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OECD

On 19 February 2018, Serbia joined the BEPS Inclusive Framework bringing to 112 the total Members in the framework. As a new BEPS Member, Serbia 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). Serbia 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 14-16 February 2018, the Platform for Collaboration on Tax (PCT) – a joint initiative of the International Monetary Fund (IMF), OECD, United Nations (UN), and the World Bank Group to strengthen collaboration on domestic resource mobilization – held its First Global Conference at the UN Headquarters in New York. The conference focused on the key directions for tax policy and administration needed to meet the Sustainable Development Goals.

On the agenda of the plenary sessions was, among others, a discussion on BEPS and the intense activity in recent years with respect to international taxation. During the 5th Session, speakers presented the new opportunities for enhanced participation of developing countries in international tax policy discussions and institutions as a result of the advent of initiatives like the Automatic Exchange of Information, the BEPS project, and the active engagement of the UN Tax Committee, but also the new challenges to fully realizing the benefits of international cooperation on tax. The conference aimed to provide guidance to countries and other stakeholders on how to better target tax efforts to achieve broader development goals.

Building a better working world

Insights from the conference will help inform and shape the future work of the PCT members and partners, including the IMF, OECD, UN and World Bank. The forthcoming work of the PCT will focus on the completion of the Platform Toolkits, among others, to help countries address challenges in international taxation. By mid-2018, it is expected that there will be an update to the G20 on tax certainty and developing countries.

European Union

On 15 February 2018, the Council of the European Union (EU) published the work programme during the Bulgarian Presidency as agreed by the Code of Conduct Group (COCG) (business taxation) meeting of 14 February 2018. Based on this work program, the COCG will work in the context of the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes, and it will in particular agree on procedures to carry out the monitoring process, and prepare a progress report to the Economic and Financial Affairs Council (ECOFIN) on this matter before summer 2018. Furthermore, it is mentioned in the published program that the COCG will observe how the defensive measures agreed on 5 December 2017 are applied and explore further coordinated defensive measures in the tax area. Among the agreed tasks, the COCG will also continue work on the application of the principles of the modified nexus approach to intellectual property regimes and, in particular, monitor whether the Member State who did not take any action starts amending its patent box regime so that it complies with the modified nexus approach by the end of 2018.

On 15 February 2018, the Council of the European Union published Procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes as agreed by the COCG (Business Taxation) in its 14 February 2018 meeting. The monitoring process as set out in the published guidelines will be carried out based on the ECOFIN conclusions of 5 December 2017, in particular Annex IV.

The sequencing of the monitoring process will start with gathering information by the jurisdictions in three separate phases as follows: (i) in phase 1 (by 9 March 2018) the jurisdictions have to send the precise timeline and description of the steps for the implementation of the commitments that they have taken; (ii) in phase 2, they have to send information in due time about each of the steps mentioned in phase 1, including, where relevant, an English translation of their draft legislation(s) as presented to their Parliament; and (iii) in phase 3 (by the agreed deadline) an English translation of the final measure(s) as enacted should be sent. Technical assistance to the jurisdictions to help them in meeting their specific commitments will be provided by the Commission Services and by the OECD Secretariat or Member States.

At the end of each semester, progress reports on the monitoring process will be submitted to the ECOFIN and an updated version of Annex II of the 5 December 2017 Council conclusions will be included in these progress reports. As a last step, at the beginning of 2019 (respectively 2020), the COCG will assess the overall implementation of commitments made by jurisdictions with a view to updating the EU list of non-cooperative jurisdictions for tax purposes accordingly.

United Nations

In February 2018, the Report on the Fifteenth Session of the Committee of Experts on International Cooperation in Tax Matters (Committee), which was held by the UN on 17-20 October 2017 in Geneva, Switzerland, was released. The report describes a lot of substantive issues related to tax cooperation in tax matters that were discussed during the event. Main topics, among others, were the tax challenges in the digitalized economy, possible update of the UN Practical Manual on Transfer Pricing for developing countries, issues related to permanent establishments, software royalties and hybrid entities, as well as the Mutual Agreement Procedure (MAP) and the handbook on dispute resolution.

According to the released report on the Fifteenth Session, the presenters discussed that the main tax challenges in the digitalized economy concern the possibility for multinational enterprises to generate income in States without having a physical presence or nexus, allowing them to avoid paying taxes to source States, the determination of the place of value creation for digital data when determining the State to which the profits should be attributed, and the risk of introducing inconsistent treatments between online retailers and "brick-and-mortar" retailers. Apart from the challenges, many benefits and opportunities derive from the digitalization of the economy for tax administrations. It is mentioned in the Report that if tax administrations were caught up with speed of change in the business environment and engaged more in technology, they could increase cooperation with other tax administrations and set clear international standards. Reference was also made to the work of the OECD, and its difficult task to draft a report on this issue, which will focus on both long-term and short-term solutions that need to interact with double tax treaties, World Trade Organization agreements and EU law. As a way forward, a Subcommittee on Tax Challenges Related to the Digitalization of the Economy was formed with a view to analyze technical, economical and other issues, describe difficulties and opportunities, monitor international developments and suggest measures related to the digitalization of economy. By the Sixteenth session in May 2018, the Subcommittee will report on its activities, recommendations and conclusions.

