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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

With many countries around the world starting to introduce measures to bring their societies and economies to the "new normal," we can see the different phases through which the tax policy approaches in relation to the COVID-19 crisis are moving. The first phase about urgent responses, occurring over the past couple months, is slowing shifting to the next, where recovery and growth are the goals.

Like national governments, the European Union (EU) responded quickly to the COVID-19 crisis. Measures include the European Commission's (the Commission) adoption of a temporary State aid framework for Member States to mitigate the socio-economic impact of the coronavirus outbreak. Other responses include the proposed changes to the Mandatory Disclosure Rules Directive (referred to as DAC6) and other directives, deferring relevant deadlines.

At the same time, the EU's agenda under the German Council Presidency for the second semester of this year, is starting to fill with tax initiatives. In that respect, Prime Minister Merkel has already declared minimum taxation a priority issue in addition to a Financial Transactions Tax.

Building a better working world

Also, the Commission will present its proposals for an anti-fraud and simplification package, focused on an "Action Plan to fight tax evasion and to make taxation simple and easy," "Tax good governance in the EU and beyond"; and a Revision of the directive on automatic exchange of information. But it is also expected that it could present its proposals for Taxation of the 21st Century that could be combined with the presentation of the Commission's backup plan should the OECD be unable to deliver its BEPS 2.0 work program.

Finally, some EU Member States are becoming increasingly vocal on the need to tax digitalized companies in their urgent search for revenues. Similarly, the financial impact of the COVID-19 crisis is prompting governments to consider other new taxes at the national or even at the EU level.

Consequently, there will be many new developments to track and analyze as they unfold in the period ahead. In addition, different countries and regions may also move at different paces, leaving the EU to develop into a frontrunner in the coming months.

## OECD

On 12 and 13 May 2020, the OECD held a consultation with respect to its public consultation document: Review of Country-by-Country Reporting (BEPS Action 13). The consultation, which was held remotely through a videoconference, was an opportunity for stakeholders to engage directly with the OECD Secretariat and the country delegates of the Inclusive Framework on BEPS on this review of the country-by-country (CbC) reporting standard and the implementation experience to date. The OECD technical groups responsible for work on CbC reporting will discuss the perspectives shared at the consultation as they advance the review through virtual meetings and work toward agreement on any changes to be made to the existing CbC reporting standard.

See EY Global Tax Alert, *OECD holds public consultation on the 2020 review of country-by-country reporting*, dated 15 May 2020.

On 4 May 2020, the OECD Secretariat hosted a webcast to provide an update on its current work related to the COVID-19 crisis and to explain how the OECD has adapted its work on other projects because of the crisis. In response to the COVID-19 crisis, the OECD is providing support to countries by gathering information on the responsive tax policy and tax administration actions that countries are taking and by analyzing cross-border tax issues that are arising. In parallel, the OECD continues its work on the full range of ongoing tax projects.

Regarding the project on addressing the tax challenges of the digitalization of the economy, it was reported on the webcast that progress is being made toward the objective of reaching agreement with respect to Pillar 1 and Pillar 2 by the end of 2020. However, due to COVID-19, the meeting of the Inclusive Framework on BEPS, which comprises the 137 jurisdictions participating in this project, that was planned for July 2020, together with the interim target of agreement on key policy features of new rules, has been postponed to October 2020. It was also noted that work on the project will continue into 2021.

See EY Global Tax Alert, *OECD hosts webcast to provide update on its tax work during COVID-19 crisis*, dated 11 May 2020.

On 30 April 2020, the Russian Federation made a notification confirming the completion of its internal procedures for the entry into effect of the provisions of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) with respect to 27 of its Covered Tax Agreements (CTAs). Russia had reserved the right to delay the entry into effect of the provisions of the MLI in accordance with Article 35(7)(a) until it has completed its internal procedures for this purpose. Now that Russia has notified the completion of its internal procedures with respect to the 27 notified CTAs, the rule on entry into effect set out in Article 35(1) and (5) of the MLI would apply as from the date that is 30 days after the Depositary has received the notification from Russia that it has completed its internal procedures, i.e., as from 30 May 2020.

