came into place late last year and started to shape and execute its agenda early this year.

Building a better working world

Where the previous European Commission, following the lead of the OECD, already has designed extensive transparency measures in the form of for example exchange of rulings, Country-by-Country (CbC) reporting and the introduction of mandatory disclosure rules, this new Commission is working to increase the transparency work even more. There is the goal to have the real-time exchange of information, and announcements have been made that analytical tools will be developed to make it possible for Member States to use the information received more effectively. Technology will be at the heart of these goals. One of the first expressions of these goals is the public consultation on automatic exchange of information by digital platforms, where digital platforms will be required to automatically exchange information on their users. This is with the aim to narrow the tax gap when these users do not meet their tax obligations. For the digital platforms, this will mean an important additional compliance burden. It also shows that this form of exchange of information, where gatekeepers are being asked to collect and share information on unrelated parties, will be a core element of the tax administration of the future. As intermediaries and relevant taxpayers are getting ready for reporting under the Mandatory Disclosure requirements of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive) as of the coming July, it is clear that the tax transparency environment will continue to evolve in the coming four years.

OECD

On 9 March 2020, the OECD released the compilation of comments received on the 2020 review of CbC Reporting (BEPS Action 13 minimum standard). The OECD received 79 contributions totaling 552 pages.

The OECD also announced that the public consultation that was scheduled for 17 March 2020 has been cancelled. According to the press release, "In light of the rapidly evolving situation with Covid-19, a decision was taken by the OECD Secretary-General to cancel or postpone most in-person OECD meetings. This includes the public consultation meeting on the Review on Action 13."

On 28 February 2020, Portugal deposited its instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Portugal confirmed its MLI positions without making any changes. The MLI will enter into force for Portugal 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 June 2020.

Also, on 14 February 2020, Japan made a notification to extend its list of covered tax agreements (CTAs) to add the tax treaty with Qatar and update its MLI positions accordingly. The MLI entered into force for Japan on 1 January 2019 and will enter into force for Qatar on 1 April 2020.

On 25 February 2020, the OECD released an XML Schema and User Guide to support the technical implementation of the OECD's Treaty Relief and Compliance Enhancement (TRACE) initiative (the TRACE XML Schema and User Guide). The TRACE XML Schema and User Guide provide guidance on the standardized electronic format to be used for reporting TRACE-related information by financial institutions to tax administrations and for the exchange of information between tax administrations. It is intended to complement the TRACE Implementation Package, which sets out the procedures, forms and agreements to be put in place to operationalize the TRACE Authorized Intermediary system that was approved by the OECD's Committee on Fiscal Affairs (CFA) in 2013.

Also, on the same date, the OECD released a dedicated XML Schema and User Guide (the Generic Status Message XML Schema and User Guide) that allows tax administrations to provide structured feedback to the sender on errors encountered with respect to tax information exchanged through the Common Transmission System (CTS). The CTS is a secure, encrypted vehicle created by the OECD to enable bilateral exchanges of tax information.

See EY Global Tax alert, *OECD releases IT-tools to support the implementation of TRACE and wider exchange of tax information*, dated 2 March 2020.

On 24 February 2020, the OECD released the eighth batch of peer review reports relating to the implementation by Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia of the BEPS minimum standard on Action 14 (*Making Dispute Resolution Mechanisms More Effective*). Guernsey and the Isle of Man had also requested that the OECD provide feedback concerning their adoption of the Action 14 best practices, and the OECD therefore also released two accompanying best practices reports.

Overall, the reports conclude that all eight assessed jurisdictions meet almost all or most of the elements of the Action 14 minimum standard. In the next stage of the peer review process, each jurisdiction's efforts to address any shortcomings identified in this Stage 1 peer review report will be monitored.

See EY Global Tax alert, *OECD releases eighth batch of peer review reports on BEPS Action 14*, dated 26 February 2020.

At the conclusion of their meeting in Riyadh on 22-23 February 2020, the G20 Finance Ministers and Central Bank Governors issued a communiqué. Among others, they endorsed Pillar One and welcomed the progress note on Pillar Two of the digital project. According to the communique, the G20 Finance Ministers and Central Bank Governors have reiterated the importance of international cooperation to complete this work and ensure tax certainty.

On 19 February 2020, the OECD released a consultation document (the Consultation Document) on model rules for reporting of data by platform operators with respect to sellers in the so-called sharing and gig economy. This interest in a common set of data reporting rules parallels the European Commission's interest in amending the European Union (EU) Directive on Administrative Cooperation (Directive 2011/16/EU, also known as the DAC) to facilitate the collection and exchange of data from digital platform operators by national tax authorities.

The views and proposals included in the Consultation Document do not represent the consensus views of the Committee on Fiscal Affairs (CFA) or its subsidiary bodies but are intended to provide stakeholders with substantive proposals for analysis and comment. Interested parties are invited to submit written comments by 20 March 2020.

See EY Global Tax alert, *OECD releases consultation document on model rules for data reporting by platform operators for sellers in the sharing economy*, dated 27 February 2020.

On 13 February 2020, the OECD Secretariat hosted a webcast to discuss some of the preliminary results of its economic analysis and impact assessment of the international tax changes being considered in the ongoing project on addressing the tax challenges of the digital economy (the BEPS 2.0 project). The OECD webcast was held just weeks after the jurisdictions participating in the BEPS 2.0 project through the OECD/G20 Inclusive Framework on BEPS reaffirmed their commitment to reach agreement on a consensus-based long-term solution by the end of 2020.

