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Global Tax Alert

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OECD

On 24 January 2018, six additional jurisdictions (Barbados, Côte d'Ivoire, Jamaica, Malaysia, Panama and Tunisia) signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) during a second signing ceremony which took place at the OECD Headquarters in Paris, in conjunction with a plenary session of the Inclusive Framework on BEPS. Four other jurisdictions (Algeria, Kazakhstan, Oman and Swaziland) expressed their intent to sign the MLI in the near future. At the time of signature, the six signatories submitted a list of their tax treaties in force that they would like to designate as Covered Tax Agreements (CTAs), i.e., treaties to be amended through the MLI. At this stage, it is expected that over 1,200 tax treaties will be modified based on matching of the specific provisions that jurisdictions wish to add or change within the CTAs nominated by signatories.

Together with the list of CTAs, signatories also submitted a preliminary list of their reservations and notifications (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for each jurisdiction will be provided upon the deposit of its 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. Of the six jurisdictions that signed the MLI, only Barbados opted in for mandatory binding arbitration.

See EY Global Tax Alert, *Six additional jurisdictions sign Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*, dated 26 January 2018.

Building a better working world

On 23 January 2018, the OECD announced the launch of the *International Compliance Assurance Programme* (ICAP) pilot. The pilot is being led by the OECD Forum on Tax Administration (FTA), and focuses on the multilateral risk assessment and resulting tax assurance of large Multinational Enterprise (MNE) groups. The pilot was launched at an event attended by participating groups and tax authorities in Washington, DC.

ICAP is a voluntary program that will use Country-by-Country (CbC) reports and other taxpayer-provided information to allow MNE groups and tax administrations to engage in an open and transparent discussion on tax risks, and, if agreement can be reached that the issues are low risk, to provide outcome letters that state this. The MNE group will also receive assurance that they will not receive further compliance interventions from the covered tax administrations (covering the period of review, together with the next two succeeding tax years), provided there are no material changes during this period. Any issues that cannot be agreed via ICAP and therefore require further attention will be handled outside of ICAP, via processes such as Advance Pricing Agreements (APAs) or, when deemed necessary, a tax audit.

The ICAP pilot focuses on low risk taxpayers, while the OECD hopes that future ICAP programs will allow taxpayers with higher risk profiles to also enter the program. At the conclusion of the event, the OECD also released an ICAP Handbook which provides more detail on the program. There are eight FTA jurisdictions participating in the pilot: Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States. The number of MNE groups participating in this exercise is unknown, and each was invited to participate by the tax authority of the jurisdiction in which it is headquartered. Future ICAP participants will have specific eligibility requirements and an application process for MNE groups to follow.

See EY Global Tax Alert, *OECD launches International Compliance Assurance Programme pilot*, dated 26 January 2018.

European Union

On 23 January 2018, eight jurisdictions were removed from the European Union's (EU's) list of non-cooperative jurisdictions for tax purposes during the Economic and Financial Affairs Council (ECOFIN) meeting. Barbados, Grenada, the Republic of Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates have been moved from Annex I to Annex II of the Council conclusions and will remain subject to close monitoring. The finance and economic affairs Ministers of the EU Member States agreed that a de-listing was justified in the light of an expert assessment of the commitments made by these jurisdictions to address deficiencies identified by the EU. The decision leaves 9 jurisdictions on the list of non-cooperative jurisdictions out of 17 announced initially on 5 December 2017. These are American Samoa, Bahrain, Guam, Marshall Islands, Namibia, Palau, Saint Lucia, Samoa and Trinidad and Tobago.

Curaçao

On 20 December 2017, Curaçao joined the Multilateral Convention, bringing the total number of jurisdictions that have signed the MLI to 72. A provisional list of reservations and notifications for Curaçao has been provided.

Guernsey-Jersey

On 22 December 2017, Guernsey and Jersey signed a Competent Authority Agreement (CAA) to exchange CbC reports. According to the provisions of the CAA, Guernsey and Jersey will exchange annually, on an automatic basis, the CbC report received from each reporting entity that is resident for tax purposes in its jurisdiction, provided that, on the basis of the CbC report, one or more constituent entities of the reporting entity's group are resident for tax purposes in the other jurisdiction, or are subject to tax with respect to the business carried out through a permanent establishment (PE) in the other jurisdiction. A CbC report is first to be exchanged with respect to fiscal years of MNE groups commencing on or after 1 January 2016. Such CbC report is to be exchanged as soon as possible and no later than 18 months after the last day of the fiscal year of the MNE group to which the CbC report relates. CbC reports with respect to subsequent fiscal years are to be exchanged as soon as possible and no later than 15 months after the last day of the fiscal year of the MNE group to which the CbC report relates.