Indonesia, on 28 April 2020, and the Czech Republic and Korea, on 13 May 2020, deposited their respective 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, Indonesia confirmed its MLI positions and it added 14 additional treaties (i.e., with Armenia, Bulgaria, Czech Republic, Denmark, Egypt, Hungary, Mexico, Pakistan, Portugal, Romania, Russia, Serbia, Spain, and Sweden) to its list of CTAs. Indonesia also removed the reservation of article 17 (corresponding adjustments) and added the reservation of article 35(7)(a) regarding the entry into effect. The Czech Republic confirmed its MLI positions but it removed 35 treaties (i.e., with Albania, Azerbaijan, Bahrain, Barbados, Belarus, Bosnia and Herzegovina, Brazil, Estonia, Ethiopia, Indonesia, Iran, Jordan, Kazakhstan, Korea, Lebanon, Macedonia, Malaysia, Moldova, Mongolia, Montenegro, Morocco, Panama, Philippines, Saudi Arabia, Sri Lanka, Syria, Tajikistan, Thailand, Tunisia, Ukraine, United Arab Emirates, United States, Uzbekistan, Venezuela, and Vietnam) from its list of CTAs. Korea confirmed its MLI positions and it added 12 treaties (i.e., with Algeria, Australia, Bahrain, Brunei Darussalam, Kenya, Malaysia, Oman, Panama, Peru, United Arab Emirates, United States and Vietnam) to its list of CTAs and it removed two treaties (i.e., with Germany and Switzerland) from the same list. The MLI will enter into force for Indonesia, the Czech Republic and Korea 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 August 2020 for Indonesia and on 1 September 2020 for the Czech Republic and Korea.

On 28 April 2020, the OECD announced that Colombia had formally completed the accession process to become the 37th member of the OECD. Colombia is now the third country from Latin American to join the OECD, following Chile and Mexico.

See EY Global Tax Alert, *Colombia becomes 37th member of the OECD*, dated 7 May 2020.

## European Union

On 12 May 2020, the agenda highlights of the next Economic and Financial Affairs Council (ECOFIN) meeting, which will take place virtually on 19 May 2020, was published. Among others, ministers will discuss progress achieved on EU measures to tackle the economic fallout of the COVID-19 pandemic and they will also focus on new anti-money laundering initiatives proposed by the Commission. The Croatian Presidency will brief ministers on the preparation of Council conclusions on the European Semester 2020 country reports.

On 8 May 2020, the Commission proposed a three-month extension to the deadlines for filing and exchanging information on cross-border arrangements under EU Directive 2011/16 due to the COVID-19 pandemic. The proposal also provides for the possibility of one further extension for filing and exchanging information for a maximum additional three months.

This proposal, if enacted, will be in the legal form of a Directive (the Proposed Directive). Given that the measures set out in the Proposed Directive relate to obligations in Directive 2011/16 which would otherwise become applicable within a short period of time, the Commission has stated that the Proposed Directive should enter into force as a matter of urgency.

The Proposed Directive was discussed at a meeting of the members of the High-Level Working Party (Taxation) on 11 May 2020 but did not find common consent due to controversies over the period of delay. The discussions are likely to continue over the next week.

See EY Global Tax Alert, *European Commission proposes deferral for certain filing deadlines under the Mandatory Disclosure Rules*, dated 8 May 2020.

On 30 April 2020, the Commission opened an investigation to assess whether a Belgian aid scheme to support videogame production is compatible with EU State aid rules.

