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Global Tax Alert

The Latest on BEPS and Beyond

July 2020

EY Tax News Update: Global Edition

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Highlights

As many individuals are about to take a step back from tax work for a summer vacation or, due to the COVID-19 pandemic, a staycation, some directional developments have taken place that will shape tax policy discussions in the fall and beyond.

In their communique of 18 July, the G20 Finance Ministers and Central Bank Governors asked the 137 jurisdictions of the Inclusive Framework on BEPS to continue to advance the work on a global and consensus-based solution on both pillars of the unified approach to addressing the tax challenges arising from the digitalization of the economy. The Inclusive Framework was asked to provide a blueprint on both pillars to the G20 Finance Ministers before their next meeting in October. This raises the question of what that blueprint may look like, as this is the first time this terminology is used. Interestingly, the yearly progress report presented by the OECD to the G20 roughly at the same time of their July meetings emphasized that the technical work on both pillars is evolving and that it should be possible to bring blueprints to the G20 by October. So it appears that the blueprints will present the technical work undertaken. On the other hand, the report indicates that there are relevant disagreements between the Inclusive Framework members on how to approach the project, such as on questions of whether there should be a phased approach to the development and introduction of the measures and whether there should be a decoupling of Pillar One and Pillar Two. This means that apparently the blueprints may be presented on a no-consensus basis and may not yet provide the roadmap to implementation. However, if the road to consensus would be paved by these blueprints and the continued negotiations, its potential impact will likely be considerable.

Meantime, the European Commission (the Commission) is building a strong tax plan for the short and long term that will have impact not only within the European Union (EU) but will have a much further reach. On 15 July, the Commission came out with a tax package on "Fair and Simple Taxation." This package promises to intensify the work on tax avoidance and tax evasion through existing and new instruments. It also promises to bring more simplicity and tax certainty, the latter in particular to compliant taxpayers. Intensifying transparency is a key and short-term action. The package already contains a legislative proposal for changing the Directive on Administrative Compliance, bringing an obligation to automatically exchange information by digital companies on the sellers using their platforms. With respect to simplification, EU-wide coordinated approaches are the primary source of simplification used, specifically looking for ways in which to move away from a fragmented landscape in the EU, to a more harmonized approach on several issues, such as value-added tax (VAT) registration numbers. Levelling the playing field inside and outside the EU when it comes to harmful tax practices and minimum levels of taxation is also presented as a short-term deliverable, with negotiations between member states to update the mandate of the Code-of-Conduct Group starting immediately. Finally, digital solutions and addressing the questions and challenges posed by the digitalization of the economy are at the heart of the package, with the Commission looking towards technology, in particular data analytics, to better understand and use the growing levels of data that both the Commission and the EU Member States have access to.

Hence, it appears that a lot will be happening from a tax perspective as of September. We hope you are able to enjoy a break from tax before then.

OECD

On 10 July 2020, the Platform for Collaboration on Tax (PCT) – a joint initiative of the International Monetary Fund, OECD, United Nations, and the World Bank Group – published its Progress Report 2020. The report summarizes the activities that the PCT has carried out since June 2019 and highlights that over the last year the PCT has achieved a number of key milestones in the work plan. Among others, the report notes that the PCT has helped developing countries access good practices in international tax through its various knowledge and outreach activities. The release of its Toolkit on Taxation of Offshore Indirect Transfers of assets, workshops on the Toolkit on Addressing Difficulties in Accessing Transfer Pricing Comparables Data, as well as public consultations on Transfer Pricing Documentation and Tax Treaty Negotiations are among the PCT products that have provided developing countries with capacity building support. Also, the launch of the PCT website is another important activity that serves as a global platform to engage with all interested stakeholders, especially tax officials from developing countries.

On 9 July 2020, the OECD released the Tax Co-operation for Development: Progress Report (the report) which sets out the range of the OECD's work with developing countries in 2019. According to the report, the OECD provides a wide variety of assistance to developing countries to ensure that they benefit from advances in tax co-operation and transparency. The report also states that while supporting developing countries in the fight against tax evasion and avoidance has been the main priority in its capacity-building effort, in 2019, the OECD extended its reach to include the full range of its tax policy and administration work as part of its development agenda. This includes providing developing countries with world-class expertise on tax high quality internationally comparable data, tailor-made guidance and tools, and direct capacity building support.