Another interesting topic introduced during the session was the issues raised by the tax treatment of collective investment vehicles in domestic law and tax treaties. It was agreed that a paper outlining the issue, which will be discussed at the Sixteenth session of the Committee on 14-18 May, 2018 will be produced.

Regarding the MAP discussions, it had been recognized that there was a lack of sufficient guidance on how to conduct it, and a number of Committee members expressed the importance of taking forward the work on MAPs. The focus would be on mechanisms to avoid and resolve disputes arising at the domestic level, ways to ensure that the MAP under Article 25 functions effectively and efficiently, and issues associated with arbitration clauses and other means as options to supplement the MAP. To support the above, a draft UN Handbook on Dispute Resolution and Avoidance, a draft updated text of the UN Guide on MAP, and drafts of possible changes to the UN Model Convention and/or Commentaries will be produced.

Australia

On 12 February 2018, the Australian Government released, for public consultation, draft legislation and an accompanying draft Explanatory Memorandum for the implementation of rules extending the application of Australia's Multinational Anti-Avoidance Law (MAAL) to corporate structures that have had trusts or partnerships interposed as part of restructures in response to the enactment of the MAAL. These rules will strengthen the existing MAAL regime to ensure the MAAL applies appropriately to artificial or contrived arrangements involving trusts and partnerships entered into by multinational entities to avoid the taxation of business profits in Australia.

It is intended that once enacted, these rules will apply retroactively from 1 January 2016. The time period for submissions on the draft legislation closed 23 February 2018.

On 8 February 2017, the Australian Government released for public consultation draft legislation and an accompanying draft Explanatory Memorandum for the implementation of the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). Australia was one of 68 jurisdictions that signed the MLI during the first signing ceremony on 7 June 2017. On enactment, this draft legislation will give force of law in Australia to the MLI. The time period for submissions on the draft legislation closed 23 February 2018.

Canada

On 31 January 2018, the ratification process for the MLI began in Canada. The Parliamentary Secretary to the Minister of Foreign Affairs tabled several tax treaties, including the MLI, in the House of Commons for consideration.

The MLI will come into effect for a particular bilateral tax treaty after the domestic ratification processes are completed in both Canada and the relevant foreign jurisdiction. The Canadian ratification process is as follows:

- The MLI has to be tabled for at least 21 sitting days of Parliament (which commenced on 31 January 2018, and is expected to be completed around 22 March 2018), during which Members of Parliament may debate, present and vote on motions related to the MLI
- Implementing legislation then has be introduced into Canadian domestic law, which may be debated in both the House of Commons and the Senate, with both houses likely sending the draft legislation to committee for study
- The draft legislation then has to be approved by Parliament and receive Royal Assent
- An Order in Council is then needed to notify the OECD that the ratification process in Canada is complete

For each applicable tax treaty, the MLI will enter into force on the first day of the fourth month after Canada and the relevant treaty partner complete their notifications to the OECD and it will enter into effect for: (a) withholding taxes, on the first day of the next calendar year; and (b) for other taxes, for tax years beginning six months after the MLI enters into force. The MLI will amend many of the existing tax treaties signed by Canada without the need for bilateral negotiations.

Costa Rica

On 2 February 2018, the Resolution DGT-R-001-2018, which implements Country-by-Country (CbC) Reporting, was published in the *Official Gazette*. There were no material changes to what was previously announced and included in the draft legislation in October, 2017. According to the Resolution, notifications should be submitted by the last working day of March each year at the latest beginning in March 2018, through a digital document signed by the entity's legal representative, addressed to the head of the tax administration. The notification should be sent in a form of a letter signed by the legal representative of the entity to tributacioninter@hacienda.go.cr.

See EY Global Tax Alert, *Costa Rica issues resolution on Country-by-Country Reporting requirements*, dated 20 February 2018.

Czech Republic

On 14 February 2018, the Cabinet of the Czech Republic approved the MLI. The Czech Republic submitted its MLI position at the time of signature listing its reservations and notifications and including 87 covered tax treaties. The MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval (or beginning on the date of the deposit of the instrument of ratification by the Czech Republic – if done after the deposit of the fifth instrument). The MLI will have to be approved by the Czech Parliament and signed by the President. The timeframe of the ratification process is unknown at this point.