The analytical work being done by the OECD Secretariat and discussed during the webcast focuses on the impact of the BEPS 2.0 proposals on the tax revenue of countries and not on the tax liabilities of multinational enterprises (MNEs). The work is intended to inform the decisions to be made by the Inclusive Framework jurisdictions in the negotiations underway at the OECD with respect to the technical and policy details of the proposed solution. The OECD's preliminary analysis is based on data from more than 200 jurisdictions, including all members of the Inclusive Framework, and from more than 27,000 MNE groups.

Based on the preliminary analysis, the OECD Secretariat expects the combined effect of Pillars One and Two to lead to a significant increase in global tax revenues overall. The OECD noted during the webcast that these preliminary results are based on assumptions and simplifications with respect to the proposals under consideration, which is not intended to pre-judge the design decisions to be made by the Inclusive Framework.

The OECD Secretariat noted that the analysis will be updated as the work on the BEPS 2.0 project progresses and further decisions are made by the Inclusive Framework on the specific international tax changes that will be included in the consensus-based solution. They also indicated that work was ongoing on a more detailed analysis to be concluded by the end of March.

See EY Global Tax alert, *OECD hosts webcast on preliminary impact assessment and economic analysis of BEPS 2.0 project proposals*, dated 21 February 2020.

European Union

On 10 March 2020, the agenda highlights of the next Economic and Financial Affairs Council (ECOFIN) meeting, which will take place on 17 March 2020, was published. Among others, the Croatian Presidency and the Commission will report to the Council of the outcome of the G20 February meeting. Ministers will finalize the preparation of the G20 and international monetary fund (IMF) spring meeting of April 2020. The Council will also discuss the capital markets union and the review of prudential rules for insurers.

Also on 10 March, EU leaders held a videoconference on the response to the coronavirus outbreak. EU leaders mandated the Commission received to further step up its response to the coronavirus on all fronts and coordinate Member State actions. The President of the European Commission, Ursula von der Leyen, said after the videoconference that the Commission is working on the following measures to support Member States in their efforts:

- To make sure that State aid can flow to companies that need it
- To make full use of the flexibility which exists in the Stability and Growth Pact

Concrete ideas on the measures were put forward before the Eurogroup on 16 March.

On 5 March 2020, Commissioner Paolo Gentiloni gave a speech at the European Policy Centre on the Commission's priorities for EU taxation policy. Among others, he mentioned that he is firmly in favor of the idea of minimum effective taxation. It would put a floor on how low countries can go in encouraging profit shifting. And, it would ensure that all companies, wherever they are and whatever their size, pay a fair share of tax. He also highlighted that the EU is actively supporting the G20/OECD work on international corporate tax reform; "As I stressed at the G20 finance ministers' meeting in Riyadh ten days ago, we are firmly in favour of a global approach in this area. This is undoubtedly the best way forward, given the globalised, digitalised nature of our economies and businesses today (…) If global consensus cannot be reached, the EU will be forced to act alone."

On 4 March 2020, the European Commission presented a proposed Regulation to enshrine in legislation the EU's political commitment to be climate neutral by 2050. The legislative proposal was submitted to the relevant institutions for further consideration under the ordinary legislative procedure.

On the same date, the Commission launched a public consultation on the future European Climate Pact which is open until 27 May 2020. It also published the inception impact assessment of the revision of the Energy Tax Directive and on a new EU scheme (carbon border adjustment mechanism).

Also on 4 March, the European Commission launched a consultation on an Action Plan to combat tax fraud within the EU which will run until 1 April 2020. The purpose of the initiative is to set out the actions to be taken in the years to come to:

a. Combat tax evasion (e.g., extending and strengthening existing cooperation tools among tax and customs administrations at the Union level such as Eurofisc; introducing new digital tools and solutions to, in particular, improve analysis capacities of tax authorities and switch from the exchange of information to a model where tax data can be shared in real time; improving cross-border tax recovery and new cooperation agreements with third countries in particular to fight tax fraud in e-commerce).
b. Make dealing with taxes across borders simpler and fair by taking advantage of the latest developments in technology and digitalization (e.g., mechanisms to prevent and solve cross-border tax disputes to enhance tax certainty in both direct and indirect taxation; simplification and modernization of tax rules in the Single Market, in particular value-added tax (VAT) rules, but also procedures for withholding taxes on investment across borders; encouraging cooperative compliance; exploring digital solutions to levy taxes at source in real time, etc.).

Furthermore, the Action Plan package will include a distinct element on the External Strategy on tax good governance 2020. The Commission will use the feedback to further develop the initiatives and will publicly release the comments it receives. Legislative proposals and an action plan are expected to be introduced during the second quarter of 2020.

On 18 February 2020, ECOFIN (or the Council) held a meeting where, among other things, it updated the EU list of non-cooperative jurisdictions for tax purposes (the EU List), discussed preparations for the EU participation in G20 meetings on 20-23 February 2020 in Riyadh, Saudi Arabia and also adopted two reforms of existing VAT rules.