Currently, Belgium has a "tax shelter" scheme to support film production which allows the taxpayer to benefit from certain tax advantages as long as spending conditions (direct or indirect) in Belgium are met. Belgium has decided to extend the same support given to film production to videogame production. However, the territorial spending conditions are exceptionally allowed under the Commission Communication on State aid due to the nature of film production which is mobile and may not be the same for the videogame production. Furthermore, the Communication explicitly rejects this type of aid to videogames which do not qualify as audiovisual works.

On 3 April 2020, the Commission approved a Polish aid scheme to support the Polish economy in the context of the coronavirus outbreak. Poland notified to the Commission under the Temporary Framework (as adopted by the Commission on 19 March 2020, as amended on 3 April 2020) a guarantee scheme on existing or new loans to support companies. The scheme will enable the provision of public guarantees amounting to up to PLN100 billion (€22 billion). The scheme, which will be accessible by medium and large Polish companies active in all sectors, aims at limiting the risk associated with issuing loans to those companies that are most severely affected by the economic impact of the current crisis. It will help businesses cover their immediate working capital or investment needs and ensure that they have sufficient liquidity to continue their activities.

The Commission found that the Polish measure is in line with the conditions set out in the Temporary Framework. On this basis, the Commission approved the measure under EU State aid rules.

A full list of State aid measures that have been adopted under the Temporary Framework is available here.

## Austria

On 9 April 2020, the OECD released the Stage 2 peer review report of Austria relating to the outcome of the peer monitoring of the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Austria's Stage 1 peer review report. Austria requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.

Overall the report concludes that Austria addressed almost all of the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, *OECD releases Austria Stage 2 peer review report on implementation of Action 14 minimum standard*, dated 8 May 2020.

## Bahrain

On 1 April 2020, the Bahrain National Bureau of Revenue issued guidance to help taxpayers and Competent Authorities (CAs) to use the Mutual Agreement Procedure (MAP) in resolving double tax treaty (DTT) disputes. The purpose of the issued guidance is to define what is a MAP, procedures and minimum requirements for initiating and conducting MAP, as well as timeline and confidentiality protection. The guidance supports Bahrain's commitment to implement the minimum standard of OECD BEPS Action 14.

See EY Global Tax Alert, *Bahrain issues guidance on Mutual Agreement Procedure*, dated 20 April 2020.

## Brazil

On 4 May 2020, Brazilian Congressman João Maia proposed Bill 2,358/2020, which would establish an annual federal digital services tax called the Contribution for Intervention in the Economic Domain – Digital (CIDE-Digital). The CIDE-Digital is targeted at large digital groups whose annual worldwide gross revenue and local gross revenue exceed R$3 billion and R$100 million, respectively. The CIDE-Digital would apply progressively. Both chambers of the National Congress (i.e., Chamber of Deputies and Senate) will need to discuss and approve the bill, in different voting rounds.

See EY Global Tax Alert, *Brazilian Congressman proposes digital services tax*, dated 8 May 2020.

## Denmark

On 29 April 2020, the Danish Government agreed with all parties in the Parliament to implement a comprehensive reform of tax control and oversight by the tax authorities.

The first stage of the reform focuses on money laundering, value-added tax, and the fight against international tax evasion. Also, extensive work is underway to secure new tools and technology solutions to support the control work. In addition, the Government has appointed a Working Group to evaluate whether the use of existing penalties can be enhanced or amendments need to be made to improve tax compliance.

On 15 April 2020, the Danish Prime Minister informed the Speaker of the Danish Parliament that, amongst others, the law proposal (L48) transposing into Danish legislation the CFC rules in line with the EU Anti-Tax Avoidance Directive 2016/1164 (2016) (ATAD Directive) has been postponed as a result of the Covid-19 crisis. It is unclear when the legislation will be decided on by the Parliament, but it is not expected to happen before the next parliamentary year (beginning on the first Tuesday in October).

## France

In October 2019, the French Tax Code (FTC) was supplemented with Articles 1649 AD to 1649 AH, implementing EU Directive 2018/822 of 25 May 2018 on the mandatory disclosure and automatic exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

On 9 March 2020, the French Tax Authorities (FTA) published official detailed draft guidance regarding the definitions of the terms and the reporting process under the French Mandatory Disclosure Rules (MDR).

