The Latest on BEPS and Beyond

October 2020

EY Tax News Update: Global Edition

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Highlights

In the September edition of The Latest on BEPS and Beyond, it was noted that the fall period would likely bring developments which could turn out to be directional for the international tax environment. One month later it is worth reviewing what has happened.

An important development to highlight is that the World Economic Forum (WEF) at the end of September presented common metrics for reporting on sustainable value creation, including tax metrics. The WEF was supported by the International Business Council (IBC), a global group of 120 CEOs of large companies, in identifying these metrics. The tax metrics are intended to expand transparency around companies' contributions to community and society through taxes. It requires publication of a company's total tax contribution.

This development is noteworthy as the WEF has now presented an alternative to public country-by-country reporting (CbCR). CbCR is included as a tax metric in another voluntary standard for reporting on sustainable value creation, the Global Reporting Initiative (GRI). The total tax contribution metric is on the one hand much broader, as it looks at a wider range of tax contributions made by reporting companies. On the other hand, it does not require full country-by-country breakdown. This development has two important impacts. First, it seems clear now that reporting on tax as a sustainability metric will be a common practice. Second, as the WEF and the GRI both support a global standard on reporting on sustainable value creation, the key question is what that metric then should be. Time will determine this. However, there still seems to be strong support for public CbCR in the European Union currently. On 21 September, during a virtual tax event hosted by the European Commission, it was suggested that the proposal for public CbCR was gaining new traction. It will be interesting to see whether that development will indeed take place and whether it will be impacted by the WEF publication.

A second important development this month was the 12 October release of the reports on the Pillar One and Pillar Two blueprints of the BEPS 2.0 project. The most important message was that no agreement has been reached yet between the more than 130 member jurisdictions of the Inclusive Framework on BEPS. The OECD Secretariat in its presentations around the release indicated that there was strong agreement that a global solution would be the preferred solution, hence the support for extension of the deadline to mid-2021. This extension was subsequently endorsed by the G20 Finance Ministers and Central Bank Governors during their meeting on 14 October. The European Commission indicated that it would support this final attempt for a global solution, but also indicated that it would come out with its own proposals promptly after mid-2021 if this attempt is unsuccessful.

Showing support for the global solution does not mean that countries will refrain from unilateral actions. On 16 October, Spain published its Digital Services Tax (DST) law in the Spanish *Official Gazette*. The Spanish Government "acknowledged that the ideal approach to address these tax challenges would be to find a multilateral, international solution within the OECD but, nevertheless, also notes that, since the adoption and implementation of practical measures are taking a long time, the adoption of a unilateral interim measure is needed to address this problem." Also in France, the assumption in the press is that the extension of the collection of the French DST, which ends at the end of this year, will not be revisited, with the effect that the DST will become effective.

In future editions, we will continue to report on whether more countries are choosing the intermediary unilateral route, and how the United States (US) Government, following the Presidential election, will react to these unilateral actions.

OECD

On 14 October 2020, the G20 Finance Ministers and Central Bank Governors met via videoconference. At the conclusion of the meeting, they issued a joint communiqué (the communiqué) on key topics discussed at the meeting. With respect to the ongoing G20/OECD project on addressing the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project), the communiqué reaffirms the G20's commitment to making further progress on the two-pillar approach and stresses the importance of addressing the remaining issues in order to reach a global and consensus-based solution by mid-2021.

The meeting took place two days after the release by the OECD of a series of detailed new documents related to the BEPS 2.0 project, including an OECD Secretary-General Tax Report to the G20 Finance Ministers and Central Bank Governors on progress on the international tax agenda in general and the BEPS 2.0 project in particular.

See EY Global Tax Alert, *G20 Finance Ministers and Central Bank Governors' meeting communiqué extends mandate of Inclusive Framework to continue negotiations on BEPS 2.0 project until mid-2021*, dated 14 October 2020.