Iceland

Recently, the Directorate of Internal Revenue published the CbC reporting notification form. An online interactive form is available on the home page of the Directorate of Internal Revenue (https://www.rsk.is/media/rsk04/rsk_0431.is.pdf).

Multinationals operating in Iceland and falling within the scope of article 91(a) of the *Income Tax Act*, i.e., with revenues amounting to ISK100 billion in 2017, should file the notification with the Directorate of Internal Revenue by the last day of the reporting period of the Ultimate Parent Entity.

Japan

On 21 December 2017, the Japanese tax authorities published the updated version of the special taxation law circular. The Japanese controlled foreign company (CFC) section of the circular was updated. The updated circular provides clarifications on some of the Japanese CFC rules, such as definition of a "Paper" company, "Cash Box" and a Foreign Financial Services Company.

The updated circular applies to the new Japanese CFC rules, which apply to CFCs' fiscal years starting on or after 1 April 2018.

Japan-Iceland

On 16 January 2018, Japan and Iceland signed a new tax treaty (the New Treaty). The New Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits inappropriate circumstances), Action 7 (preventing the artificial avoidance of permanent establishment status) and Action 14 (making dispute resolution mechanisms more effective).

The New Treaty contains, for example, a provision dealing with fiscally transparent entities. Its preamble clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance and in cases where a person other than an individual is resident in both Japan and Iceland, both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. The New Treaty has an Entitlement to Benefits clause for certain treaty benefits and a Principal Purpose Test. In the PE clause the New Treaty contains an anti-fragmentation rule and the new definition of agency PE. Moreover, the New Treaty enables taxpayers to present a case for mutual agreement procedure to the competent authorities of either Contracting State.

Both Japan and Iceland have signed the MLI and neither of them has included this tax treaty as a CTA. Therefore, it may be expected that the new tax treaty will not be further modified by the MLI, particularly given that the New Treaty already incorporated the treaty-related BEPS minimum standards.

Kazakhstan

On 25 December 2017, Kazakhstan adopted changes to its domestic transfer pricing rules introducing CbC reporting obligations with retroactive effects from 1 January 2016. Furthermore, it is expected that the Master File and Local File will be introduced starting from 1 January 2019.

CbC reports are required to be filed with the Kazakhstan tax authorities for tax years beginning on or after 1 January 2016 by the following entities with the annual consolidated group revenue equal to or exceeding €750 million (or other equivalent established in the country of residence of Ultimate Parent Entities (UPE) who are not resident in Kazakhstan):

- Kazakhstan resident entities that are UPEs of an MNE group
- Surrogate parent entities of UPEs of the MNE group that are Kazakhstan tax residents
- Kazakhstan tax resident provided that its UPE is not resident in Kazakhstan, and not required to file a CbC report in its country of residence, or failed to comply with CbC reporting requirements in its country of residence, or although obligated to file a CbC report there is no international tax treaty on the automatic exchange of information in place with Kazakhstan or there is a systemic failure of the jurisdiction of tax residence of the UPE on automatic exchange of information with Kazakhstan
- Any other entity of the group that is a non-Kazakhstan tax resident conducting activities in Kazakhstan through a structural subdivision or PE provided that its UPE is not resident in Kazakhstan, and not required to file a CbC report in its country of residence, or failed to comply with CbC reporting requirements in its country of residence, or although obligated to file CbC report there is no international tax treaty on the automatic exchange of information in place with Kazakhstan or there is a systemic failure of the jurisdiction of tax residence of the UPE on automatic exchange of information with Kazakhstan

For entities under points 1-2 above, the filing date is no later than 12 months following the reporting period. For entities under points 3-4, a CbC report may need to be filed upon the request of the Kazakhstan tax authorities and the filing date is no later than 12 months from such request. Moreover, the above entities will need to notify the tax authorities no later than 1 September of the year following the reporting period that it is a member of an MNE group.

