The latest on BEPS — 2018 mid-year review

A review of OECD and country actions in mid-year 2018

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*Through our series of Global Tax Alert articles, The Latest on BEPS, EY has tracked developments related to the OECD/G20 BEPS Project since the beginning of 2014. Based on the content of these Alerts, there is a database maintained of BEPS-related developments. There also is an interactive tool that, through the use of interactive maps and other visualizations, allows users to browse and filter this content by date, geographical location and the related BEPS Action. The **interactive tool** is part of our BEPS website at ey.com/beps.*

Overview

EY has been reporting on the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project from its outset. Since 2014, we have tracked developments inspired or driven by BEPS, both at the OECD and country level. This process includes a biweekly newsletter that summarizes the BEPS-related developments of the covered period, and an annual special edition that highlights and recapitulates the year in review. Past editions are available through the following links: 2014 edition, 2015 edition, 2016 year-end edition and 2017 end-year edition.

The G20 and the OECD finalized work on the BEPS Project and published their report on 5 October 2015. The 15 BEPS Actions equip governments with domestic and international instruments to address tax avoidance and ensure that profits are taxed where economic activities generating the profits are performed and where value is created. The issuance of the final reports marked the end of the recommendation phase of the BEPS Project and the commencement of the implementation phase. The BEPS measures will become effective only when they are implemented by the countries. The *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (Multilateral Instrument or MLI) plays a significant role to that end, as it helps implement the tax-treaty-related measures developed through the BEPS Project in existing bilateral treaties in a swift and efficient manner.

The Inclusive Framework

Due to the necessity for an effective international tax framework with the involvement of developing countries, the OECD established the Inclusive Framework (IF) on BEPS in January 2016 so that all interested countries and jurisdictions can join on an equal footing in developing standards on BEPS-related issues and reviewing and monitoring its consistent implementation. To date, 116 jurisdictions are members of the IF on BEPS, and more are continually being added.

Peer reviews

Recognizing that the key element of the work ahead is the monitoring implementation, members of the IF developed a monitoring process for the BEPS Project that aims to ensure that all members comply with the BEPS minimum standards – namely, Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Accordingly, each BEPS member is subject to an ongoing peer review process to ensure timely and consistent implementation of the four minimum standards.

Regional meetings

To keep all countries updated with the recent developments in the implementation of the BEPS package and to provide an opportunity for countries to explain their individual positions, the OECD organizes regional meetings in partnership with the regional tax organizations on a regular basis.

The Platform for Collaboration on Tax

The OECD became part of the Platform for Collaboration on Tax – a joint initiative of the International Monetary Fund (IMF), OECD, United Nations (UN) and the World Bank Group – which aims to strengthen collaboration on domestic resource mobilization through the creation of toolkits that will help countries address challenges in international taxation.

OECD's follow-up work on the BEPS Project

Although the 2015 BEPS reports are final, the OECD has undertaken follow-up work with respect to certain BEPS action items:

- On Action 1, the OECD released an interim report on the tax challenges arising from digitalization.
- As follow-up work on Action 2, the report on branch mismatch arrangements was released in 2017.
- Further work on two aspects of the common approach established in the Action 4 final report was completed in 2016.
- The OECD has approved the contents of the 2017 update to the OECD Model Tax Convention (MTC); the update added a new Article to incorporate the minimum standard agreed to as part of the work on BEPS Action 6, to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements.
- Additional guidance on how the existing rules of Article 7 of the OECD MTC would apply to permanent establishments (PEs) resulting from the changes to the definition of PE in Article 5 of the OECD MTC is now available.
- The work on transfer pricing issues of Actions 8–10 is ongoing, and additional guidance is forthcoming.
- The OECD has released a number of sets of guidance and two handbooks to assist and give greater certainty to tax administrations and multinational enterprise groups alike on the implementation and operation of country-by-country reporting of BEPS Action 13.
- And finally, the MLI has been signed by 82 jurisdictions, and will enter into force on 1 July 2018 for the first five jurisdictions that deposited their instrument of ratification, acceptance or approval of the MLI with the OECD.

Looking ahead

Since October 2015, many things have happened and the implementation of the BEPS recommendations has advanced at a good pace. The future, however, still promises more developments and changes in the international tax landscape.

Second half of 2018

Inclusive Framework

Over the next half of 2018, it is expected that more countries will join the IF on BEPS and commit to comply with the BEPS minimum standards and to 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.

Multilateral Instrument

Additional jurisdictions are expected to sign the MLI or finalize their ratification procedures in the course of 2018.

Peer reviews

Each BEPS member will continue to be subject to peer review in order to ensure timely and accurate implementation of the BEPS four minimum standards and thus safeguard the level playing field. According to the schedule, peer review reports on Action 14 related to other batches of countries will be released during the second half of 2018. Based on the assessment schedule, stage 1 peer reviews will be launched in the second half of 2018 for the sixth batch (Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa) and seventh batch (Brazil, Bulgaria, China, Hong Kong, Indonesia, Papua New Guinea, Russia and Saudi Arabia).

Exchange of tax rulings

Transparency is expected to be a key element for the next months. Countries will continue to exchange tax rulings, and their efforts to comply with the standards set in Action 5 will be monitored.

Country-by-Country Reporting

The Action 13 country-by-country (CbC) reporting requirements have already been implemented by a number of jurisdictions, and tax authorities will start analyzing the first reports exchanged in June 2018. Moreover, the number of signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) will increase.

Mandatory disclosure rules Directive

The newly adopted European Union (EU) Directive requires intermediaries and taxpayers to disclose to the tax authorities certain cross-border transactions or structures. During a transitional period, from 25 June 2018 till 1 July 2020, intermediaries and taxpayers will have to report cross-border reportable arrangements where the first step of implementation is taken as of 25 June 2018.

Anti-Tax Avoidance Directive

Priority of the EU Member States for the next half of 2018 will also be the implementation of the Anti-Tax Avoidance Directive (ATAD), which should apply as from 1 January 2019. The ATAD indicates that Member States shall adopt and publish the laws and regulations necessary to comply with the rules by 31 December 2018 at the latest.

Transfer pricing

The OECD is currently undertaking work on the transfer pricing aspects of financial transactions, and further developments are expected in this regard by the end of 2018.

2019 onwards

Digitalization

Beyond 2018, the digitalization of the economy and the measures to cope with the challenges that digitalization may create will be one of the main topics for the years to come, with many coordinated actions to be expected. An update on the *Tax Challenges Arising from Digitalisation — Interim Report 2018*, which was released in March, will be provided in 2019, as BEPS IF members work toward a consensus-based solution by 2020.