On 12 October 2020, the OECD and the OECD/G20 Inclusive Framework on BEPS released a series of documents in connection with the ongoing project on addressing the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project). The project, which began in earnest in early 2019, consists of two elements: Pillar One focused on developing new nexus and profit allocation rules and Pillar Two focused on developing global minimum tax rules. The documents include detailed reports on the Blueprints on Pillar One and Pillar Two; a lengthy Economic Impact Assessment of the Pillar One and Pillar Two proposals; a Cover Statement by the Inclusive Framework on the work to date and the next steps; a Public Consultation Document requesting comments on the Blueprints on both Pillars; and a report to the G20 Finance Ministers for their 14 October 2020 meeting. The OECD held both an on-line press conference and a webcast to update the press and the public on the latest developments in the BEPS 2.0 project.

The documents make clear that the Inclusive Framework will not reach a consensus agreement in 2020, which had been the target, because there are relevant political and technical issues that still need to be resolved. However, the Inclusive Framework Cover Statement describes the Pillar One and

Pillar Two Blueprints as providing a "solid basis for future agreement." Moreover, the member jurisdictions of the Inclusive Framework have agreed to keep working "to swiftly address the remaining issues with a view to bringing the process to a successful conclusion by mid-2021." The Inclusive Framework also welcomes written comments from stakeholders on the Pillar One and Pillar Two Blueprints by 14 December 2020, with virtual public consultation meetings to be held in mid-January 2021.

See EY Global Tax Alert, *OECD's Inclusive Framework releases BEPS 2.0 documents and agrees to continue work with target of conclusion by mid-2021*, dated 13 October 2020.

In September 2020, Albania, Bosnia and Herzegovina, Costa Rica, and Jordan 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, Albania confirmed its MLI positions and it removed the treaties with Luxembourg and Morocco from its list of Covered Tax Agreements (CTAs). Costa Rica confirmed its MLI positions and removed the treaty with Germany from its list of CTAs. Further, Costa Rica chose not to apply article 7(4) (Prevention of Treaty Abuse), removed the reservation on article 9(1) (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property) and reserved the entirety of article 10 (Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions). Bosnia and Herzegovina and Jordan confirmed their MLI positions without making any changes.

The MLI will enter into force for all these jurisdictions 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 January 2021.

On 28 September 2020, the Tax Inspector Without Borders (TIWB) released its Annual Report 2020 (the report) covering the period from January 2019 to June 2020. TIWB is a joint OECD/United Nations Development Program initiative launched in July 2015 to strengthen developing countries' auditing capacity and multinationals' compliance worldwide. The report notes that the current economic crisis is impacting the ability of developing countries to mobilize domestic resources, and the decline in global trade is leading to a fall in tax revenue from goods and services. During the period covered in the report, TIWB programs grew significantly due to geographic expansion, widening of the scope of assistance and request for additional programs from satisfied tax administrations. As a result, TIWB programs amounted to US$537 million in additional tax revenue for developing countries as of 30 June 2020.

On 24 September 2020, the OECD released the compilation of the outcomes of the third phase of peer reviews (the Compilation) of the minimum standard on Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) of the BEPS project.

According to the executive summary accompanying the Compilation, over 90 jurisdictions have already introduced legislation to impose a filing obligation for Country-by-Country (CbC) Reporting (CbCR) on multinational enterprise (MNE) groups, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbCR has been found to be largely consistent with the Action 13 minimum standard. However, 41 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework. Of the jurisdictions that have already introduced the legislation, 34 jurisdictions received one or more recommendations to make improvements to specific areas of their framework. Moreover, 76 jurisdictions have multilateral or bilateral competent authority agreements in place, which results in more than 2500 exchange relationships. In addition, 82 jurisdictions have provided detailed information about the appropriate use of CbC reports, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use.

Further work will continue to monitor the implementation and operation of CbCR and to highlight progress made by jurisdictions to address the recommendations that have been made.

Also, the OECD has indicated that the 2020 review of the CbCR minimum standard, which was announced in 2015 at the presentation of the BEPS final reports, will be finalized before the end of the year. In the context of this review, members of the Inclusive Framework will assess whether the design and underlying conditions of the minimum standard should be adjusted.

See EY Global Tax Alert, *OECD releases outcomes of third phase of peer reviews on BEPS Action 13*, dated 29 September 2020.

European Union

On 6 October 2020, the Council of the European Union (the Council or ECOFIN) updated the European Union (EU) list of non-cooperative jurisdictions for tax purposes (the EU List).

