15 January 2018

Global Tax Alert

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OECD

On 3 January 2018, Mongolia joined the BEPS Inclusive Framework bringing to 111 the total Members in the framework. As a new BEPS Member, Mongolia committed to comply with the BEPS Minimum Standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Mongolia will also participate on an equal footing with the rest of BEPS members on the remaining standard setting under the BEPS project, as well as the review and monitoring of the implementation of the BEPS package.

On 21 December 2017, the OECD released additional exchange relationships that have been activated under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country (CbC) reports. Currently, together with the exchange relationships under the European Union (EU) Council Directive 2016/881/EU, there are over 1400 automatic exchange relationships established among jurisdictions committed to exchanging CbC reports as of mid-2018. The full list of automatic exchange relationships that are in place and an update on the implementation of the domestic legal framework for CbC reporting in jurisdictions are available on the OECD website. With this update, Argentina, Bulgaria, Cayman Islands, Colombia, Croatia, Czech Republic, Hungary, India, Lithuania, Malta, Russia, and Sweden have been included on the list of countries that have activated for the first time exchange relationships for CbC reporting.

On 15 December 2017, the OECD conducted its eighth Tax Talk wherein the experts from the Centre for Tax Policy and Administration discussed various updates in the OECD's international tax work. The webcast agenda included: (i) Revenue Statistics; (ii) Tax Challenges of the digitalised economy; (iii) Tax Treaties and BEPS multilateral instrument; (iv) Mutual Agreement Procedures; and (v) Mandatory disclosure rules.

European Union

On 20 December 2017, the Court of Justice of the European Union (CJEU) issued its decision in the combined German cases C-504/16 (Deister Holding AG) and C-613/16 (Juhler Holding A/S) which concern the application of the (old version of the) German anti-treaty shopping provision, sec. 50d para 3 of the German *Income Tax Act* (ITA). The CJEU ruled that this provision infringed both the EU Parent-Subsidiary Directive and the right of freedom of establishment. In particular, the fact that asset management of a foreign entity may by itself not constitute an indication of an abusive fact pattern and the fact that valid business reasons for the interposition of a foreign entity need to be assessed from a group's perspective may also render the current German anti-treaty shopping rule in many cases inapplicable. The outcomes of this decision may also have effects on how the Principal Purpose Test (PPT) of the BEPS Action 6 will be interpreted/applied among the EU Member States.

See EY Global Tax Alert, *CJEU rules German anti-treaty shopping rule infringes Parent-Subsidiary Directive and freedom of establishment*, dated on 21 December 2017.

Argentina

On 29 December 2017, Argentina enacted comprehensive tax reform (Law No. 27,430 (the Law)), through publication in the Official Gazette. Among other measures, the law establishes a new EBITDA (earnings before interest, taxes, depreciation and amortization) rule, it introduces a permanent establishment (PE) definition and it adds transfer pricing rules for analyzing transactions involving the import or export of goods. The Law is generally effective 1 January 2018.

More specifically, the law eliminates the previous 2:1 debt-to-equity ratio and it establishes a new limit for the deduction of interest arising from financial loans. The limit equals 30% of EBITDA or a certain amount to be determined by the Executive Power, whichever is higher.

The enacted law introduces a PE definition in domestic law that follows generally the Action 7 recommendations. For the dependent agent PE, the law establishes that the mere performance of a significant role leading to the conclusion of agreements would trigger a PE. The law also stipulates that, regarding independent agents, if the agent acts totally or mainly on behalf of the foreign entity (or related entities), such agent would not be considered independent.

Finally, the enacted law adds rules on analyzing transactions involving the import or export of goods with the participation of a foreign intermediary, when at least one of the foreign parties involved (i.e., intermediary, importer or exporter) is a related party. In these cases, the law requires to prove that the foreign intermediary's remuneration is in line with the risks it assumes, the functions it carries out and the assets involved.

See EY Global Tax Alert, *Argentina enacts comprehensive tax reform,* dated 29 December 2017.

