The Latest on BEPS and Beyond

April 2021

EY Tax News Update: Global Edition

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Highlights

In its first 100 days, the Biden Administration has moved rapidly and firmly to introduce the policy proposals that President Joe Biden announced during his election campaign. In doing so, the new administration has also presented its position on international taxation. There are two areas in tax where other countries and international organizations were keenly waiting for the United States (US) to take position: the area of green taxation and on BEPS 2.0. In both areas, the US has now undertaken important initiatives.

The US has started bi- and multilateral conversations on addressing climate change. Following a high-level meeting in Shanghai, the US and China issued a joint statement indicating that they will cooperate together and with other countries to fight the climate crisis. And in the coming week, President Biden will be hosting a virtual meeting with dozens of world leaders on the topic.

On Pillar One and Two of BEPS 2.0, the US also came with innovative perspectives and proposals for bringing the international community together, linked to the presentation of their domestic plans on international taxation. The initial reactions of other countries and international organizations were positive, but also cautious as some issues were identified which will need further discussion. Only time will tell whether this new dynamic will drive the international community to the long-awaited political agreement on the two Pillars. We anticipate knowing something by mid-year.

Building a better working world

Compared to BEPS 2.0, the geo-political attention for climate change marks an even more fundamental and wider shift. The world is moving from shareholder to stakeholder capitalism, illustrated by the fact that sustainability challenges drive behavior of consumers, employees, non-governmental organizations and governments. And as businesses anticipate and react to shifts in society, sustainability challenges are also high on boards' agendas.

For businesses, key challenges are reduction of carbon emissions and sustainable use of materials through the circular economy, impacted by the type of industry and the company's specific circumstances. Regardless of the sustainability challenges that companies are addressing, they tend to consider three groups of responses:

- Tactical changes in the short term, such as switching from fossil fuels to a renewable energy source
- Technology-enabled operational transformation in the medium term
- Strategic decisions to reshape their product portfolios in the long-term, for example through M&A activities

Proactively engaging in the sustainability agenda has created a wide range of business benefits for companies, from less expensive and easier access to financing, increased demand, more resilient supply chains, and increased market value. And companies have just started on their transformational journeys, which they will continue iterating until the European Union (EU) Green Deal goals and other national Net Zero plans are achieved as expected by 2050 to 2060.

Now that both the new US administration and the EU have presented ambitious sustainable policies, it is clear that urgency is required to adapt the tax, regulatory and incentives frameworks to support and enable the sustainability-related transformation. Some businesses are taking frontrunner roles, driven by shareholder capitalism. Policymakers will be looking for measures which will level the playing field for these frontrunners, by ensuring that less green companies pay the price for their practices. It will be important to do this in a fashion that recognizes business reality, as otherwise the green transition may not be sufficiently supported, or the mechanisms put in place to incentivize the green transition could lead to State aid being provided for some categories of businesses. In the period ahead it will be important for businesses to monitor regulatory initiatives and engage with policymakers to ensure that the future sustainable tax framework will be fit for purpose.

OECD

On 7 April 2021, the G20 Finance Ministers and Central Bank Governors met via videoconference under the Italian G20 Presidency. 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 reach a global and consensus-based solution building on the solid basis of the Reports on the Blueprints for Pillar One and Pillar Two, by mid-2021. The G20 Finance Ministers and Central Bank Governors acknowledge the progress made to date and urge the G20/OECD Inclusive Framework on BEPS to address the remaining outstanding issues with a view to achieving an agreement by the set deadline.

Also on 7 April, the staff of the International Monetary Fund (the IMF) and the OECD Secretariat released a joint report discussing the current and potential use of carbon pricing and actions that jurisdictions can take to advance global coordination of a climate solution.

The report discusses the need for climate pricing to meet the goals of the 2015 Paris Agreement and states that current emissions commitments and policies are not sufficient to meet those goals. The report also details the strengths of carbon pricing. Such strengths are described as including the appeal to reduce greenhouse gas emissions and increase green energy use, encouragement of private investment in clean technologies, more flexibility than regulatory approaches, long-range effectiveness, and increased government revenue.

The Report lists key elements of a comprehensive mitigation strategy. Border Carbon Adjustment is one of such policy options considered for preventing carbon leakage and protecting loss of competitiveness of domestic firms. The Report also discusses potential challenges and items to consider in designing options effectively.

See EY Global Tax Alert, *IMF and OECD release joint report on carbon pricing*, dated 16 April 2021.