The Council decided, by written procedure, to remove the Cayman Islands and Oman and add Anguilla and Barbados to Annex I (the so-called "Black" list) of the EU List as these jurisdictions did not implement the tax reforms to which they had committed by the agreed deadline. The total number of jurisdictions now included in Annex I of the EU List is 12. As regards Annex II of the EU list (the so-called "Gray" list) and the state of play of pending commitments, the Council decided to extend several deadlines for these commitments due to the ongoing COVID-19 global pandemic. Also, the Council decided to remove two jurisdictions (Mongolia and Bosnia and Herzegovina) from Annex II which now contains 10 jurisdictions.

The Council will continue to review and update the EU List biannually, with the next update due in February 2021.

See EY Global Tax Alert, *ECOFIN publishes revised list of non-cooperative jurisdictions for tax purposes*, dated 7 October 2020.

United Nations

On 10 October 2020, the United Nations (UN) prepared a progress note on the tax consequences of the digital economy, to include an amended version of the proposed Article 12B (Income from Automated Digital Services) UN Model Tax Convention (UN MTC). The progress note includes the proposed change in the definition of royalties, the reasons on why these changes were being proposed and the positions of some Committee members who opposed these changes.

While the main substance of the original proposal was largely unchanged, there were a number of amendments: (i) income from automated digital services is subject to the provisions of article 8 (International Shipping and Air Transport); (ii) income from automated digital services has precedence over article 14 (independent personal services); (iii) application of the profitability ratio of the beneficial owner's automated digital business segment to gross annual revenue from automated digital services; and (iv) exclusion of payments qualifying as "royalties" under article 12 (Royalties) as income from automated digital services. The progress note also contains a short summary of the written and oral comments submitted by other members in preparation for, during and after a virtual meeting of the Subcommittee held on 25, 26 and 27 September.

At its 21st Session, to be held from 20-23 October and 26-29 October 2020, the UN Tax Committee will discuss the amended draft version of Article 12B UN MTC and take a decision on whether and if so how to take forward this work.

African Tax Administration Forum

On 30 September 2020, the African Tax Administration Forum (ATAF) released its Suggested Approach to Drafting Digital Services Tax (DST) Legislation that proposes a rate between 1% and 3% on gross annual digital services revenue earned by a company or an MNE in a country. The suggested DST Legislation proposes standard text that can be adopted by ATAF member countries in their domestic laws in order to tax highly digitalized businesses operating in those countries. According to the ATAF press release, "whilst efforts continue to be made by the OECD Inclusive Framework to develop a consensus-based solution to address tax challenges arising from digitalisation, the status to- date shows that a global solution is unlikely to be reached this year. This delay could cost African countries millions of dollars of tax to the ATAF membership who might wish to act now to address this potential risk. At their request ATAF has thus developed a Suggested Approach to Drafting Digital Sales Taxation as a guide."

Australia

On 6 October 2020, the Federal Treasurer presented the Australian Federal Budget 2020. Among other items, the Budget clarifies the circumstances in which a foreign incorporated company will be classified as an Australian tax resident for domestic income tax purposes.

In order to qualify as an Australian tax resident, foreign entities need to have a significant economic connection with Australia as well as their central management and control in Australia. Taxpayers will have the option of applying the new rule retrospectively from 15 March 2017.

Further, the Budget announces that Australia will modernize and expand its tax treaty network to attract foreign investment and skilled workers.

See EY Global Tax Alert, *Australia issues 2020-21 Federal Budget*, dated 7 October 2020.

On 1 October 2020, the Australian Taxation Office (ATO) published a Law Administration Practice Statement (PS LA 2020/2) to provide guidance to ATO staff on the process of applying the principal purpose test (PPT) included in many of Australia's tax treaties. The guidance included in the Practice Statement applies to the following general anti-abuse rules in Australia's tax treaties: (i) PPT under Article 7 of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI); (ii) PPT in an Australian tax treaty that is not impacted by the MLI; (iii) a main purposes test in an Australian tax treaty that is yet to be or will not be modified by the MLI. This Practice Statement reflects very few changes in substance from the draft previously issued in December 2019.