Germany

On 7 February 2018, the leadership of both the German Christian Democratic Parties and the Social Democratic Party agreed to form a new government, with Ms. Merkel as the Chancellor, for the legislative period 2017–2021. The multi-party government is based on a coalition agreement, which also includes a small summary of planned tax legislation projects. The Coalition Agreement neither provides for technical details, nor for any certainty as to when and how the agreed on objectives will be achieved. Some of the objectives that have been included are:

- Introduction of measures for appropriate taxation of the digital economy, including equitable taxation of large digital enterprises.
- Full implementation of the EU's Anti-Tax Avoidance Directive (ATAD and ATAD2), which includes in particular an adaption of the German controlled foreign company legislation, added rules governing hybrid structures, and amendments to the German interest limitation framework.

The Coalition and the Coalition Agreement must still be approved by the members of the Social Democratic Party (voting runs between 20 February and 2 March 2018) and a convention of the Christian Democratic Parties scheduled on 26 February 2018.

See EY Global Tax Alert, *Germany's Government–Coalition Agreement includes list of planned tax legislative proposals for 2017–2021*, dated 14 February 2018.

Israel

On 18 December 2017, two draft circulars on transfer pricing were released by the Israeli Tax Authority (ITA) for consultation. One circular focuses on appropriate TP methods relating to distribution, marketing, and sales by multinational enterprises in the Israeli market, while the other focuses on specific profitability ranges for certain transactions.

The latter abovementioned draft circular mentions among others that the ITA adopts Chapter 7 of the OECD's Guidelines, which establishes a markup of 5% on total operating expenses (including stock options) for low value added services that meet the criteria listed in the circular. With regards to marketing services, the ITA adopts a markup between 10%-12% on total operating expenses (including stock options). For low risk distribution activities as specified in the circular, the ITA adopts an operating margin between 3%-4% on total revenues generated in the relevant markets by the Israeli entity.

See EY Global Tax Alert, *Israel's Tax Authority releases draft circulars for comments on transfer pricing methods and profitability ranges*, dated 13 February 2018.

Liechtenstein

On 22 December 2017, an amendment of the Income and Municipal Tax Ordinance as well as an amendment of the Tax Administrative Assistance Act and the respective Ordinance were published in the *Official Gazette*. The new regulations clarify various points regarding the measures enacted in 2017 against BEPS and entered into force on 1 January 2018.

The published regulations include, among others, the application of the current version of the OECD Transfer Pricing Guidelines when determining the transfer prices of transactions with related parties and permanent establishments to ensure compliance with the arm's-length principle. Other measures relate to the documentation requirements (filing upon request) in the form of the Master File and Local File which has to be prepared for the tax year 2018 onwards. Also, the legal basis for the spontaneous exchange of ruling information was established. The provisions on the spontaneous exchange of ruling information apply to tax rulings issued after 1 January 2012 that are still valid on 1 January 2017 as well as those tax rulings issued after 1 January 2017. The respective rulings will be exchanged with foreign tax administrations for the first time in 2018.

See EY Global Tax Alert, *Liechtenstein issues guidance on BEPS measures*, dated 8 February 2018.

Lithuania

On 2 February 2018, the Lithuanian Parliament released a draft bill for the ratification of the MLI. Lithuania submitted its MLI position at the time of signature listing its reservations and notifications and including 55 covered tax treaties. The MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval. Thus far, four jurisdictions have deposited their instrument of ratification, acceptance or approval.

Luxembourg

On 20 February 2018, the Grand-Ducal Regulation on Country-by-Country Reporting was published. This Regulation includes a list of jurisdictions having an active exchange relationship with Luxembourg, and hence is relevant to determine whether a local filing of the CbC report in Luxembourg or in other jurisdictions is required. The Regulation includes two lists, one for financial years starting as of 1 January 2016, and a second list for financial years starting as of 1 January 2017.

Following the above, Luxembourg is also one of the 37 jurisdictions that have declared that CbC reports may be exchanged even for periods before the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the MAAC) is in effect for other purposes. This makes it possible that CbC reports for fiscal years commencing in 2016 are exchanged under the Convention with jurisdictions where otherwise the Convention is only in effect from 2017 or later, so long as both jurisdictions in the exchange relationship have filed such a declaration.

Pakistan

On 9 February 2018, the Federal Board of Revenue issued SRO 144(I)/2018 to amend Chapter VIA of the Income Tax Rules 2002 governing the CbC reporting. According to the new rule, the CbC report for tax year 2017 must be submitted not later than 15 months after the last day of the reporting fiscal year. However, the CbC report for tax year 2017 does not have to be filed if the tax year commences before 1 January 2016. The transmission and exchange of CbC reports shall be furnished electronically via electronic mail to cbcr@fbr.gov.pk. Furthermore, the notification due date is extended until 28 February 2018 instead of 15 February 2018 that was before the amendment.

