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OECD

On 30 November 2017, the OECD released updated guidance to give greater certainty to tax administrations and multinational enterprise (MNE) groups on the implementation and operation of BEPS Action 13 Country-by-Country (CbC) Reporting (CbCR).

The existing guidance on the implementation of CbCR (the Guidance) has been updated to address a number of specific issues including: (i) how to report amounts taken from financial statements prepared using fair value accounting; (ii) how to treat a negative figure for accumulated earnings; (iii) the purpose of the deemed listing provision in the definition of the term "group" in Article 1.1. of the Model Legislation in Action 13; (iv) the definition of total consolidated group revenue for the purpose of determining whether an MNE group is an excluded MNE group; (v) short accounting periods; and (vi) issues relating to mergers/acquisitions/de-mergers.

The document is available in English, French, and German.

See EY Global Tax Alert, *OECD releases additional guidance on Country-by-Country Reporting*, dated 4 December 2017.

Brunei

On 14 November 2017, Brunei's Ministry of Finance issued guidelines on the Mutual Agreement Procedure (MAP). Brunei, as a member of the Inclusive Framework on BEPS, is committed to comply with the BEPS Minimum Standards. According to the Acton 14 final report, in order to facilitate taxpayers' access to the MAP, jurisdictions should ensure transparency relating to their MAP regimes, and thus Action 14 Minimum Standard 2.1 provides that "[c]ountries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public." In light of this, the MAP guidelines recently released address MAP issues, such as eligible persons, eligible cases, timelines, procedures, necessary documentation, criteria for a MAP application acceptance, termination of a MAP case and implementation of the MAP agreement.

Cyprus

In accordance with Cypriot tax legislation, as of 1 January 2016, each Cypriot constituent entity of an MNE group with consolidated revenue exceeding €750 million must submit a notification containing the identity and tax residence of the Ultimate Parent Entity (UPE) and the reporting entity of the MNE group through the Government Portal called "Ariadni." The filing of the notification for fiscal year 2017 is due by the last day of the reporting fiscal year of the MNE group (i.e., by 31 December 2017 for MNE groups with a 31 December reporting fiscal year end), however it has been extended to 15 January 2018 for fiscal year 2017. Failure to submit the Notification by the statutory deadline is subject to a monetary penalty of up to €5,000.

See EY Global Tax Alert, *Cyprus Country-by-Country Reporting Notification deadline approaches for fiscal years ending 31 December 2017*, dated 6 December 2017.

France

On 15 December 2017, the OECD released the second batch of peer review reports relating to the implementation of the BEPS Minimum Standards under Action 14 on improving tax dispute resolution mechanisms. France was among the assessed jurisdictions in the second batch.

Overall, the report concludes that France meets almost all of the elements of the Action 14 Minimum Standards. In the next stage of the peer review process, France's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases France peer review report on implementation of Action 14 Minimum Standards*, dated 26 December 2016.

Germany

On 15 December 2017, the OECD released the second batch of peer review reports relating to the implementation of the BEPS Minimum Standards under Action 14 on improving tax dispute resolution mechanisms. Germany was among the assessed jurisdictions in the second batch.

Overall the report concludes that Germany meets most of the elements of the Action 14 Minimum Standards. In the next Stage of the peer review process, Germany's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases Germany peer review report on implementation of Action 14 Minimum Standards*, dated 21 December 2017.

Guernsey

On 28 November 2017, Bulletin 2017/8 on CbCR was published, which states that CbC reports must be submitted using the XML reporting schema developed by the OECD. Reports are to be submitted through the Guernsey Income Tax Office's online portal – known as 'IGOR.'

Following the publication of 2017/8, Bulletin 2017/12 was published on 19 December, establishing some transitional provisions on CbCR obligations.

Under Guernsey CbCR regulations, UPEs of an MNE group, that are resident for tax purposes in Guernsey, have to file a CbC report no later than 12 months after the last day of the reporting fiscal year of the MNE group, in respect of fiscal years commencing on or after 1 January 2016. Furthermore, an MNE group may, under certain conditions, designate a different constituent entity within the MNE group to be the reporting entity, in which case the reporting obligations apply to that Surrogate Parent Entity (SPE).