Australia

On 18 December 2017, the Australian Taxation Office (ATO) published the Practical Compliance Guideline (PCG) 2017/4 outlining its compliance approach for inbound and outbound cross-border related party financing arrangements. PCG is a major document with far-reaching impact and it is identified to impact potentially 3,000 groups. Notwithstanding this, the PCG is an ATO risk assessment framework tool only and does not necessarily reflect the law. The PCG applies effective 1 July 2017 to all related-party financing arrangements on issue from that date. The key takeaways from the revised PCG and underlying ATO approach include the pricing of related-party financing should align with the commercial incentive of achieving the lowest possible "all-in cost" (interest plus guarantee fees, swap costs etc.) to the borrower; the cost of financing should align with the cost that could be achieved on an arm's-length basis by the parent of the global group to which the borrower and lender both belong; the changed scoring system has simplified the interpretation and calculation of a taxpayer's PCG score but has made it easier for taxpayers to be rated "very high risk"; and related-party financing documentation and expected reporting requirements apply in addition to the current transfer pricing documentation obligations.

In addition, the ATO published Law Administration Practice Statement (PSLA 2017/2) outlining the ATO processes for initiating and implementing a Diverted Profits Tax (DPT) assessment. The Diverted Profits Tax (DPT) is expected to impact approximately 1,600 significant global entities (broadly entities with global turnover of AU$1 billion or more). The PSLA outlines the ATO processes and high level approvals required for issuing DPT assessments. As expected, the ATO will require the involvement of the ATO General Anti-Avoidance Rules (GAAR) Panel (similar to the Part IVA processes), which should provide some level of comfort to taxpayers. Also, a draft Law Companion Guideline (LCG 2017/D7) containing the ATO guidance on the application of

the DPT has been released for consultation and comments are due by 16 February 2018. The draft LCG provides further commentary on various DPT legislative mechanics including the interaction of the DPT with the thin capitalization rules and the determination of foreign tax liabilities for groups of entities. While the ATO has previously indicated that the DPT should generally only be applied as a last resort after the conclusion of traditional transfer pricing dispute resolution, the draft LCG is silent on this point. An additional Practical Compliance Guideline (DPT PCG) is expected in 2018. This is anticipated to provide further practical guidance on the relative DPT risks associated with particular arrangements and the likelihood of ATO review, particularly with regard to the sufficient economic substance test. The DPT PCG will be subject to confidential consultation early in 2018.

See EY Global Tax Alert, *Australian Tax Office releases further guidance regarding Cross-Border Related Party Financing and the Diverted Profit Tax*, dated 19 December 2017.

Austria

On 16 December 2017, the new Austrian Government after the elections of 15 October 2017 presented its Tax Program for the period 2017 to 2022. The program lists a long series of political declarations of intent but does not yet provide details on all aspects. Among others, the Government wants to introduce the concept of digital PE as proposed by the OECD and the EU with a view to ensure fair taxation. The introduction of the digital PE will enable national governments to tax profits of digital business models based on a significant digital presence, without the prerequisite of a physical presence.

See EY Global Tax Alert, *New Austrian Government presents Tax Program,* dated 19 December 2017.

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. Austria was among the assessed jurisdictions in the second batch. Austria 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 Austria meets most of the elements of the Action 14 Minimum Standards. In the next stage of the peer review process, Austria's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases Austria peer review report on implementation of Action 14 Minimum Standards*, dated 9 January 2018.

Belgium

On 25 December 2017, the *Belgian Corporate Income Tax Reform Act* was enacted by the King and was published in the *Belgian Official Gazette*, dated 29 December 2017.

As part of this corporate income tax reform, the general corporate income tax rate will gradually decrease to 25%, capital gains on shares are fully exempt, a dividend received deduction of 100% is foreseen, and a tax consolidation is adopted. In the context of the corporate income tax reform, Belgium has also transposed the EU Anti-Tax Avoidance Directive (ATAD I) and II in its domestic law. Also, Belgian establishments will be defined more broadly taking into account a more economic approach in line with the OECD BEPS Action 7.

Apart from the entry into force of tax consolidation and the implementation of the ATAD, there are no substantial changes compared to the draft approved by the Government on 25 October 2017. The new rules on tax consolidation will apply to financial years starting on or after 1 January 2019 (instead of 2020). The measures provided for by the ATAD will also be implemented as of 1 January 2019 (instead of 2020). However, the entry into force of the 30% EBITDA interest limitation rule remains the same, i.e., financial years starting on or after 1 January 2020.

