

The Latest on BEPS - 27 August 2018

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OECD

On 23 August 2018, the Former Yugoslav Republic of Macedonia (FYROM) became the 117th member to join the BEPS Inclusive Framework. As a new BEPS Member, FYROM committed to comply with the BEPS minimum standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). FYROM will also participate on an equal footing with the members of the Inclusive Framework on the remaining standard setting, as well as the review and monitoring of the implementation of the BEPS package.

United Nations

On 2 August 2018, the [provisional agenda](#) of the Seventeenth session of the United Nations (UN) Committee of Experts on International Cooperation in Tax, which will take place on 16-19 October, 2018 in Geneva, Switzerland, was released. According to the provisional agenda, among the substantive issues that will be discussed during the session are: (i) the report of the Subcommittee on updating the UN Model Double Taxation Convention between developed and developing countries; (ii) the update of the UN practical manual on transfer pricing for developing countries; (iii) the treatment of collective investment vehicles; (iv) dispute avoidance and resolution; and (v) tax consequences of the digitalized economy.

Australia

On 16 August 2018, the Australian Parliament passed the hybrid mismatch integrity measures which are now awaiting Royal Assent. The OECD hybrid mismatch rules will apply to income years starting on or after 1 January 2019. However, the imported mismatch rule (other than where an importing payment is made under a structured arrangement) will apply to income years starting on or after 1 January 2020.

See EY Global Tax Alert, [Australian Parliament passes hybrid mismatch legislation](#), dated 16 August 2018.

Also on 16 August 2018, the Australian Parliament approved the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). Once the Bill receives Royal Assent, Australia will be able to formally ratify the MLI. The MLI will enter into force for Australia 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. If this ratification occurs prior to the end of September 2018, the MLI should enter into force for Australia from 1 January 2019.

Belgium

On 10 August 2018, a law was published in the *Belgian Official Gazette*, amending various measures included in the corporate income tax (CIT) reform enacted earlier in 2017. Among others, the amendments primarily concern technical modifications to “fine-tune”: (i) the calculation of the incremental notional interest deduction and the introduction of a specific anti-abuse provision; (ii) the scope of the controlled foreign companies (CFC) regime; (iii) the limitation on interest deductibility based on EBITDA (earnings before interest, taxes, depreciation and amortization); and (iv) the application of the tax consolidation regime by means of group contributions.

Bermuda

On 26 July 2018, Bermuda issued the [updated version of the Country-by-Country Reporting Guidance](#). Among others, the updated Guidance includes: (i) a clarification that a constituent entity (CE) that it is neither the ultimate parent entity (UPE) nor the surrogate parent entity (SPE) does not have to notify; (ii) a definition of the term “reporting entity”; (iii) a reference that the electronic portal and user guide are now available; (iv) a clarification that the secondary reporting mechanism requiring a CE that is neither a UPE

nor an SPE to file a Country-by-Country (CbC) Report in certain circumstances does not apply in Bermuda; and (v) a new section concerning the threshold for excluded multinational enterprise (MNE) groups.

Finland

On 14 August 2018, the Finnish Ministry of Finance (MoF) released a notice regarding the introduction of the Mandatory Disclosure Regime (MDR) in Finland, as proposed by the European Union (EU) Council Directive 2018/822. In an effort to increase transparency and tackle so-called cross-border aggressive tax planning, the MDR requires certain intermediaries (e.g., tax advisors, accountants and lawyers) to disclose any cross-border arrangement that contains certain characteristics (referred to as “hallmarks”) indicating potential tax avoidance. The Finnish Ministry of Finance announced that it will commence with the preparation of legislation to implement the Directive into national law. The Directive should be implemented by 31 December 2019.

On 9 August 2018, the Finnish MoF issued its proposal for the 2019 budget. The proposal outlines a variety of tax-related budgetary measures, including the amendments of the current interest limitation rules to align the rules with the first EU Anti-Tax Avoidance Directive (ATAD). The government bill on the budgetary measures is expected to be published on 17 September.

On 6 August 2018, the Finnish MoF issued a consultation draft of a bill proposing amendments to the Finnish CFC rules. The draft bill aims to implement the CFC provisions included in the EU ATAD. The draft bill would introduce changes to the CFC definition and the applicable exemptions, including the decrease of the threshold of control for an entity to qualify as a CFC from the current 50% (direct or indirect ownership) to 25% of ownership of share capital or voting rights, or entitlement to profits, as defined by the ATAD. According to the draft bill, the new rules would enter into force as of 1 January 2019 and would be applied for the first time in relation to the tax assessment of 2019.

Next to the CFC provisions, the draft bill also analyzes the need to amend the domestic general anti-abuse rule (GAAR), while concluding that the current GAAR is still sufficient to fulfill the objectives of the ATAD. Hence, no amendments are proposed related to the domestic GAAR.

See EY Global Tax Alert, [Finland issues draft bill for public consultation regarding changes to CFC rules](#), dated 17 August 2018.

