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OECD

On 17 May 2018, the Inclusive Framework on BEPS released updates to the results of reviews of preferential tax regimes conducted in connection with BEPS Action 5. According to the update, four new regimes (Lithuania, Luxembourg, Singapore, Slovak Republic) were designed to comply with the Forum on Harmful Tax Practices' standards, four other regimes (Chile, Malaysia, Turkey and Uruguay) were abolished or amended to remove harmful features, while another three regimes (Kenya and two Viet Nam regimes) do not relate to geographically mobile income and/or are not concerned with business taxation, as such posing no BEPS Action 5 risks and have been found to be out of scope. The [updated table](#) of regime results is available at the OECD's website.

On 9 May 2018, the OECD invited comments on the scope of the [future revision of Chapter IV](#), "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes" of the Transfer Pricing Guidelines (TPG), and the [future revision of Chapter VII](#), "Special Considerations for Intra-Group Services," of the TPG. Interested parties should provide their comments by 20 June 2018 by email to TransferPricing@oecd.org. All comments received will be made publicly available.

In May 2018, Bahrain, Saint Lucia and the United Arab Emirates (the UAE) joined the BEPS Inclusive Framework bringing to 116 the total Members in the framework. As new BEPS Members, they have 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). Bahrain, Saint Lucia and the UAE 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.

Australia

On 8 May 2018, Australia's Federal Treasurer, Scott Morrison, delivered the Australian Federal Budget, *Federal Budget 2018 - punting on growth*.

Key business tax measures announced include:

- ▶ Changes to the tax treatment of research and development (R&D) expenditure with positive and negative impacts for companies. An intensity test introduced for larger companies will see improved incentives of up to 12.5% for R&D-intensive companies, but reduced to 4% for the least R&D-intensive companies. These compare with the current 8.5% and (previously) 10% incentives for larger companies.
- ▶ A consultation paper to be released in the next few weeks covering Australia's participation in the G20 countries' review of digitization of business and changes required to tax systems.

Key integrity measures announced include:

- ▶ Establishing thin capitalization integrity measures to align the valuation of intangible and internally-generated assets for tax and financial reporting purposes and, closing access to thin capitalization tests intended only for outbound investors
- ▶ Removing the ability of Managed Investment Trusts and Attribution Managed Investment Trusts to apply capital gains tax discounts at the trust level
- ▶ Launching transparency initiatives to expand the definition of a "significant global entity" from 1 July 2018, so more companies and entities will fall within the ambit of Australia's Multinational Anti-Avoidance Law, Diverted Profits Tax, General Purpose Financial Statements and Country-by-Country Reporting (CbCR) requirements in addition to an increased exposure to penalties
- ▶ Instituting numerous future black economy measures including denial of deductions for some payments where there has not been compliance with Pay As You Go (PAYG) rules
- ▶ Providing major funding of the Australian Taxation Office (ATO) "big data" compliance initiatives creating greater ATO data analytics which will require corporate readiness

See EY Global Tax Alert, [Australia issues 2018-19 Federal Budget](#), dated 10 May 2018.

Austria

On 10 April 2018, Austria's Ministry of Finance issued a draft bill for the *Annual Tax Act 2018* which provides for several amendments to Austrian tax laws and contains measures for the implementation of the European Union (EU) Anti-Tax Avoidance Directive (ATAD). Note that the draft bill has been issued for public consultation. Changes during the ongoing legislative process are still possible. It is currently expected that the final law will be passed in early summer 2018. Most of the amendments will generally be effective from 1 January 2019, with the exception of the new controlled foreign companies (CFC) regime, which will apply for fiscal years starting after 30 September 2018.

The draft bill includes, among others, the following measures:

- (i) Introduction of CFC rules. Based on the proposed rules, specific categories of income derived by low-taxed nonresident entities (or permanent establishments) will be attributed to the Austrian resident controlling entity (i.e., Option A). The draft bill excludes from the scope of application foreign entities that derive only one-third or less of their income from the listed income categories and financial undertakings if one-third or less of the entity's income from listed categories comes from transactions with the Austrian resident controlling entity or its associated enterprises;
 - (ii) Amendments to the existing exit tax rules by decreasing to five instead of seven the number of installments for the payment of an exit tax due and by introducing specific circumstances under which the deferral of payment will be immediately discontinued and tax debt becomes recoverable;
 - (iii) Amendments to the wording of the existing general anti-avoidance rule in line with ATAD;
 - (iv) Amendments to the switch over clause which will be applicable to income qualifying for the international participation exemption and income from qualified portfolio shareholdings of at least 5% if the focus of the foreign distributing entity's business operations is to derive low-taxed passive income as defined under the new CFC rules.
- The bill does not propose an 30% EBITDA (earnings before interest, taxes, depreciation and amortization) rule, as Austrian tax administration took the opinion that Austria had national targeted rules for preventing BEPS risks at 8 August 2016, which are equally effective to the interest limitation rule set out in the ATAD and thus Austria may apply these targeted rules at the latest until 1 January 2024.

