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OECD

On 22 March 2018, the OECD announced that Slovenia has deposited its instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI), becoming the fifth jurisdiction to do so. This means that 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, i.e., on 1 July 2018. Earlier, the Republic of Austria (22 September 2017), the Isle of Man (19 October 2017), Jersey (15 December 2017), and Poland (23 January 2018) deposited their instruments with the OECD. These five jurisdictions have confirmed their MLI positions without making any changes, with the exception of Slovenia that removed its tax treaty with Germany from its list of Covered Tax Agreements (CTAs).

With respect to a specific bilateral tax treaty, the provisions of the MLI will have effect after all parties to a CTA have deposited their instrument of ratification, acceptance or approval of the MLI and a specified time has passed. The timing differs for different provisions. With respect to taxes withheld at source on amounts paid or credited to nonresidents, the provisions of the MLI will have effect where the event giving rise to such taxes occurs on or after the first day of the calendar year that begins on or after the latest of the dates on which the MLI enters into force for each of the Contracting Jurisdictions to the CTA. With respect to all other taxes levied by that Contracting Jurisdiction, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period, if all Contracting Jurisdictions notify the Depositary that they intend to apply such shorter period) from the latest of the dates on which this Convention enters into force for each of the Contracting Jurisdictions to the CTA.

Building a better working world

See EY Global Tax Alert, *BEPS Multilateral Convention will enter into force on 1 July 2018 for first five jurisdictions*, dated 23 March 2018.

On 16 March 2018, the OECD released *Tax Challenges Arising from Digitalisation – Interim Report 2018* (the Interim Report) in connection with Action 1 of its Action Plan on Base Erosion and Profit Shifting (BEPS). The Interim Report sets out the BEPS Inclusive Framework's (IF) agreed direction of work on digitalization and the international tax rules through 2020.

The Interim Report provides an in-depth analysis of the main features commonly found in certain highly-digitalized business models and value creation in the digitalized age. It also considers the current state of implementation (and impact) of the BEPS package, in particular of those BEPS Action Points that are most relevant to digitalization, and further provides an overview of unilateral measures that have been introduced by countries in this area.

The Interim Report concludes that there is no consensus on the merits of, or need for, interim measures, noting that *a number of countries are opposed to such measures on the basis that they will give rise to risks and adverse consequences*. It does, however, include a framework that can be considered when designing interim measures to address the tax challenges of digitalization, as well as an outline of the possible long-term risks that will need to be addressed in designing interim taxes.

Further work will need to be carried out on digitalization analyses. An update on this work will be provided in 2019, as BEPS IF members work towards a consensus-based solution by 2020. On 20 March, the G20 welcomed the Interim Report, noting its commitment to work towards the same goal.

See EY Global Tax Alert, *The OECD's interim report on tax challenges arising from digitalisation: An overview*, dated 20 March 2018.

European Union

On 21 March 2018, the European Commission (the Commission) issued two proposals (the Proposals) for new Directives that will deliver new ways to tax digitalized forms of business activity.

The Commission's proposals focus on a two-phased approach: an interim solution, referred to as the Digital Services Tax (The DST or DST proposal) and a longer term *Council Directive laying down rules relating to the corporate taxation of a significant digital presence* (SDP or the Significant Digital Presence proposal).

The DST proposal is for a gross revenues (i.e., turnover) tax, set at a uniform rate of 3% across all European Union (EU) Member States, while the Significant Digital Presence proposal focuses on a new concept of digital permanent establishment (PE), along with revised profit attribution rules.

According to the Question and Answer (Q&A) document issued alongside the proposal, this DST will ensure that those activities which are currently not effectively taxed would begin to generate immediate revenues for Member States to the tune of an estimated €5 billion a year. If the revenues were split by gross domestic product, this would imply revenues of approximately €3.4b to the five Member States that have been publicly in favor of this tax, being France, Germany, Italy, Spain and the UK.