On 13 July 2018, the President of Finland signed a law, simplifying the application of Value Added Tax (VAT) rules in the context of the digital economy by providing a deviation for the supply of business to consumer digital services by small businesses. As of 1 January 2019, companies engaged in cross-border sales of telecommunication, broadcasting or electronically-supplied services in Finland may choose to subject these services to VAT in their country of residence, provided that the revenue generated by these services does not exceed a threshold of €10,000 in the current and the previous year.

Germany

On 16 August 2018, the German MoF issued a circular on the spontaneous exchange of CbC reports between Germany and the United States (US) concerning reporting fiscal year 2016. This follows a joint statement between Germany and the US that was released on 10 July 2018 and states the Competent Authorities intend to spontaneously exchange CbC reports for fiscal years of MNE groups commencing on or after 1 January 2016 and before 1 January 2017. Also, the two countries are currently negotiating a Competent Authority Agreement to allow for the automatic exchange of CbC reports.

Jersey

On 6 August 2018, Jersey's Government launched a [consultation](#) dealing with the introduction of substance requirements for companies tax resident in Jersey. The consultation is designed to seek feedback on the outlined proposal and submissions can be sent via email. The proposal consists of three stages: (i) step one is to identify companies carrying out relevant activities; (ii) step two is to impose substance requirements on companies undertaking relevant activities to demonstrate; and (iii) step three is to enforce the substance requirements which would operate through a hierarchy of sanctions for non-compliant companies. Also, the survey discusses the introduction of legislation for mandatory disclosure by 31 December 2019. The closing date for submissions is 31 August 2018.

Korea

On 30 July 2018, Korea's Ministry of Strategy and Finance announced the 2018 tax reform proposals (the 2018 Proposal), aimed at improving wealth distribution and sustaining growth.

The 2018 Proposal includes provisions in line with the OECD's BEPS Action Plan 7, among others. As a commitment to implement the permanent establishment (PE) rules recommended by BEPS Action 7, the 2018 Proposal reflects contents of the updates to Article 5 (PE) of the OECD Model Tax Convention approved by the OECD Council on 21 November 2017, which includes: (i) more requirements to a non-PE definition; (ii) preventing misuse of specific exceptions to the PE rules; and (iii) expanded scope of agency PE.

In the transfer pricing context, the 2018 Proposal prescribes that in applying transfer pricing methods, the tax authority has to clearly confirm whether the transaction between a resident and its foreign related party actually incurred by considering commercial and financial relationship between the parties and significantly influential conditions of the transaction, and to decide reasonableness of the tested transaction by comparing it with the one to be made between independent companies under similar circumstances. If the tested transaction considerably lacks commercial reason and cannot be used as a basis for calculation of the arm's-length price, the transaction can be denied as a whole or properly recharacterized for the purpose of application of the transfer pricing methods.

This provision will become effective for fiscal years beginning on or after 1 January 2019.

See EY Global Tax Alert, [Korea announces 2018 tax reform proposals](#), dated 15 August 2018.

Luxembourg-Senegal

On 14 June 2018, the Double Tax Treaty (the treaty) between Luxembourg and Senegal, which was signed on 10 February 2016, entered into force. The treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

The treaty contains, for example, the new recommended preamble clarifying that the treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. It also has a Principal Purpose Test. Furthermore, the treaty provides a period of three years for submission of a mutual agreement procedure (MAP) request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the treaty.

Both Luxembourg and Senegal have signed the MLI and both of them have included the treaty as a Covered Tax Agreement (CTA). For the MLI provisions to have effect on the treaty, both jurisdictions need to complete their ratification processes, deposit their instrument of ratification with the OECD and certain time needs to elapse. Although according to the preliminary MLI positions of Luxembourg and Senegal the effect of the MLI on the treaty will be limited, it is expected that the effect of the MAP provision would be further modified to permit that requests for MAP assistance be made to the competent authority of either Contracting State.

See EY Global Tax Alert, [Luxembourg-Senegal double tax treaty enters into force](#), dated 22 August 2018.

Panama

On 16 August 2018, Panamanian Council's Cabinet authorized the Minister of Foreign Affairs to submit to its National Assembly a draft bill to ratify the MLI. After the Bill is submitted to the National Assembly, the bill will undergo three rounds of debate before it is remitted to the Executive branch for the final approval by the President. Once the domestic ratification process has been completed, Panama 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 Panama 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.

On 24 July 2018, Panama's Minister of Commerce and Industry proposed to the National Assembly a draft bill (Draft Bill No. 657) that would amend the multinational headquarters regime (MHQ regime) to comply with BEPS Action 5. The draft bill would eliminate the income tax exemption granted to companies with MHQ licenses, establish a reduced income tax rate and include substantive requirements for obtaining the license.

See EY Global Tax Alert, [Panama's Minister of Commerce and Industry proposes bill to amend multinational headquarters regime](#), dated 15 August 2018.