Belgium

On 30 September 2020, the coalition agreement of the new Belgian Government was finalized. Among others, the Government expresses strong support to the ongoing BEPS 2.0 negotiations and in particular the introduction of a so-called minimum taxation for multinationals (as proposed under Pillar Two of the OECD Global Anti Base Erosion proposal, GLoBE). The Government also calls for a form of "digital taxation," preferably with an agreement on the international level (EU/OECD). The Government is planning to impose a Digital Services Tax by 2023 if an international agreement on such a tax cannot be reached.

On 10 July 2020, the Belgian Federal Public Service for Finance published Circular No. 2020/C/97 (the Circular) clarifying the new interest deduction limitation (EBITDA) rule, applicable since 1 January 2019, resulting from the transposition of the EU Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD I) (2016). The Circular includes clarifications regarding: (i) the exceeding borrowing costs; and (ii) with respect to the calculation of the taxable EBITDA. Among other clarifications, the circular letter states that:

- Exceeding borrowing costs that are non-deductible in accordance with the new interest deduction limitation rule in one company cannot be compensated with negative exceeding borrowing costs of another group company.
- The taxable EBITDA of a company is increased/decreased with professional expenses owed to/received from other Belgian group companies. However, the Circular confirms that no adjustment should be made for interest or expenses/income that are economically equivalent to interest owed to/received from other Belgian group companies.
- If a company opted for the spread taxation regime of capital gains on assets, its EBITDA is reduced by the amount of those yearly taxable gains.
- The Circular also states that where companies are under joint control of two different groups of companies, they should be considered and treated as two separate standalone companies for purposes of calculating the exceeding borrowing costs and taxable EBITA, or as a member of a separate group.

The full text of the Circular is available in Dutch and in French.

Chile

On 28 September 2020, the Chilean tax authorities issued Resolution Ex. No. 119 of 2020, amending rules on reporting indirect transfers of Chilean entities and assets. Currently, the instructions for reporting indirect transfers, exempt acquirers and the Chilean companies subject to the transfers, from the reporting requirement if the transferors report the transactions. The Resolution eliminates the mentioned exemption and requires all parties involved in the transaction to report the indirect transfer to the tax authorities by filing Form 1921.

The Resolution will be effective as from 1 January 2021.

See EY Global Tax Alert, *Chile's tax authorities amend reporting obligations for indirect transfers*, dated 2 October 2020.

On 31 August 2020, the Chilean Internal Revenue Service (IRS) published Resolution Ex. No 101, containing instructions for filing the Local File and Master File. According to the instructions, taxpayers must file, through the IRS's website, the newly created form 1950 (Master File) and Form 1951 (Local File) on the last business day of June of each year for transactions carried out in the preceding tax year. Taxpayers may request a one-time extension of the filing deadline for up to three months.

Colombia

On 21 August 2020, the Colombian Tax Authority published Resolution 000085 setting forth rules for taxpayers requesting access to initiate a Mutual Agreement Procedure (MAP). The purpose of the issued Resolution is to define what is a MAP, procedures and minimum requirements for initiating and conducting MAP, as well as the timeline and confidentiality protection. The guidance supports Colombia's commitment to implement the minimum standard of OECD BEPS Action 14.

Cyprus

On 4 September 2020, the Cypriot Tax Department publicly announced that the bilateral Competent Authority Agreement (CAA) for the exchange of CbC reports between Cyprus and the US, which is still under negotiation, is expected to be effective for Reporting Fiscal Years (RFYs) starting on or after 1 January 2020. Consequently, the secondary filing mechanism for a Cypriot Constituent Entity (CE) of an MNE group with a US tax resident Ultimate Parent Entity (UPE) is triggered for RFYs starting on or after 1 January 2019, but before 1 January 2020.

See EY Global Tax Alert, *Cyprus' Tax Authority issues clarification note regarding bilateral CAA with US*, dated 9 September 2020

Czech Republic

The Czech bill amending the Act on International Cooperation in Tax Administration implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive) was published on 14 August 2020 in the Czech Collection of Laws.

The final Czech Mandatory Disclosure Rules (MDR) legislation is effective from 29 August 2020.