Following the March guidance, the FTA published on 29 April additional official detailed draft guidance (draft guidance) dedicated to hallmarks. The draft guidance is subject to a public consultation until 31 May 2020 but may be relied upon until the final guidance is issued. The draft guidance provides some clarity on the definition and scope of the hallmarks. It also provides some examples of arrangements that meet the criteria set out in the hallmarks.

See EY Global Tax Alert, *France publishes additional official tax guidelines on Mandatory Disclosure Rules*, dated 13 May 2020.

On 23 and 30 March 2020, the FTA published additional guidelines on the Digital Services Tax (DST), which focuses on the scope and computation of the DST. The previous comments regarding reporting and accounting obligations, recovery, control and litigation published on 16 October 2019 have been updated.

The French DST consists of a 3% levy applied to the portion of global revenue relating to France according to the "domestic presence coefficient," derived from specific digital activities by companies with qualifying revenue of more than €750 million worldwide and €25 million in France. The additional guidelines provide details on the scope of the DST (definition of taxable services for both digital intermediation and targeted advertising services, which include the sale of data for the purpose of targeted advertising, territoriality rules, thresholds, etc.) and on how to calculate the DST (taxable payments and "domestic presence coefficient").

Interested parties may submit comments on the additional guidelines until 23 May 2020 by e-mail to bureau.d2-dlf@dgfip.finances.gouv.fr. Only signed comments will be considered. Thus, there may be revisions before the guidance is issued in final form. However, the guidance is already binding on the FTA.

See EY Global Tax Alert, *France issues comprehensive draft guidance on digital services tax*, dated 13 April 2020.

## Guernsey

On 11 March 2020, Guernsey approved the Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules or MDR) Regulations 2020 (the Regulations). The Regulations introduce 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 Director (Director of the Revenue Service or such other person, body or authority as the Director may by notice specify for the purposes of these Regulations). 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) provides relevant services in respect of the CRS avoidance arrangement or opaque offshore structure. The Regulations also provide for the details of the information to be disclosed. Penalties are provided for failure to comply with the Regulations. The Director may issue guidance notes for clarifying the provisions of the Regulations.

## Hong Kong

On 16 April 2020, Hong Kong's Inland Revenue Department (IRD) issued a revised practice note (Revised DIPN 31) which explains that the IRD is now required to spontaneously furnish to the tax authorities of relevant overseas jurisdictions the following four categories of tax rulings issued by the IRD:

(i) Rulings relating to preferential tax regimes

(ii) Unilateral Advance Pricing Arrangements and any other cross-border unilateral rulings in respect of transfer pricing

(iii) Permanent establishment rulings

(iv) Related party conduit rulings

The Revised DIPN 31 also indicates that tax rulings on offshore claims in Hong Kong are not in-scope rulings that need to be spontaneously exchanged since they do not fall within the four categories above.

See EY Global Tax Alert, *Hong Kong conducts compulsory spontaneous exchange of information for certain tax rulings*, dated 14 May 2020.

## India

On 27 March 2020, the Indian Government, through the Union Budget of India 2020 introduced an amendment to expand the scope of the Equalization Levy (EL) to cover consideration received by nonresident e-commerce operators (e-com EL) from specified transactions. The e-com EL provisions are effective from tax years starting 1 April 2020 and will apply at the rate of 2% on the consideration received or receivable by the nonresident e-commerce operator from specified transactions where such receipts exceed INR20 million (approx. US$265,000) during the relevant tax year. The wide scope of e-com EL is likely to have an impact on a number of multinational enterprises (MNEs), whether operating highly digitalized business models or not, given the increasingly pervasive nature of digitalization. Therefore, the MNEs would need to evaluate in detail the implications of this amendment on their operating models and monitor the compliance obligations.