According to the report, all Inclusive Framework members, including developing countries, are expected to implement the four minimum standards of the BEPS package. However, it is recognized that developing countries often face far more fundamental challenges in addressing BEPS risks than developed countries. This is due to issues such as weak legislation, outdated tax treaties and limited capacity in their tax administrations. Addressing these concerns is a top priority for the Inclusive Framework. Also, regarding the OECD project to address the digital economy, discussions in 2019 suggest that Pillars One and Two contain much that is attractive to developing countries, including additional taxing rights and simplification measures that will lessen the burden on thinly resourced tax administrations. While developing countries are largely supportive, there are also aspects of these proposals where developing countries need to defend their interests and make sure their voices are heard.

Lastly, in 2019, the key priorities on tax transparency for developing countries were to assist with information security management, the effective use of Common Reporting Standard data (three workshops were held in 2019) and advancing automatic exchange of information (AEOI) implementation in Africa.

On 8 July 2020, the OECD released the second edition of the annual Corporate Tax Statistics publication (the report) together with an updated database. The database is intended to assist in the study of corporate tax policy and expand the quality and range of data available for the analysis of BEPS activity. For the first time, the database includes anonymized and aggregated Country-by-Country (CbC) reporting statistics, reflecting information for 2016 provided by 26 member jurisdictions of the Inclusive Framework on BEPS and covering about 4,000 multinational enterprise groups that operate across more than 100 jurisdictions worldwide. The OECD also published a list of Frequently Asked Questions on the anonymized and aggregated CbC reporting data.

As highlighted in the press release accompanying the release of the corporate income tax statistics report and the database, the OECD views the new statistics as suggesting some preliminary insights that, despite the data limitations and the fact that legislative changes following the introduction of the BEPS-measures had not entered into effect yet, are indicative of the existence of BEPS behavior and reinforce the need to continue to address remaining BEPS issues as part of the Inclusive Framework's work on Pillar Two of the ongoing international efforts to address the tax challenges arising from digitalization of the economy (the BEPS 2.0 project).

This second edition of the database also includes, for the first time, information on controlled foreign company rules and on interest limitation rules, which the OECD indicates can assist in understanding progress related to the implementation of BEPS Actions 3 and 4.

See EY Global Tax Alert, *OECD releases new corporate tax statistics including anonymized and aggregated Country-by-Country report statistics*, dated 15 July 2020.

On 3 July 2020, the OECD released Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy as approved by the OECD/G20 Inclusive Framework on BEPS on 29 June 2020. The Model Rules lay out a system for requiring digital platforms to collect information on the income realized by those offering accommodation, transport and personal services through platforms and to report the information to tax authorities.

The press release accompanying the release of the Model Rules includes a comment from Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, that "The approval of the [Model Rules] by the G20/OECD Inclusive Framework on BEPS proves that multilateral solutions to address tax challenges in the digital economy are possible and that they are to the benefit of tax administrations, taxpayers and businesses alike."

Work on the parallel effort led by the European Commission on this topic also has continued. A Commission proposal for amendment of the 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 was released on 15 July 2020.

See EY Global Tax Alert, *OECD releases model rules for data reporting by platform operators for sellers in the sharing economy*, dated 8 July 2020.

On 29 June 2020, the Platform for Collaboration on Tax (PCT) published a draft toolkit on Tax Treaty Negotiations (the toolkit). The toolkit is designed to help developing countries build capacity in tax treaty negotiations, building on existing guidance, particularly from the United Nations (UN) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (the UN Manual). The toolkit describes the steps involved in tax treaty negotiations such as how to decide whether a comprehensive tax treaty is necessary, how to prepare for and conduct negotiations, and what follow-up measures to take after negotiations. Treaty negotiating teams can also find practical tips on the conduct of negotiations and negotiation styles. The PCT is seeking comments on the draft toolkit by 10 September 2020 from interested stakeholders. The PCT aims to release the final toolkit in early 2021.

On 24 June 2020 and on 7 July 2020, Kazakhstan and Oman respectively deposited their 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, Kazakhstan confirmed its MLI positions and it removed the reservation on Article 16 (Mutual Agreement Procedure). Oman confirmed its MLI positions and it added the treaty with Slovak Republic to its list of covered tax agreements (CTAs). The MLI will enter into force for Kazakhstan and Oman 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 October 2020 for Kazakhstan and on 1 November 2020 for Oman.

On 18 June 2020, the OECD issued a statement from the Secretary General that calls on all members of the Inclusive Framework to remain engaged on the OECD project to address the challenges arising from the digital economy and expresses concern about the implications of unilateral action rather than a multilateral solution. The statement comes as a reaction to recent statements and exchanges regarding the ongoing negotiations to the project. According to the statement, the OECD will maintain its schedule of meetings to offer all members of the Inclusive Framework a place in the design of a multilateral approach.