In a press release issued alongside the proposals, the Commission notes that the SDP measures could eventually be integrated into the scope of the Common Consolidated Corporate Tax Base, but sets out no distinct interdependency between these two activities.

Both solutions would be delivered by new Directives. The proposals will be submitted to the Council for adoption and to the European Parliament for consultation, and the Commission hopes that final adoption will occur by 31 December 2019, for 1 January 2020 transposition into national law.

The Q&A document, noted above, sets out the Commission's justifications for action, proposed delivery methods and potential timing. A factsheet, also issued with the proposal, sets out additional contextual information.

See EY Global Tax Alert, *European Commission issues proposals for taxation of digitalized activity*, dated 21 March 2018.

On 21 March 2018, the Commission released a Communication on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations. The adopted Communication aims to ensure that EU external development and investment funds cannot be channeled or transited through entities in countries listed on the EU's list of non-cooperative tax jurisdictions (the EU list). In order to safeguard the EU's development policy, an exception is made for direct financing, where a project is physically implemented in a listed non-cooperative tax jurisdiction and is not linked to money-laundering, terrorism financing, tax fraud or tax evasion.

The Communication aims to facilitate the implementation of compliance requirements in order to ensure that EU funding is routed according to sound tax good governance standards. The released Communication does not create any new legal obligations. The Commission will provide updates on the information contained in the Communication as needed in order to adapt its content when and where appropriate taking into account the experience acquired in implementing it.

See EY Global Tax Alert, *European Commission adopts first counter-measures on listed non-cooperative tax jurisdictions*, dated 22 March 2018.

On 13 March 2018, the Council of the European Union (the Council) reached a political agreement on the draft Directive amending Directive 2011/16/EU with respect to the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (the Amendment).

While the overall objective of the Amendment is to provide EU Member States (Member States) with an additional tool with which to tackle perceived tax avoidance and aggressive tax planning, the Amendment leaves those terms undefined, instead imposing a new obligation on EU-based tax consultants, banks, lawyers, and other intermediaries to disclose any cross-border arrangement that contains one or more features or "hallmarks," if they are identified as intermediaries for the purposes of the Amendment. The geographical scope of the new reporting requirements comprises arrangements within the EU, as well as between Member States and third countries.

The hallmarks cover a broad range of structures and transactions, including certain deductible payments which are taxed at a rate of zero or nearly zero when received and intercompany transactions which meet specific transfer pricing hallmarks, such as any transfer of hard-to-value intangibles. Some of the hallmarks will only trigger reporting requirements when they also fulfil the main benefit test. Where intermediaries are outside EU jurisdiction or are prevented by law from disclosing information, the obligation to disclose is transferred to the taxpayer. Following the reporting of the arrangements, the information about the arrangements specified by the Amendment will be automatically exchanged between Member States.

Member States must adopt and publish national laws required to comply with the Amendment by 31 December 2019, at the latest. National laws will provide for penalties for non-compliance, which according to the Amendment should be scoped in a way that is effective, proportionate and dissuasive.

Member States will apply the new reporting requirements from 1 July 2020, but such requirements will cover arrangements where the first step of implementation begins after the entry into effect of the Amendment, being 20 days after publication of the Amendment into the *Official Journal of the European Union*. Such entry into effect is foreseen in June or July 2018. The first information shall be reported by 31 August 2020 and exchanged by 31 October 2020.

See EY Global Tax Alert, *Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers*, dated 14 March 2018.

Cayman Islands-Guernsey

On 8 March 2018, Cayman Islands and Guernsey signed a Competent Authority Agreement (CAA) to exchange Country-by-Country (CbC) reports. According to the provisions of the CAA, the Competent Authority of the Cayman Islands will annually exchange with the Competent Authority of Guernsey on an automatic basis the CbC report received from each Reporting Entity that is resident for tax purposes in the Cayman Islands, provided that, on the basis of the information provided in the CbC Report, one or more Constituent Entities of the multinational enterprise (MNE) group of the Reporting Entity are resident for tax purposes in Guernsey or are subject to tax with respect to the business carried out through a PE situated in Guernsey. 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.