See EY Global Tax Alert, *India extends Equalization Levy scope to cover e-commerce supplies or services*, dated 29 April 2020.

## Indonesia

On 18 March 2020, Indonesia's Ministry of Finance has released Regulation number 22/PMK.03/2020 (PMK-22), Guidelines for the Establishment and Implementation of Advanced Pricing Agreements, which repeals the prior regulation on advanced pricing agreements (APA). The stated intent of PMK-22 is to align Indonesia's APA framework with the OECD/ G20 BEPS project, to provide greater legal certainty as well as to make the APA program more effective. PMK-22 provides a number of significant developments which include the following, among other things: (1) An APA can now cover five forward years as well as open historical years under a rollback, subject to certain conditions; (2) Additional criteria on a taxpayer's eligibility for the APA program; (3) The pre-filing process burden has eased significantly for taxpayers under this new regulation; (4) Stricter timing of process; (5) The application for an APA has the ability to trigger an audit of the taxpayer where the taxpayer's related party transactions have not been audited in the three prior years or a roll-back request is submitted; (6) Clarification that the DGT may not make a correction to the transfer pricing of a transaction covered under the APA as long as the taxpayer has implemented the APA agreement; (7) Annual compliance reports requirement; and (8) APA renewal process.

## Jersey

On 30 April 2020, the Minister for External Relations made the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Amendment of Regulations No. 3 – Participating Jurisdictions) (Jersey) Order 2020.

The Order updates the list of participating jurisdictions for the automatic exchange of information on financial accounts under the CRS. The Order entered into force on 1 May 2020.

With effect from 1 January 2016, Jersey adopted the CRS pursuant to which qualifying financial institutions are required to prepare and submit data on reportable financial accounts. This information will then be exchanged with multiple jurisdictions that are recognized as participating jurisdictions by Jersey. This list of participating jurisdictions has been updated since 2017.

## Kenya

On 6 May 2020, the Chairperson of the Department Committee on Finance & National Planning presented the Finance Bill, 2020 (the Bill) to Parliament. It is anticipated that Parliament will request stakeholder and public comments before the Bill becomes an Act. Among others, the Bill proposes to impose a DST on income from services provided through a digital marketplace in Kenya at the rate of 1.5% on the gross transactional value. The DST shall be payable via a withholding tax system. Withholding tax agents will be appointed by the Commissioner. The tax paid under this regime by a resident person or nonresident person with a permanent establishment in Kenya, shall be offset against the income tax payable for that year of income. The effective date of the proposed DST is 1 January 2021.

See EY Global Tax Alert, *Kenya proposes Finance Bill, 2020*, dated 8 May 2020.

## Latvia

On 14 April 2020, Latvia's Cabinet of Ministers approved the 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 legislation was published on 17 April 2020 and will be effective from 1 July 2020.

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

Unlike the draft legislation issued in December 2019, the final Latvian legislation provides for an exemption from reporting where the reporting obligation would breach legal professional privilege.

See EY Global Tax Alert, *Latvia passes regulations to implement Mandatory Disclosure Rules: A detailed review*, dated 5 May 2020.

## Malaysia

On 16 March 2020, the Malaysian Government announced a Movement Control Order (MCO), initially effective from 18 March 2020 to 31 March 2020. The MCO was subsequently extended four times, with certain restrictions applying until 9 June 2020. In response to the movement restrictions, the Malaysian Inland Revenue Board has published a regularly updated Frequently Asked Questions (FAQ) document addressing a range of tax administrative concessions. These concessions include but are not limited to extended deadlines for CbC reporting and CbC reporting notification requirements. The latest FAQ document dated 15 May reflects the following extended CbC reporting related deadlines:

(i) Submissions due on 31 March 2020: Deadline extended to 15 May 2020

(ii) Submissions due on 30 April 2020: Deadline extended to 31 May 2020

(iii) Submission of CbC reporting notifications by constituent entities due on either 31 March 2020 or 30 April 2020: Deadlines extended to 31 May 2020