On 1 April 2021, the OECD published the OECD Secretary-General tax report to the G20 Finance Ministers and Central Bank Governors (the report). One of the areas covered by the report is the project on the tax challenges arising from the digitalization of the economy. It reiterated the aim of the G20/OECD Inclusive Framework on BEPS to achieve a global and consensus-based solution by mid-2021. The COVID-19 pandemic and the economic recovery from the crisis caused by the pandemic are also at the top of the G20 agenda. The report highlights that a key priority in the short run will be to improve the targeting of tax relief to ensure that support is channeled to those who need it most and to carefully withdraw support where it is no longer needed. Further, the report acknowledges that governments must encourage fundamental transformations in the way their economies and societies currently function to reduce the risk of dangerous climate change. Moreover, the report indicates that the OECD has worked over the past years to tackle international tax evasion and avoidance. This work has resulted in the end of bank secrecy, enhanced tax transparency and enduring international cooperation between tax administrations. Lastly, the report also notes that the international tax agenda has become truly global. Out of the 139 members of the G20/OECD Inclusive Framework on BEPS, 68 are developing countries. Members participate on an equal footing and it is considered crucial that all members benefit from tax transparency standards and the BEPS project.

Also on 1 April, the OECD released the third annual peer review on Action 6 (prevention of treaty abuse) and a revised peer review documents on Action 6 to carry out the peer review process beginning in 2021. The peer review report includes information available as of 30 June 2020 and covers the 137 jurisdictions that were members of the Inclusive Framework by such date. Overall, the majority of the Inclusive Framework members are translating their commitment to prevent treaty shopping into actions and are modifying their treaty networks. The peer review also indicates that, of the three alternative methods to address treaty shopping, the majority of the jurisdictions have chosen to implement a Principal Purpose Test (PPT).

With respect to the peer review process documents, the Action 6 minimum standard remains unchanged, and the terms of reference for the peer review remain largely unchanged with the exception of the establishment of a framework through which in certain situations assistance would be given to an Inclusive Framework member that has non-compliant agreements.

See EY Global Tax Alert, *OECD releases third annual peer review report and revised peer review documents on BEPS Action 6 relating to prevention of treaty abuse*, dated 16 April 2021.

On 31 March 2021, the OECD published on its website a press release that 12 no or only nominal tax jurisdictions (Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, United Arab Emirates) began their first annual tax information exchanges under the Forum on Harmful Tax Practice's (FHTP) global standard on substantial activities. These exchanges cover information on the identity, activities and ownership chain of entities established in no or only nominal tax jurisdictions that are either non-compliant with substance requirements or engage in intellectual property or other high-risk activities. The exchanges will enable receiving tax administrations to carry out risk assessments and to apply their controlled-foreign company (CFC), transfer pricing (TP) and other anti-base erosion and profit shifting provisions.

On 25 and 30 March 2021, Hungary and Greece respectively deposited their instrument of ratification of the *Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting* (MLI) with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Hungary added 10 tax treaties (Albania, Armenia, Bahrain, Belarus, Bosnia and Herzegovina, Kuwait, North Macedonia, Oman, UAE, United States) to its list of Covered Tax Agreements (CTAs) and removed two tax treaties (Moldova, Mongolia) from the same list. It also chose to apply Part VI of the MLI (Mandatory Binding Arbitration) and included a list of reservations to the scope of cases eligible for Mandatory Binding Arbitration. Greece did not make changes on its list of CTAs but it added reservations on Article 9 (anti-abuse rules for capital gains) and on the scope of cases eligible for Mandatory Binding Arbitration. The MLI will enter into force for 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 by their instrument of ratification, i.e., on 1 July 2021.

On 29 March 2021, the Committee of Fiscal Affairs of the OECD released a public consultation proposing changes to the Commentaries on the OECD Model Tax Convention (OECD Model). The document includes recommendation on the interpretation of Article 9 (associated enterprises) and other related articles of the OECD Model. In particular, the proposed changes specify that the conditions for the deductibility of expenses are a matter to be determined by domestic law. Hence, if domestic law rules would result in fewer expenses being deductible than the arm's-length amount, this would not be considered to cause economic double taxation and there would be no obligation on the other Contracting State to make corresponding adjustments under Article 9 of the OECD Model.

The OECD invites interested parties to submit comments on the discussion draft before 28 May 2021.

See EY Global Tax Alert, *OECD releases consultation document with proposed changes to Commentaries to OECD Model Tax Convention on Article 9 (Associated Enterprises) and related articles*, dated 13 April 2021.

On 25 March 2021, the OECD published the Arbitration Profiles of 30 jurisdictions applying Part VI (mandatory binding arbitration) of the MLI. All the Arbitration Profiles have the same structure and contain the following: (i) references to a jurisdiction's MLI position, Mutual Agreement Procedure (MAP) profile and the synthesized texts obtainable from the MLI Matching Database; (ii) Indication of the type of arbitration process that will apply to that jurisdiction as the default type of arbitration; (iii) reservations made; (iv) hyperlinks to the competent authority agreements concluded in respect to the Arbitration clause of the MLI; and (v) any further clarifications.

On the same date, the OECD announced that on 15 March 2021, the Conference of the Parties to the MLI adopted an opinion regarding the entry into effect of the MLI with respect to taxes withheld at source in specific cases. This applies where the latest of the dates on which the MLI enters into force is 1 January of a given year. In that case, the MLI will have effect for taxes withheld at source on 1 January of that year.