Colombia-Italy

On 26 January 2018, Colombia and Italy signed a tax treaty (the Treaty). The Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits in inappropriate circumstances), and Action 7 (preventing the artificial avoidance of permanent establishment status).

The Treaty contains, for example, the new preamble language that clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. In cases where a person other than an individual is resident in both Colombia and Italy (i.e., a dual resident entity) both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. Furthermore, the Treaty contains a Principal Purpose Test (but not a Limitation on Benefits Clause) and the PE recommendations included in the BEPS project, including an anti-fragmentation clause, the expanded definition of agency PE and making all the specific activities exceptions subject to the preparatory or auxiliary requirement.

See EY Global Tax Alert, *Colombia signs tax treaty with Italy*, dated 26 March 2018.

Denmark

On 12 March 2018, the OECD released the third batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Denmark was among the assessed jurisdictions in the third batch. Denmark 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 Denmark meets most of the elements of the Action 14 minimum standard. In the next stage of the peer review process, Denmark's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

See EY Global Tax Alert, *OECD releases Denmark peer review report on implementation of Action 14 minimum standard*, dated 22 March 2018.

India

On 14 March, 2018, the Indian Finance Bill, 2018, which is currently in the enactment stage, was amended with respect to the due date for the filing of a CbC report by an Indian constituent entity in the following cases: (i) the ultimate parent entity (UPE) is not obligated to file a CbC report in its home jurisdiction; (ii) the UPE is located in a jurisdiction with which India does not have a CbC Reporting information exchange agreement in place; or (iii) the UPE is located in a jurisdiction where there has been a systemic failure. According to the amendment, in such cases, the due date for the filing of an Indian CbC report would be prescribed by the Indian tax administration (i.e., it would not be 31 March 2018, which is the current due date).

Indonesia

In March 2018, the Directorate General of Taxation (DGT) published on its website a list of countries having an international agreement that provides for the exchange of information with Indonesia, as well as a list of Qualifying Competent Authority Agreements in place for each fiscal year. This information is relevant for determining whether an MNE group could be subject to local CbC report filing in Indonesia.

Liechtenstein

On 20 February 2018, the Liechtenstein Government released a consultation report on proposed amendments to the *Income and Municipal Tax Act*, which are driven by the review of international tax practices by the EU Code of Conduct Group and are intended to ensure that Liechtenstein's tax law is in line with EU-accepted tax standards. Among the proposed amendments, the draft bill includes: (i) implementation of anti-avoidance rules in connection with dividend income and capital gains derived from participations in foreign entities; (ii) implementation of anti-avoidance rules regarding the notional interest deduction; and (iii) elimination of tax deductions for depreciation or value adjustments on participation. The consultation phase for the proposed tax law amendments will run until 9 April 2018. Following the consultation period, the draft tax law will be submitted to Parliament for approval while it is expected that the new rules will apply for the tax year 2019.

See EY Global Tax Alert, *Liechtenstein releases consultation report on implementation of anti-avoidance rules into tax law*, dated 20 March 2018.

Norway

On 12 March 2018, the OECD released the third batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Norway was among the assessed jurisdictions in the third batch.

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

See EY Global Tax Alert, *OECD releases Norway peer review report on implementation of Action 14 minimum standard*, dated 20 March 2018.

Poland

On 15 March 2018, the Minister of Finance signed and published a Decree on the extension of deadlines for performing certain obligations with respect to local transfer pricing (TP) documentation.

The purpose of the Decree is to extend by six months the time limits for:

- Preparation of the Local File documentation
- Confirmation of the preparation of Local File documentation
- Submission of a simplified Corporate Income Tax (CIT)-TP and Personal Income Tax-TP report

Without the extension, the above obligations would be due within the deadline for submitting the annual tax return for a given year. The deadline for submitting the return is by the end of the third month of the following tax year (e.g., the return should be filed by the end of March 2018 for the year ending 31 December 2017). In light of the Decree, the actual deadline is by the end of ninth month of the following tax year.

