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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

In the May 2020 edition of *The Latest on BEPS and Beyond*, we already noted that European Union (EU) policy makers had responded quickly to the COVID-19 crisis and had also started to unfold an ambitious tax agenda in the fields of digital taxation, tax good governance and the exchange of information. These developments make a new EY initiative extremely timely: EY is establishing its EU Tax Policy Hub, hosted by EY's Public Policy Hub, in Brussels. Located in the heart of the European Quarter in Brussels, the hub is perfectly placed to stay on top of the latest tax developments in Europe.

The EU Tax Policy Hub is being set up by Maikel Evers, who recently joined EY from the OECD Secretariat where he worked on the establishment of the Inclusive Framework, led the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) project and contributed to the two-Pillar Work Program. In this edition of "The Latest on BEPS and Beyond," Maikel reflects below on the latest tax developments in Europe.

The EU tax developments in the past few weeks have foreshadowed a hot Summer in Europe. EU representatives have negotiated intensively on changes to administrative deadlines to respond to COVID-19 and also initiated negotiations on an expanded budget to finance an EU recovery package.

Building a better working world

On 3 June, negotiators of the 27 EU Member States reached agreement on allowing a six-month extension of the reporting deadlines for DAC6, the EU's Mandatory Disclosure Directive. It took the Member States quite some effort to reach agreement on the extension that is expected to be published soon. The compromise solution is an optional extension that individual Member States can choose to adopt for their national mandatory disclosure procedures. This means that different reporting deadlines may apply across Europe. The impact is therefore being followed closely by EY's mandatory disclosure professionals.

Intensive negotiations have also started on an EU recovery plan from the crisis that Member States face due to COVID-19. One proposal launched on 27 May is to create a €750 billion recovery fund, called "Next Generation EU." The budget proposals which were presented allow the EU to borrow €750 billion from the financial markets in order to make funds available to Member States in need. As means to repay these loans, the proposal suggests the introduction of new EU taxes to complement the existing own resources. This controversial proposal includes a new revenue-based tax for large companies operating in the internal market and a digital services tax (DST). In the ongoing negotiations over the coming weeks, it is not likely that the tax proposals will be implemented quickly, in particular since EU Member States traditionally have been reluctant in allowing the EU to generate its own income through own resources.

The mere mention of an EU-wide DST as part of a possible recovery initiative is applying additional pressure to the global negotiations led by the OECD in its efforts to address the tax challenges of the digitalization of the economy.

Additional pressure on the global negotiation may come from Germany, which will hold the rotating presidency of the EU as of July. As one of the most vocal proponents of Pillar Two, it can be expected that Germany will initiate discussions at the EU level. For now, the Europeans are still awaiting Pillar Two consensus at the global level. Should the OECD-led negotiations run into delays, the question will be whether the EU shall develop into a frontrunner under Germany's leadership. An EU Financial Transaction Tax is also still on Germany's priority list.

Normally, deep summer is when idle days find respectability. Looking ahead this year, the European Summer will be anything but idle. We stand ready to keep you informed on the latest developments.

OECD

On 4 June 2020, the OECD released the final version of the Platform for Collaboration on Tax toolkit on the Taxation of Offshore Indirect Transfers (the toolkit). The toolkit provides guidance on the design and implementation issues when one country seeks to tax an entity that is a tax resident in another country on gains on its sale of interests in an entity that owns assets located in that country. The toolkit also includes two models for domestic legislation that countries could adopt to impose tax on such offshore indirect transfers. The toolkit represents the analysis and conclusions of the staffs of the four partner organizations (International Monetary Fund, OECD, United Nations (UN), and the World Bank Group) and does not represent the official views of the organizations or their member countries.

See EY Global Tax Alert, *OECD releases the Platform for Collaboration on Tax toolkit on taxation of offshore indirect transfers of assets*, dated 8 June 2020.