See EY Global Tax Alert, *Belgian Government approves draft law on corporate tax reform including 100% participation exemption*, dated 7 November 2017 and EY Global Tax Alert *Belgian Parliament adopts corporate tax reform*, dated 2 January 2018.

China

On 19 December 2017, China's State Administration of Taxation (SAT) issued Announcement 46 which clarifies matters concerning CbC reporting (CbCR) in China. SAT [2017] No. 46 acknowledges that the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Convention) became effective from 1 January 2017.

In order to effectively integrate Convention and previously issued China CbCR rules (i.e., *The Announcement on Improvement of the Filing of Related-Party Transactions*

and the Management of Contemporaneous Documentation (SAT [2016] No. 42)), SAT [2017] No. 46 clarified that the CbCR secondary reporting rules do not apply for the year of 2016 and thus the Chinese tax authorities won't require constituent entities of non-Chinese multinational enterprise (MNE) group to submit a CbCR during the course of an tax audit for the year of 2016. SAT [2017] No. 46 has no impact on the preparation and submission of local file and master file.

Colombia

On 15 December 2017, Colombia issued Regulatory Decree 2120 which provides further information and guidance CbCR, Master file and Local File. The Decree, among other things, introduces a notification requirements for CbCR in Colombia. CbCR requirements apply to MNE groups with total consolidated revenues for accounting purposes equal or exceeding 81 million taxable units (approximately US$800 million). Accordingly, constituent entities are required to submit a notification to the Colombian Tax Authorities stating whether it belongs to a MNE group, if the MNE group is required to prepare a CbC report and if so, indicate the identity of the Reporting Entity and its country of tax residence. The Tax Authorities have sent requests to a number of constituent entities asking for the presentation of the notification corresponding to the fiscal year 2016 by 19 January 2018, in most cases.

See EY Global Tax Alert, *Colombia issues regulations on obligation to notify tax authorities about Country-by-Country report*, dated 10 January 2018.

Denmark

On 21 December 2017, a press release was published by the Danish tax and customs administration on CbCR (press release (No. 17-1975627)). The press release reiterates that MNE groups with a turnover of DKK5.6 billion have to file a 2016 report before the end of 2017, via a form 05034. The declaration for 2017 must also be made before the end of 2018 with form 05034.

Finland

On 19 December 2017, Bill No. 191/2017 was submitted to the Parliament to bring the CbCR in line with Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. The bill contains information on secondary reporting obligations and aims to align the wording of article 14d of the *Taxation Procedure Act* with the wording of the Directive.

Also on 19 December 2017, the announcement was made by the Ministry of Finance that Finland is willing to exchange CbC reports with other jurisdictions for all tax periods covered by the Multilateral Competent Authority Agreement (MCAA). The unilateral announcement allows Finland to exchange information with countries that have not yet implemented the Convention on Mutual Assistance in tax matters, provided that the other country has also made a unilateral announcement.

France

On 21 December 2017, the French Parliament approved the Finance Bill for 2018 and the second Amending Finance Bill for 2017. Among others, the Finance Bill for 2018 has modified the so-called Carrez interest deductibility limitation rule (Carrez rule). The "Carrez rule" limits the deductibility of interest expenses on debt subscribed for the acquisition of qualifying participations by a French company in certain cases. The Finance Bill for 2018 has adapted this mechanism to ensure compliance with EU freedom of establishment. Such amendment of the Carrez rule will apply to Corporate Income Tax due for fiscal years closed on or after 31 December 2017.

See EY Global Tax Alert, *French Parliament approves Finance Bill for 2018 and second Amending Finance Bill for 2017*, dated 22 December 2017.

The French Finance Bill for 2018, approved by the French Parliament on 21 December 2017 and published in the Journal Officiel on 31 December 2017, aligns French transfer pricing documentation requirements with the OECD BEPS Action 13 recommendations (*Transfer Pricing Documentation and Country-by-Country Reporting*).

Specifically, the OECD's BEPS Action 13 recommends that MNE groups should disclose additional information in their transfer pricing reports and proposed a standardized format for the disclosure of general information on the group (Master File) and more detailed information for each taxable entity that is part of the group (Local File).

See EY Global Tax Alert, *France aligns transfer pricing documentation requirements with OECD Action 13 Master File and Local File*, dated 9 January 2018.