The extension of the deadlines covers the above-mentioned obligations arising in 2018 (i.e., with reference to Local File documentation, confirmation of preparation of local documentation within the deadline and the CIT-TP statement for 2017) and 2019 (i.e., with reference to Local File documentation, confirmation of preparation of local documentation within the deadline and the CIT-TP statement for 2018).

The Ministry of Finance is currently also contemplating changing the documentary thresholds and excluding "small" entities from the obligation to prepare Local File documentation. No further details are currently available in this respect.

Russia

On 21 February 2018, Government Order No. 184 of 21 February (the Order) was published on the Government's official website. The order authorizes the Federal Tax Service to negotiate and sign bilateral treaties on the exchange of financial information and CbC reporting with countries that are not parties to multilateral treaties on the exchange of information or with countries whose administrative practices are based on the conclusion of bilateral treaties.

South Africa

On 21 February 2018, an amended draft regulation on electronic services for Value Added Tax (VAT) was published in South Africa, after its announcement by the Minister of Finance during the South Africa's 2018 National Budget Speech on the same day. The current regulation's definition of electronic services includes a specific list of services and only foreign suppliers of these services fall within the ambit of the South African VAT regime. With an aim to broaden the scope of this definition, the draft regulation proposes the deletion of the specific types of services currently regarded as electronic services and the inclusion of any type of service supplied electronically. The only exclusions provided under the draft regulation are educational services supplied by a person regulated by an educational authority in an export country and telecommunications services. The proposed amendments will come into effect on 1 October 2018.

See EY Global Tax Alert, *South Africa amends definition of e-services for VAT purposes*, dated 27 February 2018.

Spain

On 12 March 2018, the OECD released the third batch of peer review reports relating to the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Spain was among the assessed jurisdictions in the third batch.

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

See EY Global Tax Alert, *OECD releases Spain peer review report on implementation of Action 14 minimum standard*, dated 16 March 2018.

Thailand

On 13 March 2018, the proposed amendment of Thai tax law was brought up for discussion at a cabinet meeting. In light of the digital economy, Thailand plans to impose tax on digital currency investment, including cryptocurrencies, digital tokens, and initial coin offerings. Basically, income from digital assets will be treated as taxable income (like dividends or capital gains), and subject to Thai taxes, in a similar manner to other ordinary income. The proposed amendment is expected to be included in the agenda for cabinet approval in the near future.

United Kingdom (UK)

On 13 March 2018, the UK Government released an update on the Government's thinking in respect of the taxation of companies operating in the digital economy which builds on the original paper published as part of the Autumn Budget 2017. The updated paper reiterates the Government's view that:

- The participation and engagement of users is an important aspect of value creation for certain digital business models and is likely to be reflected through several channels, such as the provision of user-generated content or as a contribution to certain intangibles such as brand.
- The preferred and most sustainable solution to the tax challenges of digitalization is a multilateral reform of the international corporate tax framework to reflect the value of user participation. The paper sets out some of the Government's initial thinking on developing multilateral solutions.
- In the absence of international reform, there is a need to consider whether interim measures, such as revenue-based taxes, may be necessary. The paper explores what the Government considers are some of the important considerations regarding the scope and design of an interim measure, and the steps that could be taken to ensure that such a measure is targeted and protects start-ups and growth companies.

While this is essentially the same position as that set out in the original position paper, following consultation the Government now goes into more detail on how new rules might apply and the challenges that need to be addressed as measures are developed. However, the paper does not set out the Government's final position on these issues. Instead it sets out the Government's updated thinking, with a view to engaging further with businesses and other stakeholders to better understand and resolve some of the outstanding questions.

See EY Global Tax Alert, *UK issues position paper update on corporate tax and the digital economy*, dated 14 March 2018, and *UK issues Spring Statement and associated documents*,dated 14 March 2018.

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