

## The Latest on BEPS - 18 June 2018

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### OECD

On 5 June 2018, the OECD added Serbia to the list of countries that have deposited their instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI) - bringing the total number to six. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Serbia has confirmed its preliminary MLI positions without any change. The MLI will enter into force for Serbia on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by Serbia of its instrument of ratification, acceptance or approval, i.e., on 1 October 2018. For Serbia, based on the current number of instruments of ratification, acceptance or approval that have been deposited with the OECD, the first three treaties affected by the MLI will be those with Austria, Poland and Slovenia, taking effect during 2019. More specifically, the applicable provisions of the MLI will have effect from 1 January 2019 for taxes withheld at source on amounts paid or credited to a nonresident while for all other taxes levied by Serbia, the applicable provisions of MLI will have effect six months after 1 October 2018, being from 1 April 2019. Additional jurisdictions are expected to finalize their ratification procedures of the MLI during 2018.

### European Union

On 5 June 2018, the Council of the European Union (EU) Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU with respect to mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (the Directive) was published in the [Official Journal of the European Union](#). The Directive will enter into force 20 days after its publication. This means that the Directive will enter into force on 25 June 2018.

Cross-border reportable arrangements where the first step of implementation is taken between the date of entry into force of the Directive (25 June 2018) and the date of application of the Directive (1 July 2020), will have to be reported by 31 August 2020 and are to be exchanged between EU Member States by 31 October 2020.

The scope of the cross-border arrangements to be reported is relatively broad and may lead to extensive reporting obligations for both intermediaries and – mainly corporate, but also individual – taxpayers. Reporting obligations for cross-border arrangements are triggered by certain hallmarks (or characteristics). These hallmarks target a relatively wide range of cross-border arrangements.

See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.

## Andorra-Cyprus

On 18 May 2018, Andorra and Cyprus signed a tax treaty (the Treaty) which contains some treaty-based BEPS recommendations from Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

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. It also contains a Principal Purpose Test. Moreover, the Treaty enables taxpayers to present a case for mutual agreement procedure to the competent authorities of either Contracting State.

Both Andorra and Cyprus have signed the BEPS MLI prior to signing this Treaty. For the MLI provisions to have effect on this new Treaty, both jurisdictions would need to include it first in their respective list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made by that respective jurisdiction.

## Andorra

On 16 May 2018, Andorra enacted comprehensive tax reform, which entered into force on 17 May 2018 (Law 6/2018, of 19 April, amending Law 95/2010, of 29 December, on Corporate Income Tax), through publication

in the *Official Gazette*. Among other measures, the law introduced Country-by-Country (CbC) Reporting (CbCR) rules and amended the patent box regime to align it to the recommendations in BEPS Action 5.

All Andorra tax resident entities that are ultimate parent entities (UPEs) of a multinational enterprise (MNE) group with annual consolidated group revenue equal to or exceeding €750 million have to prepare a CbC report for financial years starting on or after 1 January 2018. Unless a surrogate parent entity (SPE) is appointed, any other entity of the group that is resident in Andorra will have to prepare and submit the CbC report if the UPE is not resident in Andorra and any of the following conditions are met: (i) it is not obliged to file a CbC report in its country of residence; (ii) there is not a sufficient and qualifying exchange of information instrument between Andorra and that jurisdiction in place; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. The CbC report shall be filed no later than 12 months after the last day of the reporting fiscal year of the MNE group (the non-compliance would be considered as a low-tax offense with a penalty amounting to €1,000 regarding the first offense and €3,000 regarding following offenses). Furthermore, an Andorra group entity of an MNE group is required to notify the Ministry of Finance if it is a UPE or an SPE within the period for filing the corporate income tax return of the reporting fiscal year (i.e., during the month following the six months after the conclusion of the fiscal year). Moreover, every Andorra resident constituent entity that is not a UPE or an SPE, is required to notify the tax authorities in the same period about the identity and tax residence of the entity filing the CbC report (The non-compliance would be considered as a low-tax offense with a penalty amounting to €1,000 regarding the first offense and €3,000 regarding following offenses).

Based on the adopted law, the patent box regime is amended to provide for an 80% exemption on net income derived from the licensing of patents, utility models and copyrighted software programs only when certain requirements are met. To benefit from this exemption a number of requirements must be met (e.g., the taxpayer must exploit the intangible asset in its own name and in the course of its business activity, and the taxpayer must deposit the accounts necessary to determine the income and expenses in connection to each asset licensed).

## Denmark

On 31 May 2018, the Danish Minister of Taxation published a draft bill for the implementation of the EU's anti-tax avoidance directive (the ATAD) into Danish law. It is expected that a final bill will be presented in Parliament in October 2018 and it will be adopted before the end of 2018.