European Union

On 15 July 2020, the Commission adopted a package for fair and simple taxation (the tax package). The tax package includes a set of new initiatives to ensure that EU tax policy supports Europe's recovery from the COVID-19 crisis and long-term sustainable growth. The tax package contains three separate but complementary initiatives:

- Action Plan for fair and simple taxation supporting the recovery
- Legislative proposal in the form of a Revision of the Directive on administrative cooperation
- Communication on Tax Good Governance in the EU and beyond

According to the press release, the tax package is the first part of a comprehensive and ambitious EU tax agenda for the coming years. The Commission will also work on a communication presenting a new approach to business taxation for the 21st century, to address the challenges of the digital economy and ensure all multinationals pay a minimum level of tax. This communication will include issues such as taxation of digital businesses and minimum taxes. This communication is expected before the end of the year. It will also come with proposals to ensure that taxation supports the EU's objective of reaching climate neutrality by 2050.

See EY Global Tax Alert, *European Commission adopts package for fair and simple taxation*, dated 16 July 2020.

On 14 July 2020, the Commission issued a recommendation on making State financial support to undertakings in the EU conditional on the absence of links to non-cooperative jurisdictions. The restrictions should also apply to companies that have been convicted of serious financial crimes, including, among others, financial fraud, corruption, non-payment of tax and social security obligations.

The aim of the recommendation is to provide guidance to Member States on how to set conditions to financial support that prevent the misuse of public funds and to strengthen safeguards against tax abuse throughout the EU. The Commission also recommends exceptions to the restrictions, for example, if the undertaking can prove that it has paid adequate tax in the Member State for a given period of time (e.g., the last three years) or if it has a genuine economic presence in the listed country. Member States should inform the Commission of the measures that they will implement to comply with the recommendation, in line with the EU's good governance principles.

As of 1 July 2020, Germany assumed the rotating six-month Presidency of the Council of the EU following the Croatian Presidency. Germany will hold the Presidency of the Council of the EU until 31 December 2020. On 30 June 2020, the Germany Presidency of the Council of the EU published its Programme (the program) including the focus areas for the six-month period of its Presidency.

In the tax area, the program indicates that the three main priorities of the Germany Presidency during its term will be:

1. Implementation of the OECD proposals on addressing the tax challenges arising from the digitalization of the economy in the EU
2. Introduction of a financial transaction tax at the European level
3. Revision of the directive on administrative cooperation in the field of taxation

See EY Global Tax Alert, *Germany's Presidency of the Council of the EU publishes its Program*, dated 1 July 2020

On 24 June 2020, the Council of the EU announced that it adopted amendments to the EU Directive 2011/16 allowing Member States an option to defer by up to six months the time limits for the filing and exchange of information on cross-border arrangements under Directive 2018/822 (DAC6 or Directive) due to the COVID-19 pandemic.

The amendments also provide the possibility of one further extension for a maximum additional three months by means of a unanimous decision of the Council depending on the evolution of the pandemic.

See EY Global Tax Alert, *Council of the EU adopts amendments for deferral of MDR filing deadlines*, dated 24 June 2020.

Austria

On 30 June 2020, the Austrian Ministry of Finance published draft guidance for stakeholder consultation on chosen questions with respect to the interpretation and application of the rules of DAC6 as implemented by the Austrian implementation law.

The guidance states that Austria decided not to exercise the option of a deferral of deadlines for filing and exchanging of information, as adopted by the Council of the European Union on 24 June 2020. The consultation document, however, states that, due to technical issues at the EU level causing delays in setting up a central registry for DAC6 purposes, it may only be possible to file relevant information presumably as from 1 October 2020. Therefore, Austria is planning to provide penalty relief for late reporting that essentially provides a two or three-month deferral).

With respect to reportable arrangements between 25 June 2018 and 30 June 2020, the deadline for reporting will be 31 October 2020 instead of 31 August (i.e., a two-month deferral). With respect to reportable arrangements from 1 July 2020, the standard 30-day reporting period will begin on 1 October 2020 (i.e., a three-month deferral).

Belgium

On 30 June 2020, the Belgian Federal Public Service for Finance published Frequently Asked Questions (FAQs) Circular No. 2020/C/88 (the Circular) relating to CbC reporting under BEPS Action 13. The Circular includes 101 FAQs and covers among others the following items; (i) general requirements that must be met when filing the master file and local file; (ii) threshold; (iii) requirements for filing CbC declarations; and (iv) the treatment of permanent establishments (PEs). The Circular applies retroactively from 1 January 2020.