See EY Global Tax Alert, *OECD publishes Arbitration Profiles of 30 countries under the MLI and a clarification regarding entry into effect*, 1 April 2021.

On 22 March 2021, the OECD Forum on Tax Administration published a list of 19 jurisdictions that have confirmed their participation in the next phase of the International Compliance Assurance Programme (ICAP). This list is subject to further updates as additional tax administrations confirm their participation.

The OECD also published a spreadsheet that contains an additional information on each participating jurisdiction's approach to ICAP implementation and operation. The spreadsheet is also subject to updates as further information is received by the ICAP participating jurisdictions.

See EY Global Tax Alert, *OECD Forum on Tax Administration publishes jurisdictions currently participating in the International Compliance Assurance Programme (ICAP)*, dated 29 March 2021.

European Union

As previously reported (see *The Latest on BEPS and Beyond*, dated 19 January 2021) , the European Commission has launched a public consultation for the design of an EU digital levy, which was open for comments until 12 April 2021. EY submitted a comment letter. All submissions and a summary report will soon be available on the Commission website.

After the Portuguese Presidency unlocked the debate on public Country-by-Country (CBC) reporting in the EU, on 29 March 2021, the first trilogue between the EU institutions on the proposal took place during which the co-legislators (the Council representing the EU Member States and the EU Parliament) presented the main elements of their respective negotiation mandates. While the Portuguese Presidency of the EU Council is looking forward to a "good and rapid agreement," the first trilogue revealed that key points of disagreement between the European Parliament and the Council still exist, including the safeguard clause, which allows for a number of years of delay in reporting for competitive reasons, and the disaggregation of data. This first meeting is being followed with technical meetings and additional trilogue meetings. The Portuguese EU Presidency hopes to finalize the negotiations by June.

See EY Global Tax Alert, *EU negotiations on public CbCR move forward as majority of Member States back proposal*, dated 26 February 2021.

On 22 March 2021, the Council of the EU (the Council) adopted new rules revising the Directive on administrative cooperation in the field of taxation (Council Directive 2011/16/EU or DAC) to extend the EU tax transparency rules reporting by digital platforms on their sellers (DAC7).

The new rules introduce a reporting obligation for digital platforms located both inside and outside the EU and an automatic exchange of information between Member States' tax administrations on revenues generated by sellers on these platforms as of 1 January 2023. Besides introducing this new reporting obligation for digital platforms, a number of generic changes to the DAC not limited to digital platforms were also introduced, including a legal framework for the conduct of joint audits between two or more Member States as of 1 January 2024.

The new rules for information from digital platforms are inspired by the work done at the OECD but are much wider in terms of the scope and businesses affected. The revised DAC states that although not identical, the OECD Model Rules are expected to provide for the reporting of equivalent information in relation to relevant activities that are in scope of both DAC7 and the Model Rules, which may be expanded further to cover additional relevant activities.

See EY Global Tax Alert, *EU adopts tax transparency rules for digital platforms (DAC7)*, dated 23 March 2021.

On 16 March 2021, the Council of the EU (the Council or ECOFIN) held an informal videoconference. During their meeting, the Ministers discussed taxation challenges stemming from the digitalization of the economy and issues related to economic recovery. They discussed the recent G20 Finance Ministers and Central Bank Governors meeting and looked forward to upcoming meetings, including the G20 and IMF spring meetings on 7 to 10 April 2021.

The discussion on taxation of the digital economy followed the launch by the Commission of a public consultation for the design of an EU digital levy, which was open for comments until 12 April 2021. In addition to this, the EU has invited public input on the following tax initiatives:

- Roadmap for the design of Commission Communication on Business taxation for the 21st century – deadline was 1 April 2021
- Public consultation process on the future revision of the Directive on Administrative Cooperation to also address the use of alternative means of payments and investment (DAC8) – deadline is 2 June 2021
- Roadmap for the design of Commission Recommendation on how EU countries can simplify tax obligations and ensure taxpayers' rights are respected – deadline is 2 June 2021

The next ECOFIN is scheduled for 18 May 2021.

See EY Global Tax Alert, *EU Finance Ministers exchange views on digital taxation while the Commission announces it may introduce a digital levy separate from OECD's Pillar One*, dated 17 March 2021.

United Nations

On 8 April 2021, the United Nations (UN) released a document presenting an update of the UN Model Double Taxation Convention between Developed and Developing Countries (UN Model). In particular, the document includes a revised version of the proposal for inclusion of computer software payments in the definition of royalties and a draft Commentary. The update to the UN Model is presented for discussion and decision at the 22nd session of the UN Committee to be held online from 19 to 28 April 2021.