The proposal includes the following rules: (i) existing Danish tax law contains a court-based anti-avoidance rule with a limited scope. The draft bill introduces a GAAR in accordance with Article 6 of the ATAD that will apply from 1 January 2019 to both resident and nonresident companies; (ii) the draft bill retains approach A, i.e., CFC taxation of non-distributed financial income, of the existing Danish CFC rules with some amendments. More specifically, the asset test is abolished, the income test is lowered from 50% to 33.3%, and the concept of financial income is expanded to cover other income generated from intellectual property. The new CFC rules will be applicable from income years starting 1 January 2019 and thereafter; (iii) the existing earnings before interest and tax (EBIT) rule will be substituted by an earnings before interest, taxes, depreciation and amortization (EBITDA) rule in accordance with the ATAD. Based on the proposal, exceeding borrowing costs may only reduce EBITDA by up to 30%. The proposed legislation also includes a safe harbor of DKK22.3 million (equal to €3 million). The new EBITDA rule will be applicable for income years starting as from 1 January 2019; (iv) the current exit tax rules will be amended so as the maximum period of deferral will be five years. Also, Denmark will recognize the arm's-length price of the assets as tax basis when the assets are brought under Danish tax jurisdiction. The amendments on the exit rules will be applicable from income years starting 1 January 2020 and thereafter; and (v) new rules on hybrid mismatches will be introduced addressing double deductions, deductions without inclusion, deductions without inclusion regarding hybrid entities and permanent establishments, as well as double non-taxation of disregarded permanent establishments and reverse hybrid companies. The new rules will be applicable from 1 January 2020.

See EY Global Tax Alert, [Denmark publishes draft bill to implement EU ATAD](#), dated 5 June 2018.

## Finland - Hong Kong

On 24 May 2018, Finland and Hong Kong signed a tax treaty (the Treaty) which contains some treaty-based BEPS recommendations from Action 6 (preventing the granting

of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

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. The Treaty also provides that in cases where a person other than an individual is resident in both Finland and Hong Kong, both competent authorities shall endeavor to determine by mutual agreement, the Contracting State of which the person shall be deemed to be a resident. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Treaty except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States. Furthermore, the Treaty contains a main purpose test which is on the lines of the Principal Purpose Test of the final report on Action 6. The Treaty enables taxpayers to present a case for mutual agreement procedure to the competent authorities of either Contracting State.

Both Finland and Hong Kong have signed the BEPS MLI prior to signing this Treaty. For the MLI provisions to have effect on this new Treaty, both jurisdictions would need to include it first in their respective list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made by that respective jurisdiction.

See EY Global Tax Alert, [Hong Kong signs income tax treaty with Finland](#), dated 4 June 2018.

## New Zealand

On 3 April 2018, the New Zealand Inland Revenue Department (IRD) confirmed in a statement that cryptocurrency is property for tax purposes and ordinary tax rules will apply. For New Zealand taxation purposes, personal property is defined as someone's assets other than land. While the New Zealand property rules are complex, proceeds from the sale of property will generally be considered as income received by a taxpayer, where they acquired the property for the purpose of disposal, or they are in the business of dealing in the property. Given New Zealand does not have a comprehensive capital gains tax, dispositions of property in circumstances other than these may not give rise to New Zealand taxation.

See EY Global Tax Alert, [New Zealand: Taxation of cryptocurrency](#), dated June 2018.

## Sweden

On 18 May 2018, the Swedish Tax Agency published guidelines, clarifying its use of information in CbC reports. The guidelines are in line with the OECD guidelines on the appropriate use of information included in CbC reports that were issued on 6 September 2017. In this respect, the Swedish Tax Agency has published guidance whereby the following use of CbC report information is explicitly allowed: (i) overall analysis of transfer pricing risks and other risks of tax base erosion; (ii) selection of companies for further audits; and (iii) economic and statistical analysis. Moreover, it is explicitly stated that the Swedish Tax Agency may not make any income adjustments solely based on the CbC report information.

## Uruguay

On 4 June 2018, the Uruguayan Ministry of Foreign Affairs submitted to Parliament a draft bill to ratify the MLI. The Parliament's approval is required in order for Uruguay to ratify the MLI. Once the domestic ratification process has been completed, Uruguay would need to deposit its instrument of ratification, approval or acceptance of the MLI with the OECD and confirm its MLI positions. The MLI will enter into force for Uruguay on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of such instrument.

## United States

On 7 June 2018, the Internal Revenue Service (IRS) added Slovenia to the list of countries with which the United States (US) 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 eight countries and is expected to update this database as other agreements are concluded.

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