The 2020 review

In the long term, the BEPS measures will be more broadly implemented by the countries while an increase in tax disputes and controversy may arise. A thorough review will take place in 2020, which will reassess the impact and the effectiveness of the BEPS Project and whether modifications or additions to the recommendations are required.

In light of the above, it is undeniable that the international tax changes stemming from the OECD BEPS Project are transforming the global tax environment in which multinational companies operate. Businesses that do not attempt to anticipate the impact of these changes may struggle to adapt to new approaches and comply with the new rules.

Review of country developments by BEPS action

The report is structured in the following way. Each action is split into two parts. The first part discusses the OECD developments during the period under review and situates the continual guidance and work of the OECD toward the implementation of the relevant measures. The second part includes references to specific country developments during the first six months of 2018 with respect to each action point. This section of the report poses that the countries are currently adopting new measures in line with the OECD recommendations and are moving actively toward their implementation. Due to the increased activity at the EU level, a separate sub-report now addresses the EU BEPS-related activity.

Action 1

The final report on Action 1, *Addressing the Tax Challenges of the Digital Economy*, considers the direct and indirect tax challenges created by increased digitalization and provides an evaluation of the options to address these challenges. The report does not recommend any of the options analyzed and leaves it up to the individual countries to introduce any of them as additional safeguards against BEPS.

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 BEPS. The Interim Report sets out the BEPS IF's agreed direction of work on digitalization and the international tax rules through 2020. The Interim Report does not make any specific recommendations to countries, as it is agreed that further work will need to be carried out to understand the various business models operated by enterprises offering digital goods and services, as well as digitalization more broadly. However, despite the technical complexity and the diverse positions, the BEPS IF members agreed to undertake a coherent and concurrent review of the rules and achieve a consensus-based solution by 2020. The Interim Report was also presented to the G20 during their meeting in Buenos Aires, Argentina, during 19–20 March.

In February, and as part of Budget 2018, Singapore announced the extension of 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. Another development concerning indirect taxation relates to the amended draft regulation on electronic services for value-added tax (VAT) that was published in South Africa.

In March 2018, the UK Government released an update to the position paper on the Government's thinking in respect of the taxation of companies operating in the digital economy; the update builds on the original paper published as part of the Autumn Budget 2017 and follows on from a consultation with UK taxpayers from November 2017 to February 2018.

In March, the Slovak tax administration issued guidance regarding the taxation of nonresidents that perform regular intermediation of accommodation and transport services within the Slovak Republic through digital platforms. The guidance clarifies that nonresident operators of digital platforms who repeatedly facilitate the conclusion of contracts for providing transportation and accommodation services are obliged to register a PE in the Slovak Republic by the end of the month following the month when these repeated activities are carried out.

In Thailand, two Emergency Decrees were published in the *Royal Gazette* to enact laws related to digital asset business operations and Thai tax ramifications on certain income earned from digital assets. The decrees are effective as of 14 May 2018.

On 30 April 2018, Spain released its 2018 Stability Program and Budgetary Plan Update, which proposes the introduction of a digital services tax to be effective in 2018 and onward, with the objective of taxing digitalized companies in the jurisdiction where their added value is generated. The Spanish 2018 Budget Law, which was published in the Official Gazette on 4 July 2018, stipulates that the government will send to the Congress and to the Senate a proposal to introduce this tax in the three months following the approval of this Budget Law.

According to the 2018 Australian Federal Budget, a consultation paper is to be released soon covering Australia's participation in the G20 countries' review of digitization of business and changes required to tax systems.

In May, Italy's Ministry of Economy and Finance launched a public consultation on the two proposals for new Directives of taxation of the digital economy released by the European Commission. The public consultation was open until 22 June 2018, and the comments received have not yet been published.

Action 2

The final report on Action 2, *Neutralizing the Effects of Hybrid Mismatch Arrangements*, contains detailed recommendations in two parts addressing hybrid mismatch arrangements. Part I recommendations include modifications to the domestic law provisions aimed at neutralizing mismatches such as deduction/non-inclusion (D/NI), double deduction (DD) and indirect D/NI. Part II deals with changes to be made to the OECD Model Convention and the tax treaty issues in the context of Action 2. Part II focuses on recommendations on treaty issues.

On 7 March 2018, Australia's Treasurer released for public consultation a revised Exposure Draft, Treasury Laws Amendment (OECD Hybrid Mismatch Rules) Bill 2018 (the Revised Exposure Draft) which will implement the OECD BEPS Action 2. The Revised Exposure Draft contains certain measures announced but not included in the first exposure draft, which was released on 24 November 2017, namely, the additional Australian integrity rules and branch hybrid mismatch rules. Consultation on the Revised Exposure Draft closed on 4 April 2018.

On 22 December 2017, United States (US) President Trump signed the US Tax Cuts and Jobs Act (TCJA) (H.R. 1) into law. The TCJA introduced, among other items, a "hybrid" financing rule denying deductions for interest or royalties paid to a related foreign person pursuant to a hybrid transaction or hybrid entity when the payments either are not includible or are deductible to the recipient in their home jurisdiction. The provision is effective for tax years beginning after 31 December 2017.

For example, on a bilateral level, the new income tax treaty that was signed between France and Luxembourg, replacing the current double tax treaty signed on 1 April 1958 (amended several times since this date), contains a number of treaty-based recommendations in line with the BEPS Project, and, in particular, it also contains a provision dealing with fiscally total or partial transparent entities (i.e., new Article 1 of the double tax treaty on the Personal Scope).

The TCJA requires a US shareholder of any CFC to include in gross income for a tax year its global intangible low-taxed income (GILTI) in a manner similar to current subpart F income inclusions. A US shareholder's GILTI for any tax year means the excess, if any, of the US shareholder's net CFC tested income over its net deemed tangible income return. In this manner, GILTI represents an amount deemed in excess of a specified return.

Action 3

OECD BEPS Action 3, *Designing Effective Controlled Foreign Company Rules*, sets out recommendations to strengthen the rules for the taxation of those corporations. The OECD has noticed that the existing controlled foreign company (CFC) rules do not correspond to the new business international environment and are not sufficient in combating BEPS. Hence, Action 3 deals with strengthening CFC rules and provides recommendations for the design of those rules in the form of six building blocks, meaning that jurisdictions are not obliged to implement the recommendations as minimum standards, but they may choose to do so. The six building blocks are (1) definition of a CFC, (2) CFC exemptions and threshold requirements, (3) definition of income, (4) computation of income, (5) attribution of income and (6) prevention and elimination of double taxation.

