

## The Latest on BEPS - 30 July 2018

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### OECD

On 26 July 2018, the OECD announced that it is now gathering input on the implementation of the BEPS Action 14 minimum standard in relation to the review of the sixth batch of jurisdictions (Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa) and invites taxpayers to submit their input related to their experiences in these jurisdictions, via an electronic questionnaire, by 24 August 2018.

The exercise is part of the process of the mutual agreement procedure (MAP) peer review and monitoring process that the OECD launched in December 2016 under Action 14 of the BEPS project in relation to more effective dispute resolution mechanisms.

Business taxpayers are encouraged to take this opportunity to submit their views. The OECD will continue to launch peer reviews of further batches of jurisdictions and publish peer review reports in accordance with the [assessment schedule of peer reviews](#) published by the OECD in October 2016.

See EY Global Tax Alert, [OECD invites taxpayer input on sixth batch of peer reviews of dispute resolution processes under BEPS Action 14](#), dated 26 July 2018.

On 22 July 2018, the OECD published on its website the OECD's Secretary-General Report (the [report](#)) to G20 Finance Ministers and Central Bank Governors. The report was provided to the G20 Finance Ministers and Central Bank Governors meeting in Buenos Aires, Argentina on 21-22 July 2018, and consists of two parts.

Part I is an update of the activities and achievements of the OECD's ongoing tax agenda and future progress needed, in particular through the OECD/G20 Inclusive Framework (IF) on BEPS. Part II is a progress report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes. The report also includes as Annex 1 the text of the *2nd Annual Progress Report of the OECD/G20 Inclusive Framework on BEPS*.

The report also includes, as an annex, a report titled, *UPDATE ON TAX CERTAINTY: IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors* ([the updated report](#), also published separately on the OECD's website). This report, which was co-authored by the OECD and International Monetary Fund, provides an update to the [March 2017 report](#) on tax certainty, and examined survey responses from 724 enterprises headquartered in 62 different countries and with regional headquarters in 107 different jurisdictions, as well as 25 national tax authorities.

At the end of the G20 Finance Ministers and Central Bank Governors meeting, the G20 also released a [Communiqué](#) highlighting the outcomes of the meeting. In the Communiqué, the G20 confirms that they remain committed to seeking a consensus-based solution to address the impacts of the digitalization on the international tax system by 2020, with an update in 2019. This effectively underscores the desire of the G20 that the OECD should continue to lead in addressing this issue.

See EY Global Tax Alert, [OECD Secretary-General sends G20 finance ministers an annual progress report of the Inclusive Framework on BEPS and update on IMF/OECD Report on Tax certainty](#), dated 25 July 2018.

## Belgium

On 24 July 2018, the Belgian Federal Government reached political agreement on the 2018/2019 budget. One of the budgetary measures relate to the interest limitation rule provided for by the European Union (EU) Anti-tax Avoidance Directive (ATAD) and its effective date. More specifically, the interest limitation rule was transposed in December 2017 as part of the Belgian corporate tax reform and it was initially scheduled for 2020. The ATAD requires EU Member State to apply the interest limitation rules as of 2019, unless that Member State already has equally effective national rules in place. It was unclear whether Belgium had equally effective interest limitation rules to postpone the entry into force of

the ATAD interest limitation rules until 2020. In light of this, it is being considered to advance the entry into force of the interest limitation rules to 2019 (financial years starting on or after 1 January 2019) to fully comply with the ATAD and avoid potential action from the European Commission.

See EY Global Tax Alert, [Belgium reaches agreement on 2018/19 budget including on the timing of interest limitation rule under EU ATAD](#), dated 30 July 2018.

## Colombia

On 21 June 2018, the Colombian National Tax Authority published a draft resolution regarding transfer pricing. Among others, the draft resolution includes instructions on the Country-by-Country Reporting (CbCR) notification. Accordingly, if a constituent entity is required to file a specific TP form (form 120), the CbCR notification will be submitted within that form. Otherwise, a constituent entity will need to download a specific form from the Tax Authority's website and send it via email to [preciostransferencia@dian.gov.co](mailto:preciostransferencia@dian.gov.co). The deadlines are the same in both cases, i.e., in September (depending on the taxpayer identification number).

## France

On 18 July 2018, the French Tax Authority published detailed guidelines on transfer pricing documentation requirements to provide further guidance on the new rules introduced under the *Finance Act 2018* and the Decree No. 2018-554 of 29 June 2018. The new rules apply to financial years commencing on or after 1 January 2018.