Also, on 7 September 2020, the Czech Government approved a six-month deferral to the initial MDR reporting (deferral regulation) which was officially published on 10 September 2020. The deferral regulation generally follows the Council amendment 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 final Czech MDR legislation is broadly aligned to the requirements of the Directive.

See EY Global Tax Alert, *Czech Republic publishes final bill amending Act on International Cooperation in Tax Administration to implement Mandatory Disclosure Rules*, dated 22 September 2020.

Denmark

On 7 October 2020, the Danish Minister of Taxation (re) published bill no. L 28 on international taxation. The bill is expected to be enacted before the end of 2020. The main rules include a proposal to amend the definition of a permanent establishment (PE) to align it with the new definition set out in Article 5 of the OECD Model Convention (2017), inter alia broadening the agency PE rule and to establish an anti-fragmentation rule. The bill also proposes the possibility for Danish companies to deduct final losses incurred by their foreign subsidiaries subject to a number of conditions. In addition, the bill includes provisions that will significantly strengthen the Danish transfer pricing rules on documentation and underlines the right of the Danish Tax Authorities to adjust the income of companies if their documentation with regard to transfer pricing has not been filed in due time.

The Danish Government has also proposed amendments to the Danish Controlled Foreign Company (CFC) rules to implement the CFC rules of the ATAD into Danish law. In the latest draft, no substance test was included, however, the preparation of a bill is still in progress, and the content is not yet clear. A bill is expected to be presented in November 2020.

Indonesia

On 11 August 2020, the Indonesian Directorate General of Taxation (DGT) issued guidelines on the procedures on the implementation of a MAP. Key items addressed in the guidelines include the steps to file a MAP request with the DGT and further guidance regarding the implementation of the 24-month timeline for MAP negotiations. The guidelines also outline the steps for MAP negotiations to be extended past a 24-month period. There is a difference in the process for MAP negotiations entered into prior to or after 26 April 2019 as 26 April is the date that the prior regulation introduced a 24-month deadline for MAP negotiations.

Jersey

On 9 September 2020, Jersey introduced mandatory disclosure rules into domestic law for reporting certain arrangements through the Taxation (Implementation) (International Tax Compliance) (Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures) (Jersey) Regulations 2020.

Under the Regulations, intermediaries (i.e., promoters and service providers) and taxpayers, in some cases, are obliged to disclose certain information relating to arrangements designed to circumvent common reporting standard (CRS) regulations and opaque offshore structures, i.e., arrangements designed to make the relevant ultimate beneficial owners unidentifiable, to the tax administration which will then exchange such information with foreign tax authorities.

The Regulations establish certain features that an arrangement could have (known as hallmarks) that would make it reportable. The list of hallmarks is not exhaustive. Therefore, any arrangement that has the ultimate effect of circumventing the CRS regulations or making the ultimate beneficial owners unidentifiable is potentially reportable.

Penalties are provided for failure to comply with the Regulations.

The Regulations will come into force on the date appointed by the Minister for External Relations.

Malaysia

On 4 August 2020, the Malaysian Government gazetted the Double Taxation Relief (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order 2020 [P.U.(A) 224], ratifying the MLI. Malaysia submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the CTAs it identified to be covered by the MLI (73 CTAs). The instrument of ratification still needs to be deposited with the OECD before the MLI will enter into force with respect to Malaysia's CTAs. A definitive list of reservations and notifications will also need to be provided when the instrument of ratification is deposited.

Malta

On 18 September 2020, the Commissioner for Revenue notified that due to the deferral of the Mandatory Disclosure Rules reporting deadlines as a result of the COVID-19 pandemic, the period allowed for notification by non-disclosing intermediaries was being extended accordingly.

Thus, in relation to cross-border arrangements subject to reporting for the period from 25 June 2018 to 31 December 2020, intermediaries waiving their obligation to report under Regulation 13(7)(e) of the Cooperation with Other Jurisdiction on Tax Matters Regulations are required to notify any other intermediary or the relevant taxpayer of their reporting obligation no later than 12 January 2021.