At the end of 2017, the Japanese tax authorities published the updated version of the special taxation law circular. The updated circular provides clarifications on some of the Japanese CFC rules, such as definition of a "Paper" company, "Cash Box" and a Foreign Financial Services Company, and it applies to the new Japanese CFC rules, which apply to CFCs' fiscal years starting on or after 1 April 2018. The Japanese tax authorities provided technical explanation on the same circular in July 2018. Furthermore, Russia adopted a law that establishes several changes to the existing CFC legislation. Most of the amendments apply to CFC profits calculated from 2016 onward, but in a few cases, the amendments are effective only from 1 January 2017.

Action 4

The final report on Action 4, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*, recommends a common approach to tackle BEPS involving interest and equivalent payments. The report recommends a fixed ratio rule that would restrict an entity's net interest expense to a fixed percentage of its earnings before interest, taxes, depreciation and amortization (EBITDA), along with a group ratio rule allowing an entity in a highly leveraged group to deduct net interest expense in excess of the amount permitted under the fixed ratio rule.

On 18 April 2018, the OECD and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) invited comments on a draft practice note that will help developing countries address profit shifting from their mining sectors via excessive interest deductions.

On 1 June 2017, the Icelandic Parliament passed legislation amending the interest limitation rules, which are effective as from 1 January 2018. On 30 December 2017, the Parliament passed an amendment (Law No. 96/2017) under which the effects of the amendment are postponed by one year so that the exception provided for domestic groups is extended by one year, i.e., until 1 January 2019. Moreover, Argentina enacted comprehensive tax reform that establishes a new EBITDA rule effective from 1 January 2018. More specifically, the law eliminates the previous 2:1 debt-to-equity ratio, and it establishes a new limit for the deduction of interest arising from financial loans. The limit equals 30% of EBITDA or a certain amount to be determined by the Executive Power, whichever is higher. The Norwegian Parliament approved the 2018 Fiscal Budget, which contains amendments to the interest expense limitation rules, in relation to both the amount of interest expense that can be carried forward by partnerships with tax losses (with effect from income year 2017) and the definition of financial institutions (with effect from income year 2018).

The TCJA, adopted at the end of 2017, limits the net interest expense deduction for every business, regardless of form, to 30% of adjusted taxable income. The provision exempts taxpayers with average annual gross receipts of US$25 million or less for the three-tax-year period ending with the prior tax year. The provision also allows businesses to carry forward interest amounts disallowed under the provision to succeeding tax years indefinitely.

Action 5

The focus of the final report on Action 5, Countering Harmful Tax Practices More Effectively, is mainly on two topics: (i) requiring substantial activity for preferential regimes through the use of a "nexus approach" in the context of intellectual property (IP) regimes; and (ii) improving transparency through a framework for the compulsory spontaneous exchange of information on certain rulings that could give rise to BEPS concerns.

Harmful tax regimes

On 17 May 2018, the IF 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 and 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; and another three regimes (Kenya and two Vietnam regimes) do not relate to geographically mobile income and/or are not concerned with business taxation and, as such, pose no BEPS Action 5 risks and have been found to be out of scope.

With respect to IP regimes, in July, the Spanish 2018 Budget Law introduced amendments to the Patent Box regime; the regime is extended to utility models, copyrighted advanced software produced as a result of research and development activities, and supplementary protection certificates for medicinal and phyto-pharmaceutical products. Further, the concept of net income derived from the licensing of qualifying IP is clarified and certain restrictions to losses derived from qualifying IP are established. Luxembourg adopted a law compliant with the OECD's new nexus approach to ensure that the same IP asset is not allocated to both the head office and the foreign PE. In addition, the French Tax Authorities launched a public consultation regarding the application of the modified nexus approach to industrial property with a view to proposing amendments to the current French IP tax regime as part of the upcoming Draft Finance Bill for 2019 to be released this autumn. In the US, the Act allows a US corporation a new deduction against its foreign-derived intangible income (FDII) and GILTI inclusion.

Exchange of information

At the end of 2017, the OECD released the first annual peer review report relating to the compliance by members of the IF on BEPS of the minimum standards on Action 5 for compulsory spontaneous exchange on certain tax rulings. The report covers the jurisdictions that participated in the BEPS Project prior to the creation of the IF, and it assesses the 2016 calendar-year period. This report will be followed by annual reviews performed at least through 2020 (the end of the current agreed review period). With respect to jurisdictions that joined the BEPS inclusive framework in 2016, the next annual peer review process will be their first review.

On 14 April 2018, the Indian Tax Administration issued a press release inviting comments on proposed modifications to the rules and forms relating to private tax rulings in the country. The proposed modifications mainly seek, among other things, information to comply with the OECD suggestions for the exchange of information on the rulings 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.

Furthermore, 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 the tax rulings meeting the criteria for the exchange of information that 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).

Action 6

The final report on Action 6, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*, contains changes to the OECD MTC and related changes to the commentary to address the inappropriate granting of treaty benefits and other potential treaty abuse scenarios. It includes anti-abuse provisions that provide safeguards against the abuse of treaty provisions, a revision to the title and preamble of the OECD MTC, and tax policy considerations relevant to the decision to enter into a tax treaty with another country. Some countries have implemented Action 6 recommendations in their tax treaties while others have introduced anti-abuse rules in their domestic laws.

The OECD released in 2017 the peer review document on BEPS Action 6, setting forth the agreed terms of reference and the assessment methodology for the peer review process. The review of the implementation of the BEPS Action 6 minimum standard on treaty-shopping began in 2018 with the objective of concluding a first report on the implementation of the minimum standard for the January 2019 meeting of the IF on BEPS.

On a bilateral level, many double tax treaties have been amended in order to include an anti-abuse clause and the Action 6 recommendations during the period under review. For example, the new double tax treaties between Colombia and Italy, Cyprus and Luxembourg, and France and Luxembourg contain a principal purpose test (PPT) rule based on which a benefit under the treaty can be denied if the subjective test is met, unless it can be established, under the objective test, that granting the benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions. In March 2018, Hong Kong and India signed a tax treaty that contains a main purpose test that is similar, though not identical, to the PPT as included in the final report on Action 6. Other examples are related to the signed income tax treaties of Brazil with Singapore and Switzerland, both of which contain a Limitation on Benefits (LOB) Clause and a PPT.

Action 7

The final report on Action 7, *Preventing the Artificial Avoidance of Permanent Establishment Status*, aims to tackle strategies used to avoid having a taxable presence in a country under tax treaties by changing the definition of a PE in the OECD MTC.