During the meeting, the Council decided to add the Cayman Islands, Palau, Panama and Seychelles to Annex I (the so-called "Black" list) of the EU List as these jurisdictions did not implement the tax reforms to which they had committed by the agreed deadline. The total number of jurisdictions now included in Annex I of the EU List is 12. In contrast, 16 jurisdictions managed to implement all the necessary reforms to comply with EU tax good governance principles ahead of the agreed deadline and have therefore been removed from Annex II of the EU list (the so-called "Gray" list). Annex II now contains 13 jurisdictions.

The Council will continue to review and bi-annually update the EU List, with the next update due in October 2020.

See EY Global Tax alert, *ECOFIN publishes revised list of non-cooperative jurisdictions for tax purposes and adopts two reforms of existing VAT rules*, dated 19 February 2020.

On 13 February 2020, ECOFIN published the European Commission codification proposal for a Council Directive on administrative cooperation in the field of taxation (the Directive). The Directive covers the following topics: DAC1 (Automatic exchange of Information (AEOI) for five categories of income and capital), DAC2 (AEOI of financial account information), DAC3 (AEOI for tax rulings and advance pricing agreements), DAC4 (AEOI of the CbC reports), DAC5 (access of anti-money laundering information) and DAC6 (Mandatory Disclosure Rules). The Directive has been substantially amended several times and in the interests of clarity and rationality it should be codified. According to the explanatory memorandum of the proposal, the new Directive will supersede the various acts incorporated in it. The proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself. The proposal also includes six annexes which are available in a separate document.

Argentina

On 29 February 2020, General Resolution 4680 (the Resolution), issued by the Argentina tax authorities, was published in the *Official Gazette*. The Resolution establishes special deadlines for filing the transfer pricing annual tax return and related documentation. According to the Resolution, the new deadlines are between 20 and 24 April 2020, depending on the taxpayer's tax identification number, and affects tax years closed from 31 December 2018 to 31 July 2019 (both inclusive). The Resolution is in force as from the date of its publication.

Belgium

On 25 February 2020, the Belgian Tax Administration published Circular Letter No. 2020/C/35 (the Circular Letter) on transfer pricing.

The Circular Letter confirms that the Belgian Tax Administration generally adheres to the principles of the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2017 OECD TPG), but includes interpretations and preferences of the Belgian Tax Administration with respect to various transfer pricing topics. The Circular Letter also covers certain financial transactions and makes references to the recently published OECD report on this matter. It is important that multinational groups who are present in Belgium review the impact of this circular on their current transfer pricing policies.

The Circular Letter is applicable to transactions as of 1 January 2018, except for: (i) certain specific considerations for benchmarking analyses and transfer pricing adjustments; and (ii) considerations on financial transactions as described in Chapter X of the Circular Letter and the OECD Guidelines, which are both applicable to transactions that take place as of 1 January 2020. The Circular Letter also states that any future changes to the OECD Guidelines can be assumed to be generally followed by the Belgian tax authorities.

Bermuda

On 31 January 2020, the Bermuda Ministry of Finance published an updated list of jurisdictions that are to be treated as Reportable Jurisdictions for the purposes of the CbC Reporting Standard for the 2019 reporting fiscal year. The jurisdictions listed will receive 2019 CbC reports from Bermuda. In this update, Hong Kong was added for the first time to the list.

Bulgaria

The Bulgarian National Assembly approved, on 31 December 2019, the amendments to the Tax and Social Insurance Procedure Code implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Bulgarian legislation entered into force on 1 January 2020 and will be effective from 1 July 2020.

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

No explanatory notes or further guidance were issued with the legislation amendments. It is not yet known when the National Revenue Agency or the Ministry of Finance will issue further guidance.

See EY Global Tax alert, *Bulgaria enacts final legislation to implement Mandatory Disclosure Rules*, dated 4 March 2020.

Chad

On 31 December 2019, Law 043/PR/2019 relating to Chad's Budget 2020 (Finance Law 2020) was adopted. Among other items, a definition of permanent establishment (PE) was introduced into law for the first time. According to the definition, the following activities may trigger a PE:

(i) a management headquarters, branch, sales store, office, factory, mine, quarry or other natural resource extraction site; (ii) a construction or assembly site with a project duration of more than six months; and (iii) the provision of services through employees or other staff, when this activity continues for the same project or related projects over 183 days over any period of 12 months.

Also, the Finance Law introduced a penalty for delays in the filing of transfer pricing documents which ranges from F.CFA 10 million to 25 million for the first three months and then 5 million for each following month delayed.

Chile

On 24 February 2020, the Chilean Congress approved the Tax Reform Package which was published as Law 21,210/2020 (the Law). Among others, the adopted Law includes a definition of PE following the criteria given by the OECD and a new special anti-avoidance rule for disproportionate profit distributions. For more information, see the Latest on BEPS and Beyond, dated 15 October 2019 and 18 February 2020.

Croatia

The Croatian Parliament has approved the Croatian *Act on Administrative Cooperation in the Field of Taxation implementing the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements* (referred to as DAC6 or the Directive).

Following the approval of the Act (the primary legislation), the Croatian Minister of Finance executed the Bylaws (the secondary legislation) on the Automatic Exchange of Information in the Field of Taxation, which supplement the primary legislation and include the hallmarks as contained in Annex IV of the Directive.

The Act entered into force on 1 January 2020 and the Bylaws entered into force on 3 January 2020. Both the primary and secondary legislation will be effective from 1 July 2020.