On 4 December 2017, the French Government published additional comments regarding the potential treatment of CbCR requirements of French subsidiaries and branches of foreign multinationals, where the country of residence of the UPE has not yet signed the automatic exchange of information agreement with France (e.g., the US).

Pursuant to OECD recommendations, the French tax authorities have indicated that French subsidiaries and branches of a foreign groups whose Ultimate Parent Entity (UPE) is not located in a State included in the ministerial order that contains the list of States considered as "compliant" for CbCR purposes would be relieved from any CbCR filing requirements in France for fiscal year starting from 1 January 2016 if the following conditions are met: (i) the UPE voluntarily files the CbC report in its State of residence for the respective fiscal year; (ii) this CbC report complies with the requirements set out by the OECD; and (iii) the local tax authorities of the State in which the UPE is located provide the French tax authorities with this CbC report.

Furthermore, on 13 December 2017, the United States (US) Internal Revenue Service (IRS) published on its website that the US and France had signed a joint statement providing for the spontaneous exchange of CbC reports filed with respect to fiscal years beginning in 2016.

With respect to the situation of US groups, it therefore seems that the voluntary filing of a CbC report in the US should relieve the French entities of US groups from their obligation to file a CbC report in France for the fiscal year starting on 1 January 2016.

See EY Global Tax Alert, *French Country-by-Country Reporting requirements may impact US multinational groups*, dated 12 December 2017.

Greece

On 15 December 2017, the Greek Public Revenue Authority published additional clarifications on CbC reporting through a guide of frequently asked questions (FAQs). The guidance outlines the local CbCR framework and provides guidance on the implementation of the CbC reporting that in principle incorporates the OECD related guidance (e.g., regarding the definition of the items to be included, the entities to be reported, the filing obligations, the CbC exchange mechanism and the appropriate use of the information contained).

The guidance also includes a set of examples relating to the CbC report and notification filing obligations.

Regarding the sharing mechanisms, the guidance also mentions that the automatic exchange of CbC reports between Greece and the US, which was signed on 27 September 2017, is yet to be ratified by law.

Hong Kong

On 29 December 2017, the Hong Kong Government published a legislative bill which seeks to codify transfer pricing principles, to introduce the three-tiered approach for transfer pricing documentation and to provide for an advance pricing arrangement (APA) regime. In addition, the bill goes beyond the BEPS Minimum Standards by adopting the PE rules for non-treaty residents from BEPS Action 7 recommendations. Residents of countries with tax treaties with Hong Kong will continue to rely on the PE rules under the relevant tax treaties.

The legislative bill also sets out provisions to implement the BEPS Minimum Standards, including introduction of a statutory dispute resolution mechanism, enhancement of the current tax credit system, removal of the ring-fencing features in the existing preferential tax regimes, and incorporation of the substantial activities requirement from the OECD for certain preferential tax regimes.

The legislative bill has been introduced to the Legislative Council for first reading and debate. The effective dates for the regulations are staggered across accounting period beginning on or after 1 January 2018 (for CbC reports), 1 April 2018 (for master file/local file and APAs) and years of assessment beginning on or after 1 April 2018 (for profits taxes under the Inland Revenue Ordinance). Amendments related to Advance Rulings apply from when the legislative bill comes into effect.

See EY Global Tax Alert, *Hong Kong introduces tax and transfer pricing legislation to counter Base Erosion and Profit Shifting*, dated 5 January 2018.

Iceland

On 1 June 2017, the Icelandic Parliament passed legislation amending the interest limitation rules, which are effective as from 1 January 2018. On 30 December 2017, the Parliament passed an amendment (Law no. 96/2017) under which the effects of the amendment are postponed by one year so that the exception provided for domestic groups is extended by one year, i.e., until 1 January 2019.

Ireland

On 19 December 2017, the Irish Revenue Commissioners published eBrief No. 117/17 on CBCR. According to the eBrief, the electronic filing facility for the receipt of CbC reports or equivalent CbC reports for fiscal years ending in 2016 is now open. The filing facility will be open until 28 February 2018. The Commissioners also updated the FAQs for CbC reporting to include step-by-step filing instructions.

On 25 December 2017, *Finance Act 2017*, was signed into law by the President of Ireland. As part of this Act, the OECD Multilateral Convention (MLI) is ratified into Irish law.

