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Global Tax Alert

The Latest on BEPS and Beyond

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EY Tax News Update: Global Edition

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Highlights

The international tax arena continues to be in vogue and Pillar One of the BEPS 2.0 project has gained traction after some time with no official communications, as the OECD Secretariat has requested input on draft rules for nexus and revenue sourcing rules published this month. The draft rules are the first working document of a series of building blocks expected to be released by the OECD Secretariat on Pillar One in the coming months. Unlike the Model Rules of Pillar Two, the draft rules on Pillar One do not reflect consensus of the Inclusive Framework members on the substance of the document, so changes to those rules are expected. Also, the European Commission has encouraged stakeholders to take part in the OECD public consultation on Pillar One with the aim of presenting a draft directive once the technical aspects of the multilateral convention are agreed.

Considering the time restrictions that the OECD and Inclusive Framework have to implement the BEPS 2.0 project, the two-week period provided to send comments on the draft rules for Pillar One is very limited to analyze and provide comments on a matter that will have great impact on business operations.

As for the content of the Pillar One revenue sourcing draft rules, it is more than clear the level of complexity that multinational enterprise (MNE) groups are going to be exposed to. Every single transaction needs to be identified and sourced to the relevant jurisdiction. Businesses should ensure that their systems allow identification of most, if not all, of their transactions in a clear manner. These rules evidence the increased compliance burden that multinational companies in scope will have to face.

With respect to Pillar Two, the activity has not stopped and the OECD working groups are working full steam to finalize the comments on the Model Rules while European Union (EU) Finance Ministers are negotiating the Draft Directive with the aim of getting agreement during the French EU Council Presidency this semester. So far, Member States have expressed general support on the directive, but some have also expressed their concerns about the short implementation timeline and the complexity of the rules. The timeline for implementation in 2023 is still not clear.

OECD

Pillar One draft rules on nexus and revenue sourcing open for public comments

On 4 February 2022, the Secretariat of the OECD released a public consultation document with draft rules on nexus and revenue sourcing in connection with Pillar One of the BEPS 2.0 project.

The nexus test applies solely to determine whether a group entity of a Covered Group is liable to tax charged in accordance with the Amount A rules in a given jurisdiction and has no other implications for any group entity of the Covered Group. The revenue sourcing rules determine when revenues of a Covered Group arise in a jurisdiction. According to the draft rules, revenue is to be sourced on a transaction-by-transaction basis using a reliable indicator or, as a back-stop, a specified allocation key. Different sourcing rules, indicators and allocation keys are provided for the different categories of revenue that are identified in the draft rules.

The draft rules do not reflect consensus of the Inclusive Framework members on the substance of the document. The OECD invites comments on the draft rules to be submitted in writing by 18 February 2022.

See EY Global Tax Alert, *OECD releases Pillar One public consultation document on draft nexus and revenue sourcing rules*, dated 11 February 2022.

Lesotho, Thailand and Vietnam sign the MLI

On 9 February 2022, the OECD announced that Lesotho, Thailand, and Vietnam signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). At the time of signature, all three jurisdictions submitted a list of its tax treaties in force that they would like to designate as covered tax agreements (CTAs). Together with the list of CTAs, they also submitted a preliminary list of their reservations and notifications in relation to the CTAs (MLI positions) with respect to the various provisions of the MLI. The definitive MLI positions for these jurisdictions will be provided upon the deposit of their respective instrument of ratification, acceptance or approval of the MLI. As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Lesotho was the only jurisdiction who opted in for mandatory binding arbitration.

Update on peer review under BEPS Action 5

On 24 January 2022, the OECD released an update on the results of the peer reviews of jurisdictions' domestic laws under BEPS Action 5 (harmful tax practices). The updated results cover new decisions on nine preferential tax regimes. According to the OECD press release, the total number of tax regimes that have been reviewed, or are under review, is 317. The peer review shows the following results:

- The regimes of Hong Kong (Profits tax concession for carried interest); Lithuania (Large scale investment projects); Qatar (Exemptions and concessionary rate under Qatar financial centres; Free zones at science & technology parks; and Free zone areas) are considered not harmful.
- The regimes of Mauritius (Foundations and Trusts regimes) have been abolished.
- The regime of Costa Rica (free trade zone) is in the process of being amended.
- The regime from Albania (Industries incentive (software production/development)) is under review.