## Netherlands

On 15 April 2020, an advisory committee established by the Dutch Government published a report on measures for the "fairer" taxation of multinationals, while maintaining the attractive fiscal investment climate in the Netherlands for corporate headquarters. The proposed measures of the published report do not have an official status, they are non-binding and only constitute advice to the Government. In the published report, the advisory committee recommends that the Government conducts further research to gather more information about the worldwide corporate income tax position of multinationals. The advisory committee also recommends that the Government takes a leading role in international tax developments, such as BEPS 2.0. Finally, the advisory committee proposes several measures to broaden the corporate income tax base for multinationals, which consist of recommendations for introducing a minimum tax for multinationals and recommendations for eliminating international mismatches. The report will now be studied by the Government, who is expected to respond with a roadmap of the way forward this summer.

See EY Global Tax Alert, *Dutch Government's advisory committee publishes report on taxation of multinationals*, dated 16 April 2020.

On 6 April 2020, the Dutch Ministry of Finance published guidance on the application of the BEPS MLI and its effect on Dutch tax treaties. The new document provides a brief overview of the MLI, including background information, how the MLI works, and as of when the MLI applies. Additionally, the document provides a list of the covered tax treaties to which the MLI applies, and from which date these changes apply. This list will be updated on a quarterly basis.

## Peru

On 21 April 2020, Peru's Executive Power enacted Supreme Decree 085-2020-EF (the Decree), amending the Peruvian Income Tax Law regulations and establishing new rules for determining the market value of shares in indirect transfers of Peruvian shares. The Decree requires four methods, namely quotation value, discounted cash flow method, equity value and residual method, to be followed when determining the market value of shares of the resident entity and the nonresident entity in indirect transfers of shares, either for transactions with related or unrelated parties. The Decree went into effect on 22 April 2020.

See EY Global Tax Alert, *Peru amends rules on indirect transfers of shares*, dated 28 April 2020.

## Portugal

On 24 April 2020, the Portuguese Secretary of Tax Affairs issued Order no. 153/2020-XXII which includes measures to extend several deadlines for filing and payment of certain taxes in response to the ongoing COVID-19 pandemic crisis. Among these measures, the Order extends the deadlines for taxpayers to prepare and submit the transfer pricing documentation report to 31 August 2020, and the Annual Tax and Accounting Information Return of which the transfer pricing disclosure annex is an integral part to 7 August 2020.

On 28 February 2020, Portugal deposited its instrument of ratification of the MLI with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Portugal submitted the definite list of 79 tax treaties entered into by Portugal and other jurisdictions that Portugal would like to designate as CTAs, i.e., tax treaties to be amended through the MLI as well as its list of reservations and notifications. The MLI will enter into force for 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 by Portugal of its instrument of ratification, i.e., 1 June 2020.

See EY Global Tax Alert, *Portugal deposits its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 20 April 2020.

## Saudi Arabia

Saudi Arabia deposited its instrument of ratification for the MLI with the Secretary-General of the OECD on 23 January 2020.

The MLI will enter into force for Saudi Arabia on 1 May 2020 and 14 Saudi Arabian double tax treaties will be modified as of that date. As more jurisdictions are expected to proceed with ratification of the MLI, going forward, other Saudi Arabian double tax treaties will be amended in line with the MLI. Accordingly, businesses operating in Saudi Arabia should review the changes introduced by the MLI to determine if the changes will affect access to treaty benefits.

See EY Global Tax Alert, *Saudi Arabia: MLI enters into force on 1 May 2020*, dated 30 April 2020.

## Sweden

On 9 April 2020, the OECD released the Stage 2 peer review report of Sweden relating to the outcome of the peer monitoring of the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Sweden's Stage 1 peer review report. Sweden requested the OECD to also provide feedback concerning the adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.