Italy

On 23 December 2017, the Italian Parliament approved the 2018 Budget Law. Among others, the 2018 Budget Law has introduced changes to the Italian interest expense rule in line with the principles included the EU ATAD.

See EY Global Tax Alert, *Italy approves 2018 Budget Law*, dated 29 December 2017.

Moreover, the 2018 Budget Law also introduced a new "Tax on digital transactions" (Web Tax) and a new definition of PE. According to the 2018 Budget Law "Web Tax," which includes significant amendments compared to the initial draft law, is: (i) levied at a 3% rate on the value of each digital transaction; (ii) due by Italian residents and non-Italian residents enterprises rendering more than 3,000 digital business to business transactions in a calendar year and will not be creditable from the Italian income tax; and (iii) settled by the buyers of the services.

The new definition of PE is partially in line with OECD BEPS Action 7 by adding a new provision which implies the possibility of having a PE presence in Italy even where a company does not have a physical presence in the Italian territory to the extent other factors may indicate a significant presence (e.g., revenues, number of customers etc.).

See EY Global Tax Alert, *Italy enacts Web Tax and new PE definition*, dated on 29 December 2017.

Jersey

On 15 December 2017, according to information available on the OECD website, Jersey deposited the instrument of ratification, acceptance or approval of the MLI. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. However, Jersey has not confirmed its preliminary MLI positions yet.

Korea

On 19 December 2017, Korea enacted the 2018 tax reform bill (the 2018 Tax Reform) after it was passed by Korea's National Assembly on 5 December 2017. The 2018 Tax Reform also includes provisions in line with the OECD's BEPS Action 2 (Neutralising the effects of Hybrid Mismatch Arrangements) and Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments), among others. Unless otherwise specified, the 2018 Tax Reform will generally become effective for fiscal years beginning on or after 1 January 2018.

See EY Global Tax Alert, *Korea enacts 2018 tax reform bill*, dated 5 January 2018.

Luxembourg

On 15 December 2017, an amendment was introduced to the draft legislation on the new intellectual property (IP) regime that is currently being discussed (which is not covered in the 2018 budget law). The amendment aims to clarify that research and development expenses incurred by a PE in another country within the European Economic Area can constitute "eligible expenses" of the taxpayer only if these can be attributed to the (Luxembourg) head office under the applicable double tax treaty (i.e., if and to the extent the Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) functions are organized at the level of the head office).

It is expected that the Parliament will vote on the draft law in the first months of 2018. If approved, the new IP regime will likely enter into force from 2018.

Norway

In December 2017, the Norwegian Parliament approved the 2018 Fiscal Budget in line with the Government's proposal dated 12 October 2017. This fiscal budget contains amendments to the interest expense limitation rules, in relation to both the amount of interest expense that can be carried forward by partnerships with tax losses (with effect from income year 2017) and the definition of financial institutions (with effect from income year 2018).

When the EBITDA limit for deducting interest expense was reduced from 30% to 25% in 2016, the rate used to reduce the carry forward interest deduction for partnerships was not changed accordingly. As of the 2017 income year, the rate used to reduce the carry forward interest deduction for partnerships is also reduced to 25% to be aligned with the rate in the EBITDA rule.

Financial institutions, as defined in Norwegian company legislation, were intended to be exempt from the interest deduction limitation rules. However, due to changes in the company legislation from 2016, the scope of the interest deduction limitation rules was broadened to include certain financial institutions originally not intended to be covered by the interest deduction limitation rules. The interest deduction limitation rules have now been amended so that they do not apply to financial institutions according to the new company legislation.

See EY Global Tax Alert, *Norwegian Government issues 2018 Fiscal Budget*, dated 18 October 2017 and *Norwegian Parliament approves 2018 Fiscal Budget; Implementation of SAF-T in 2020*, dated 3 January 2018.

Portugal

On 21 December 2017, Portuguese Orders number 383-A/2017 and 383-B/2017 were published in the *Official Gazette*. Order number 383-A/2017 approved form 55 containing the CbC report. Form 55 must be submitted by electronic means on a yearly basis and within 12 months after the end of the fiscal period concerned (in respect of tax years starting as from 1 January 2016). For reporting fiscal year 2016, the deadline has been extended until 28 February 2018. Further, order number 383-B/2017 approved the list of jurisdictions with whom Portugal has activated the relationship to automatically exchange CbC reports.