On 30 May 2020, a Royal Decree was published in the *Belgian Gazette* addressing the penalties related to the Belgian MDR legislation.

The Royal Decree provides for two categories of penalties:

- Penalties regarding incomplete reporting by the intermediaries or relevant taxpayers – the penalties range from €1.250 – €25.000
- Penalties regarding failure to report or late reporting by the intermediaries or relevant taxpayers – the penalties range from €5.000 – €100.000

This Royal Decree entered into force on 1 July 2020.

In addition, on 3 June 2020, the Belgian Federal Public Service of Finance announced an administrative tolerance, providing for a six-month deferral of the MDR reporting deadline. The impact of the deferral can be summarized as follows:

- Reportable cross-border arrangements, where the first step of implementation was made between 25 June 2018 and 30 June 2020, need to be reported before 28 February 2021 (instead of 31 August 2020)
- The period of 30 days for filing information only starts as from 1 January 2021 (instead of 1 July 2020) for:
  - Reportable cross-border arrangements which are made available for implementation, or are ready for implementation, or where the first step of implementation has been made between 1 July 2020 and 31 December 2020
  - Intermediaries who – between 1 July 2020 and 31 December 2020 – directly, or by means of other persons, provided aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement
- The first periodical report regarding "marketable arrangements" needs to be reported by 30 April 2021 at the latest

The Belgian Federal Service for Finance also published on 26 June 2020 FAQs on the legislation implementing DAC6. The FAQs contain clarifications with respect to the reportable cross-border constructions, the intermediaries and taxpayers required to report, the hallmarks, the relevant information that has to be reported, the reporting deadlines as well as the required reporting format.

Chile

On 8 July 2020, the Chilean Congress ratified the MLI, which is now pending the Chilean President's signature. Once approved by the President, the MLI will be published in the *Official Gazette* and enacted upon publication. Publication is expected within 30 days of the ratification date. Chile submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the CTAs it wishes to be covered by the MLI (currently 34 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.

See EY Global Tax Alert, *Chile ratifies Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 13 July 2020.

Costa Rica

On 12 June 2020, Costa Rica's Tax Authorities published, in the *Official Gazette*, Resolution No. DGT-R-13-2020 (the Resolution), which provides guidance on VAT on cross-border digital services and intangible assets.

The Resolution defines that digital services rendered through digital means by foreign service providers to users in Costa Rica are subject to VAT on such services. In addition, the acquisition of an intangible asset from a foreign supplier by a user in Costa Rica is also included in the collection of VAT.

See EY Global Tax Alert, *Costa Rica's Tax Authorities publish guidance on charging and collecting of VAT on cross- border digital services and intangible assets*, dated 19 June 2020.

Croatia

On 18 June 2020, the Croatian Tax Office announced that the reporting deadlines under the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC6) have been extended as follows:

- Arrangements implemented between 25 June 2018 and 1 July 2020: the deadline has been extended from 31 August 2020 to 28 February 2021
- Arrangements implemented between 1 July 2020 and 31 December 2020: the 30-day reporting period will be effective from 1 January 2021
- The first periodic report on marketable arrangements must be submitted by 30 April 2021

The extensions follow the adoption on 24 June 2020 by the Council of the EU of amendments to the EU Directive 2011/16 allowing Member States an option to defer, for up to six months, the time limits for the filing and exchange of information on cross-border arrangements under DAC6.

Cyprus

On 19 June 2020, the Cypriot House of Representatives adopted the law to implement the provisions of the EU Anti-Tax Avoidance Directive (ATAD I) with respect to exit taxation rules, as well as, the provisions of the amending Directive (ATAD II) with respect to hybrid mismatch rules (the Law). The Law will apply retroactively as of 1 January 2020 with the exception of reverse hybrids which will be effective as of 1 January 2022.

See EY Global Tax Alert, *Cyprus adopts legislation implementing exit taxation and hybrid mismatch rules*, dated 23 June 2020

The Cypriot House of Representatives passed a bill that introduces a number of changes with regards to notional interest deduction on corporate equity. The key changes are those in relation to the definition of the reference interest rate and in particular, the increase of risk premium from 3% to 5% as well as.

See EY Global Tax Alert, *Cyprus amends Notional Interest Deduction rules*, dated 5 June 2020.