As part of its ongoing work on Action 7, the OECD released in March the final Additional Guidance on the Attribution of Profits to a PE, which provides additional guidance on the attribution of profits to PEs resulting from the changes to Article 5 of the OECD MTC. The guidance sets out general principles for the attribution of profits to PEs in light of the changes to Article 5 of the OECD MTC. The key principle across the examples is that the profits attributable to a PE are those that the PE would have derived if it were a separate and independent enterprise. This principle, the guidance says, applies regardless of whether a tax administration adopts the authorized OECD approach (AOA) or any other approach used to attribute profits.

In February, 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. It is intended that once enacted, these rules will apply retroactively from 1 January 2016.

Furthermore, the Japanese Diet (Japanese Legislature) passed the 2018 tax reform bill, which contains modification to the domestic PE definition according to the OECD's recommendations in the BEPS Action 7 final report. The revision to PE will apply to fiscal years beginning on or after 1 January 2019.

Bilaterally, for example, the treaty that was signed between Colombia and Italy on 26 January 2018 contains 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. Similarly, the PE clause (Article 5) of the new version of the double tax treaty between France and Luxembourg contains an anti-fragmentation rule and the new definition of agency PE.

Actions 8–10

The work under the final report on Actions 8–10, *Aligning Transfer Pricing Outcomes with Value Creation*, intends to ensure that the transfer pricing methods will allocate profits to the most important economic activities. The final report stipulated further work under these Actions on profit splits and financial transactions.

On 9 April 2018, the OECD published additional Transfer Pricing Country Profiles (TPCPs) for 14 countries, reflecting the existing transfer pricing legislation and practices for each country (namely, Australia, China, Estonia, France, Georgia, Hungary, India, Israel, Liechtenstein, Norway, Poland, Portugal, Sweden and Uruguay). The OECD has published TPCPs for 45 different countries in total,[1] while the TPCPs for another 9 countries are forthcoming.[2] These country profiles focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's-length principle, transfer pricing methods, comparability analysis, intragroup services, cost contribution agreements and other implementation measures. The information contained in these profiles is intended to clearly reflect the current state of countries' legislation and to indicate to what extent their rules follow the OECD Transfer Pricing Guidelines.

In May, the OECD invited comments on the scope of the future revision of the TPG's Chapter IV, "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes," and the future revision of Chapter VII, "Special Considerations for Intra-Group Services." Interested parties could provide their comments by 20 June 2018 via email, and all comments received will be made publicly available.

On 22 June 2018, the OECD released two reports: *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles*, under BEPS Action 8; and *Revised Guidance on the Application of the Transactional Profit Split Method*, under BEPS Action 10. The new *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles*, which has been formally incorporated into the TPG as an annex to Chapter VI, is aimed at reaching a common understanding and practice among tax administrations on how to apply adjustments resulting from the application of this approach. The *Revised Guidance on the Application of the Transactional Profit Split Method* retains the basic premise that the profit split method should be applied where it is found to be the most appropriate method on a case-by-case basis, but it significantly expands the guidance available to help determine when that may be the case. This guidance has been formally incorporated into the TPG, replacing the previous text on the transactional profit split method in Chapter II.

The Japanese tax authorities published modifications to the Commissioner's Directive on the Operation of Transfer Pricing. The updated Directive includes a simplified 5% markup approach for low-value services. The Directive clarifies situations where the simplified approach can be used and also identifies the scope of intragroup services and procedures for advance pricing agreements. The Zambian Transfer Pricing (Amendment) Regulations 2018, which govern transfer pricing transactions between residents (and PEs of nonresident companies) and their related nonresident entities as well as documentation requirements, were published in the *Government Gazette* in April.

In the UK, the Taxation (International and Other Provisions) Act 2010 TPG Guidelines Designation Order 2018 was laid before the House of Commons and entered into force on 23 March 2018. The Order updates the definition of "the transfer pricing guidelines" in the UK's legislation by designating the new 2017 version (which was updated in light of BEPS Actions 8–10) in place of the previous version referred to in Section 164(4)(a) of the Taxation (International and Other Provisions) Act 2010. It should be noted that the UK courts do allow some flexibility when considering which guidelines should be referred to in certain situations (for example when considering treaties it may be appropriate to reference the guidelines in places where the treaty was ratified).

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[1] Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China (People's Republic of), Colombia, Croatia, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Hungary, India, Indonesia, Ireland, Israel, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Russian Federation, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States and Uruguay.

[2] Argentina, Chile, Finland, Greece, Iceland, Italy, Korea, South Africa and Turkey.

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 TPG for multinational enterprises (MNEs). The Decree replaces the previous decree from 2013 and incorporates the results of the OECD's BEPS plan to align the outcome of transfer pricing with the value creation within an MNE.

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 TPG. Further implementing provisions are expected to be issued by the Italian Tax Authorities. Also, on 30 May 2018, the Italian Tax Authority issued guidelines to activate the procedure to obtain a corresponding adjustment following a primary transfer pricing adjustment that occurred in a foreign jurisdiction according to the arm's-length principle.

Action 12

The final report on Action 12, *Mandatory Disclosure Rules*, makes a series of recommendations about the key design features of mandatory disclosure regimes while focusing in particular on international tax schemes, which are viewed as an area of particular concern. The recommendations are aimed to allow maximum consistency between countries while also being sensitive to local needs and compliance costs.

On 9 March 2018, the OECD issued new mandatory disclosure rules for addressing Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures which are in line with the principles articulated in the best-practice recommendations contained in BEPS Action 12 final report on mandatory disclosure rules. The new model rules require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities in certain circumstances when, for example, there is a CRS Avoidance Arrangement or Opaque Offshore Structure.

In Indonesia, the Directorate General of Taxes (DGT) is in the process of formulating a regulation to implement Mandatory Disclosure Rules, in accordance with BEPS Action 12 with the aim to achieve transparency in relation to tax planning.

Action 13

The final report on Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, sets out a three-tiered standardized approach to transfer pricing documentation and introduces a new version of Chapter V of the OECD TPG, covering documentation. The standardized approach consists of a local file, a master file and a CbC report.

On 23 January 2018, the OECD announced the launch of the International Compliance Assurance Program (ICAP) pilot. The pilot is being led by the OECD Forum on Tax Administration (FTA) and focuses on the multilateral risk assessment and resulting tax assurance of large MNE groups. ICAP is a voluntary program that will use CbC reports and other taxpayer-provided information to allow MNE groups and tax administrations to engage in an open and transparent discussion on tax risks and, if agreement can be reached that the issues are low-risk, to provide outcome letters that state this. There are eight FTA jurisdictions participating in the pilot: Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States.