Russia

On 12 December 2017, the Russian Federal Tax Service opened a public consultation publishing the formats for CbCR and the notification on the participation in multinational groups on its official website. The Russian Federal Tax Service also published instructions for electronically filing the CbCR forms. The new forms are in line with OECD BEPS Action 13 requirements.

Serbia

On 28 December 2017, the Serbian Government approved the MLI. As a further step the MLI is currently in parliamentary procedure, waiting to be ratified. Once ratified by five signatories, the MLI will enter into force on the first day of the fourth month from the date of deposit of the fifth instrument of ratification, acceptance or approval. The MLI will amend many of the double tax treaties signed by Serbia without the need for bilateral renegotiations.

Slovakia

On 20 December 2017, amendments to the *Income Tax Act* were signed by the President. The amendments entered into force on 1 January 2018, with some exceptions. For more information, see EY's Latest on BEPS newsletter, dated 18 December 2017.

Spain

On 30 December 2017, Spanish Royal Decree 1074/2017, which amends the Corporate Income Tax regulations and other regulations, was published in the *Official Gazette*. Among others, Royal Decree 1074/2017 modifies the Spanish CbCR rules to better align them with the EU Directive 2016/881. In particular, the Royal Decree clarifies that Spanish entities or PEs located in Spain that belong to an MNE group are not subject to Spanish CbCR local filing obligations if: (i) the MNE group has appointed a "surrogate parent entity" resident in another EU Member State to file the CbC report; or (ii) the MNE group has appointed a "surrogate parent entity" resident in a non-EU Member State to file the CbC report and other requirements are met.

The Royal Decree entered into force on 30 December 2017 and the provisions relating to CbCR rules are applicable with retroactive effect from 1 January 2016.

Switzerland

On 20 December 2017, the Swiss Federal Council initiated the consultation procedure on the MLI. Together with 67 other jurisdictions, Switzerland signed the MLI during a signing ceremony hosted by the OECD in Paris on 7 June 2017. At the time of signature, Switzerland submitted

a list of 14 tax treaties that it would like to designate as Covered Tax Agreements (CTAs), i.e., tax treaties to be amended through the MLI. Together with the list of CTAs, Switzerland also submitted a provisional list of reservations and notifications (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions will be provided upon the deposit of its instrument of ratification of the MLI. In line with its policy of implementing only the Minimum Standards of the BEPS Action Plan, Switzerland expressed reservations on the majority of the articles of the MLI.

The consultation procedure on the MLI invites the 26 Swiss cantons and other interested parties to express their opinion on the Swiss MLI positions as well as on the ratification and implementation of the MLI in general. The consultation procedure is part of the domestic ratification process, and runs until 9 April 2018. Afterwards, the Federal Council will review the responses and prepare a draft which will be subject to approval of the Swiss Parliament.

In the explanatory report on the MLI, the Swiss Federal Council explains Switzerland's view whereby the MLI should have the same effect as amendment protocols to existing bilateral tax treaties, i.e., it directly amends the existing treaties. Only tax treaties with countries that take a similar view on the legal working of the MLI as Switzerland will be amended by the MLI.

Other jurisdictions consider the MLI as a separate agreement of international law. According to their view, the MLI does not amend existing tax treaties but enters into force alongside them. In case of doubt, the respective MLI provisions would prevail over older tax treaties as lex posterior. One of the jurisdictions following the second approach is the United Kingdom (UK). Therefore, it was necessary from the perspective of Switzerland to negotiate a separate amendment protocol to the 1977 Swiss-UK tax treaty. The Federal Council decided to add the amendment protocol, which was signed on 30 November 2017 in London, to the consultation procedure on the MLI. Content-wise, the amendment protocol implements the changes introduced by the MLI into the Swiss-UK tax treaty. Similar amendment protocols will be signed with other countries in due course.

United Kingdom

On 19 December 2017, the Competent Authority Agreement on the Exchange of Country-By-Country (CbC) Reports (the CAA) was signed with Jersey. The CAA with Guernsey was signed on 24 November 2017 by the United Kingdom and on 29 November 2017 by Guernsey.

On 13 December 2016, the Competent Authority Agreement on Automatic Exchange of Information (2016) with the Isle of Man was signed.

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