However, according to Bulletin 2017/12: (i) there are a number of jurisdictions that have committed to CbCR but do not currently have a Competent Authority Agreement in effect with Guernsey; and (ii) it has not yet been possible to complete all of the testing of the CbCR module of the IGOR system.

Therefore, considering that the first occurrence of reporting under the Guernsey CbCR regulations will occur by 31 December 2017 (in respect of MNE groups with a year end of 31 December 2016), the Director has established the following transitional provisions for the first CbCR period: (i) for all Guernsey UPEs or SPEs with a first reporting deadline prior to 31 March 2018, the Director has deferred the reporting deadline to 31 March 2018; and (ii) for all Guernsey Constituent Entities with a reporting fiscal year ending prior to 31 March 2018 (where the Guernsey CbCR regulations requires the Constituent Entity to submit the CbC report for the MNE Group) the Director has deferred the reporting deadline to 31 March 2018.

This Bulletin does not remove the obligation for such entities to file the report in Guernsey, in respect of the relevant period. The Director has only deferred the administrative reporting timeframe (as a transitional measure). Such a deferment will not affect the date by which Guernsey will have to transmit the CbC reports to other relevant jurisdictions (which for the year to 31 December 2016 is 30 June 2018).

Italy

On 15 December 2017, the OECD released the second batch of peer review reports relating to the implementation of the BEPS Minimum Standards under Action 14 on improving tax dispute resolution mechanisms. Italy was among the assessed jurisdictions in the second batch.

Overall, the report concludes that Italy meets most of the elements of the Action 14 Minimum Standards. In the next stage of the peer review process, Italy's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases Italy peer review report on implementation of Action 14 Minimum Standards*, dated 22 December 2017.

On 28 November 2017, the Italian Government issued a Decree providing amendments to the Italian Patent Box regime. The amendments are aimed at aligning the existing differences between the Italian Patent box regime and the OECD nexus approach recommended in BEPS Action 5. To this end, the Decree introduces the following measures: (i) removal of trademarks from the list of qualifying intellectual properties; (ii) introduction of a grandfathering provision; and (iii) introduction of exchange of information rules according to which the Italian Revenue Agency will exchange with the relevant tax authorities, and in certain circumstances, the name of each Italian taxpayer whose Patent Box option also includes trademarks.

See EY Global Tax Alert, *Italy introduces amending provisions to patent box regime*, dated 12 December 2017.

Japan

On 14 December 2017, Japan's coalition leading parties released the 2018 tax reform outline (the Outline). A tax reform bill (the Bill) will be prepared based on the Outline. The Bill will be submitted to the Diet (Japanese legislature) and is expected to be enacted by the end of March 2018.

One of the proposed amendments in the Outline is the scope of a permanent establishment (PE) under the Japanese domestic tax law. The amendments in general follow the OECD's recommendations in the BEPS Action 7 final report.

An agency PE is proposed to include a person who habitually concludes contracts on behalf of a nonresident individual or a non-Japanese company, or habitually plays a principal role leading to the conclusion of contracts that transfer the ownership of a nonresident individual or non-Japanese company to another person. A person who acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related will be regarded as a dependent agent. Exceptions to PE rules, such as a fixed place used for storage, display or delivery, would be limited to activities that are of a preparatory or auxiliary character. The anti-fragmentation rules would be added, which deny the PE exceptions where the activities of two persons constitute complementary functions and the combined activities exceed the PE threshold. Splitting up of contracts rules would be added by aggregating separate periods of construction contracts for purposes of determining a construction PE if the main purpose of the separation of construction contracts is to avoid the threshold of a one-year period. A fills-order-agent and a secures-order-agent would be excluded from the scope of the agency PE under the Japanese domestic tax law.

This revision is expected to apply to fiscal years beginning on or after 1 January 2019.

See EY Global Tax Alert, *Japan releases 2018 tax reform outline*, dated 19 December 2017.

Luxembourg

On 15 December 2017, the OECD released the second batch of peer review reports relating to the implementation of the BEPS Minimum Standards under Action 14 on improving tax dispute resolution mechanisms. Luxembourg was among the assessed jurisdictions in the second batch. Luxembourg requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying best practices report.

Overall the report concludes that Luxembourg meets most of the elements of the Action 14 Minimum Standards. In the next stage of the peer review process, Luxembourg's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases Luxembourg peer review report on implementation of Action 14 minimum standards*, dated 22 December 2017.

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