During the first half of 2018, there has been ongoing and increasing activity around CbC reporting. In promoting the consistent and effective implementation of CbC reporting, the OECD released in February additional guidance to give greater certainty to tax administrations and MNE groups on the implementation and operation of BEPS Action 13 on CbC Reporting (CbCR). Accordingly, the existing guidance on the implementation of CbCR has been updated to address two specific issues: (i) the definition of total consolidated group revenue, relevant to determine whether a filing obligation exists; and (ii) whether noncompliance with the confidentiality, appropriate use and consistency conditions constitutes a systemic failure, which could trigger an obligation for local filing of the CbC report. Additionally, the OECD released a compilation of the approaches adopted by 24 member jurisdictions of the Inclusive Framework on BEPS with respect to some of the issues where the CbC guidance allows for alternative approaches. Prior to the latest update in 2018, the OECD has previously updated its CbC guidance five times: in December 2016, April 2017, July 2017, September 2017 and November 2017.

On 23 May 2018, the OECD released the first annual peer review report relating to the compliance by members of the IF on BEPS of the minimum standard on Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, with a focus on the domestic legal and administrative framework. The report also comments on certain aspects relating to the exchange of information framework as well as the confidentiality and appropriate use of CbC reports. The report contains the review of 95 jurisdictions, which provided legislation or information pertaining to the implementation of CbC reporting, with individual sections for each jurisdiction. Based on the main findings of the report and as of 12 January 2018, 60 jurisdictions have introduced legislation to impose a CbCR filing obligation for relevant MNEs, thereby covering the majority of MNEs expected to be in scope. Also, out of the 95 jurisdictions that were assessed, 58 jurisdictions have multilateral or bilateral competent authority agreements in place, effective for taxable periods starting on or after 1 January 2016 or on or after 1 January 2017. The released report will be followed by two additional annual reports on peer reviews performed in 2018 and in 2019; the reports will each focus on different aspects of the key areas under review, i.e., the exchange of information framework, and the confidentiality and appropriate use of CbC reports, respectively.

CbC reporting is the BEPS recommendation that has been implemented the most. By following this link, you can access an overview that provides a summary of the jurisdictions that have adopted or are in the process of adopting CbCR rules, as well as those jurisdictions that are expected to implement CbC reporting in the near future.

Currently, there are more than 1,500 bilateral exchange relationships activated with respect to jurisdictions committed to exchanging CbC reports. These include exchanges between the 70 signatories to the CbC MCAA, between EU Member States under EU Council Directive 2016/881/EU and between signatories to bilateral competent authority agreements (CAAs) for exchanges under Double Tax Conventions or Tax Information Exchange Agreements, including 39 bilateral agreements with the United States. The list of automatic exchange relationships that have been activated is available on the OECD website.

Action 14

The final report on Action 14, *Making Dispute Resolution Mechanisms More Effective*, reflects the commitment of participating countries to implement substantial changes in their approach to dispute resolution. These measures are aimed at strengthening the effectiveness of the Mutual Agreement Procedure (MAP), minimizing uncertainty and preventing unintended double taxation by ensuring effective and timely resolution of disputes. The final report represents an agreement reached by the countries by way of developing a minimum standard on the resolution of treaty-related disputes.

Countries have further agreed to undertake effective implementation through a peer-review-based mechanism to monitor the process. To that end, on 12 March 2018, the OECD released the third batch of peer review reports relating to the implementation by the Czech Republic, Demark, Finland, Korea, Norway, Poland, Singapore and Spain of the BEPS Minimum Standards on Action 14 on improving tax dispute resolution mechanisms. Denmark, Poland and Singapore also requested that the OECD provide feedback concerning their adoption of the Action 14 best practices, and therefore, the OECD has also released three accompanying best-practices reports. Also, on the same day, the OECD announced that it was gathering input on the implementation of the BEPS Action 14 Minimum Standards in the fifth batch of jurisdictions (Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey) and invited taxpayers to submit their input related to their experiences in these jurisdictions, via an electronic questionnaire, by 9 April 2018.

In February, the Slovak Ministry of Finance issued guidance regarding the MAP applicable under tax treaties and the EU Arbitration Convention. One month later, and following the recommendations that were made in Belgium's BEPS Action 14 peer review report, the Belgian tax authorities issued a Circular Letter on the existing rules for the settlement of (double taxation) disputes under tax treaties. The administrative circular provides an overview of the main procedural rules as well as practical views and positions taken by the Belgian tax administration during both the administrative and (in some cases ongoing) judicial procedural phases of a (double taxation) dispute case under

Belgium's competence to tax certain types of income. Furthermore, the Government of Canada made available on its website the annual report issued by the Canada Revenue Agency (CRA) on its MAP Program. According to the report, the OECD MAP peer review report released in September 2017 concluded that, overall, Canada meets most of the elements of the Action 14 minimum standard. Where deficiencies were noted, the CRA is working to address them. In the next stage of the peer review process, Canada's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

On a bilateral level, the newly signed treaties between Japan and Iceland, France and Luxembourg, and Brazil and Switzerland, for example, provide that a case for mutual agreement procedure can be presented to the competent authorities of either contracting state.

Action 15

The final report on Action 15, *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*, explores the technical feasibility of an MLI to implement the treaty-related measures developed during the course of the BEPS Project and to amend bilateral tax treaties. Each provision under the MLI (Articles 3 to 26) first reflects the BEPS measures as developed during the BEPS Project with certain modifications. However, the MLI is structured in a way so as to provide flexibility for Contracting Jurisdictions to implement (parts of) the MLI based on their needs.

As of 1 July 2018, 82 jurisdictions have signed the MLI — 68 jurisdictions signed during a ceremony hosted by the OECD in Paris on 7 June 2017; 4 more jurisdictions (Cameroon, Curaçao, Nigeria and Mauritius) signed the MLI after the ceremony; 6 additional jurisdictions (Barbados, Côte d'Ivoire, Jamaica, Malaysia, Panama and Tunisia) signed the MLI during a second signing ceremony that took place in January 2018; 3 jurisdictions (Kazakhstan, Peru and United Arab Emirates) signed during the plenary meeting of the IF on BEPS in June 2018; and Estonia signed the MLI a couple of days after the meeting. Out of the 82 MLI signatories, 78 jurisdictions are BEPS members, and 4 are non-BEPS members.