On 27 May 2020, Switzerland submitted a notification confirming the completion of its internal procedures for the entry into effect of the provisions of the MLI with respect to its Covered Tax Agreement (CTA) with Luxembourg. Switzerland had reserved the right to delay the entry into effect of the provisions of the MLI until it had completed its internal procedures for this purpose. Now that Switzerland has notified the completion of its internal procedures, the rule on entry into effect of the MLI would apply to the CTA with Luxembourg as from the date that is 30 days after the Depositary has received the notification from Switzerland that it has completed its internal procedures.

On 7 May 2020, the OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country reports (CbC MCAA). According to this latest update, Gibraltar signed the CbC MCAA on 5 May 2020. The total number of jurisdictions that have signed the CbC MCAA is now 85.

In May 2020, the OECD released additional exchange relationships that have been activated under the CbC MCAA. Currently, there are over 2,400 automatic exchange relationships established among jurisdictions committed to exchanging CbC reports. With this update, the Bahamas has been included on the list of countries that have activated for the first-time exchange relationships for CbC reporting (CbCR). The Bahamas has activated 41 exchange relationships and will exchange CbC reports relating to reporting fiscal years commencing on or after 1 January 2019. The Bahamas is a non-reciprocal jurisdiction, i.e., it has committed to send CbC reports to its exchange partners but will not receive CbC reports submitted to the tax authorities in other jurisdictions and will not apply local filing.

European Union

On 3 June 2020, a political agreement reached by the ambassadors of the Member States at the COREPER II meeting regarding the deferral of the filing deadlines of the EU Directive 2011/16 (DAC6) due to the COVID-19 pandemic. Under the amended proposal, Member States would be allowed to grant a six-month extension to the existing deadlines for filing and exchanging information on cross-border arrangements. The amended proposal also provides for the possibility of one further extension for a maximum additional three months but proposes to do so by means of a unanimous decision of the Council.

See EY Global Tax Alert, *EU Council ambassadors reach agreement on amended proposal for deferral of MDR filing deadlines*, dated 5 June 2020.

On 27 May 2020, the Commission presented its proposal for a recovery plan from the crisis that societies and economies are facing due to COVID-19. To ensure the recovery is sustainable and fair for all EU Member States, the Commission proposed to create a new recovery instrument worth €750 billion, called "Next Generation EU." As part of the funding proposal for the instrument, the Commission proposed the introduction of EU taxes to complement the existing own resources. This controversial proposal includes a:

- New corporate tax based on operations that will be levied on companies that draw huge benefits from the EU single market and will survive the crisis
- DST for large companies
- Tax on non-recycled plastic packaging waste
- Carbon border adjustment mechanism
- Emissions Trading System-based resource including a possible extension to maritime and aviation sectors

Also, on the same date, the Commission published its adjusted 2020 Work Programme.

See EY Global Tax Alert, *European Commission publishes proposal for recovery plan and adjusts 2020 Work Programme*, dated 28 May 2020.

On 14 May 2020, the Commission sent a letter of formal notice to Luxembourg and Portugal requesting them to adjust their respective domestic laws to be in line with the interest limitation rule set forth under the EU Anti-Tax Avoidance Directive (ATAD) – Article 4 of the Council Directive (EU) 2016/1164. Both Member States make use of the possibility to exempt financial undertakings from the interest limitation rules in the ATAD. Luxembourg and Portugal apply broader rules to this exception and do not apply this interest limitation to entities that cannot be qualified as financial undertakings (namely, securitization entities). If Luxembourg and Portugal do not act within the next four months, the Commission may send a reasoned opinion to the authorities of both countries.

See EY Global Tax Alert, *Portugal requested by European Commission to amend legislation transposing the Anti-Tax Avoidance Directive*, dated 18 May 2020.