On 12 July 2018, France ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), by way of Law No. 2018-604, as published in Official Journal No. 0160 of 13 July 2018. France now needs 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 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 by France.

On 30 June 2018, the [Decree No. 2018-554](#), which includes guidance for multinational groups on transfer pricing documentation, was published in the Official Journal. The guidance provides many clarifications about the content and the preparation of the master file and local file. Among

others, the guidance mentions that the transfer pricing documentation must be delivered in an electronic format by large enterprises at the opening of a tax audit procedure upon request from a tax inspector. The new guidance is applicable to fiscal years starting after 1 January 2018 for all French entities falling within the ambit of the formal French transfer pricing documentation requirement.

See EY Global Tax Alert, [French transfer pricing decree completes implementation of BEPS Action 13](#), dated 19 July 2018.

## Georgia

On 4 July 2018, a draft bill to ratify the MLI was initiated in the Parliament of Georgia by the Finance Ministry. The next steps in the ratification process entail three hearings by the respective committees of the Parliament and the voting process for the final ratification. Once the domestic ratification process has been completed, Georgia 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 Georgia 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.

## Hong Kong

On 13 July 2018, the legislative bill on BEPS and transfer pricing was passed and became law of Hong Kong. It codifies certain transfer pricing principles, introduces the three-tiered approach for transfer pricing documentation and provides for an advance pricing arrangement (APA) regime. It also sets out provisions to implement the BEPS minimum standards, including introduction of a statutory dispute resolution mechanism, enhancement of the current tax credit system, removal of the ring-fencing features in the existing preferential tax regimes, and incorporation of the substantial activities requirement from the OECD for certain preferential tax regimes.

The effective dates for the regulations are staggered across accounting periods beginning on or after 1 January 2018 (for Country-by-Country (CbC) reports), 1 April 2018 (for master file/local file), years of assessment beginning on or after 1 April 2018 (for arm's-length principle and APAs) and years of assessment beginning on or after 1 April 2019 (for deeming provision on intellectual property and Authorized

OECD Approach for permanent establishments). There is a grandfathering of transactions effected or income accrued before 13 July 2018.

See EY Global Tax Alert, [Hong Kong passes tax and transfer pricing legislation to counter BEPS](#), dated 16 July 2018.

Also on 13 July 2018, the Hong Kong Government gazetted an order which will make available the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA) as a platform for the automatic exchange of financial account information in tax matters, automatic exchange of CbC reports and spontaneous exchange of information on tax rulings. The Order is subject to negative vetting in the Hong Kong Legislative Council on 10 October 2018 and the MCMAA will have retroactive effect in Hong Kong starting from 1 September 2018.

## India

On 13 July 2018, the Indian Tax Administration issued a notification inviting suggestions and comments from stakeholders and the general public on the thresholds for determination of a Significant Economic Presence (SEP) of a nonresident (NR) taxpayer under the Indian domestic tax law. The Indian Budget 2018 introduced an amendment to the definition of the term "business connection" (equivalent to a permanent establishment rule under the Indian domestic tax law) to additionally cover a SEP. The term SEP was defined as: (i) systematic and continuous soliciting of business activities or engaging in interaction with users in India through digital means, subject to certain thresholds to be prescribed; or (ii) transaction in goods, services or property carried out by an NR in India including provision of the download of data or software in India, subject to certain thresholds to be prescribed. The Indian Tax Administration is now seeking suggestions and comments by 10 August 2018 with respect to the thresholds of number of users and amount of revenue for the NR to trigger a SEP in India.

Also on 13 July 2018, the Indian Tax Administration issued a notification to modify the application forms to be submitted for a private tax ruling in India. By background, one of the priority areas of Action 5 of the OECD BEPS Action Plans is improving transparency through a framework for the compulsory spontaneous exchange of information on certain rulings, including Permanent Establishment rulings. Under the Action Plan, the exchange of information on the rulings is suggested, in addition to the countries of residence of the entities entering into the relevant transaction, with the

countries of residence of the parent entity and the ultimate parent entity. The Indian Tax Administration had issued a press release inviting comments on proposed modifications to the rules and forms relating to private tax rulings in the country. The final notification has now been issued with effect from 13 July 2018, seeking information that includes the name, address and country of the residence of immediate parent company and ultimate parent company of the nonresident applicants of a private tax ruling.