See EY Global Tax Alert, *OECD releases 2021 update on peer review of preferential tax regimes*, dated 31 January 2022.

Eighth batch of Stage 2 peer review reports on BEPS Action 14

On 24 January 2022, the OECD released the eighth batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino, and Serbia on dispute resolution under BEPS Action 14. Overall, the outcomes of this batch reports positive changes across the assessed jurisdictions. According to the peer review reports, Curaçao, Guernsey, Jersey, Monaco, San Marino, and Serbia have addressed either all or most of the deficiencies identified in the Stage 1 peer review. Brunei Darussalam and the Isle of Man addressed some of the identified deficiencies. All the assessed jurisdictions have committed to resolve the remaining deficiencies identified during the peer review process.

See EY Global Tax Alert, *OECD releases eighth batch of Stage 2 peer review reports on dispute resolution*, dated 26 January 2022.

Release of the 2022 edition of the OECD TP guidelines

On 20 January 2022, the OECD released the 2022 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines). This new edition consolidates a number of reports resulting from the OECD/G20 BEPS Project, such as: (i) revised guidance on the transactional profit split method approved by the OECD/Inclusive Framework on BEPS in 2018; (ii) guidance for tax administrations on the application of the approach to Hard-to-Value Intangibles approved in 2018; and (iii) transfer pricing guidance on financial transactions approved in 2020. In addition, the new edition includes some changes for consistency.

See EY Global Tax Alert, *OECD publishes 2022 Transfer Pricing Guidelines*, dated 21 January 2022.

Country developments

Chile: Anti-abuse rules can be applied by the tax authorities

Recently, the elected President of Chile (who will take office in March 2022) announced a tax reform. Among other items, the proposed changes would allow tax authorities to apply general anti-avoidance rules. Currently, general anti-avoidance rules are under the competence of tax courts, i.e., only tax courts can decide the existence of abuse or simulation (upon request of the tax authority with the taxpayer being a party in the procedure). However, any changes in the legislative regulation of these rules will require approval by the Chilean Congress.

Denmark: Guidance on the submission of the Master File

On 31 January 2022, the Danish Tax Administration (DTA) published guidance on the requirements to submit the Master File. The deadline for submission of the Master File is 60 days after the due date for the filing of the annual corporate income tax return. For income years starting on 1 January 2021, the deadline is 29 August 2022. However, foreign groups owning Danish subsidiaries raised some questions about the feasibility to finalize the Master File in time to meet the deadline. According to the guidance, the DTA would allow the submission of a temporary Master File if certain cumulative requirements are met, such as: (i) the temporary Master File submitted is less than a year old at the time of the submission deadline; (ii) it must be stated when the final Master File for the income year in question will be submitted; and (iii) significant changes affecting the Danish taxpayer for the income year in question, not already disclosed in the local file, must be briefly described.

If the taxpayer is not able to submit a temporary Master File meeting the requirements above, an extension of the submission deadline must be requested to the DTA.

See EY Global Tax Alert, *Danish Tax Administration publishes new guidance on submission deadline for Master Files covering income years as of 1 January 2021*, dated 2 February 2022.

Finland: Opinion on the proposed EU Directive on Pillar Two

On 10 January 2022, the Finnish Tax Authorities published an opinion sent to the European Commission on the EU proposed Directive on Pillar Two, published by the Commission on 22 December 2021. According to the opinion, the proposed Directive is very complex and imposes a significant administrative burden on both taxpayers and the tax administration. Further, the proposed Directive contains a considerable number of new concepts and definitions which will take several years to become established in practice. The Finnish Tax Authorities also acknowledge that the new rules will require a new kind of in-depth accounting expertise in the tax administration, as the assessment of the level of taxation would be based on adjusted, accounting-compliant results. Lastly, the Finnish Tax Authorities consider that the proposed timeline for implementation in the EU (by the end of 2022) is very challenging since the details of the proposed rules are still being discussed by the OECD.