On 6 April 2021, the UN released a final draft of the new Article 12B (Income from Automated Digital Services) of the UN Model Tax Convention after the UN Committee of Experts on International Cooperation in Tax Matters held its 21st session. According to the draft provision, income from automated digital services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed a specific percent to be established through bilateral negotiations of the gross amount of the income. The draft provision defines automated digital services as "any payment in consideration for any service provided on the internet or an electronic network requiring minimal human involvement from the service provider."

At its 22nd session, the UN Committee is invited to approve the final draft of Article 12B for inclusion in the 2021 version of the UN Model Tax Convention.

Australia-Belgium

On 3 March 2021, Australia and Belgium signed a Memorandum of Understanding (MOU) for arbitration provided under the MLI for unresolved issues under the MAP.

The MOU reflects the mutual understanding between the competent authorities of Australia and Belgium on the procedural and operational details of the arbitration process. In particular, the MOU covers: (i) how to request for submission of a case; (ii) minimum information and documents required; (iii) appointment of arbitrators; and iv) the arbitration process. Further, the MOU mentions that Australia included a reservation in its MLI positions to exclude from arbitration any cases involving the application of Australia's general anti-avoidance rules.

The MOU took effect on 3 March 2021 and remains in effect until terminated by either competent authority giving at least six months written notice to the other. Arbitrations that have commenced prior to the termination date will be concluded in accordance with this MOU.

Belgium

In two recent decisions, the Belgian Court of Appeal of Ghent ruled on the tax treatment of a dividend distribution by a Belgian company to its Luxembourg holding vehicle. In both cases, the tax exemptions applied at source were denied on the basis of general anti-abuse principles. The dividend distributions were the result of a series of steps where, among others, a double-tier holding structure was set-up, companies were capitalized through contributions of shares and thereafter merged – further to which shares were funded with external debt and transferred within the group on non-at arm's-length terms, debt was reallocated and cash could be distributed to the shareholders in a tax-exempt manner.

The Court of Appeal of Ghent applied the same methodology as the Court of Justice of the European Union in its Danish cases. In particular, the Court of Appeal of Ghent reviewed the facts to assess whether there is tax abuse based on "objective" and "subjective" criterion. In both cases, the taxpayers presented multiple business motives to justify the transaction steps and the tax treatment applied. The Court of Appeal of Ghent, however, ruled that those were not convincing and could not outweigh the apparent and predominant tax motives.

See EY Global Tax Alert, *Belgian Court of Appeal issues decisions on tax abuse – application of the CJEU Danish cases*, dated 29 March 2021.

Cyprus

On 31 March 2021, Cyprus published Law N. 41(I)/2021 to transpose the EU Directive 2018/822 (DAC6 or Directive) into domestic law. In general, the Law is aligned with DAC6 with only a few differences. One of these difference is that the Law includes a provision that allows the Cypriot Tax Department to require under written notice, the provision of documents and/or information regarding a specific arrangement within 14 days from the date of such notice. Another difference is that the Law provides for an "EU-nexus" main benefit test, with the tax advantage being limited to tax advantages obtained in Cyprus or another EU Member State.

The Law entered into effect as of 1 January 2021. For those cross-border arrangements concluded on or after 25 June 2018, it will have a retrospective effect provided that one of the prerequisites triggering events is met.

See EY Global Tax Alert, *Cyprus law to implement Mandatory Disclosure Rules enters into force*, dated 2 April 2021.

Egypt

On 3 March 2021, the Egyptian Ministry of Finance published a factsheet clarifying the impact of the MLI on Egypt's CTAs. The fact sheet notes that Egypt notified 54 CTAs in its instrument of ratification of the MLI. To date, there are 39 matched CTAs that could be modified by the MLI once the MLI takes effect for the relevant CTAs. Moreover, the factsheet includes the dates of entry into effect of the MLI with respect to taxes withheld at source and other taxes for the relevant CTAs.

France

On 4 March 2021, the French Government published an updated list of non-cooperative states and territories (NCSTs) in the *Official Journal* by Decree of 26 February 2021. The list is amended as follows:

- The Bahamas and Oman are withdrawn from the list (with effect from 4 March 2021)
- Dominica and Palau are added to the list (with effect from 1 June 2021)

The updated list includes the following jurisdictions:

British Virgin Islands, Anguilla, Panama, Seychelles, Vanuatu, American Samoa, American Virgin Islands, Dominica, Fiji, Guam, Palau, Samoa, Trinidad and Tobago.

On 23 February 2021, the French tax authorities published guidelines on the France-Luxembourg Income and Capital Tax Treaty (2018) (the treaty). The guidelines provide clarifications on certain provisions of the treaty, some of which include certain treaty-based recommendations from the BEPS project contained in Action 6 (treaty abuse), Action 7 (permanent establishment), and Action 14 (making dispute resolution mechanisms more effective).

The guidance provides in particular clarification on the permanent establishment (PE) and the MAP clauses contained in the tax treaty. The guidance also contains a reference to the specific guidelines related to the application of the PPT for the purposes of the treaty. The published guidelines have effect as from 1 January 2020.