United Nations

The provisional agenda of the twentieth session of the UN Committee of Experts on International Cooperation in Tax, which will be held virtually on 22-26 June 2020, was recently released. According to the provisional agenda, the session will advance progress on updating the Committee's key documents (e.g., UN Model double taxation convention, UN Transfer Pricing Manual), as well as development of new reports and guidelines (e.g., new UN handbooks on tax dispute avoidance and resolution and on environmental taxation). Discussion on tax consequences of the digitalized economy is also included in the agenda. In addition to the agenda, the Committee also published a number of papers related to the discussion topics and welcomes comments on the Session papers by 15 June 2020. Comments should be submitted to taxcommittee@un.org.

An example of the issued papers is a note that provides an update on the work on the application of Article 12 of the UN Model Convention to software payments. According to the note, previous discussions on the topic revealed that there was agreement that the following three distinct issues should be examined as part of this work:

A. Elaboration of the minority view reflected in of paragraph 12 of the Commentary on the UN Model
B. Reconsideration of the part of the Commentary on Article 12 dealing with the application of the definition of royalties to software payments and payments for other digital products
C. Possible modification of the definition of royalties

The note will be discussed at the twentieth session of the Committee and it is expected to be agreed that the work on these issues be continued by the next membership of the Committee through a Subcommittee specifically set up for that purpose.

Angola

On 4 March 2020, the President of Angola signed Ratification Letter No. 4/20, whose text was previously approved by the Angolan National Assembly, ratifying the Angola-United Arab Emirates (UAE) Income Tax Treaty (2018), as published in the *Official Gazette* (Diário da República I Série) No. 37 of 27 March 2020.

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 provides a period of three years for submission of a Mutual Agreement Procedure (MAP) request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty. The MLI has no effect on the Treaty as Angola has not signed the MLI. For the MLI provisions to have effect on the Treaty, Angola would need to first sign the MLI, and then include the Treaty on its list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made. The UAE has already signed the MLI and included this Treaty on its list of CTAs.

Argentina

On 15 May 2020, the Argentine Federal Tax Authorities (AFIP – Administración Federal de Ingresos Públicos) published, in the *Official Gazette*, General Resolution No. 4717 (GR 4717), containing the long-awaited regulations implementing the transfer pricing (TP) provisions enacted as part of the tax reform in December 2017. Among other items, GR 4717 established new compliance obligations and filing rules for TP documentation. Additionally, the GR 4717 introduced definitions and requirements for intercompany transactions. Also, on 5 June 2020, the AFIP published General Resolution No. 4733 (GR 4733), which contains some amendments to the due dates for transfer pricing filings established in GR 4717.

See EY Global Tax Alerts, *Argentina issues long-awaited transfer pricing regulations*, dated 28 May 2020 and *Argentina further extends due dates for transfer pricing filings*, dated 10 June 2020.

Australia

On 25 May 2020, the Bill *(Treasury Laws Amendment (2020 Measures No. 1) Bill 2020)* to broaden the definition of significant global entity (SGE) and to adjust CbCR obligations was enacted. The expansion of the SGE definition will impact which entities are subject to:

- The multinational anti-avoidance law (MAAL) and diverted profits tax (DPT) regime as well as CbCR and general-purpose financial statements (GPFS) reporting requirements, from years starting on or after 1 July 2019.
- Australia's increased administrative tax penalties regime from 1 July 2020.

Generally, an entity will be an SGE if it is either: a global parent entity (an entity that is not controlled by another entity) with annual global income of AU$1 billion or more (including trusts and partnerships); or a member of a group of entities that are consolidated for accounting purposes and the global parent entity of that group has annual global income of AU$1 billion or more.

The Bill expands the SGE definition to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company (notional listed company group).

In addition, to better align the CbCR reporting rules with international standards, the Bill adjusts the CbCR obligations to apply only to a "country-by-country reporting entity" (CBCRE). Most significant global entity groups that are a notional listed company group will also be CBCREs. However, some exceptions apply, including notably, that individuals are excluded from being a CBCRE.