The final Croatian MDR legislation is broadly aligned to the requirements of the Directive. It is not yet known whether the Croatian Tax Authority plans to issue further guidance with respect to the interpretation or practical operation of the MDR rules.

See EY Global Tax alert, *Croatia passes Law to implement Mandatory Disclosure Rules*, dated 27 February 2020

Czech Republic

On 13 February 2020, the Czech Republic ratified the MLI. The Czech Republic submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the tax treaties (CTAs) it wishes to be covered by the MLI (currently 52 CTAs). The instrument of ratification still needs to be deposited before the MLI will enter into force with respect to its CTAs. A definitive list of reservations and notifications will also need to be provided upon the depositing the instrument of ratification.

Estonia-Guernsey

On 20 February 2020, the Estonian President proclaimed the double tax treaty between Estonia and Guernsey. The treaty still needs to be ratified by Guernsey before it enters into force.

The 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 Estonia and Guernsey (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. In the PE clause, the treaty 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. Furthermore, the treaty enables taxpayers to present a case for 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 treaty.

Both Estonia and Guernsey 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 the treaty-related BEPS minimum standards.

Germany

On 4 March 2020, the German Ministry of Finance (MoF) published a draft decree containing guidance on the final German MDR legislation which was published in the *German Federal Gazette* on 30 December 2019.

The newly issued draft decree provides further clarity on the MoF's interpretation of the scope, hallmarks and reporting procedure and confirms that the German MDR legislation is broadly aligned with the requirements of the Directive. The draft decree also contains a so-called "white list" of arrangements that are in principle not reportable. This "white list" is however shorter than expected and the arrangements included do not appear to be commonly implemented transactions. Due to delays with the establishment of the reporting interface connection at the responsible German Federal Central Tax Office (BZSt), a one-time extension shall be granted until 30 September 2020 for the submission of the first reports.

The draft decree has been released for public consultation, and it is expected that the final decree will be published by the end of June 2020 at the latest.

See EY Global Tax alert, *German Ministry of Finance publishes draft MDR guidance*, dated 17 March 2020.

On 19 February 2020, the German MoF issued guidance concerning harmful preferential regimes in connection with the German royalty deduction limitation rule (Section 4j of the Income Tax Code). This rule partially disallows the deduction of royalty payments made to recipients in jurisdictions, which are subject to a non-OECD (non-nexus) compliant harmful preferential tax regime which taxes the royalty income at an effective rate below 25%.

The decree identifies and lists harmful preferential tax regimes in a non-exhaustive list, which should fall under the German royalty deduction limitation rule beginning with the 2018 assessment period. The decree also lists preferential regimes which are still under review, such as the regimes of Brunei Darussalam, Cook Islands, Dominica, Jordan, Lithuania, Paraguay, Qatar and the US FDII (foreign-derived intangible income) deduction.

See EY tax alert, *German Ministry of Finance publishes guidance on royalty deduction limitation rule*, dated 26 February 2020.

Gibraltar

On 5 March 2020, the Income Tax Office issued guidance on the MAP with the purpose of providing guidance and to explain how taxpayers can use the domestic MAP to seek assistance from the Competent Authority in Gibraltar in order to resolve disputes in relation to taxation that is not in accordance with, or within scope of, the provisions of the relevant tax treaties. After providing background information regarding tax treaties and their function, the guidance illustrates the details of the domestic MAP procedure.

The scope of the guidance only extends to tax treaties that are entirely based on the OECD Model Tax Convention on Income and Capital. Gibraltar does not have any double tax treaties currently in force, although a treaty was signed with the United Kingdom (UK) in October 2019. The guidance states that access to a MAP process will be possible in Gibraltar, regardless of whether the applicable treaty includes the equivalent of Article 9(2) of the OECD Model Tax Convention. Copies of tax treaties entered into by Gibraltar that include a MAP article and comply with the OECD's BEPS minimum standard will be available on the website: https://www.gibraltar.gov.gi/income-tax-office. In addition, the guidance establishes that the OECD Model Tax Convention is taken as a detailed explanation of the intention and meaning of each of the articles of the OECD model and, therefore, will be considered as an interpretive aid. It is also specified in the guidance that access to a MAP process regarding transfer pricing cases is possible in Gibraltar, regardless of whether the applicable treaty includes the equivalent of Article 9(2) of the OECD Model Tax Convention.

As member of the BEPS Inclusive Framework, Gibraltar has agreed on a peer review process to evaluate the implementation of the minimum standard on BEPS Action 14. Gibraltar is included in the 10th batch of assessing jurisdictions and its Action 14 peer review report is expected later this year. Although Gibraltar does not have any double tax treaties currently in force and it has not received any valid MAP requests yet, Gibraltar will be submitting MAP statistics to the OECD as required.

Iceland

On 18 February 2020, the Ministry of Finance of Iceland submitted a bill to the Parliament concerning penalties to be imposed in the case of non-compliance with transfer pricing documentation obligations applying to transactions with related parties. More specifically, the penalties will apply when a legal entity violates the obligation to document information on the nature and scope of transactions with a related legal entity, the nature of the relationship and the basis of a controlled decision. This obligation will arise if the operating income of a legal entity in a single fiscal year or total assets at the beginning or at the end of the fiscal year is more than ISK1 billion (approximately €6.8m) and is applicable as of the next accounting year.