Overall, the report concludes that Sweden has addressed almost all the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, *OECD releases Sweden Stage 2 peer review report on implementation of Action 14 minimum standard*, dated 21 April 2020.

## Turkey

On 16 April 2020, the Revenue Administration issued draft General Communiqué no. 4 on Transfer Pricing amending General Communiqué no. 1 on Transfer Pricing (Draft Communiqué no. 4).

The Draft Communiqué no. 4 mainly implements the Presidential Decree, no. 2151 on determining disguised profit distribution between related companies which was gazetted on 25 February 2020 and mainly includes OECD documentation, that is, the master file, annual transfer pricing report and CbC report for the 2019 accounting period.

The draft communique also provides: (i) examples for determining the 10% threshold for the definition of "related party"; and (ii) explanations related to recognition of the Transitional Net Margin Method (TNMM) and Profit-Split Method.

The Revenue Administration requested comments on the Communiqué to be submitted via e-mail by 1 May 2020 at the latest.

On 20 March 2020, the final version of the DST Communiqué was published in the *Official Gazette*.

The Communiqué describes the implementation of the DST, which came into force by Law no. 7194, which was published in the *Official Gazette* on 7 December 2019 and entered into force on 1 March 2020.

Following enactment of the Law no. 7194, the Turkish Government introduced, on 5 February 2020, the first draft of the Communiqué on the implementation of the DST (Draft DST Communiqué). The Draft DST Communiqué was updated on 28 February and re-issued on the website of the Turkish Revenue Administration.

The Communiqué introduces explanations, procedures and principles regarding the implementation of the DST, regulated in Articles 1 to 7 of the Law No. 7194.

The Communiqué applies retroactively from 1 March 2020.

See EY Global Tax Alert, *Turkey publishes final General Communiqué on the Implementation of the Digital Services Tax*, dated 23 March 2020.

The DST, which entered into force on 1 March 2020, has been levied for the first time in Turkey. DST return filings and payments for the first taxation period (March 2020) have been made by taxpayers subject to the DST who exceed the thresholds in 2019 accounting period. Filings and payments were made through the following link: https://digitalservice.gib.gov.tr by the last day of April. The website is still accessible for tax registrations, filings and payments for those who have not yet filed.

See EY Global Tax Alert, *Turkey collects Digital Services Tax payments*, dated 6 May 2020.

## United Kingdom

The United Kingdom (UK) tax authority, Her Majesty's Revenue and Customs (HMRC) has circulated draft guidance on the application of the UK's implementing legislation for the EU Directive 2018/822 on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (the UK Regulations), which implements the Directive in the UK, was laid before Parliament on 13 January 2020 and will come into force on 1 July 2020. HMRC is inviting comments on this draft guidance from interested parties to be made by 15 May 2020, following which HMRC will update and finalize this guidance.

HMRC's initial commentary on the EU Directive was contained in its consultation document published in July 2019 alongside the UK's draft legislation. HMRC published the comments received in response to the consultation in January 2020 alongside the UK's enacted legislation. The current draft guidance incorporates much of the content that was contained in the consultation and the responses to the consultation document but also includes additional material including a number of key changes on specific points.

HMRC has acknowledged that work on the guidance is on-going as many of the comments submitted to HMRC from industry groups have not been reflected in the current update and specifically that it intends to develop the content on the "Penalties" section of the guidance.

See EY Global Tax Alert, *UK HMRC issues draft guidance on Mandatory Disclosure Regime regulations*, dated 7 May 2020.

## United States

The United States (US) Internal Revenue Service has published new frequently asked questions (FAQs) describing best practices and common mistakes in preparing transfer pricing documentation. The guidance is designed to encourage and help taxpayers to prepare improved documentation with an aim to decrease the number of issues selected for examination and improve the examination efficiency for the issues that are selected.

See EY Global Tax Alert, *US IRS releases FAQs on transfer pricing documentation best practices*, dated 21 April 2020.

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