Chile

On 1 June 2020, Chile's new Value-Added Tax (VAT) on digital services rendered by foreign digital service providers became applicable. Foreign digital service providers that provide services to individuals in Chile, such as intermediation services; supply or delivery of digital entertainment content; provision of software, storage, computing platforms or infrastructure; and advertising must register for VAT purposes and report the relevant VAT.

In order to regulate the new VAT on digital services, on 13 May 2020, Chile launched a public consultation on a draft circular to clarify the application of VAT on digital services. The circular provides the scope of services to be taxed and general rules of application, rules regarding the accrual of income, an explanation on how to deal with withholding tax obligations for subject responsible and an explanation on the new simplified regime for companies performing services to individuals in Chile.

See EY Global Tax Alert, *Chile: VAT on digital services enters into force*, dated 3 June 2020.

Czech Republic

On 13 May 2020, the Czech Republic 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, the Czech Republic submitted the definite list of 52 tax treaties entered into by the Czech Republic and other jurisdictions that the Czech Republic would like to designate as CTAs, i.e., tax treaties to be amended through the MLI and its list of reservations and notifications. The MLI will enter into force for the Czech Republic 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 the Czech Republic of its instrument of ratification, i.e., 1 September 2020.

See EY Global Tax Alert, *The Czech Republic deposits its instrument of ratification of the MLI*, dated 27 May 2020.

Denmark

On 18 May 2020, the Danish Government published an agreement between the Danish Ministry of Taxation and Finance Denmark (the Danish business association for the banking industry) on a new withholding tax (WHT) on dividends regime. Under the proposed regime, dividend WHT would be based on relief at source principles with custodian banks playing a central role and taking on liability for faulty withholding. The Agreement aims at ensuring the final WHT rate pursuant to a double tax treaty or domestic Danish law is withheld upon the dividend distribution by replacing the current reclaim regime with relief at source. As a vital part of the concept, a nonresident shareholder must be registered with the Danish tax authorities and relevant documentation substantiating beneficial ownership shall be made available prior to the dividend distribution. The Agreement does not contain any information on when the proposed model would enter into force.

See EY Tax Alert, *Denmark proposes new withholding tax regime for dividends*, dated 26 May 2020.

Finland

On 20 May 2020, the Finnish Tax Administration published guidance on the exit tax rules for companies. On 1 January 2020, exit taxation rules for companies entered into force in Finland in line with the exit tax provision of the EU ATAD. The guidance discusses the rules and sets out which situations will lead to the application of exit taxation.

Germany

On 27 May 2020, the German Federal Cabinet (Bundesregierung) approved a draft bill for the ratification process of the Multilateral Instrument (MLI). The draft bill is still subject to approval by both the lower house of the German Parliament (Bundestag) and the Federal Council (Bundesrat).

Germany submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the 35 tax treaties (CTAs) it wishes to be covered by the MLI. 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.

Indonesia

On 5 May 2020, Indonesia's Minister of Finance (MOF) issued implementing regulations for the expansion of VAT to cover cross-border digital transactions, effective from 1 July 2020. VAT at 10% applies to the supply of digital goods and services from outside the Indonesian customs area to buyers located in Indonesia. The rule appears to capture both supplies to consumers and to businesses (B2C and B2B).

International sellers, international service providers, and international or local e-commerce platform providers will be identified and registered by Indonesia's Director General of Tax (DGT) as VAT collectors if they exceed certain thresholds in a 12-month period with respect to: (1) transaction value; and/or (2) traffic or access numbers. The DGT will issue regulations providing these thresholds. Other companies which are not identified and registered by the DGT may voluntarily register as VAT collectors if they exceed the above thresholds. The regulations are silent on any potential consequences for companies if they exceed the thresholds but do not voluntarily register.