On 22 March 2018, the OECD announced that Slovenia has deposited its instrument of ratification, acceptance or approval of the *MLI*, becoming the fifth jurisdiction to do so. This means that the MLI entered 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 according to Article 34 of the MLI. For each signatory ratifying, accepting or approving the MLI after the deposit of the fifth instrument of ratification, acceptance or approval, 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 by such Signatory of its instrument of ratification, acceptance or approval. Nine jurisdictions in total, namely Austria, Jersey, Isle of Man, New Zealand, Poland, Serbia, Slovenia, Sweden and the United Kingdom, have deposited so far their instrument of ratification, acceptance or approval of the MLI with the OECD. Australia has proposed a draft bill to ratify the MLI into domestic law, and in Canada, Bill C-82 was introduced on 20 June 2018 (it has not moved past the first reading), incorporating the 28 May 2018 Notice of Ways and Means Motion to amend the Income Tax Act with regard to the MLI. Other countries, e.g., Czech Republic and Ireland, have approved their ratification bills, but further steps are required in their domestic law to complete the ratification process. Lastly, some countries, e.g., France, Japan and Malta, have already completed the ratification process domestically and are expected to deposit the instrument of ratification, acceptance or approval of the MLI to the OECD soon.

The entry into force of the MLI, does not directly affect all MLI signatories. For the provisions of the MLI to have effect with respect to a CTA, it is necessary that (i) both parties of the CTA have to deposit their instrument of ratification, approval or acceptance of the MLI with the OECD and (ii) the MLI has to have entered into effect. Even when these conditions are met, a further analysis is required as the MLI contains a number of alternatives or optional provisions that generally will apply only if all Contracting Jurisdictions to a CTA affirmatively choose to apply a particular alternative or option. Article 35 of the MLI sets out when the provisions of the MLI will have effect in each Contracting Jurisdiction with respect to specific taxes that fall within the scope of a CTA.

EU BEPS-related developments in review

A review of EU activity related to BEPS

Overview

The EU has been actively involved in the G20/OECD's BEPS Project since its outset with the aim to help Member States take consistent action against base erosion and profit shifting practices. The EU's active role on the implementation of the BEPS Project was driven by the wish to ensure fairer, simpler and more effective taxation in the EU and was dominated by the debate around aggressive tax planning, base erosion and profit shifting, tax competition, transparency and corporate social responsibility in the international tax arena. The European Commission's approach has been to enshrine key BEPS measures into binding EU law so that they are swiftly and smoothly implemented across the EU, creating a solid framework for Member States to deliver on their BEPS commitments in a coordinated way.

Since the OECD's issuance of the BEPS final reports, there has been a deluge of EU developments in the area of taxation related to BEPS. The EU is considered very instrumental in driving the implementation of BEPS forward in many respects. Of the 15 BEPS Actions, the EU has already taken an active role in respect to 10 of them. For example, regarding Action 1, the European Commission issued two proposals for new Directives on digital economy; the Anti-Tax Avoidance Directive, which is under implementation stage, addresses the recommendations contained in BEPS Actions 2, 3, 4 and 6; in the context of Action 5, the EU has adopted the Directive on exchange of information of tax rulings; a Commission recommendation on the implementation of measures against tax treaty abuse that was adopted in 2016 urges Member States to adopt general avoidance rules and to amend the PE definition in their treaties in line with BEPS Actions 6 and 7; the Directive on new mandatory transparency rules for intermediaries and taxpayers broadly reflects the objectives of Action 12 of the OECD BEPS Project; with the CbC Directive 2016/881, the EU introduced into legislation BEPS Action 13; and lastly, in line with the recommendations set out under Action 14, the EU has adopted the Tax Dispute Resolution Directive setting forth the rules for a mechanism to resolve disputes between Member States. Apart from the proposals on digital taxation, which are still awaiting adoption by the Council, and the Commission recommendation related to Actions 6 and 7 that has no binding effect, all the other EU measures have already been adopted and constitute part of the EU legislation.

The following analysis serves to summarize the latest EU initiatives against the background of the OECD BEPS Project.

Digitalization

On 21 March 2018, the European Commission issued two 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, which will apply only until the SDP solution has been implemented, is for a gross revenues (i.e., turnover) tax, set at a uniform rate of 3% across all EU Member States. Consensus among EU Member States has not yet been reached on timing, but the DST proposal sets out proposed adoption of the Directive by 31 December 2019. The SDP proposal focuses on a new concept of digital PE, along with revised profit attribution rules. According to the proposed Directive, Member States shall adopt and publish, by 31 December 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive, and they shall apply those provisions from 1 January 2020 with respect to tax periods beginning on or after that date. In April 2018, the finance and economic affairs Ministers of the EU Member States discussed the above proposals at their informal Economic and Financial Affairs Council (ECOFIN) meeting in Sofia, Bulgaria. The Bulgarian Presidency of the Council of the EU scheduled a number of technical working meetings, starting on 2 May 2018, to discuss the proposals ahead of the next European Council meeting that took place in June.

ATAD

The anti-tax avoidance Directive (ATAD) is intended to provide for a uniform legislative implementation of some of the OECD BEPS recommendations. The agreed upon ATAD text establishes a minimum standard with respect to five areas that relate to Actions 2, 3, 4 and 6 of the BEPS Project: interest deductibility limitation, a General Anti-Abuse Rule (GAAR), CFC rules, hybrid mismatches and exit taxation. The ATAD is under an implementation process by many Member States, and some of its measures are expected to be transposed into domestic law of more Member States in

2018. The ATAD indicates that Member States shall adopt and publish the laws and regulations necessary to comply with the rules by 31 December 2018 at the latest, and the Directive should apply as from 1 January 2019. In relation to exit taxes, Member States are granted a delay of one year. Regarding hybrid mismatches, Member States will have until 1 January 2020 to transpose the rules into national laws and regulations (1 January 2022 for the implementation of reverse hybrid mismatches).

During 2018, Austria, Denmark and Luxembourg have submitted a draft bill transposing the ATAD measures. On 23 February 2018, the Dutch Ministry of Finance, released its fiscal policy agenda with the implementation of the ATAD being a top priority. Furthermore, France has launched a public consultation for the implementation of the interest limitation rule of the EU ATAD.

Based on the Coalition Agreement, which was concluded in February by the multiparty government of both the German Christian Democratic Parties and the Social Democratic Party, the main objective of the coalition is, among others, the full implementation of the EU's Anti-Tax Avoidance Directive (ATAD and ATAD2), and the adoption of added rules governing hybrid structures. Also, the Finnish Ministry of Finance issued a draft bill on the new interest deduction limitation rules stemming from the EU ATAD which are expected to expand and significantly tighten the current regulation. The new interest deduction limitation rules are scheduled to be applied as of 2019. On 14 June 2018, the Swedish Government adopted a bill regarding important changes in the corporate taxation area, which introduces, among others, legislation to align Sweden's rules with the EU ATAD.

In the annex of this sub-report there is a chart listing Member States, noting whether the state's domestic rules meet the ATAD requirements and whether the state has implemented the relevant rules. The chart illustrates some high-level information on the rules in each Member State.