Germany

On 31 March 2021, The Federal Cabinet approved a draft bill to fight tax avoidance and unfair tax competition. The bill aims to encourage jurisdictions that do not meet recognized standards in the areas of transparency in tax matters, unfair tax competition and the implementation of the BEPS minimum standards to make adjustments to comply with international standards. To achieve this aim, the bill introduces administrative as well as substantive tax law measures, such as tightened CFC rules or even denial of deductible payments made to entities resident in "blacklisted" jurisdictions.

The draft bill is yet to be approved by both the lower house of the Parliament and the Federal Council. If approved, the bill would enter into force on 1 July 2021. First measures could be applied as of 2022, while the denial of deductible payments would not be applicable before 2025.

On 29 March 2021, the German Federal Ministry of Finance published the final decree providing guidance on the German Mandatory Disclosure Rules (MDR) legislation. The final decree is broadly in line with the latest draft decree issued on 14 July 2020 and has only a few changes. The final decree clarifies that the rules for the basis of the reportable cross-border arrangement are not the German MDR rules but the ones dealing with the tax consequences between Germany and any other EU Member State (e.g., the specific provisions of those Corporate Income Tax Acts). Further, the report must include the rules applying to the arrangement as well as the rules which are prevented from application due to the execution of the tax arrangement. Moreover, the final decree includes a new appendix that contains an indicative list of preferential tax regimes and a list of third-country jurisdictions which have been assessed by EU Member States collectively or within the framework of the OECD as lacking transparency respectively considered as non-cooperative. Deductible payments made to associated enterprises in such non-cooperative jurisdictions may be reportable under the conditions of hallmark C1.

The final decree is immediately applicable.

See EY Global Tax Alert, *German Ministry of Finance publishes final MDR guidance*, dated 1 April 2021.

On 24 March 2021, the German Government agreed on the draft bill implementing the EU "Anti-Tax Avoidance-Directive" (ATAD). The draft bill covers anti-hybrid rules, taxation of cross-border asset transfers/exit taxation, and CFC rules.

The anti-hybrid and exit taxation rules are based on the ATAD rules proposed by the EU Directive 2016/1164 of 12 July 2016, and EU Directive 2017/952 of 29 May 2017, although in certain respects they go beyond the mandated minimum standard. Regarding the CFC rules, the draft bill significantly extends the application of the German rules by broadening the concept of control, as well as by imposing CFC taxation on foreign (nonresident) taxpayers owning CFCs through a German PE. The draft bill also suggests changes to the definition of active income. In particular, dividends from portfolio investments (ownership below 10% as of the beginning of the calendar year) no longer qualify as active income and could be subject to a CFC pick-up. Further, the so-called CFC "motive test" or anti-abuse test has been tightened. The draft bill now requires the presence of a substantial business activity, which the CFC needs to pursue "on its own" on the basis of appropriate operating substance and qualified personnel.

The anti-hybrid rules are planned to be applicable retroactively for expenses accruing after 31 December 2019. The CFC rules would apply to all CFCs with a fiscal year beginning in 2022.

See EY Global Tax Alert, *German Government agrees on draft ATAD implementation law*, dated 26 March 2021.

Also on 24 March, the German Government proposed a bill implementing a "check-the-box" system for entity classification for tax purposes. Under the proposed system, commercial partnerships (national and foreign) may elect to be taxed as corporations for income tax purposes and their shareholders to be taxed like shareholders of a corporation. This choice would also allow the partnership to reverse it at a later point in time. In order to apply for this option, the partnership should submit an application to the competent tax office and all shareholders must agree. However, a three-quarter majority decision of the shareholders may be sufficient, if such a provision is provided in the shareholders' agreement and if the option to check-the-box is included in the relevant provision. The bill does not provide for a retroactive election. The effective date of the election shall be the end of the fiscal year immediately preceding the fiscal year for which the election is filed.

This choice would be available for fiscal years ending in 2022 or later years.

See EY Global Tax Alert, *German Government agrees on draft bill introducing "check-the-box" elections for partnerships and further changes*, dated 25 March 2021.

On 17 March 2021, the German Federal Ministry of Finance issued official guidance on the application of the substance carve-out for CFC rules purposes regarding CFCs located in third countries (i.e., countries outside the EU). The guidance notes, e.g., that the taxpayer must prove that the foreign controlled company pursues an actual economic activity in the host country by having employees sufficiently qualified to carry out the company's activities. The foreign controlled company should also have equipment to carry on the activities independently and take business decisions by itself.

The guidance is applicable to all pending cases.

Greece

On 10 March 2021, the Greek Independent Authority for Public Revenue (IAPR) issued the Circular E. 2054/10.03.2021 to provide guidance on the TP implications of the COVID-19 pandemic (the Guidance), taking into account the OECD TP Guidelines 2017 as well as the OECD Guidance on the TP implications of the COVID-19 pandemic 2020.