Denmark

On 29 June 2020, the Danish Ministry of Taxation published an Executive Order providing that the mandatory cross-border reporting deadline transposed into Danish law further to the implementation of Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6) has been extended by six months.

Finland

On 3 July 2020, the Finnish tax authorities issued guidance on Finnish hybrid mismatch rules. The hybrid mismatch legislation has been transposed into Finnish law following Article 9 of the Anti-Tax Avoidance Directive (EU) 2016/1164 (2016) and the OECD's BEPS recommendations on hybrid mismatches.

On 1 July 2020, the Finnish Government published an opinion regarding the transfer pricing (TP) guidance on financial transactions, as published by the OECD on 11 February 2020. According to the opinion, the OECD TP guidance on financial transactions does not contain fundamental new interpretative guidance, except for the creditworthiness of a separate company. Therefore, the tax administration is of the opinion that the guidelines can otherwise be used as a source of interpretation for tax years ended before the guidelines were published.

On 5 June 2020, the Finnish Tax Authorities (FTA) published the MDR reporting schema. Individuals (and e.g., foreign entities under certain circumstances) may file their MDR reports by using a manual form which was published by the FTA on 24 June.

See EY Global Tax Alert, *Finland publishes official tax guidelines on Mandatory Disclosure Rules*, dated 29 June 2020.

Finland-Guernsey

Finland and Guernsey signed an amending protocol to update the Finland –Guernsey Individuals Tax Agreement (2008) in Helsinki on 3 April 2020 and in Guernsey on 24 April 2020 respectively. The amending protocol contains new 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 amending protocol also includes a principal purpose test. Furthermore, the amending protocol enables taxpayers to present a case for mutual agreement procedure (MAP) to the competent authorities of either Contracting State. Both Finland and Guernsey have signed the MLI but neither of them has included this tax treaty as a CTA.

Gabon

On 14 April 2020, the Gabonese Tax Administration issued official Communication n°146/MEF/SG/DGI which postpones the transfer pricing documentation filing deadline in Gabon from 30 April 2020 to 31 July 2020. This exceptional measure aims at mitigating the impact of the COVID-19 crisis.

See EY Global Tax Alert, *Gabon postpones transfer pricing documentation filing deadline*, dated 22 April 2020.

Germany

The German Ministry of Finance (BMF) has announced that Germany will not extend the deadlines for filing and exchanging information on cross-border arrangements under the EU Directive 2011/16 (DAC6 or the Directive).

The announcement came as a surprise as the German deferral was broadly expected. As a result, the original reporting deadlines apply, so that the 30-day reporting period commenced on 1 July 2020 and the first Mandatory Disclosure Rules (MDR) reports for this period will become due from 31 July 2020 onward. For the transition period (25 June 2018 to 30 June 2020), reports must be filed by 31 August 2020. Companies with business activities in Germany currently face major compliance efforts, to which the confirmation of the initial DAC6 reporting deadlines without the implementation of the widely agreed postponement at an EU level adds a significant additional burden. Taxpayers and intermediaries should promptly register at the Federal Central Tax Office for submission based on their elected manner of transmission.

See EY Global Tax Alert, *Germany announces no postponement of MDR reporting deadlines*, dated 8 July 2020.

Greece

On 7 July 2020, the Greek Government circulated draft legislation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The draft Greek legislation also provides for a six-month deferral to the reporting deadlines under DAC6 following the adoption on 24 June 2020 by the Council of the EU of amendments to the Directive. This amendment permits Member States an option to defer for up to six months the time limits for the filing and exchange of information on cross-border arrangements under DAC6.

The draft legislation was subject to public consultation and comments on the proposals were requested by 14 July 2020. The Greek draft legislation will now be subject to the formal legislative process and is likely be amended before final enactment.

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

See EY Global Tax Alert, *Greece publishes draft proposal to implement Mandatory Disclosure Rules*, dated 16 July 2020.

Italy

On 10 June 2020, the Italian Government published Legislative Decree n. 49 (Decree) which implements the new rules on tax dispute resolutions set forth by Council Directive 2017/1852 of 10 October 2017. The Decree implements new rules to resolve disputes between Italian and other tax authorities on the interpretation and application of agreements and conventions for the avoidance of double taxation through MAP. If the request to start a MAP is rejected, or after a period of two years (three in the case of postponement) during which the tax administrations have not been able to reach an agreement, the taxpayer can file a further request to open the arbitration phase by the setting up of an Advisory Commission. The Decree applies to MAPs filed as of 1 July 2019 with reference to fiscal years starting from 1 January 2018 onwards.