If the bill is approved, the Director of Internal Revenue may impose administrative fines if this provision is violated in whole or in part. When the fines are determined, the following items will be considered:

1) The severity of the offense, i.e., whether the documentation is incomplete or lacking
2) Whether the default was repeated
3) The willingness of the offender to cooperate

Fines imposed may amount up to ISK4 million (approximately €31.3k) for each fiscal year that the taxpayer has failed to comply with this provision in whole or in part, and the imposition of a fine may apply to six previous income years. If the legal entity fulfills this obligation within a month as of the decision of the Director of Internal Revenue, the fine may be reduced by half.

Indonesia-Singapore

On 4 February 2020, Indonesia and Singapore signed a new tax treaty (New Treaty) which will replace the existing tax treaty that has been in effect since 1992. The New Treaty will enter into force upon the exchange of notices of ratification. The New Treaty contains the preamble language which emphasizes that the tax treaty is not intended to be used to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance. It also includes a principal purpose test provision.

See EY Global Tax Alert, *Indonesia and Singapore sign new tax treaty*, dated 21 February 2020.

On 31 January 2020, Indonesia's Government submitted the draft New Tax Law which includes the following measures with respect to the tax treatment of the digital economy.

1) New VAT collection mechanism for international digital companies for the supply of intangible goods or services from outside Indonesia. Certain international sellers, international service providers, international and local e-commerce platform provider companies will be required to collect 10% VAT from Indonesian customers. The Ministry of Finance will issue regulations to set out the criteria and mechanics of VAT collection and whether this would be administered directly or via Indonesian agents. It is not yet clear whether the non-Indonesian parties would be full VAT taxpayers or perhaps operate on a "payment only" basis.
2) Digital PE and Electronic Transaction Tax (ETT). International sellers, international service providers, or international e-commerce platform providers that actively offer and/or conduct activities with consumers domiciled in Indonesia may be deemed to have a PE in Indonesia if they exceed certain thresholds with respect to: (i) consolidated group gross revenue; (ii) revenue derived from Indonesia; and/or (iii) number of active users in Indonesia. If the PE definition under a treaty overrides this domestic law, the New Tax Law will introduce an ETT that will tax income sourced from Indonesia. Implementing regulations regarding the types of transactions, thresholds, rate of ETT and administrative arrangements are to be issued.

Kazakhstan

On 20 February 2020, the President of Kazakhstan signed a law ratifying the MLI. Kazakhstan submitted its provisional MLI positions at the time of signature, listing its reservations and notifications. The approved MLI includes 54 CTAs that Kazakhstan wishes to be covered by the MLI. Kazakhstan 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.

Latvia

The Ministry of Finance of the Republic of Latvia submitted to the meeting of State Secretaries, on 19 December 2019, the draft regulation "Rules on automatic exchange of information on reportable cross-border arrangements" implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Latvian draft legislation is now subject to the formal legislative process and may be amended before the final enactment. If implemented as currently proposed, the

Cabinet Regulation on Latvian MDR will, in principle, closely align with the requirements of the Directive. The explanation attached to the draft regulation outlines the purpose and scope of the Directive and the draft Latvian regulation.

The Latvian legislation is planned to take effect from 1 July 2020 and reports will retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

See EY Global Tax alert, *Latvia publishes draft proposal to implement Mandatory Disclosure Rules*, dated 2 March 2020.

Luxembourg

On 4 March 2020, the Luxembourg Tax Authorities issued a circular providing guidance on the controlled foreign company (CFC) rules applicable in Luxembourg since 1 January 2019 following implementation under Luxembourg's law of the EU Anti-Tax Avoidance Directive (EU ATAD). For background, see EY Global Tax Alert, *Luxembourg: A detailed review of the EU ATAD implementation law*, dated 28 December 2018.

The circular clarifies the following points in relation to the CFC rules applicable in Luxembourg:

- Scope of the CFC rules
- Type of control considered for the application of the CFC rules
- Methodology for the assessment of the effective tax rate applicable to a CFC
- De-minimis rules providing that the CFC inclusion does not apply to CFCs which either: (i) derive annual profits in their commercial balance sheet which are not exceeding €750,000 or (ii) derive a profit in their commercial balance sheet, which does not exceed 10% of the operating expenses incurred during the same financial year
- Definition of a CFC
- Amount of inclusion for Luxembourg tax purposes of undistributed net income of a CFC
- Relief of double taxation related to included CFC income
- Municipal Business Tax treatment of CFC income

An EY Tax alert on the Luxembourg circular is currently under preparation and will address the key points of this circular in more detail.

Malta

On 20 February 2020, Malta ratified the Malta-Armenia double tax treaty (the Treaty) by way of Legal Notice 28 of 2020, as published in *Official Gazette* No. 20,350. On 24 September 2019, Armenia and Malta signed the Treaty, which is the first between the two countries. The Treaty is yet to come into effect.

The Treaty contains the preamble language which clarifies that it is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. The Treaty also includes a principal purpose test. Furthermore, the Treaty enables taxpayers to present a case for 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 Treaty.

Both Armenia and Malta have signed the MLI and neither of them have included this 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 the treaty-related BEPS minimum standards.