Peru

On 18 January 2018, the Resolution 014-2018, which sets forth the rules to submit the Local File in Peru, was published in the *Official Gazette*. The Resolution establishes the criteria to determine which taxpayers must submit the Local File as well as the cases in which there is no obligation to submit it. The Resolution lists the information that must be included in the Local File, which mainly refers to intercompany transactions, and whether they meet the arm's-length principle. Also, it contains the requirements for submission, and the cases in which the filing may be rejected. The Local File should be submitted via the electronic Form 3560 in May of each year, while for tax year 2016 the Resolution contains a specific schedule for submission (ranging from 13 April 2018 to 23 April 2018).

See EY Global Tax Alert, *Peru establishes deadline for submitting local file*, dated 24 January 2018.

Russia

On 29 December 2017, Federal Law No. 436-FZ dated 28 December 2017, which establishes several changes to the existing controlled foreign company (CFC) legislation, was signed by the Russian President and published in the official government portal. Among others, the new rule introduced the following amendments: (i) new rules for the process of calculating the CFC taxable base for financial assets transactions; (ii) a rule that the income from certain transactions with derivatives will be considered as active income; (iii) a list of functions of foreign companies performed in Russia which do not trigger Russian corporate tax residence; (iv) rules on the carrying forward of CFC losses incurred within the three years prior to 2015; (v) rules on the distribution of CFC profits; (vi) rules on taxation of individuals upon the sale of assets in case of a CFC liquidation; (vii) rules on the calculation of the CFC taxable base of a foreign consolidated group; (viii) rules on the CFC exemption for multi-tier ownership structures; (ix) extension of the list of activities of nonresident entities that do not lead to a permanent establishment presence in Russia; and (x) exemption of CFC profits from transfer pricing rules. Most of the new rules apply to CFC profits calculated from 2016 onwards, but in a few cases the amendments are effective only from 1 January 2017.

Singapore

On 19 February 2018, as part of Budget 2018, Singapore announced the introduction of a Goods and Services Tax (GST) on imported services to ensure a fair and resilient tax system in a digital economy, to be effective from 1 January 2020. Business to business imported services will be taxed via a reverse charge mechanism. Only businesses that make exempt supplies or do not make any taxable supplies need to apply the reverse charge. The taxation of business to consumer imported services will take effect through an Overseas Vendor Registration regime, which requires overseas suppliers and electronic marketplace operators that make significant supplies of digital services to local consumers to register with the Inland Revenue Authority of Singapore (IRAS) for GST. The IRAS will release further details by end February 2018.

The proposed OVR does not affect e-commerce for low value goods. For imports of low-value goods (where the goods are imported by air or post and the value is below S$400), it is still under review by the government.

See EY Global Tax Alert, *Singapore releases Budget 2018*, dated 26 February 2018.

Slovenia

On 15 February 2018, the Slovenian Government presented to Parliament a draft bill to ratify the MLI where it was unanimously voted by the members of the Parliament. The MLI will be ratified for Slovenian purposes after 15 days have passed from the date the Act was published in the *Slovenian Official Gazette*. The MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval. Thus far, four jurisdictions have deposited their instrument of ratification, acceptance or approval.

Turkey

On 5 December 2017, the Turkish Government published, in the *Official Gazette*, Law No.7061 approved by the Turkish Parliament, introducing among others Value Added Tax (VAT) as of 1 January 2018 with respect to nonresident persons (real or legal) who engage in e-commerce activities with Turkish resident individuals who are not VAT taxpayers in Turkey. On 31 January 2018, the Turkish Revenue Administration issued a Communiqué regarding this tax liability. The Communiqué provides a transition period for the first tax return and accordingly the VAT on the e-services provided during January, February and March 2018 must be declared by 24 April 2018. Nonresident service providers should declare the VAT by registering as a "VAT Liability Exclusive to the Electronical Service Suppliers" in Turkey with a registration form. However, the form has not been issued yet by the tax authority. It is expected that the form will be issued by the end of the March, 2018. After completion of registration procedures, the corresponding VAT must be paid by 26 April 2018 through the website (www.gib.gov.tr) of the Department of Revenue Administration and could be made with the debit card or credit card of authorized banks.

The scope of the e-services are not explicitly stated in the Communiqué. Thus, it is understood that all the services provided electronically and through online means would fall under the scope of e-services.

See EY Global Tax Alert, *Turkish Tax Authority publishes VAT guidance for nonresidents providing E-services to Turkish resident individuals*, dated 31 January 2018.

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