Kenya

On 23 June 2020, the Kenya National Assembly adopted the *Finance Act 2020* which was also signed by the President on 30 June 2020. Among others, the *Finance Act 2020* introduced a digital services tax (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 PE in Kenya, shall be offset against the income tax payable for that year of income. The effective date of the DST is 1 January 2021.

On 29 May 2020, Kenya issued draft *Value-Added Tax (VAT) (Digital Marketplace Supply) Regulations, 2020* (the Regulations) for public commentary and subsequent approval by Parliament. The Regulations are intended to offer guidelines on the taxation of a "digital marketplace" following the introduction of taxation of such services under the *Finance Act, 2019*. The Regulations provide details, among others, on the scope of taxable supplies, the registration requirements, the rules on place and time of supplies and invoice and record-keeping requirements. In addition to the penalties prescribed under the *VAT Act*, restrictions of access to the digital marketplace in Kenya will be applied for failure to comply with the provisions of these Regulations.

See EY Global Tax Alert, *Kenya introduces VAT regulations on supply of digital services*, dated 19 June 2020.

Liechtenstein-Netherlands

On 3 June 2020, representatives of the Principality of Liechtenstein (Liechtenstein) and the Netherlands signed a comprehensive double tax treaty (the treaty). The newly signed treaty has been published but is still pending ratification by the parliaments of both countries before it enters into force. The treaty contains new 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 Liechtenstein and the Netherlands (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 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 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 Liechtenstein and the Netherlands 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.

See EY Global Tax Alert, *Liechtenstein and Netherlands sign tax treaty*, dated 13 July 2020

Luxembourg

The Luxembourg Ministry of Finance has transmitted to Parliament a draft law (Draft Law) introducing a six-month deferral to the MDR Law (Law of 25 March 2020). The Draft Law is in line with previous announcements by the Ministry of Finance and follows the adoption on 24 June 2020 by the Council of the EU of amendments to the EU Directive 2011/16 allowing Member States an option to defer for up to six months the time limits for the filing and exchange of information on cross-border arrangements under Directive 2018/822 (DAC6). The Draft Law also introduces a three-month deferral of the communication of information with respect to 2019 under the *Foreign Account Tax Compliance Act (FATCA) Law* (Law of 24 July 2015) and the Common Reporting Standards (CRS) Law (Law of 18 December 2015).

See EY Global Tax Alert, *Luxembourg publishes draft legislation extending MDR reporting deadlines for six months*, dated 8 July 2020.

Macau

On 22 June 2020, Macau ratified the tax treaty that has been signed with Hong Kong in 2019. The treaty contains new 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 Hong Kong and Macau (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 clause 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 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.

Malaysia

On 16 June 2020, the Malaysia Inland Revenue Board (IRB) issued FAQs on the treatment of new, on-going and concluded advance pricing arrangements (APAs) in light of the COVID-19 crisis. According to the FAQs, the IRB will not accept new APA applications from businesses impacted by the COVID-19 crisis until further notice. On-going APA applications will be processed based on the information previously submitted to the IRB, with no substantial amendments permitted. In light of this, a taxpayer with an on-going APA application can choose to either continue its application based on information previously submitted to IRB or withdraw their APA application. The FAQs also state that an APA renewal is not possible if the critical assumptions in the expiring APA are no longer valid or relevant due to material changes in the taxpayer's business as a result of the COVID-19 pandemic.

Malta

On 2 July 2020, the Maltese Commissioner for Revenue announced that the first reporting deadlines under Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC6) have been extended by six months following the adoption on 24 June 2020 by the Council of the EU of amendments to the EU Directive 2011/16 allowing Member States an option to defer, for up to six months, the time limits for the filing and exchange of information on cross-border arrangements under DAC6.

Mexico

In June 2020, the Mexican Tax Administration Service (SAT) launched a website containing practical information for nonresidents providing digital services to recipients located in Mexico. Among others, the website includes information on: (i) the procedure to be followed by nonresidents for registering before the Taxpayers Registry (RFC); (ii) the filing of the corresponding tax returns; (iii) the issuance of tax invoices; and (iv) FAQs on the tax regime applicable to digital platforms. The website also contains practical information for individuals carrying on business activities through digital platforms.

Netherlands

On 30 June 2020, the Dutch Government issued a decree containing official guidance from the Dutch Tax Authority on reportable cross-border arrangements addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC6 or the Directive).

The decree confirms once more that the Dutch MDR legislation is broadly aligned to the requirements of the Directive.