The Circular addresses four key issues: (i) comparability analysis; (ii) losses and the allocation of COVID-19 specific costs; (iii) government assistance programs; and (iv) advance pricing agreements (APAs). In essence, the guidance issued by IAPR constitutes a concise summary of the OECD Guidance.

See EY Global Tax Alert, *Greece's Tax Authority issues guidance on COVID-19 and Transfer Pricing*, dated 23 March 2021.

Ireland

On 29 March 2021, Irish Revenue published updated guidance (eBrief 068/21) on anti-hybrid rules. The updated guidance builds on the guidance published in July 2020. In summary the updated guidance:

- Reflects the amendments made by *Finance Act 2020* with respect to the application of anti-hybrid rules to worldwide systems of taxation.
- Provides further guidance on key terms used in the anti-hybrid rules such as "payee" and "associated enterprise."
- Includes a new section on "imported mismatches" describing:
  - The policy behind the rules and how companies should consider the tracing of payments and identifying of payees
  - What action(s) Irish Revenue anticipates an entity to take in the context of the imported mismatch rule
  - What would be "reasonable to consider" for the purposes of the imported mismatch rule

Italy

On 23 March 2021, the Italian Tax Authorities (ITA) issued Circular No. 3/E to provide guidance on the application of the Digital Services Tax (DST). In particular, the ITA provided specific clarifications with respect to the scope of application of the DST, including: definition of qualifying taxable persons and qualifying digital services; the adopted geolocation criteria; the calculation of taxable revenues; and administrative obligations.

The ITA also clarified that the DST is not a tax on income so it is not generally covered by tax treaties concluded by Italy and, where the same taxable income is also subject to a DST in another country, no tax credit would be granted for the DST paid abroad. However, the DST paid may be deducted from taxable income subject to corporate income tax in Italy in the year in which it is paid.

Also on 23 March, Italy published Law Decree No. 41/2021 introducing new measures to support business activities impacted by the COVID-19 pandemic. Among others, the Law Decree has further postponed the payment and return filing deadlines for the DST. With this extension, qualifying taxable persons must pay the DST due by 16 May 2021 (previously 16 March 2021) and submit the DST return by 30 June 2021 (previously 30 April 2021).

The Law Decree entered into force on 23 March 2021.

Luxembourg

On 11 March 2021, the Luxembourg Tax Authorities (LTA) updated Circular L.G. Conv. D.I. n°60 (Circular) on the application of the MAP. The Circular provides the mechanism and procedural aspects of the MAP, including: (i) access to MAP; (ii) how to initiate a MAP and the process afterwards; and (iii) the possible implementation of a solution proposed to the taxpayer. The Circular also deals with the interaction of the MAP with other procedures and legal remedies.

With respect to access to the MAP, the Circular confirms that access to the MAP applies broadly and should only be refused if the time limit to initiate a MAP is exceeded or if the residence criterion (if applicable) is not met. In order to initiate a MAP, the taxpayer needs to submit a written request to the competent authority of the State of residence of the taxpayer (in Luxembourg, the Minister of Finance or his authorized representative), unless the provisions of the relevant tax treaty allow the request to be made to either competent authority. In this respect, the Circular lists the information and the documents to be submitted together with the MAP request.

If an agreement is reached between the competent authorities resulting in a modification of the taxation in Luxembourg, the implementation thereof is subject to the approval of the taxpayer who requested the MAP and to the waiver by said taxpayer of all legal remedies, both in Luxembourg and abroad, in relation to the matter settled in the agreement.

See EY Global Tax Alert, *Luxembourg updates Mutual Agreement Procedure*, dated 25 March 2021.

Maldives

On 16 March 2021, the Maldives Inland Revenue Authority (MIRA) issued the APA Regulation (2021/R-42) outlining the procedure to enter into an APA. The Regulation applies to residents and nonresidents with a PE in the Maldives who have entered or will enter into a transaction with a related party. To initiate an APA, the taxpayer should request a pre-filing meeting with the MIRA to determine the scope of the agreement, identify TP issues, and discuss broad terms of the agreement. Among other items, the APA application should contain the following elements: (i) description of the transactions; (ii) period of application; (iii) TP details (e.g., comparability analysis, TP method, critical assumptions); and (iv) global group structure and history of and information about products, functions, tangible assets and intangible assets of the associated enterprise.

The Regulation came into effect on 16 March 2021.

Netherlands

On 29 March 2021, the Dutch Government released a public consultation to revise the Dutch classification rules for entities incorporated under foreign law and partnerships formed under Dutch as well as foreign law. Under the current classification rules, a foreign entity is compared to the Dutch legal entity which it most closely resembles based on its legal characteristics and is then treated similarly to said Dutch legal form.

For example, the Dutch limited partnership (CV) may qualify as either transparent or non-transparent depending on the free transferability of the partnership interests. If the transferability is not restricted, the CV is considered opaque (non-transparent) for Dutch tax purposes (open CV). As a result, comparable foreign limited partnerships are often treated as non-transparent from a Dutch perspective, potentially resulting in a hybrid entity mismatch.