Mexico

On 8 September 2020, Mexico's President submitted an economic proposal for 2021 to Congress. Among other items, the proposal provides clarification on the General Anti-Avoidance Rule (GAAR) enacted in December 2019 to ensure that this provision would not impede a criminal investigation or charges. Further, the proposal expands the obligation to nonresident digital service providers that serve as intermediaries for the purchase of goods and services over their platform, to collect Value Added Tax on goods and services paid for through the platform. Before the Proposal can become law, both chambers of Mexico's Congress must debate and vote on it. They need to approve the Proposal by 31 October 2020. Once approved, the Proposal will be sent to the President for his signature and will be published in the *Official Gazette*. The Proposal will become law on the date of publication and should be effective 1 January 2021.

See EY Global Tax Alert, *Mexico's President submits 2021 economic proposal to Congress*, dated 18 September 2020.

Netherlands

On 15 September 2020, the Dutch Government published the Dutch budget proposals (the Proposals) for fiscal year 2021. The proposals announce a €2 billion workforce incentive plan for employers that will be a boost for workforce investment activities, both increasing new employment and securing the retention of employees. Additionally, the Dutch Government continues to combat perceived abusive tax structures in line with international tax proposals and has introduced further measures to support economic recovery from the COVID-19 crisis. In order to fund the incentives/stimulus package, the planned reduction of the headline corporate income tax rate (CIT) to 21.7% will not be introduced in 2021. Furthermore, the Proposals include a tax agenda, outlining expected legislative measures for the coming periods. The Proposals are currently subject to the review and discussions by the Dutch Parliament and as such may be subject to amendments. The final version of the Proposals are expected to be enacted in December 2020.

On 25 September 2020, the Dutch Government published a public consultation on a legislative proposal with respect to the new withholding tax on dividends paid to low tax jurisdictions as from 2024. The legislative proposal extends the scope of application of withholding taxes on interest and royalties paid to low tax jurisdictions (i.e., tax rate lower than 9% or on the EU list of non-cooperating jurisdictions) to dividends. Interested parties may submit their comments by 23 October 2020.

Oman

On 27 September 2020, Oman published in the *Official Gazette* Decision No.79/2020 to introduce CbCR requirements as of 1 January 2020. According to the decision, all Oman tax resident constituent entities that are UPEs of MNE groups with annual consolidated group revenue of not less than OMR300 million (approximately €670 million) have to prepare a CbC report. Any other entity of the group that is resident in Oman will have to prepare and submit the CbC report if the UPE is not resident in Oman and any of the following conditions are met: (i) it is not obliged to file a CbC report in its country of residence; (ii) there is an international agreement which permits automatic exchange of information between the jurisdiction where the UPE is resident and Oman, but there is no QCAA in effect between these jurisdictions by the time for filing the CbC Report; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. Notwithstanding the above, local filing will not be required if the MNE group appoints a surrogate parent entity (SPE) and other requirements are met. The CbC report should be submitted within the 12-month period after the last day of the RFY. Moreover, an Oman constituent entity will need to notify the tax authorities whether it is the UPE or SPE by 31 December 2020. If it is neither a UPE nor an SPE, it will have to inform the tax authorities of the identity of the UPE or SPE along with its tax residency by 31 December 2020.

Panama

On 30 September 2020, the Panamanian National Assembly approved the MLI through Bill No. 357. For the ratification process to be complete, the approved bill will have to be sent to the President for his acceptance/signature and then be published at the Panamanian *Official Gazette*. Panama submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the 17 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.

Peru

On 28 September 2020, the Peruvian Tax Authority published Ruling No. 000155-2020. The Ruling postpones the filing of the CbC reports for the 2019 reporting fiscal year for Peruvian constituent entities that are members of an MNE group whose UPE is not a resident in Peru if local filing requirements apply and the local taxpayer meets any of the following conditions:

- The UPE is not required to file the CbC report in its jurisdiction of residence.
- Taxpayers resident in Peru that had to submit the CbC report because the UPE's country of residence has an international treaty or Andean Community decision in effect with Peru that authorizes the exchange of tax information, but it does not have a qualifying competent authority agreement in effect with Peru for the exchange of the CbC report.
- Taxpayers with a UPE resident in a jurisdiction with an exchange of information instrument in place with Peru in which the systematic failure of the tax information exchange has been communicated by Peruvian tax authorities to the taxpayer resident in Peru.