France: Parliament clarifies anti-hybrid rules

On 15 December 2021, the French Parliament approved the Finance Bill for 2022. Among other measures, the Finance Bill clarifies the application of the 24-month inclusion period applicable to anti-hybrid rules. As a reminder, for fiscal years beginning on or after 1 January 2020, a company cannot deduct, for French Corporate Income Tax (CIT) purposes, an expense that has not been included in the taxable result of the non-French resident beneficiary. For hybrid financial instruments, a payment is deemed to be included in the beneficiary's taxable result if that inclusion takes place during a financial year that begins within 24 months following the end of the fiscal year in respect of which the expense was deducted. This 24-month period is also used to assess the existence of a double deduction outcome in the case of a payment made to a hybrid entity.

In this regard, the Finance Bill for 2022 provides that, for fiscal years ending on or after 31 December 2021, in the absence of such an inclusion during the year of payment, the expense remains deductible for French CIT purposes in that year and will only have to be added-back to the taxable result of the French company in respect of the last fiscal year that began during the aforementioned 24-month period.

On the same day, the French Tax Authorities published guidelines on the anti-hybrid rules mainly focused on: (i) the definition of the concepts mentioned in the anti-hybrid rules; (ii) the scope of the rules and corrective measures in general and certain specific hybrid mismatch situations; and (iii) specific rules for reverse hybrid mismatches and dual residence mismatches.

See EY Global Tax Alert, *French Parliament approves Finance Bill for 2022*, dated 21 December 2021.

Germany: Guidance on royalty deduction limitation rule

In January 2022, the German Ministry of Finance (MoF) issued two decrees in relation to the royalty deduction limitation rule. The first decree summarizes the view of the MoF regarding the royalty deduction limitation rule and provides an extensive application of the limitation. Further, it includes procedural details and the burden of proof. Accordingly, taxpayers claiming a royalty deduction have to provide substantial documentation regarding the taxation of the income at the level of the recipient and further details on the (economic) ownership of the intangible property (IP).

The second decree lists numerous preferential tax regimes which are in scope of the German royalty deduction limitation rule and is essentially an update of the decree published in 2020. The list is divided in two parts: (i) all harmful preferential regimes identified by the tax authorities to date; and (ii) preferential regimes which are still under review; those are preferential regimes of Jordan, Lithuania, Paraguay and the United States Foreign-Derived Intangible Income deduction. The most important update with regard to the harmful preferential regimes is the inclusion of special cantonal tax incentives under Swiss law.

See EY Global Tax Alert, *German Ministry of Finance publishes guidance on German royalty deduction limitation rule*, 28 January 2022.

Italy: Circular on CFCs published

On 27 December 2021, the Italian Tax Authorities issued Circular No. 18/E to provide clarifications on controlled foreign companies (CFC) rules. In particular, the Italian Tax Authorities clarify under what circumstances resident and nonresident persons qualify for the application of the Italian CFC rules, the level of control required, the calculation of the level of taxation of the CFC and the passive income requirement and other requirements.

On the same day, the Italian Tax Authorities also published protocol n. 376652/2021 introducing simplified rules for determining the effective level of taxation of CFCs.

Italy: Clarifications on reportable cross-border arrangements (DAC6)

On 31 December 2021, the Italian Tax Authorities published Resolution N. 78/E clarifying that TP adjustments made by Italian entities in favor of certain controlled nonresident companies may qualify as a reportable cross-border arrangement under hallmark C.1 provided that certain requirements are met (e.g., satisfaction of the main benefit test and/or potential reduction of the tax due.

There is an exception made for the first reporting (for which the deadline follows the ordinary terms), the reporting period would be 30 days from the date of approval of the financial statements of the parent company that makes the adjustment.