Under the proposed entity classification rules, a Dutch limited partnership (CV) will always be transparent for Dutch tax purposes. With respect to foreign entities, the legal form comparison analysis remains applicable. However, in the absence of a comparable Dutch legal equivalent, the classification takes place with reference to the tax treatment in the jurisdictions under the law of which that entity has been incorporated. For those entities tax resident in a jurisdiction other than its jurisdiction of incorporation, the only relevant treatment is the one in the country of incorporation. If the tax residency is in the Netherlands, it is proposed that the entity will be treated as non-transparent and consequently considered to be a taxpayer in the Netherlands.

The consultation runs until 26 April 2021. Following, the Dutch Government will issue a legislative proposal that will be subject to review and parliamentary proceedings. If enacted, the proposed changes will take effect as of 1 January 2022.

See EY Global Tax Alert, *The Netherlands starts consultation to better align legal entity and partnership classification rules with international tax standards*, dated 31 March 2021.

On 25 March 2021, the Dutch Government released a proposal introducing a withholding tax of 25% on dividend payments to low-taxed jurisdictions. The withholding tax is also applicable in abusive situations. Payments to affiliated entities resident in a low-taxed jurisdiction with a statutory tax rate lower than 9% or a jurisdiction on the EU list of non-cooperative jurisdictions are in scope of this proposal. In respect of dividend payments in abusive situations, the withholding tax also applies to (deemed) payments to intermediate holding companies. For example, where a dividend distribution is made by a Dutch entity to a conduit company (e.g., that lacks economic substance) located in a non-low taxed jurisdiction which then makes a distribution to an (ultimate) recipient in a low-taxed jurisdiction. Relevant substance in a conduit company provides a presumption that the arrangement is not abusive.

The proposal is currently under review by the Dutch Parliament and is subject to the regular parliamentary proceedings. If enacted, the new rules will take effect as of 1 January 2024.

See EY Global Tax Alert, *Dutch Government releases legislative proposal introducing withholding tax on dividend payments to low-taxed jurisdictions, hybrid entities or in certain abusive situations as of 2024*, dated 26 March 2021.

Spain

On 6 April 2021, the Spanish Government approved the Regulations setting forth Spanish MDR. The Regulations were published in the State *Official Gazette* on 7 April 2021 and enter into force on 8 April 2021, and are also effective as from that same date.

The final Spanish MDR Regulations are generally aligned to the requirements of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements.

See EY Global Tax Alert, *Spanish Government publishes MDR Regulations*, dated 8 April 2021.

On 26 March 2021, the Spanish Tax Authorities published an official notice announcing a second deferral of the Financial Transaction Tax (FTT) payment and submission deadline. In accordance with this announcement, the FTT returns for the period of January to May can be submitted between 10 and 20 June 2021.

See EY Global Tax Alert, *Spanish Tax Authority further delays first reporting and payment of Financial Transaction Tax*, dated 30 March 2021.

On 9 March 2021, the Spanish Council of Ministers approved the Royal-Decree Law (RDL) implementing the EU Anti-Tax Avoidance Directive (Council Directive 2017/952 of 29 May 2017, "EU ATAD 2") into the Spanish legislation, which was published in the Spanish *Official Gazette* on 10 March 2021. Although the final wording is generally in line with the draft released in November 2020 and with the EU Directive, the RDL includes certain particularities and technical issues which require additional interpretation.

In line with the EU ATAD 2 (and the OECD BEPS work on hybrids), the RDL amends the Spanish Corporate Income Tax (CIT) and Nonresident Income Tax Laws to target specific fact patterns where either a "deduction/non-inclusion" (D/NI) or a "double deduction" (D/D) mismatch arises due to a hybrid element. The provisions introduced as per the RDL are not applicable to the extent there is "dual inclusion income," which is defined as income which is subject to tax under the rules applicable in Spain (CIT Law) and in another jurisdiction.

See EY Global Tax Alert, *Spanish Council of Ministers approves implementation of ATAD 2*, dated 10 March 2021 and EY Global Tax Alert, *Spain implements EU ATAD 2: Detailed analysis*, dated March 17 2021.

Turkey

On 22 February 2021, Turkey issued a circular extending the CbC reporting deadlines until 26 February 2021. This extension was applicable for CbC reports related to reporting fiscal year 2019 that had to be filed by 31 December 2020 or for entities with special accounting periods ending January 2020 and that had to be submitted on 31 January 2021. Further, the circular provided an extension until 31 March 2021 for cases where the ultimate parent entity (UPE) or the surrogate parent entity (SPE) resides in Turkey. The circular also provides an extension until 30 June 2021 for cases where the UPE or the SPE does not reside in Turkey.