Netherlands

On 25 February 2020, the Dutch Tax Administration published a document with questions and answers concerning the decree on pre-consultations for rulings with an international character (the Decree). Among others, following items are discussed:

- A ruling can be requested with respect to international aspects of corporate income tax, dividend withholding tax, tax treaties and other regulations for the avoidance of double taxation.
- Sufficient economic nexus with the Netherlands must exist for an advance ruling to be granted.
- No pre-consultation concerning an international advance tax ruling can be requested if the main or one of the main aims of an arrangement is to reduce Dutch or foreign taxation.
- No advance ruling can be obtained with respect to non-arm's length transaction based on shareholder motives.

- No ruling can be requested for transactions with low-tax countries applying a tax rate of less than 9% or countries included on the EU black list.
- Tax filings: when filing a tax return the taxpayer may request the Tax Administration to take a position with respect to certain tax aspects for the tax year concerned. To the extent that such request is for one tax year, it does not fall within the scope of the Decree.

New Zealand

On 24 February 2020, New Zealand's Inland Revenue (IR) released its Policy Issues Paper proposing several amendments to the *Goods and Services Tax Act (GST) 1985*. Among the issues and proposed solutions covered in the paper was excluding cryptocurrency from the GST and financial arrangement rules. The IR is proposing that crypto-assets should be excluded from the ambit of the GST and financial arrangement rules to ensure these rules do not impose barriers to investing into, or raising capital from, crypto-assets.

The two options put forward to remove the GST from supplies of crypto-assets are to apply a treatment similar to money (outside the scope of GST) or exempt financial supplies. In addition, supplies of crypto-assets will not be subject to the GST when supplied to a nonresident. In addition, the IR proposes that the existing rule enabling input tax recovery on capital raising costs also apply to raising capital through issuing crypto-assets. The IR is seeking submissions on the proposals by 9 April 2020.

See EY Global Tax Alert, *New Zealand Inland Revenue releases GST Policy Issues Paper*, dated 27 February 2020.

Norway

On 27 February 2020, the Norwegian Ministry of Finance (the Ministry) issued a public consultation paper regarding the introduction of withholding tax (WHT) on interest and royalty payments to related parties. The Ministry is also considering introducing WHT on certain lease payments to related parties. However, this is only a tentative proposal.

For interest, the WHT will apply only for payments to related parties that are tax resident in a low-tax jurisdiction. For royalties on the use of intellectual property rights, WHT will apply to all payments to related parties, regardless of whether they are resident in a low-tax jurisdiction.

The proposed tax rate is 15% on the gross amount. An optional net taxation regime is included for companies that are tax resident within the European Economic Area (EEA), if they qualify as actually established and carrying out genuine economic activities within the EEA.

The Ministry proposes that the rules shall be effective from 1 January 2021. Comments to the proposal must be submitted by 27 May 2020.

See EY tax alert, *Norwegian Government proposes introduction of withholding tax on interest and royalties paid to nonresident related parties*, dated 28 February 2020.

Peru

On 5 February 2020, Peru's Tax Authority (SUNAT) published, on its website, a catalogue of potentially aggressive tax planning schemes (*Catálogo de Esquemas de Alto Riesgo Fiscal*) that are likely to be subject to the general anti-avoidance rule (GAAR).

The catalogue includes five schemes for which the GAAR could apply. The catalogue provides a detailed description of each scheme. It also determines the tax benefit or reduction that is likely to be obtained from each scheme. These schemes are:

- Schemes involving the deduction of royalties on trademarks between an individual domiciled in Peru and a company domiciled in Peru
- Schemes in which a non-domiciled company transfers shares issued by a company domiciled in Peru through a foreign trust or other similar entity
- Schemes in which a non-domiciled company holding shares issued by a company domiciled in Peru changes its domicile to take advantage of a tax treaty providing more favorable treatment of capital gains on a transfer of shares
- Schemes involving a trademark assignment and the capitalization of debts
- Schemes involving a management contract (*contrato de gerenciamiento*) entered into between two companies domiciled in Peru

According to SUNAT, the catalogue will be updated periodically to include additional schemes over time.

Qatar

On 11 February 2020, Qatar's General Tax Authority (GTA) published six directives on its website to address the MAP under its tax treaties. The directives which were issued as part of the GTA's efforts to implement BEPS Action 14 address the following aspects:

- Directive 1 reiterates the power of the GTA, being the competent authority under tax treaties, to enter into MAP agreements with other competent authorities, and confirms the intention of the GTA to publish these agreements (subject to exceptions).
- Directive 2 confirms the GTA's intention to take a lenient approach in interpreting the provisions of tax treaties regarding the deadlines for submitting a MAP request.
- Directive 3 clarifies the GTA's approach towards initiating discussions with other competent authorities on MAP cases. This approach will be based primarily on fairness, objectivity and consistency.
- Directive 4 stresses the importance of providing accurate and complete information together with the MAP request.
- Directive 5 explains the criteria for rejection of a MAP request, using the commentary of article 25 of the OECD Model Treaty (2017) as a basis.
- Directive 6 confirms the intention of the GTA to establish a program for bilateral advance pricing arrangements. It is expected that such a program will be issued in a separate directive.

As member of the BEPS Inclusive Framework, Qatar has agreed on a peer review process to evaluate the implementation of the BEPS Action 14 minimum standard. Qatar is included in the 10th batch of assessing jurisdictions and its Action 14 peer review report is expected later this year.