Italy: Tax Authorities issue Circular on hybrid mismatches

On 26 January 2022, the Italian Tax Authorities released Circular Letter No. 2/2022 providing clarifications on hybrid mismatch rules. This Circular follows the comments received during the public consultation period launched in October 2021. Among other items, the Circular provides clarifications and examples on the application of the rules, and relevant definition and requirements. Further, the Tax Authorities clarified that the domestic rules addressing hybrid mismatches do not qualify as specific anti-avoidance rules and, therefore, cannot be subject to the disapplication of anti-abuse (avoidance) rules.

Netherlands: Tax treaty negotiation plan for 2022

On 1 February 2022, the Dutch Government announced its tax treaty negotiation for 2022. According to the press release, the Netherlands wants to continue discussions with the following countries: Belgium, Brazil, Kyrgyzstan, Moldavia, Morocco, Mozambique, Portugal, Russia, Sri Lanka, Uganda, and the United Arab Emirates. Additionally, the Netherlands wants to start renegotiations with Bahrain, Barbados, Rwanda, and Suriname.

South Africa: Act introducing tax laws amendments while anti-tax avoidance measures are on hold

On 19 January 2022, South Africa published in the *Government Gazette* Act 20 of 2021 amending certain tax laws. Among other items, the Act strengthens the CFC anti-diversionary rules. In particular, the updated rules provide that when a CFC purchases goods, these goods should be physically delivered within the country of residence of that CFC. This amendment is effective on 1 January 2022 and applies in respect of years of assessment commencing on or after that date.

In addition, the amendment of two anti-avoidance measures has been deferred. These measures relate to the reinforcement of the limitation of interest deduction provisions for debts owed by persons not subject to tax and the restriction to set off the balance of assessed losses in the determination of the taxable income. The implementation date for these amendments will align with the date when the reduction in the corporate tax rate is effective. This is not expected to happen before 2023.

Switzerland: Plans to implement OECD minimum tax rate for large multinational companies from 2024

On 12 January 2022, the Swiss Federal Council decided on the implementation of the global minimum tax rate agreed in the two pillar solution to address the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project). Accordingly, Switzerland will implement the 15% minimum tax for MNE groups that are in-scope of Pillar Two. The Federal Council will work close with the cantons, communes and other interested parties, to ensure a timely implementation of the new global minimum tax rules. Switzerland aims to have these rules in effect by 1 January 2024.

The cantons will make sovereign decisions on location measures to ensure that Switzerland remains an attractive business location. The latter will be in addition to the forthcoming withholding tax reform.

See EY Global Tax Alert, *Switzerland plans to implement OECD minimum tax rate for large multinational companies from 2024*, dated 14 January 2022.

Taiwan: Effective date for CFC regime

On 14 January 2022, the Executive Yuan formally issued ruling no. 1100041879 to announce that the effective date of the CFC regime is 1 January 2023.

UAE: Introduction of corporate tax

On 31 January 2022, the MoF of the United Arab Emirates (UAE) confirmed that the UAE will introduce a corporate income tax (CT) for financial years starting on or after 1 June 2023. The CIT rates are as follow: (i) 0% for taxable income up to AED375,000 (approximately US$102,000); (ii) 9% for taxable income above AED375,000; and (iii) a different tax rate for large multinationals that meet specific criteria set in Pillar Two of the BEPS 2.0 project.

See EY Global Tax Alert, *UAE to introduce corporate tax for financial years starting as of 1 June 2023*, dated 2 February 2022.

Vietnam: Review of policies for tax treaties

On 10 December 2021, Vietnam published Decision 2072/QD-TTg on policies governing its tax treaty framework. The Decision approved a proposal on Vietnam's policies with respect to its tax treaty network to align it with international tax practices and developments. Among other items, the proposal includes the following: (i) develop a clause on digital tax; (ii) adopt the minimum standards of BEPS; and (iii) sign the multilateral instrument.

See EY Global Tax Alert, *Vietnam initiates review of policies governing tax treaties*, dated 20 January 2022.

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