Israel

On 2 June 2020, the Israeli Tax Authority published a tax circular that sets forth the situations in which a TP study that is filed by a taxpayer will be considered as meeting the Israeli TP standards and in this case the burden of proof, as part of the audit procedure, will be transferred from the taxpayer to the tax assessor. According to the circular, the mere filing of documents as required by law is not sufficient to transfer the burden of proof to the tax assessor. Where the facts of the relevant case are disputed, the burden to prove those facts, that serve as the basis of the study, will be placed on the taxpayer. If the taxpayer did not file a TP study, or where the TP study that was filed does not meet the relevant requirements, the tax assessor will not be required to perform a comprehensive study, but may issue an adjustment based on "estimations, assessments, and personal experience."

See EY Global Tax Alert, *Israel's Tax Authority releases tax circular on burden of proof related to transfer pricing audits*, dated 5 June 2020.

Italy

On 1 June 2020, the Italian Tax Authorities (ITA) issued Circular No. 13/E (the circular) providing clarifications on current reporting obligations for e-commerce platforms for VAT purposes. According to the Italian legislation, a taxable person which facilitates, through the use of an electronic interface such as an online marketplace, platform, portal or similar means, distance sales of imported goods or distance sales of goods within the EU, must communicate, to the ITA, relevant data for each supplier which made at least one supply in the relevant quarter. The circular provides clarifications with respect to the qualifying platforms, the required data and the transmission procedure. Failure to comply with such obligations may result in VAT liability at the level of the platform. The relevant provision will be replaced as of 1 January 2021 by Article 14-bis of Council Directive 2006/112/CE on the common system of VAT.

Liechtenstein

On 9 April 2020, the OECD released the Stage 2 peer review report of Liechtenstein 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 Liechtenstein's Stage 1 peer review report. Liechtenstein 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 Liechtenstein addressed most of the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, *OECD releases Liechtenstein Stage 2 peer review report on implementation of Action 14 minimum standard*, dated 26 May 2020.

Luxembourg

On 19 May 2020, the Luxembourg Council of government approved the double tax treaty between Luxembourg and Botswana. The treaty has not yet entered 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. It also contains 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 13 May 2020, the Luxembourg Tax Authorities issued guidance addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to file information on reportable cross-border arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The newly issued guidance (the Guidance) provides more clarity on the interpretation of the Luxembourg Mandatory Disclosure Rules (MDR) legislation and how the Luxembourg Government anticipates the reporting process to operate. The Guidance confirms that the Luxembourg MDR legislation is broadly aligned to the requirements of the Directive.

See EY Global Tax Alert, *Luxembourg Tax Authorities issue MDR guidance*, dated 2 June 2020.

Nigeria

Recently, Nigeria's Minister of Finance issued an Order titled Companies Income Tax (Significant Economic Presence) Order, 2020 (the Order) to provide guidance on the definition of Significant Economic Presence (SEP), in relation to taxation of income derived from Nigeria by foreign companies. The Order sets forth the relevant activities that potentially create a SEP in Nigeria, and in some instances, provides for monetary thresholds in addition to the said activities. The Order groups the digital services that may create a SEP in Nigeria into three categories: (i) Use of digital platforms; (ii) Use of a Nigerian domain name/registration of a website in Nigeria; (iii) Purposeful and sustained interaction. In addition to digital services, a foreign company that provides technical, professional, management or consultancy services will be deemed to have a SEP in Nigeria, where such foreign company in respect of the said services, receives payment from a Nigerian resident or a fixed base/agent of a foreign company in Nigeria.

See EY Global Tax Alert, *Nigeria issues order on definition of significant economic presence in Nigeria*, dated 2 June 2020.

Philippines

On 19 May 2020, the Philippines' Government introduced House Bill No. 6765 (the bill), also known as the *Digital Economy Taxation Act of 2020*. The bill proposes that digital or electronic goods, services rendered electronically in the course of trade or business, such as digital advertising services, internet-based subscription services, other services rendered electronically and e-commerce transactions, be subject to VAT. Network orchestrators and e-commerce platforms will be designated as withholding agents for income tax and/or VAT purposes. In addition, the bill requires nonresident suppliers of digital services to establish a representative office or appoint a resident agent to carry out business in the Philippines. The bill is subject to further deliberations in Congress and may be subject to change.