Spain

On 28 February 2020, the Spanish Council of Ministers approved a bill introducing the Spanish Digital Service Tax (DST).

The current Bill is fully aligned with the previous version of the bill drafted in 2019 (See EY Global Tax Alert, *Spain sends bill on Digital Services Tax to Parliament for approval*, dated 29 January 2019). Its main features are similar to the DST initially proposed by the EU Commission on 21 March 2018, with a rate of 3% imposed on gross income derived from certain digital services for which user participation is essential for creating value; namely, targeted online advertising, online intermediation services and the sale of user data. Only companies with worldwide revenues of at least €750 million annually, with a total amount of taxable revenues obtained in Spain exceeding €3 million annually would be subject to the DST.

The Spanish Government has acknowledged that the best approach would be to find a multilateral international solution to the challenges arising from the new global economy. However, since reaching a solution at the international level is taking a long time, a first interim unilateral response is needed. Thus, the Bill's preamble states that the Spanish DST is conceived as a temporary transitional measure which will apply until the rules implementing an internationally-agreed solution enters into force.

The Bill now moves to the Parliament for approval. If approved, it will come into force three months after it is published in the Spanish *Official Gazette*. It is expressly foreseen that, if approved, the filing and payment of the DST corresponding to the second quarter and third quarter of 2020 will not be due until 20 December 2020.

See EY Global Tax Alert, *Spain sends 2020 bill on Digital Services Tax to Parliament for approval*, dated 3 March 2020.

Also on 28 February, the Bill on the Financial Transaction Tax (FTT) was published and sent to the Parliament to go through the corresponding approval procedure. No relevant changes have been made in relation to the previous Bill of this tax published in January 2019.

The FTT is an indirect tax triggered upon the acquisition of listed shares of Spanish companies with market capitalization over €1,000 million, irrespective of the agents participating in the acquisition, at a 0.2 % tax rate. The Bill provides several exemptions, such as, initial public offerings, corporate restructurings, transactions between entities forming part of a group, acquisitions made in the scope of securities financing transactions, amongst others. Some of the exemptions are similar to the French FTT; however, even in coinciding exemptions, differences are expected to arise.

The taxpayer will be the financial intermediary to the acquisition that transfers or executes the orders (with a wide range of rules depending on the concrete situation), although the taxable person will be the acquirer of the shares. The new wording of the Bill also includes the obligation of the taxpayer to inform the custodian of all the details of the transaction as well as of the amount of Spanish FTT due. Monthly liquidation is expected.

This Bill still needs to undergo the approval procedure and it is uncertain whether the Spanish Government has the support needed to progress the Bill.

See EY Global Tax Alert, *Spain sends bill on Financial Transaction Tax to Parliament*, dated 4 March 2020.

Sweden

The Swedish Government issued to Parliament, on 4 February 2020, a final bill implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

An earlier draft of the proposed bill, published on 6 December 2019, was subject to scrutiny by The Council on Legislation (Swe: Lagrådet), which made only minor remarks. The updated bill considers the view of the Council and the final bill is unlikely to be amended materially before final enactment. It is expected that the Parliament will enact the proposal in early March 2020.

If implemented as currently proposed, the Swedish MDR legislation will be closely aligned with the requirements of the Directive. However, the proposal states that it deals only with the implementation of DAC6 and the Government is still considering whether the regulation should be extended to domestic arrangements.

The Swedish legislation will enter into force on 1 July 2020 and sanctions will be effective from that date.

See EY Global Tax alert, *Sweden issues final proposal on Mandatory Disclosure Rules to Parliament*, dated 26 February 2020.

Tunisia

On 27 December 2019, Tunisia's Finance Law 2020 was published in the *Official Gazette* (No. 104 for 2019). Among other measures, the Finance Law introduced a 3% digital tax on the sale of digital applications and digital services performed via the internet by nonresident companies. The conditions for applying the new tax will be determined by a Decree. The measures of the Finance Law 2020 are applicable, as from 1 January 2020.

Turkey

On 28 February 2020, the Turkish Revenue Administration updated the Draft DST Communiqué that was published on 5 February 2020 to introduce new exclusions to the DST provisions. Among others, the updated Draft DST Communiqué mentions that the following services for sales of audio, visual or digital content and use of digital content are not considered digital content: (i) storage of digital data on online platforms; and (ii) tickets sold in the digital environment that provide the right to use of services that are the subject of an actual presentation such as cinema, theater, concert, museum, sporting competitions, bus, train, plane tickets. Also, the date for the Documentation and Notification Obligation Regarding Exemption has been amended to 30 June instead of 31 May.

See EY Global Tax Alert, *Turkey updates draft DST Communiqué*, dated 28 February 2020.

On 25 February 2020, under Turkey's Presidential Decision no.2151, the existing documentation requirement has been expanded to include OECD documentation, that is, the master file, an annual transfer pricing report and CbC reports. The rules are applicable for reporting fiscal years commencing on or after 1 January 2019.

