

Belarus joins BEPS Inclusive Framework and Global Forum on Transparency and Exchange of Information for Tax Purposes

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Executive summary

As stated in the Resolution of the Council of Ministers of the Republic of Belarus #590 dated 12 October 2020, Belarus will join the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) and the Base Erosion and Profit Shifting (BEPS) Inclusive Framework (the Inclusive Framework). It is expected that Belarus will join these initiatives starting 1 January 2021.

Both projects were initiated by the Organisation for Economic Co-operation and Development (OECD) and are aimed at global tax cooperation:

- ▶ The Global Forum is a key international body working on the implementation of international standards related to transparency and the exchange of information for tax purposes in order to put an end to bank secrecy and tax evasion through global tax cooperation (includes over 160 member countries).
- ▶ The Inclusive Framework brings together over 135 countries and jurisdictions¹ to collaborate on the implementation of the BEPS Project that includes 15 Actions and equips governments with the domestic and international instruments needed to ensure that profits are taxed where economic activities generating the profits are performed and where value is created.

Detailed discussion

The Global Forum on Transparency and Exchange of Information for Tax Purposes

By joining the Global Forum, Belarus commits to the implementation of two international standards, both of which contribute to closer cooperation between tax authorities worldwide and allow them to obtain information necessary for ensuring tax compliance.

The first standard provides for the international exchange of information on request (EOIR), where a tax authority can request a particular piece of information to progress a tax investigation.

The second provides for the international automatic exchange of information (AEOI), where a pre-defined set of information on financial accounts held by nonresidents is automatically exchanged each year. This exchange is underpinned by ensuring that the information is kept confidential and properly safeguarded and particular requirements are placed on jurisdictions to ensure this.

The Global Forum will provide Belarus, as a member country, technical assistance in implementing the mentioned standards as well as conduct peer reviews to ensure the standards are implemented effectively. Belarus, in return, will be also required to participate and contribute to the peer review process and pay an annual membership fee.

The BEPS Inclusive Framework

Belarus's membership in the Inclusive Framework means that the Belarusian tax authorities will implement some of the recommendations provided in the BEPS final reports in the Belarusian tax legislation and tax treaties, and will participate on equal footing with the rest of Inclusive Framework members on the remaining standard setting, as well as the review and monitoring of the implementation of the BEPS package. Belarus will also pay an annual membership fee.

First of all, as a member of the Inclusive Framework, Belarus is committed to comply with the BEPS minimum standards as they are designed to ensure a level playing field for all member countries. The BEPS minimum standards are comprised in the following BEPS Actions:

- ▶ Action 5 (Countering Harmful Tax Practices)
- ▶ Action 6 (Preventing Treaty Abuse)
- ▶ Action 13 (Transfer Pricing Documentation)
- ▶ Action 14 (Dispute Resolution)

The implementation of the respective BEPS minimum standards is subject of a peer review process that evaluates the implementation by each member country. Belarus will also participate in this review process that helps member countries review their tax systems, identify weaknesses and tackle them based on the international experience.

Within the implementation of *Action 5*, preferential tax regimes applicable in Belarus must be disclosed for the peer review to determine whether these may be considered as harmful and can facilitate base erosion and profit shifting. Moreover, as part of the minimum standard in *Action 5*, Belarus commits to the compulsory spontaneous exchange of certain tax rulings in accordance with the transparency framework.

According to *Action 6*, Belarus will be committed to ensure a minimum level of protection against treaty abuse (e.g., through including an express statement on non-taxation and one of three methods of addressing treaty shopping in its double tax treaties or using a Multilateral Instrument that can modify existing bilateral double tax treaties). At the moment, Belarus has concluded 74 bilateral tax treaties and almost all the treaties should be modified in order to be in line with *Action 6*.

Action 13 revised standards for transfer pricing documentation to enhance transparency to tax administrations and also introduced a three-tiered standardized approach to the documentation (a Master file, a Local file and country-by-country (CbC) report). According to *Action 13* requirements all large multinational enterprises (namely their ultimate parent companies) are required to prepare a CbC report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which they operate. The CbC report is shared with tax administrations in relevant jurisdictions, for the use in a high-level transfer pricing and BEPS risk assessments.

Action 14 seeks to improve the resolution of tax-related disputes between jurisdictions and within the implementation of this *Action*, the Belarusian legal and administrative framework will be assessed in key areas against a minimum standard to prevent disputes and improve the availability and access to the mutual agreement procedure (MAP). In the implementation of this initiative the draft Law "On changes in the Tax Code of the Republic of Belarus," that shall enter into force starting 1 January 2021, has already stipulated the introduction of a MAP.

Over time Belarus may be interested in implementing other provisions of the BEPS Project in addition to the BEPS minimum standards. In the meantime, some of the BEPS initiatives have been already implemented to some extent in the Belarusian tax legislation include: transfer pricing rules (Chapter 11 of the Tax Code of the Republic of Belarus), business purpose test rule (Item 3 of the Article 33 of the Tax Code of the Republic of Belarus), and thin capitalization rules (Article 172 of the Tax Code of the Republic of Belarus).

Furthermore, joining the Inclusive Framework will allow Belarus to collaborate on the OECD BEPS 2.0 initiative which is aimed at resolving the tax challenges arising from the digitalization of the economy.

Implications

The full impact of Belarus' joining the Global Forum and the Inclusive Framework will be determined through the peer review process. Nevertheless, these developments are quite significant since they demonstrate the readiness of the Belarusian tax authorities to modify their working approaches and participate in global initiatives in order to prevent BEPS in the most effective way. With participation in the Global Forum and the Inclusive Framework, Belarusian tax authorities will have access to new instruments for transparency and tackling BEPS and tax avoidance.

Endnote

1. <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>.

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