Netherlands

On 28 December 2017, the Tax Plan 2018 (Law of 20 December 2017) and the Bill on other fiscal measures 2018 (Law of 20 December 2017) was published in the *Official Gazette* No. 517. Under the 2018 Tax Plan, "voluntary filing" (also known as "parent surrogate filing") is explicitly allowed from countries having introduced CbC reporting for fiscal periods commencing later than 1 January 2016.

On 18 January 2018, the Dutch Minister for Finance issued an overview of financial and tax-related legislation, reports, and letters that are planned to be submitted to the Dutch lower house by the Government in 2018 (Letter No. 2018-0000005589). One of the key measures included is the announced legislative proposal for the implementation of the EU Anti-Tax Avoidance Directive, which is anticipated by June.

Nigeria

On 21 January 2018, the Federal Inland Revenue Service (FIRS) announced, through its official twitter handle, the signing of the Income Tax Regulations (Country-By-Country Reporting) Regulations 2018 (The Regulations) by Nigeria's President. The Regulations constitute a significant landmark towards establishing the necessary framework for the automatic exchange of CbC reports in accordance with the Multilateral Competent Authority Agreement (MCAA) signed by Nigeria in January 2016 and ratified by the Federal Executive Council in August 2016. The Regulations primarily seek to provide guidance to MNEs on their reporting obligations to the FIRS in relation to their global activities, profits, taxes, accumulated earnings and other indicators of their group's economic activity. It is expected that the relevant information when provided by the MNEs will enable the FIRS to conduct improved transfer pricing risk assessments and ultimately prevent tax evasion and avoidance.

Singapore

On 11 January 2018, the Inland Revenue Authority of Singapore (IRAS) published an updated list of activated bilateral Automatic Exchange of Information (AEOI) relationships for the automatic exchange of CbC reports for UPEs of Singapore MNE groups. The updated list now comprises 42 jurisdictions. The full list of jurisdictions and their respective effective taxable periods is set out below. This list should continue to be monitored as it is not the final list of AEOI relationships that Singapore will enter into.

List of jurisdictions

Exchange relationship effective from fiscal year (FY) 2016: Australia, Belgium, Brazil, Bulgaria, Colombia, Denmark, Finland, France, Germany, Greece, Guernsey, India, Ireland, Italy, Japan, Jersey, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Slovak Republic, Slovenia, South Africa, Spain and the United Kingdom.

Exchange relationship effective from FY 2017: Argentina, Austria, Canada, Chile, Croatia, Cyprus, Czech Republic, Estonia, Indonesia, New Zealand, Norway, Poland, Portugal and Sweden.

South Africa

On 29 December 2017, the South African Revenue Service (SARS) released an updated list of jurisdictions with which South Africa does not have a Qualifying CAA in effect by the time the CbC report must be filed (note that first filings are due 28 February 2018). This means that South African taxpayers forming part of a foreign MNE group may be required to file a CbC report with SARS, even though the UPE is resident in a country other than South Africa.

See EY Global Tax Alert, *South African Revenue Service publishes list of non-QCAA jurisdictions*, dated 9 January 2018.

Sweden

On 15 January 2018, guidance on CbC reporting was published by the Swedish Tax Administration (Document No. 202 521135-17/111). According to this document:

- A Swedish parent company must submit a CbC report even if it was included in another corporate group in the previous year, unless the group is exempt from reporting obligations.

- For the determination of whether a Swedish parent company is required to submit a CbC report for a particular fiscal year, it is decisive if the group's total income during the previous financial year of the parent company exceeded SEK7 billion. In this context, a fiscal year may be either longer or shorter than 12 months.
- The Tax Administration does not consider that there is support for adjusting the turnover with regard to the length of the financial year or to calculate the limit of SEK7 billion from the end of the financial year. Hence, the SEK7 billion limit applies regardless of the length of the previous financial year.

United Kingdom

At the end of December 2017, the United Kingdom (UK) tax authority (HMRC) confirmed that CAAs on the exchange of CbC reports had been signed with Jersey, Guernsey, the Isle of Man and the Cayman Islands. The OECD list has not yet been updated for all of these new agreements. So far, the UK has 58 CbC exchange agreements in place, although not all are effective for reports relating to fiscal periods beginning before 1 January 2017, so groups should check the agreements for the territories in which they operate.

CbC reports will be shared automatically with tax authorities in the countries named in the report and with which the UK can exchange in accordance with international agreements. HMRC has committed to exchange these reports within 15 months of the end of the period covered by the report (18 months for the first period). HMRC will not notify groups when the exchange actually takes place.

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