In a separate decree on 26 June 2020, the Netherlands officially announced their deferral of the DAC6 filing deadlines by six months. Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, Member States are permitted to defer by up to six months the time limits for the filing and exchange of reportable arrangements in accordance with the amendments to EU Directive 2011/16 adopted and announced by the Council of the EU on 24 June 2020.

See EY Global Tax Alert, *Dutch Tax Authority issues guidance on reportable cross-border arrangements*, dated 30 June 2020.

On 23 June 2020, the Dutch Government published an updated decree regarding MAPs taken into account for international developments such as OECD's Action 14 on dispute resolution, the OECD MLI and the EU Arbitration Directive. Among others, the decree provides information on: (i) the grounds upon which a MAP can be requested; (ii) how and when a taxpayer can request a MAP; (iii) the steps followed in a MAP; and iv)the conditions attached to requesting a bilateral or multilateral advance pricing agreement.

On 29 May 2020, the Dutch Government announced a conditional withholding tax on dividend payments (ultimately) to shareholders resident in low-tax jurisdictions or jurisdictions included on the EU's list of non-cooperative jurisdictions (EU List) by 2024. This conditional withholding tax is in addition to the conditional withholding tax on interest and royalty payments to group companies in low-tax or blacklisted jurisdictions per 2021. The Government aims to publish draft legislation before the end of its term, which is March 2021.

See EY Global Tax Alert, *The Netherlands announces additional measures to be introduced by 2024 related to dividend payments to low-tax jurisdictions or jurisdictions on EU list of non-cooperative jurisdictions*, dated 29 May 2020

Also on 29 May, the Dutch Ministry of Finance sent its updated Dutch tax treaty policy to the Dutch Parliament, replacing an earlier version of 11 February 2011. The document describes the policy framework for tax treaty negotiations for the coming years and contains general considerations with respect to the choice of treaty partners, the use of anti-abuse provisions and entitlement to treaty benefits. Furthermore, the policy contains an overview of the main provisions which the Netherlands prefers to include in a new tax treaty and on which points of the Dutch tax treaty policy deviates from the OECD Model 2017 and the MLI.

Poland

On 23 June 2020 in light of the COVID-19 pandemic, the Polish Government extended the filing deadlines for transfer pricing documentation. The new deadlines are as follows:

- Deadlines falling between 31 March and 30 September 2020 will be extended until 31 December 2020
- Deadlines falling between 1 October 2020 and 31 January 2021 will be extended for three months

The extended deadlines apply to the deadline for filling a statement confirming that Local File documentation is ready as well as TP-R form information.

The deadline to attach the master file to local documentation is extended until the end of the third month from the day following the date on which the extended deadline for the submission of the transfer pricing documentation possession statement expires.

No extensions to the deadline for submitting a CbC reporting notification have been granted in the light of the COVID-19 situation.

On 18 June 2020, the Senate (the upper chamber of Parliament) adopted a bill implementing Council Directive 2017/952 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (2017/952) (ATAD II). The adopted provisions will apply from 1 January 2021.

On 16 June 2020, further to a recommendation of the European Commission, the President of Poland signed a bill into law introducing a specific anti-avoidance rule on notional interest deduction. According to the rule, if a taxpayer or a related party carries on economically unjustified activities driven by a fiscal motive, with the main purpose of gaining the benefit from such a deduction, the deduction will be denied. This provision will come into effect on 1 January 2021.

In June 2020, new MDR legislative developments in Poland introduced a deferral of MDR deadlines for cross-border and other tax arrangements.

See EY Global Tax Alert, *Poland defers MDR deadlines for cross-border and other tax arrangements*, dated 9 July 2020.

Romania

On 1 July 2020, Romania passed the Emergency Ordinance no. 107/2020 transposing the provisions of the Council Directive (EU) 2020/876 of 24 June 2020 which amend the DAC6 Directive by giving Member States an option to defer, for up to six months, the time limits for the filing and exchange of information on cross-border arrangements under DAC6.

The deadlines imposed by the DAC6 Directive in Romania have been extended as follows:

- The reporting date on cross-border arrangements where the first step of implementation has been made between 25 June 2018 and 30 June 2020 is postponed from 31 August 2020 to 28 February 2021.
- The deadline for the first exchange of reported information on cross-border arrangements between the tax authorities is postponed from 31 October 2020 to 30 April 2021.
- The reporting deadline of the 30-day period for reporting on cross-border arrangements which qualify as reportable, made available for implementation, ready for implementation or for which the first step of implementation has been made between 1 July 2020 – 31 December 2020 is postponed from 1 July 2020 until 1 January 2021, at the latest. This deadline also applies to intermediaries who have provided, directly or by means of other persons aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation or managing the implementation of a reportable cross-border arrangement, between 1 July 2020 – 31 December 2020.