Poland

On 22 August 2018, the Polish Ministry of Finance published the assumptions for the law implementing, among others, announced plans to implement regulations on exit taxation as

provided in the EU ATAD. In accordance with the provisions of the Directive, the new regulations aim to prevent profit shifting by taxing unrealized capital gains in the event of outbound relocations of assets, migrations or restructurings from Poland to another jurisdiction. The new regulations would apply to both companies and individuals. The expected implementation date is 2019.

In the same document inter alia the following plans to implement from the beginning of 2019 were confirmed: (i) Intellectual property (IP) Boxes regime allowing for reduced taxation of IP-related income at the rate of 5%; and (ii) a reduced CIT rate for small and medium-sized entities at the rate of 9%.

Russia

On 3 August 2018, the President of the Russian Federation signed a law amending the Russian transfer pricing regulations. The law excludes a significant number of domestic transactions from the scope of the Russian transfer pricing regulations by targeting for transfer pricing regulations only transactions between Russian companies that: (i) apply different tax rates on profits or special tax regimes; and (ii) if the income from these transactions exceeds 1 billion rubles per year (approx. US\$14.8 million). The law also provides a unified income threshold of 60 million rubles (approx. US\$0.9 million) for cross-border transactions between related parties (including transactions that are equated with transactions between related parties) in order to be targeted by the Russian transfer pricing regulations.

The law will have effect on transactions in relation to which income and/or expenses are recognized on or after 1 January 2019.

See EY Global Tax Alert, [Russia amends transfer pricing rules](#), dated 13 August 2018.

Switzerland

On 22 August 2018, the Swiss Federal Council adopted a dispatch on the MLI. The dispatch was submitted to the Swiss Parliament for approval. Provided the Swiss Parliament follows the dispatch of the Swiss Federal Council, the Federal Decree is still subject to an optional referendum. That is, if within 100 days of the final decree's publication, 50,000 voters sign a petition requesting a public referendum, the MLI will be subject to a popular vote, which could delay the entry into force of the Federal Decree accordingly.

Switzerland signed the MLI on 7 June 2017 but excluded the application of the substantive provisions which do not constitute BEPS minimum standards by means of a reservation. The MLI will initially adjust the Swiss double taxation agreements with Argentina, Austria, Chile, the Czech Republic, Iceland, Italy, Lithuania, Luxembourg, Mexico, Portugal, South Africa, and Turkey to the tax treaty related minimum standards defined within the framework of the BEPS project. These countries are prepared to agree with Switzerland on the precise wording of the double tax treaties to be adapted via the MLI.

Also on 22 August, the Swiss Federal Council adopted a dispatch on the amending protocol, signed on 30 November 2017, to the Switzerland-United Kingdom Income Tax Treaty (1977) (the treaty). The Federal Council is now requesting Parliament's authorization to ratify the agreement. The United Kingdom (UK) has already ratified the amending protocol. The treaty will be adapted to the minimum standards of the BEPS project with the Protocol of Amendment. In particular, the amending protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits inappropriate circumstances), and Action 14 (making dispute resolution mechanisms more effective).

The Amending Protocol contains, for example, the new recommended preamble clarifying that the treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. It also includes a general agreement abuse clause. Moreover, the Amending Protocol enables taxpayers to present a case for MAP to the competent authorities of either Contracting State.

Both Switzerland and the UK have signed the MLI and neither has included this tax treaty as a CTA. The discussions between Switzerland and the UK on the concrete impact of the MLI on the treaty have revealed that they have different views on the relationship between the MLI and the treaty. For this reason, it was decided to adapt the treaty to the agreement related results of the BEPS project via a bilateral protocol amending the treaty.

Taiwan

On 25 June 2018, the Taiwan MoF published "Regulations Governing Application of Mutual Agreement Procedure for Double Taxation Agreements" (the Regulations). Taiwan has concluded 32 double tax agreements in total and all of them include a MAP article with language in general equivalent to Article 25 of the OECD Model Tax Convention. The published Regulations provide procedures to taxpayers and tax authorities for making the dispute resolution mechanism more effective and settling the cases within a reasonable time frame. Although Taiwan is not a BEPS member yet, the issuance of the Regulations is in line with BEPS Action 14. The MoF specifically indicates the Regulations are to meet the BEPS Action 14 minimum standard, aiming to resolve tax disputes in a timely, effective and efficient manner. In addition to MAP, the Regulations also prescribe the specific procedures for Bilateral or Multilateral Advance Pricing Arrangements. The Regulations apply from 25 June 2018.

United States

On 23 August 2018, the Internal Revenue Service (IRS) added Austria to the list of countries with which the United States (US) has signed a Competent Authority Agreement (CAA) for the automatic exchange of CbC reports. The IRS maintains a [website](#) that includes an up-to-date listing of the jurisdictions with which the US Competent Authority has entered into CAAs and the jurisdictions that are in negotiations for a CAA.

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