In addition, the bill proposes amendments to the rules governing the deductibility of intragroup interest and royalty payments, which provide that such payments are not deductible if the income of the recipient is either not taxed or subject to a tax rate of less than 10%. According to the bill, for determining the effective tax rate of 10%, any refunds or credits granted to the receiving entity or its shareholders must be taken into account, even if such credit or refund is granted in the nine subsequent years.

See EY Global Tax Alert, [Austria's Ministry of Finance publishes draft CFC rules](#), dated 4 May 2018.

Bahrain

On 3 May 2018, Bahrain deposited its instrument of ratification for the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention). This is pursuant to the ratification of Law 13/2018 by Bahrain to join the Convention which was signed by Bahrain in Paris on 29 June 2017 while maintaining specific reservations. The Convention will enter into force for Bahrain on 1 September 2018, i.e., on the first day of the month following the expiration of a period of three months after the deposit of the instrument of ratification. The Convention will be an important platform that will enable Bahrain to implement initiatives on international tax cooperation, including the automatic exchange of information (on request, spontaneous or automatic), including Country-by-Country (CbC) reports under BEPS Action 13.

Brazil - Singapore

On 7 May 2018, Brazil and Singapore signed an income 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).

The Treaty contains, for example, 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. Furthermore, the Treaty contains a Limitation on Benefits (LOB) Clause and a Principal Purpose Test (PPT).

Brazil - Switzerland

On 3 May 2018, Brazil and Switzerland signed a treaty for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (the Treaty). The Treaty includes provisions based on the OECD BEPS action plan, such as Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

The Treaty contains a PPT and an LOB clause. The Treaty also enables taxpayers to present a case for mutual agreement procedure to the competent authorities of either Contracting State.

See EY Global Tax Alert, [Brazil and Switzerland sign double tax treaty](#), dated 14 May 2018.

Costa Rica

On 3 May 2018, the Resolution [DGT-R-25-2018](#) (Resolution), regulating a project within Costa Rica's Tax Administration for implementation of the OECD/G20 BEPS Actions and international tax transparency standards, was published in the *Official Gazette*. The Resolution's main purpose is to establish a full-time work team with functions related to monitoring and discussing publications, questionnaires, and guidelines issued by the OECD and other international organizations in relation to international tax transparency standards, BEPS and related topics. The Resolution also sets out other objectives, functions and an initial period of two years for the validity of the project. The Resolution will be effective from 1 May 2018.

France

On 24 April 2018, the French Tax Authorities launched a public consultation regarding amendments to the corporate income tax rules that aims to align French legislation with EU law (e.g., ATAD) and some of the BEPS recommendations. The public consultation, which runs until 11 May 2018 (with a potential extension), includes the following topics:

- ▶ Application of the modified nexus approach to industrial property (rules regarding French patent box)
- ▶ Amendments to the French tax consolidation regime in order to ensure its compatibility with EU
- ▶ Implementation of the interest limitation rule of the EU ATAD

It is expected that these changes would be included in the Finance Bill for 2019, which will be presented around September 2018.

On 19 April 2018, the French Senate unanimously approved the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). The MLI has been sent to the French National Assembly for further approval. The MLI will enter into force for France on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of the instrument of ratification of the MLI with the OECD.

Guernsey

On 16 April 2018, Guernsey's Income Tax Office published on the government portal with respect to CbCR, *A Guide to the Appropriate Use of Information Exchanged* ([the Guidance](#)). The Guidance includes Guernsey's approach to the requirement that relevant information exchanged is to be used by the recipient tax administration appropriately, in accordance with OECD BEPS Action 13. In particular, the Guidance describes the legal background to CbCR, and clarifies the meaning of "appropriate use" for CbCR purposes. According to the Guidance, the use of CbCR information is restricted to high-level transfer pricing and other BEPS-related risk assessment and to economic and statistical analysis.

Hong Kong

On 14 May 2018, the Hong Kong Government proposed amendments to the previously tabled legislative bill regarding the introduction of three-tiered approach for transfer pricing documentation. Among all, the Government made several concessions on the preparation of the master file and local file, including: (i) exemption of reporting domestic transactions with no tax effect; (ii) relaxation of the reporting threshold (taxpayers will be exempted if any two of the following conditions are satisfied: (1) total annual revenue not exceeding HK\$400 million, (2) total assets not exceeding HK\$300 million, and (3) no more than 100 employees); and (iii) extension of the preparation time to nine months after the end of the entity's accounting period. The amended legislative bill has been introduced to the Legislative Council for debate.