The deadline for submitting the 2019 CbC reports is now aligned to the 2017 and 2018 postponements. For the tax years of 2017, 2018 and 2019, the due date will be the last business day of the month following the month in which the Peruvian tax authority publishes on its website that Peru has met the standard of confidentiality and security for information, as required by the OECD.

See EY Global Tax Alert, *Peru's Tax Authority postpones filing of CbC report for 2019 tax year*, dated 2 October 2020.

Poland

On 30 September 2020, the Polish Government submitted, in the framework of their plan to strengthen the Polish tax system, its bill to the Parliament. Among others, the Government aims to impose on taxpayers with revenue exceeding €50 million in the preceding tax year and on tax consolidated groups regardless of their revenue, the obligation to prepare and publish information on the execution of their tax policy including information on the planned and realized business restructurings affecting their transfer pricing policy. The bill is expected to undergo the full legislative process by the end of November 2020.

Spain

On 16 October 2020, Spain published the law (Ley 4/2020) on Digital Services Tax (DST) in the Spanish *Official Gazette*. Its main features are similar to the DST initially proposed by the European Commission in March 2018, with a rate of 3% imposed on gross income derived from certain digital services for which user participation is essential for creating value; namely, targeted online advertising, online intermediation services and the sale of user data. The Spanish DST is applicable only to companies with worldwide revenue of at least €750 million per year and with a total amount of taxable revenue obtained in Spain exceeding €3 million per year. The Spanish DST will be effective as of 16 January 2021.

The Spanish Government has acknowledged that the ideal approach to address these tax challenges would be to find a multilateral, international solution within the OECD. Nevertheless, the Spanish Government also notes that, since the adoption and implementation of practical measures are taking a long time, the adoption of a unilateral interim measure is needed to address this issue.

See EY Global Tax Alert, *Spanish DST is enacted, effective 2021*, dated on 16 October 2020.

United Arab Emirates

On 10 August 2020, the United Arab Emirates (UAE) enacted significant changes to the Economic Substance (ES) Regulations (ESR) under Cabinet of Ministers Resolution No. 57 of 2020 together with guidance issued by the Ministry of Finance under Ministerial Decision No.100 of 2020, dated 19 August 2020 (Updated Regulations). The Updated Regulations have replaced and repealed the prior ESR and guidance. Among others, there have been significant updates and clarifications to the regulations, with the key changes being the updates to the definitions of "licensee and certain "relevant activities." Furthermore, entities that are at least 51% owned by the UAE Government are no longer specifically exempted under the Updated Regulations, however, new exemptions have been introduced.

Given these changes, UAE businesses that are required to comply with the ESR should:

1. Re-evaluate the applicability of ESR to their business and determine how the Updated Regulations impact their ESR compliance approach.
2. Resubmit FY19 notifications (when the portal is available), together with any changes required to the information already filed with the relevant regulatory authorities.
3. Assess the key functions performed to see how they align to the economic substance tests.
4. Identify gaps where the test requirements are not adequately met and plan a mitigation strategy to ensure compliance.

The Updated Regulations have also updated the penalty regime for non-compliance with a range of administrative penalties of up to AED400,000 (approx. US$108,000), including the suspension or nonrenewal of trade licenses.

On 4 June 2020, the UAE issued Cabinet Resolution No.44 of 2020 (Updated Regulations) which had repealed and replaced Cabinet Resolution No.32 of 2019 that introduced CbCR rules for MNEs operating in the UAE.

The Updated Regulations provide that only MNE groups with the UPE in the UAE will be required to submit a CbC report in the UAE. Furthermore, the Updated Regulations provide that a CbCR notification must be submitted in the UAE only if the UPE of the MNE group is tax resident in the UAE. Therefore, MNE groups headquartered/tax resident outside of the UAE are no longer required to submit a CbCR notification in the UAE. Prior to these Updated Regulations, an entity or branch located in the UAE was required to file a CbC report and/or CbCR notification in the UAE if it was a member of an MNE group.

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EYG no. 007164-20Gbl

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