## Italy

On 30 May 2018, the Italian Tax Authority issued the guidelines to activate the procedure to obtain a corresponding adjustment following a primary transfer pricing adjustment occurred in a foreign jurisdiction according to the arm's-length principle. The issued guidelines include implementation rules and some additional clarifications. Among others, the clarifications include information on where, when, by whom and how such procedure can be activated. For example, the clarifications mention that the procedure can be activated by Italian resident taxpayers belonging to a multinational group and/or carrying on their activity through a permanent establishment abroad, as well as by nonresident taxpayers carrying on their activity through a permanent establishment in Italy. Also, the procedure to request a corresponding adjustment can be requested in situations where the primary transfer pricing adjustment is final and in line with the arm's-length principle or where a double tax treaty providing an adequate exchange of information is in place with the jurisdiction in which the primary adjustment has been carried out. The request shall indicate the procedure for the international disputes to be activated. Furthermore, the additional clarifications explain that taxpayers are still free to directly apply for the MAP or for the Arbitration Convention rather than for the unilateral procedure at hand and they are also eligible to apply for the MAP in case the domestic procedure fails.

On 14 May 2018, the Italian Ministry of Economy and Finance issued a Ministerial Decree providing guidelines on the implementation of new domestic transfer pricing measures. The decree sets out general principles applied in the international practice making reference to the OECD Transfer Pricing Guidelines. Further guidance is expected to be provided by the Italian tax authorities.

## Luxembourg

On 10 July 2018, a regulation which establishes the list of jurisdictions with which Luxembourg will automatically exchange CbC reports based on BEPS Action 13 was published in the *Official Gazette*. According to the [list](#), Luxembourg will exchange CbC reports with 50 jurisdictions for the 2016 tax period. For the 2017 tax period, Argentina, Chile, Iceland and Uruguay are added to the list, bringing the total number of jurisdictions to 54.

## Malaysia

On 6 July 2018, Malaysia announced that the Multimedia Super Corridor (MSC) Malaysia incentive will be updated in line with the minimum standard under BEPS Action 5. Currently, the MSC Malaysia incentive offers an income tax exemption (of 70% or 100% of qualifying income) or investment tax allowance (100% allowance) for five years for information, communication and technology companies and institutes of higher learning, which meet various criteria. The income tax exemption can be extended for a further five years beyond the original five-year period. The new legislation and guidelines are expected to be in force by 31 December 2018.

In the meantime and to ease transition into the new regime, the following has been announced: (i) New MSC Malaysia approvals will not be granted starting from 1 July 2018, including applications for extension of income tax exemption period or applications to add new MSC Malaysia Qualifying Activities; (ii) Existing MSC Malaysia status companies with tax incentives will be given the option to either grandfather their status until 30 June 2021 or to move into the new regime and be subjected to the new conditions; and (iii) New approvals and extensions of the income tax exemption period for current MSC Malaysia status companies will only be considered once the new legislation and guidelines come into force.

## Netherlands

On 13 July 2018, the Dutch State Secretary for Finance informed Parliament that the legislative proposal to implement the EU ATAD, which was planned to be submitted in June, shall be postponed. The proposal shall be submitted after the summer recess and ultimately on Budget Day (18 September 2018).

## Nigeria

On 3 July 2018, the Nigerian Federal Inland Revenue Service published two sets of guidance to give greater certainty on the implementation and operation of CbCR in Nigeria. The [Guidelines for Country-by-Country Reporting](#) provide guidance on the procedure for the completion and filing of the CbC reports, while the [Guidelines on the appropriate use of the information contained in CbC reports](#) include guidance on the meaning of “appropriate use,” the consequences of non-compliance with the appropriate use condition and approaches to ensure the appropriate use of CbCR information in line with the OECD guidelines on the appropriate use of information included in CbC reports.

## Peru

On 19 July 2018, Peru's Congress enacted Law 30823, which grants the President power to legislate in tax matters. Under this power, the President has the ability to enact for a short period new tax laws with no involvement of the Congress, but only for specific items. Among other things, the President has 60 calendar days (i.e., up to 17 September 2018) to adapt the national legislation to international standards and recommendations issued by OECD, the Financial Action Task Force and international best practices for the fight against tax avoidance and evasion.

See EY Global Tax Alert, [Peruvian Congress grants President power to legislate in tax matters](#), dated 20 July 2018.