Spain

The Spanish Government published draft legislation in June 2019 accompanied by detailed guidance implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to file information on reportable cross-border arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

On 22 May 2020, after a public consultation, the Spanish Government published a revised Bill which has been sent to the Congress and Senate (the Parliament) to be voted upon. If implemented as currently proposed, the Spanish legislation will be broadly aligned to the requirements of the Directive.

It is expected that further regulations will be published by the Spanish Government to address the practical application of the Hallmarks and the Main Benefit Test, however it is not yet known whether the regulations will be available before 1 July 2020.

See EY Global Tax Alert, *Spain sends MDR bill to Parliament for approval*, dated 29 May 2020.

South Africa

On 19 May 2020, the South African National Treasury issued a media statement to extend the submission for public comments on the 2020 Budget proposal to limit net interest expense deductions to 30% of earnings for years of assessment commencing on or after 1 January 2022. The period of submission has been extended from 29 May 2020 to 30 September 2020. For more information, see the April 2020 issue of *The Latest on BEPS and Beyond*, dated 21 April 2020.

South Korea

On 13 May 2020, South Korea 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, South Korea submitted the definite list of 45 tax treaties entered into by South Korea and other jurisdictions that South Korea would like to designate as CTAs, i.e., tax treaties to be amended through the MLI and the list of reservations and notifications. The MLI will enter into force for South 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 by South Korea of its instrument of ratification, i.e., 1 September 2020.

See EY Global Tax Alert, *South Korea deposits its instrument of ratification of the MLI*, dated 4 June 2020.

Switzerland

On 4 June 2020, the Swiss Council of States (Ständerat) approved amending protocols on its treaties with Iran, Ireland, Korea, Netherlands, New Zealand, Norway, Sweden and Ukraine to meet the tax treaty BEPS minimum standards. The amending protocols contain 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, including treaty shopping. The amending protocols also include a principal purpose test. Furthermore, the amending protocols enable taxpayers to present a case for MAP to the competent authorities of either Contracting State.

United States

The United States (US) Internal Revenue Service (IRS) has announced modifications for filing advance pricing agreement (APA) and MAP requests to allow for electronic filing and digital signatures. In the same announcement, the IRS has also addressed questions about how the current economic environment is affecting the handling of pending and executed APAs by the Advance Pricing and Mutual Agreement program.

See EY Global Tax Alert, *US IRS announces modifications for filing APA and MAP requests, addresses questions on pending and executed APAs*, dated 15 May 2020.

On 2 June 2020, the US Trade Representative (USTR) announced investigations will be conducted into certain jurisdictions relating to the adoption or contemplated adoption of a DST. As outlined in a corresponding Federal Register Notice (FRN), jurisdictions included within the scope of this announcement include Austria, Brazil, the Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom.

Investigations will be conducted pursuant to Section 301 of the *Trade Act of 1974* (Section 301), with the goal of determining whether the adopted or contemplated DST of the relevant jurisdiction is unreasonable or discriminatory as well as whether it burdens or restricts US commerce.

In the event the USTR concludes that a particular DST policy falls within the scope of Section 301, the USTR will then decide how the DST policy is to be addressed. For example, the USTR could choose to impose punitive tariffs on goods from these jurisdictions, as seen with other Section 301 investigations. Companies with transactions involving the investigated jurisdictions, and therefore, potentially subject to actions on DST, should closely monitor the investigation process, consider submitting comments per the FRN (due 15 July 2020), and assess impacts if action is taken.

See EY Global Tax Alert, *USTR initiates investigations into digital services taxes either adopted, or under consideration, by certain jurisdictions*, dated 4 June 2020.

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