Saudi Arabia

On 9 June 2020, Saudi Arabia's General Authority of Zakat and Tax published on its website guidance regarding MAP. The issuance of the guidance is in line with Saudi Arabia's commitment to the BEPS Action 14 minimum standard as a member of the BEPS Inclusive Framework. Saudi Arabia is included in the seventh batch of assessing jurisdictions and its peer review report was released on 28 November 2019. The guidance was issued to facilitate access to the MAP and includes information on the following topics: (i) MAP description; (ii) Conditions and procedures for requesting a MAP; (iii) Timeframes for the applicability of MAP decisions; and (iv) Stages of MAP proceedings.

Slovenia

On 30 June 2020, the Ministry of Finance in Slovenia proposed amendments to the Tax Procedure Law to include the extension of the MDR reporting deadlines under DAC6, following the adoption on 24 June 2020 by the Council of the EU of amendments to the EU Directive 2011/16 allowing Member States an option to defer, for up to six months, the time limits for the filing and exchange of information on cross-border arrangements under DAC6:

- The reporting date on cross-border arrangements from 31 August 2020 to 28 February 2021
- The deadline for the first exchange of reported information on cross-border arrangements from 31 October 2020 to 30 April 2021
- The starting date for the 30-day deadline for reporting on cross-border arrangements from 1 July 2020 to 1 January 2021

Proposed amendments will be sent to the Parliament for further reading and adoption.

Spain

The Spanish Supreme Court (Tribunal Supremo) issued a favorable decision on 3 March 2020, which was recently published, setting relevant precedent regarding the limits of a dynamic interpretation of tax treaties. Among others, the Spanish Supreme Court ruled that the OECD Commentaries to the Model Tax Convention (and the OECD Transfer Pricing Guidelines) have no normative value binding for a judicial court and are not sources of Law. Also, the Commentaries may not be directly invoked without the basis of a tax rule with normative value, like a tax treaty.

See EY Global Tax Alert, *Spanish Supreme Court rules on limits to dynamic interpretation of tax treaties*, dated 17 June 2020.

On 2 June 2020, the Spanish Council of Ministers approved the China (People's Rep.) – Spain Income Tax Treaty (2018). The treaty has now been sent to the Parliament to follow the legislative approval procedure. Once in force and effective, the new treaty will replace the China (People's Rep.) – Spain Income and Capital Tax Treaty (1990). The treaty contains new 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. 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 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 China and Spain 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.

On 26 May 2020, the Spanish Council of Ministers reapproved the MLI. The MLI has now been sent to Parliament for further approval. The Council of Ministers had previously approved the MLI on 13 July 2018. Due to the dissolution of the Chambers on 4 March 2019, by Royal Decree 129/2019, the MLI needs to be referred to the Parliament again. Spain submitted its MLI positions at the time of signature, listing its reservations and notifications and included 86 tax treaties that it wishes to be covered by the MLI. Once Spain has completed its domestic ratification procedures, Spain must submit its instrument of ratification with the OECD for the MLI to enter into force. Spain must also confirm its reservations and notifications.

Sweden

The Swedish Parliament adopted, on 3 June 2020, final legislation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

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

See EY Global Tax Alert, *Sweden extends MDR reporting deadlines for six months*, dated 8 July 2020.

United Arab Emirates

On 15 April 2020, the United Arab Emirates (UAE) Ministry of Finance (MoF) published a Relevant Activities Guide (the guide) for the purpose of the UAE economic substance regulations (ESR). The guide helps assessing whether an entity carries on a relevant activity for ESR purposes, and also provides clarifications on the identified relevant activities and their associated core income generating activities.

- Among others, the guide clarifies that a substance over form approach will be used to determine whether a company falls within the scope of the ESR.
- Economic substance should be demonstrated by having core income generating activities within the UAE.
- A stricter definition of activities has been clarified in order for a company to determine whether it is in the banking business, insurance business, Investment Fund Management business, lease-finance business, shipping business, holding company business, intellectual property business and the distribution and service center business.
- The guide also provides examples of practical scenarios where a Licensee may, or may not be, subject to the ESR based on its activities.
- Failure to file a required ESR notification may be subject to an administrative penalty between AED10,000 and AED50,000.

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