Exchange of rulings

At the end of 2015, the EU Council formally adopted a legislative proposal that aims at the exchange of information of tax rulings. The adopted Directive has been implemented by all Member States. According to the adopted Directive, as of 1 January 2017, Member States are obliged to automatically exchange information on all new cross-border tax rulings that they issue. Every six months, national tax authorities send to the depository a report listing all the cross-border tax rulings that they have issued. Each Member State is able to check those lists and to ask the issuing Member State for more detailed information on a particular ruling. By 1 January 2018, Member States must also provide the same information for all cross-border rulings issued since the beginning of 2012.

Recommendations on tax treaty abuse

On 28 January 2016, the European Commission released an anti-tax avoidance package offering, among other things, a recommendation on the implementation of measures against tax treaty abuse. The recommendation advises Member States about how to reinforce their tax treaties against abuse and aggressive tax planning, in a way that is compliant with EU law and is in line with OECD BEPS Actions 6 and 7. The recommendation covers the introduction of general anti-abuse rules in tax treaties and the revision of the definition of permanent establishment based on the new proposed provisions to Article 5 of the OECD MTC.

Mandatory disclosure rules

On 25 May 2018, the Council of the EU formally adopted the 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 adopted Directive requires "intermediaries" such as tax advisors, accountants and lawyers that design and/or promote tax planning arrangements to report transactions and arrangements that are considered by the EU to be potentially aggressive. If there are no intermediaries that can report, the obligation will shift to the taxpayers. Following the reporting of the arrangements, the information about the arrangements will be automatically exchanged between Member States. The content of the Directive corresponds to that agreed by the ECOFIN on 13 March 2018. 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 Directive, i.e., on 25 June 2018, being 20 days after publication of the Directive into the Official Journal of the EU on 5 June 2018. The first information shall be reported by 31 August 2020 and exchanged by 31 October 2020.

Country-by-Country Reporting

Directive 2016/881, adopted on 25 May 2016, introduces into EU legislation BEPS Action 13 and sets up an automatic information exchange system. The CbC Directive, which requires MNE Groups that are headquartered in the EU or with operations in the EU and that have total consolidated revenue equal to or higher than €750 to file the CbC report in accordance with the standard template, has already been implemented by all Member States and transposed into their domestic laws.

The European Commission proposed in 2016 a further step in tax transparency that would amend the Accounting Directive (Directive 2013/34/EU) and introduce "public CbCR" rules. The proposal builds on the OECD BEPS work, in particular Action 13 on CbC reporting. However, it goes a step ahead by requiring large MNEs to make certain items of the CbC report publicly available. The timing of this legislative procedure is very difficult to predict at this stage. Once adopted, the Draft Directive would have to be transposed into national legislation by all EU Member States, within one year after the entry in force. The first income tax information reports would apply to financial years starting at least two years after the Directive is adopted.

At the end of 2017, the EU Presidency released a state of play document containing the Presidency's compromise proposal on public CbCR to take stock of the work undertaken with the help of delegations at the working party level during the meetings on 20 September, 11 October and 14 November 2017. The released document includes changes to the Commission Proposal of 12 April 2016 and to the Presidency's compromise text of 22 June 2017. The compromise proposal introduces sub-reporting requirements for entities within the group if the sum of their revenues as reflected on their financial statements exceeds €750 million for each of the last two consecutive financial years. Furthermore, in certain cases where it is seriously prejudicial to the commercial position of an undertaking, the compromise proposal gives the right to undertakings to defer disclosing certain information for up to four years, provided they clearly disclose the deferral and provide a reasoned explanation for it in the report.

Tax dispute resolution mechanisms

On 10 October 2017, the Council of the EU adopted the Tax Dispute Resolution Directive setting forth the rules for a mechanism to resolve disputes between Member States when those disputes arise from the interpretation and application of agreements that provide for the elimination of double taxation. The Directive constitutes part of the EU's ongoing fight against aggressive tax planning and its efforts to resolve double taxation issues for businesses, and it is in line with recommendations set out under Action 14 on Making Dispute Resolution Mechanisms More Effective. Member States will have until 30 June 2019 to transpose the Directive into national laws and regulations. It will apply to complaints submitted after that date on questions relating to a tax year starting on or after 1 January 2018.

Multilateral Instrument

All EU Member States have already signed the MLI. Out of the nine countries that have so far deposited their instrument of ratification, acceptance or approval of the MLI to the OECD and confirmed their final positions, five are EU Member States, namely Austria, Poland, Slovenia, Sweden and the United Kingdom. It is expected that additional Member States will complete their ratification process in the course of 2018. During the ratification procedures the decisions of countries in relation to their rights to reserve on certain parts of the MLI (a reservation or opt-out) may change.

Other developments

EU blacklist

On 5 December 2017, the Council of the EU published a listing of "Uncooperative jurisdictions for tax purposes" (EU list), comprising 17 jurisdictions that were deemed to have failed to meet relevant criteria established by the European Commission. The publication of a listing of uncooperative jurisdictions for tax purposes by the EU is not directly connected to the OECD BEPS Project recommendations; however, it has indirect but widespread impacts on them. According to the commitments made by a number of jurisdictions at the time of publication of the EU list, the IF on BEPS, for example, would grow by at least 12 members as a result of this exercise, while at least 6 jurisdictions have agreed to implement the automatic exchange of information by 2018.

During the first half of 2018, there were many changes to the EU list. The finance and economic affairs Ministers of the EU Member States agreed that a de-listing is justified in the light of an expert assessment of the commitments made by the listed jurisdictions to address deficiencies identified by the EU. Currently, seven jurisdictions remain on the EU list (American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago, and the US Virgin Islands).

In February, the Council of the EU also 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 Code of Conduct Group (GOCG) (Business Taxation) in its 14 February 2018 meeting. At the beginning of 2019 and as a final step of the monitoring process analyzed on the guidelines, 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.

The European Commission has also adopted the first countermeasures on listed non-cooperative tax jurisdictions by the adoption of a Communication in March that sets 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 list.

Annex 1

ATAD implementation overview as of 1 July 2018

Anti-Tax Avoidance Directive
Implementation overview

EY

✓ = *domestic rule meets the ATAD requirement*
✓ (red) = *domestic rule does not meet the ATAD requirement*
? = *unclear/no information*
☺ = *implemented*
✗ = *not implemented*
A = *passive income approach*
B = *non genuine arrangement approach*

Disclaimer

This material has been prepared for general information and discussion purposes only and is not intended, and should not be relied upon, as accounting, tax or other professional advice. The information contained hereafter is based on tax legislation, its rules and regulations and thus it may be modified or changed at any time by a country's administrative, judicial or legislative authorities, which may have a significant effect on the conclusions contained hereunder. Please refer to a country advisor for specific advice.