Korea

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. Korea was among the assessed jurisdictions in the [third batch](#).

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

See EY Global Tax Alert, [OECD releases Korea peer review report on implementation of Action 14 minimum standard](#), dated 16 May 2018.

Netherlands

On 11 May 2018, the Dutch State Secretary for Finance published a Decree on the application of the arm's-length principle and the OECD's transfer pricing guidelines for multinational enterprises (MNEs). The Decree replaces the previous decree from 2013 and incorporates the results of OECD's BEPS plan to align the outcome of transfer pricing with the value creation within an MNE. The Decree provides guidance on the interpretation of the arm's-length principle specifically with respect to aspects of the OECD guidelines that require clarification or leave room for a domestic interpretation.

See EY Global Tax Alert, [Dutch Finance Secretary publishes new Decree on application of the arm's-length principle and OECD Guidelines](#), dated 18 May 2018.

Russia

On 3 May 2018, the Procedure setting forth the process for managing bilateral and multilateral Advanced Pricing Agreements (APAs) was officially published in Russia. The adoption of the Procedure should provide a practical framework for the conclusion of APAs with the involvement of one or more foreign competent authorities and should enable a practical mechanism aimed at preventing transfer pricing disputes, as recommended, inter alia, by OECD BEPS Action 14. The Procedure is expected to be effective as of 4 June 2018.

See EY Global Tax Alert, [Russia's bilateral and multilateral APA Procedure officially published](#), dated 10 May 2018.

In May 2018, Russia's Federal Tax Services (FTS) issued Orders establishing the format for CbC reports and CbCR Notification as well as instructions for completing and filing these forms. Both the CbC report and the CbCR Notification are to be submitted electronically in XML format and must be prepared in Russian, while it is permissible to also provide the information in a foreign language. The Orders set forth: (i) requirements relating to completion of the XML forms of the CbC report and CbCR Notification; (ii) the information contained in the CbC report and Notification; and (iii) instructions on completion of these elements.

See EY Global Tax Alert, [Russia approves format for Country-by-Country Reports and Notifications](#), dated 14 May 2018.

Spain

On 30 April 2018, Spain released its *2018 Stability Programme and Budgetary Plan Update* (the 2018 program update), which proposes the introduction of a Digital Services Tax (DST) to be effective in 2018 and onwards. Even though no draft of this proposed new tax has been released yet, it will presumably be aligned with the proposal made by the EU to tackle challenges of taxing digitalized business.

See EY Global Tax Alert, [Spain proposes a Digital Services Tax to be effective in 2018](#), dated 17 May 2018.

Switzerland

On 8 May 2018, the Swiss Federal Department of Finance announced that the Swiss Federal Tax Administration (SFTA) has transmitted for the first time information on advance tax rulings to spontaneous exchange of information partner states. The exchange concerned the content of tax rulings meeting the criteria for the exchange of information which were still effective on 1 January 2018. In a first batch, the SFTA has transmitted 82 reports to a total of 41 states (a number of these reports were exchanged with several partner states).

Switzerland has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the exchanges were made within the framework of the BEPS project.

Thailand

On 13 May 2018, two Emergency Decrees were published in the *Royal Gazette* to enact the law (the Law) related to: (i) digital asset business operations; and (ii) Thai tax ramifications on certain income earned from digital assets. The Law is effective as of 14 May 2018 and aims to govern and regulate business operations related to digital assets as cryptocurrencies and digital tokens have increasingly been used as tools to publicly raise funds, as a medium of exchange, and similar activities. Failure to comply with the rules will subject a digital asset business operator to the imprisonment and/or fine. Further, income from digital assets is subject to Thai tax in a manner similar to other ordinary income. Such income received by a foreign person would generally be subject to the 15% withholding tax.

See EY Global Tax Alert, [Thailand enacts emergency decrees on digital assets](#), dated 21 May 2018.

United States

On 14 and 16 May 2018, the Internal Revenue Service (IRS) added Liechtenstein and Mauritius respectively to the list of countries with which the United States has signed a Competent Authority Agreement (CAA) for the automatic exchange of CbC reports. The IRS maintains a website that includes an up-to-date listing of the jurisdictions with which the US Competent Authority has entered into CAAs and the jurisdictions that are in negotiations for a CAA. The IRS is in the process of negotiating CAAs with another nine countries and is expected to update this database as other agreements are concluded.

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