## Russia

On 25 June 2018, the [order](#) of the Federal Tax Service No. MMB-7-17/359@ of 30 May 2018, was registered with the Ministry of Justice of the Russian Federation. The order establishes the list of states and territories with which Russia will automatically exchange CbC reports. According to the list, Russia will exchange CbC reports with 49 states and 2 territories.

## Senegal

On 20 March 2018, the Senegal Parliament approved law n°2018-10, which amends the existing General Tax Code adopted on 31 December 2012. Based on the adopted law, all Senegal tax resident constituent entities that are ultimate parent entities (UPEs) of a multinational enterprise (MNE) group with annual consolidated group revenue equal to or

exceeding XOF491 billion (€750 million approximately) have to prepare a CbC report for financial years starting on or after 1 January 2018. In addition, any other constituent entity of the MNE group that is tax resident in Senegal will have to prepare and submit the CbC report if the UPE is not resident in Senegal 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 Senegal and that jurisdiction in place; or (iii) the jurisdiction has been notified regarding a systematic failure to exchange the information. Notwithstanding the above, a consistent entity tax entity in Senegal will not be required to file a CbC report if a Surrogate Parent Entity (SPE) is appointed in Senegal and further conditions are met. Failure to comply with the CbCR rules will be punishable by a fine of XOF25 million (US\$27,700 approximately). Further details are yet to be described by the competent authority.

## Spain

On 13 July 2018, the Spanish Council of Ministers approved the MLI. Both the Spanish Congress and Senate have to pass it in order for the MLI to be ratified. The MLI will enter into force for Spain 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.

## Ukraine

On 23 July 2018, Ukraine signed the MLI and submitted a list of 77 tax treaties that it would like to designate as Covered Tax Agreements (CTAs), i.e., treaties to be amended through the MLI. Together with the list of CTAs, Ukraine also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI position) in respect of the various provisions of the MLI. The definitive MLI position for Ukraine will be provided upon the deposit of its instrument of ratification of the MLI.

According to its MLI position, Ukraine opted in for the MLI articles relating to implementation of Actions 6, 7 and 14 in relation to all CTAs. Ukraine agreed to introduce the Principal Purpose Test as a condition for granting benefits under the tax treaty. 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. Ukraine did not opt in for mandatory binding arbitration.



Following this, Ukraine will start the domestic process for ratification of the MLI by the Ukrainian Parliament. Once the domestic ratification process is completed, Ukraine would need to deposit its instrument of ratification of the MLI before the OECD and confirm its MLI positions. The MLI will enter into force for Ukraine on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit.

## United States

On 24 July 2017, the Internal Revenue Service (IRS) published clarifications to the instructions for Schedule A (Form 9975). In the clarification, the IRS addressed certain US MNE groups that do not have any US organized constituent entities whose tax jurisdiction of residence is the US.

As noted in the instructions to the Form 9975, taxpayers that file a Form 9975 must attach at least two Schedules A to the Form 9975. Generally, at least one Schedule A must be for the United States. However, certain US MNE groups may have only US-organized constituent entities that are fiscally transparent. These fiscally transparent US business entities do not have a tax jurisdiction of residence for purposes of reporting information on Form 9975. Thus, these fiscally transparent US business entities, along with all other constituent entities of the US MNE group that do not have a tax jurisdiction of residence, should be reported on one Schedule A that indicates the tax jurisdiction “stateless” by entering code “X5” on the tax jurisdiction line of Part I,

Schedule A. The US MNE’s fiscally transparent US business entities should be listed in Part II of this Schedule A. Each US-organized constituent entity is therefore listed on either a US Schedule A or on a “stateless” Schedule A.

If a filing does not have either a US Schedule A or a “stateless” Schedule A that contains fiscally transparent US business entities, then the Form 9975 has not been completed properly.

Additionally, in the clarification, the IRS identified eight countries that are included in the [country codes list](#) maintained by IRS that do not correspond to a valid OECD country code for purposes of exchanging CbCR information. Accordingly, the clarification provides that none of these country codes should be entered on the tax jurisdiction line of Part I of Schedule A. If the tax jurisdiction of one of the enumerated countries is associated with a larger sovereignty, filers should use the country code for the larger sovereignty with which the tax jurisdiction is associated.

On 20 July 2018, the IRS added Croatia 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 six countries and is expected to update this database as other agreements are concluded.

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