According to the rules, all Turkish tax resident constituent entities that are ultimate parent entities (UPEs) of an MNE group with annual consolidated group revenue equal to or exceeding €750 million must prepare and submit a CbC report. Any other Turkish tax resident constituent entity of an MNE group will have to prepare and locally file a CbC report if the UPE is not resident in Turkey and any of the following conditions are met: (i) it is not obliged to file a CbC report in its country of residence; (ii) no competent authority agreement has been agreed in a timely manner under the current international agreements of Turkey and the jurisdiction of tax residence of the UPE for the exchange of the Country-by-Country Reports; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. Notwithstanding the above, local filing of the CbC report will not be required if the MNE group appoints a surrogate parent entity (SPE) and other requirements are met. The CbC report should be submitted to the Revenue Administration within the 12-month period after the last day of the reporting fiscal year. Failure to timely and correctly submit the CbC report may lead to the loss of penalty protection. Moreover, a Turkish constituent entity will need to notify the Revenue Administration whether it is the UPE or the SPE by the end of August 2020. The notification requirement is on an annual basis. The required information about subsequent years must be submitted to the Revenue Administration annually by the end of June.

Furthermore, the master file is required to be prepared by corporate taxpayers affiliated with an MNE group with an asset size on the balance sheet and a net sales amount in the income statement attached to the corporate tax return for the previous accounting period each at TRY500 million (approximately €72 million) and above. The master file should be prepared by the end of the accounting period following the end of the relevant fiscal period and after this period ends. The first master file should be prepared for the 2019 accounting period. Taxpayers with a special accounting period should prepare the first master file for their special accounting period that starts after 1 January 2019. The master file should be submitted to the Revenue Administration or those authorized to conduct tax inspections upon request.

Taxpayers which have domestic and foreign related-party transactions with taxpayers registered with the Large Taxpayers Office in an accounting period, foreign related-party transactions made by the other corporate taxpayers in an accounting period, domestic related-party transactions of corporate taxpayers operating in free zones and transactions of all corporate taxpayers with foreign branches and related parties located in free zones must also prepare a local file. The local file must be prepared by the submission date of the corporate tax return and after that period ends, if requested, it should be submitted to the Revenue Administration or those authorized to conduct tax inspections.

See EY Global Tax Alert, *Turkey revises transfer pricing documentation requirements to be effective from 2019*, dated 3 March 2020.

United Arab Emirates

On 29 February 2020, the new Income Tax Treaty (2019) (the Treaty) between Korea and the United Arab Emirates (UAE) entered into force. The Treaty generally applies from 1 January 2021.

The 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. The Treaty also includes a principal purpose test. Furthermore, the Treaty enables taxpayers to present a case for 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 Treaty.

On 19 December 2019, the new Income Tax Treaty (2018) (the Treaty) between Brazil and the UAE was ratified by the UAE. The Treaty still needs to be ratified by Brazil before it enters into force.

The 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 the PE clause, the Treaty 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. It provides a period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty.

For the MLI provisions to have effect on the Treaty, Brazil would need to first sign the MLI, and then both jurisdictions would need to include the Treaty in their respective list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made by that respective jurisdiction.

United Kingdom

On 11 March 2020, the UK Budget for 2020 was presented to Parliament by the Chancellor of the Exchequer. In the context of BEPS-related measures, the UK Government will introduce a new 2% tax on the revenues of search engines, social media services and online marketplaces which derive value from UK users from 1 April 2020. These businesses will be liable to DST when the group's worldwide revenues from these digital activities are more than £500 million and more than £25 million of these revenues are derived from UK users. The UK Government believes the most sustainable long-term solution to the tax challenges arising from digitalization is reform of the international corporate tax rules and strongly supports G7, G20 and OECD discussions on long-term reform. The Government is committed to dis-applying the DST once an appropriate international solution is in place.

A consultation on the corporation tax rules that apply to hybrid mismatch arrangements will also be published on 19 March 2020, alongside the Finance Bill. The consultation is expected to consider the "double deduction" rules, the "acting together" definition and whether it is appropriate in all cases for hybrid counteractions to arise in respect of tax-exempt entities holding interests in hybrid payees which they see as opaque, but which the UK sees as transparent.

The changes are expected to be particularly relevant for investment holding structures involving US funds. However, corporate groups should also review their wider implications including how changes to the double deduction rules may impact on structures where UK entities are already or may be "checked" into US groups as disregarded entities.

On 25 February 2020, the Council of the European Union (the Council) adopted a decision authorizing the European Commission to open negotiations for a new partnership agreement with the United Kingdom of Great Britain and Northern Ireland. The Council nominated the Commission to act as the negotiator during these negotiations and adopted negotiating directives as a mandate for conducting the negotiations. For previous reporting, see *The Latest on BEPS and Beyond*, dated 18 February 2020.

Among others, the following goals were put forward for the partnership to achieve:

- To implement 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 BEPS
- To maintain common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to; exchange of information on income, financial accounts, tax rulings, CbC reports, beneficial ownership and potential cross-border tax-planning arrangements
- To reaffirm the Parties' commitment to curb harmful tax measures, taking into account the G20-OECD BEPS Action Plan and to the Code of Conduct for Business Taxation

The first formal meeting between the European Commission and the UK was expected to take place in early March, however talks have been temporarily postponed due to the developing situation around COVID-19.

United States

Recently, the US Internal Revenue Service (IRS) released aggregated CbC report data. The data presented is collected from Form 8975 – Country-by-Country Report and Form 8975 Schedule A – Tax Jurisdiction and Constituent Entity Information and relates to the reporting fiscal year 2017. The data provides aggregated information on the contents of Tables 1 and 2 of the CbC reports. This is the second year that the IRS has released such information.

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