	GAAR			Interest limitation rule							CFC rules				Exit tax			Hybrids			Reverse Hybrids	
	Domestic rule	Implementation Status	Effective date	Domestic rule	Implementation Status	Effective date	De minimis rule	Grandfathering	Group ratio rule	Carry forward and/or back	Domestic rule	Implementation Status	Effective date	CFC income approach	Domestic rule	Implementation Status	Effective date	Domestic rule	Implementation Status	Effective date	Implementation Status	Effective date
Austria	✓	☺	Already in force	✗	✗	?	-	-	-	-	✓ (red)	✗	01-1-2019	A	✓	☺	Already in force	✓ (red)	✗	01-1-2020	✗	01-1-2022
Belgium	✓	☺	Already in force	✓	☺	01-1-2020	yes	yes	no	yes	✓	☺	01-1-2019	B	✓	☺	01-1-2019	✓	☺	01-1-2019	☺	01-1-2019
Bulgaria	✓	☺	Already in force	✓ (red)	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	?	✓ (red)	✗	01-1-2020	✓ (red)	✗	01-1-2020	✗	01-1-2022
Croatia	✓	☺	Already in force	✗	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	?	✗	✗	01-1-2020	✗	✗	01-1-2020	✗	01-1-2022
Cyprus	✓	☺	Already in force	✗	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	?	✗	✗	01-1-2020	✗	✗	01-1-2020	✗	01-1-2022
Czech Republic	✓ (red)	✗	01-1-2019	✗	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	A	✗	✗	01-1-2020	✗	✗	01-1-2020	✗	?
Denmark	✓ (red)	✗	01-1-2019	✓ (red)	✗	01-1-2019	-	-	-	-	✓ (red)	✗	01-1-2019	A	✓ (red)	✗	01-1-2020	✓ (red)	✗	01-1-2020	✗	01-1-2022
Estonia	✓	☺	Already in force	✗	✗	01-1-2019	-	-	-	-	✓ (red)	✗	01-1-2019	?	✓ (red)	✗	01-1-2019	✓ (red)	✗	01-1-2019	✗	01-1-2022
Finland	✓	☺	Already in force	✓ (red)	✗	01-1-2019	no	no	no	yes	✓ (red)	✗	01-1-2019	?	✓ (red)	✗	01-1-2020	✗	✗	01-1-2020	✗	01-1-2022
France	✓	☺*	Already in force	✓	☺*	?	-	-	-	-	✓	☺*	Already in force	?	✓	☺	Already in force	✓ (red)	✗	01-1-2020	✗	01-1-2022
Germany	✓	☺	Already in force	✓	☺	Already in force	-	-	-	-	✓	☺	Already in force	?	✓	☺	Already in force	✓ (red)	✗	01-1-2019	✗	01-1-2019
Greece	✓	☺	Already in force	✓	☺	Already in force	-	-	-	-	✓	☺	Already in force	?	✓ (red)	✗	01-1-2020	✓ (red)	✗	01-1-2020	✗	01-1-2022
Hungary	✓	☺	Already in force	✓	☺	01-1-2024	-	-	-	-	✓	☺	Already in force	?	✗	✗	01-1-2020	✓ (red)	✗	01-1-2020	✗	01-1-2022
Ireland	✓	☺	Already in force	✓	☺	01-1-2024	-	-	-	-	✗	✗	01-1-2019	?	✓ (red)	✗	01-1-2020	✗	✗	01-1-2020	✗	01-1-2022
Italy	✓	☺	Already in force	✓	☺	Already in force	-	-	-	-	✓	☺	Already in force	A	✓	☺	Already in force	✓ (red)	✗	01-1-2020	✗	01-1-2022
Latvia	✗	✗	01-1-2019	✓	☺	01-1-2018	-	-	-	-	✗	✗	01-1-2019	?	✗	✗	01-1-2020	✗	☺	01-1-2018	✗	01-1-2022
Lithuania	✗	✗	01-1-2019	✓	✗	01-1-2023	-	-	-	-	✓ (red)	✗	01-1-2019	A	✗	✗	01-1-2019	✗	✗	01-1-2019	✗	01-1-2019
Luxembourg	✓	☺	Already in force	✗	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	B	✓ (red)	✗	01-1-2020	✗	✗	01-1-2019 and 2020	✗	01-1-2022
Malta	✓	☺	Already in force	✓ (red)	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	?	✗	✗	01-1-2019	✓ (red)	✗	01-1-2020	✗	01-1-2020
Netherlands	✓	☺	Already in force	✓ (red)	✗	01-1-2019	yes	no	no	-	✓ (red)	✗	01-1-2019	B/A	✓	☺	Already in force	✗	✗	01-1-2020	✗	01-1-2020 or 2022
Poland	✓	☺	Already in force	✓	☺	Already in force	yes	yes	no	yes	✓	☺	Already in force	A	✗	✗	01-1-2019 or 2020	✓ (red)	✗	01-1-2019 or 2020	✗	01-1-2019 or 2020
Portugal	✓	☺	Already in force	✓ (red)	✗	01-1-2019	-	-	-	-	✓ (red)	✗	01-1-2019	?	✓	☺	Already in force	✗	✗	01-1-2020	✗	01-1-2022
Romania	✓	☺	01-1-2018	✓	☺	01-1-2018	-	-	-	yes	✓	☺	01-1-2018	B	✓	☺	01-1-2018	✓ (red)	✗	01-1-2020	✗	01-1-2022
Slovakia	✓	☺	01-1-2018	✓	☺	Already in force	-	-	-	no	✓	☺	01-1-2019	B	✓	☺	01-1-2018	✓	☺	01-1-2018	☺	01-1-2018
Slovenia	✓ (red)	✗	01-1-2019	✓ (red)	✗	01-1-2019	-	-	-	-	✗	✗	01-1-2019	?	✗	✗	01-1-2020	✗	✗	01-1-2020	✗	01-1-2022
Spain	✓	☺	Already in force	✓	☺	Already in force	yes	no	no	yes	✓	☺	Already in force	A	✓	☺	Already in force	✓	☺	01-1-2020	✗	01-1-2022
Sweden	✓	☺	Already in force	✓	☺	01-1-2019	-	-	-	-	✓ (red)	✗	01-1-2019	B	✓	☺	Already in force	✓	☺	01-1-2019	☺	01-1-2019
United Kingdom	✓	☺	Already in force	✓	☺	Already in Force	yes	no	yes	yes	✓	☺	Already in force	n/a	✓ (red)	n/a	No changes Scheduled	✓	☺	Already in force	☺	Already in force

*Although domestic rules already exist and apply, they do not exactly meet the ATAD requirements.

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