United Kingdom

On 30 March 2021, HM Revenue & Customs (HMRC) published a manual on the tax treatment of cryptoassets to help understand the tax implications that can arise from transactions involving cryptoassets. The manual makes a distinction between individual and businesses. According to the manual, HMRC's position is that cryptoassets are not money or currency, but instead should be treated for tax purposes in the same way as other assets. For individuals, income tax would apply to trading in such assets and a capital gains tax would apply once a cryptoasset is disposed of. For businesses, different taxes (e.g., capital gains tax, corporate tax, value-added tax) may apply depending on the specific activity. More complex areas (e.g., cryptocurrency mining) are also addressed. Lastly, the manual devotes a section to compliance.

On 23 March 2021, the United Kingdom (UK) Government launched a consultation on TP documentation. This consultation explores potential changes to TP record keeping requirements for the largest businesses and the introduction of a new tax filing requirement for all businesses affected by TP regulations. Under the proposed changes, HMRC would require UK businesses to keep certain information relating to TP matters in standardized formats. Upon request by HMRC, UK businesses will be required to provide this information to HMRC promptly and in a consistent manner. The consultation also discusses the introduction of a mandatory requirement for multinationals within country-by-country reporting (CbCR) groups to provide, within 30 days, HMRC with a copy of the master file (MF) upon request and to keep (and produce on request) a local file (LF). Failure to provide these documents in due time would be taken into account by HMRC when considering whether reasonable care had been taken in the preparation of the tax return.

The consultation also requires businesses to file an annual schedule reporting data about cross-border transactions through some form of International Dealings Schedule (IDS), in addition to any requirement for an MF and LF. In this respect, the consultation explores the idea that all UK businesses that are in scope of UK TP legislation would be required to file an IDS providing details about cross-border, intragroup transactions where the counterparty is in another territory.

The consultation runs until 1 June 2021.

See EY Global Tax Alert, *UK issues new consultation on transfer pricing documentation*, dated 6 April 2021.

Ukraine

On 25 March 2021, the Ministry of Finance published a press release announcing the implementation of the three-tier TP documentation, including an MF, an LF and a CbC report.

The CbCR rules are applicable in Ukraine for reporting fiscal years commencing on or after 1 January 2020. According to the rules, all Ukrainian tax resident constituent entities that are UPEs of a multinational enterprise (MNE) group with annual consolidated group revenue equal to or exceeding €750 million must prepare and submit a CbC report. Any other Ukrainian tax resident constituent entity of an MNE group will have to prepare and locally file a CbC report if the UPE is not resident in Ukraine and any of the following conditions are met: (i) it is not obliged to file a CbC report in its country of residence; (ii) no competent authority agreement has been agreed in a timely manner under the current international agreements of Ukraine and the jurisdiction of tax residence of the UPE for the exchange of the CbC reports; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. The CbC report must be submitted within 12 months following the ending of the financial year of the consolidated group. Non-submission of the report is subject to a penalty up to €75,000.

Ukrainian tax resident constituent entities which conducted controlled transactions during the fiscal year must also submit notifications on participation in an MNE group. The first notification must be submitted for fiscal year 2020 no later than 1 October 2021.

The Ukrainian tax authorities are entitled to request an MF from the Ukrainian tax resident constituent entities of an MNE with annual consolidated group revenue equal to or exceeding €50 million. The MF must be submitted in Ukrainian only and must contain specific information listed in the Tax Code of Ukraine. The request cannot be filed earlier than 12 months and not later than 36 months after ending of the financial year of the MNE group.

The local TP documentation must be prepared by any Ukrainian tax resident entity which conducted controlled transactions during the fiscal year. The TP documentation is prepared in Ukrainian only and must be submitted to the tax authorities within 30 days of the request.

Vietnam

On 23 March 2021 Vietnam released a draft Circular, which provides guidance on the implementation of a number of articles of the Law on Tax Administration, addressing implementing rules for taxation of e-commerce activities. The draft includes the definition of "e-commerce activities" (conducting part or the entire process of commercial activities by electronic means) and "digital-based business" (provision of services via the internet or an electronic network where the nature of the provision is automated with little to no human intervention).

The persons in scope for e-commerce activities are the following: (i) nonresident suppliers that do not have a fixed place of business in Vietnam and conduct e-commerce activities; (ii) entities in Vietnam purchasing goods or services from nonresidents; (iii) tax organizations and agents operating in Vietnam that are authorized by overseas suppliers to perform e-commerce activities; and (iv) commercial banks and intermediary payment service providers.

With respect to tax registration, filing and payment, these will be handled through a website managed by the Vietnamese tax authorities if a nonresident supplier opts to file tax directly with the Vietnamese tax authorities. Alternatively, nonresident suppliers can appoint organizations or authorized tax agents to handle the tax registration, filing, payment. The draft Circular also proposes that commercial banks, intermediary payment services providers will be responsible for withholding, paying of taxes in respect of payments made to nonresident suppliers by individual buyers.

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EYG no.003153-21Gbl

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