

The Latest on BEPS - 11 March 2019

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OECD

On 5 March 2019, Morocco joined the BEPS Inclusive Framework, bringing the total number of jurisdictions to 129. As a new BEPS member, Morocco is 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). Morocco 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.

Africa

Recently, the African Tax Administration Forum (ATAF) issued a [technical note](#) on the Tax Challenges arising in Africa from the digitalization of the economy. Following the release of the OECD Public Consultation Document, the ATAF's second technical note provides further details on the proposed revisions to the profit allocation and nexus rules and the proposals to address remaining BEPs issues. It then sets out details of how ATAF will work with members to ensure Africa helps to steer the development of these proposals. According to the technical note, the ATAF will dedicate significant resources to providing technical updates to its members and engage in frequent consultations with ATAF members to form an African view and proposals on new tax rules.

Australia

On 22 February 2019, the Australian Taxation Office published synthesized texts of Australia's tax treaties with Japan, Poland, New Zealand, and the United Kingdom, as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). The MLI entered into force for Australia on 1 January 2019.

Botswana

On 4 February 2019, Botswana's Minister of Finance & Development Planning presented the 2019 budget to Parliament. Among others, the Minister confirmed the publication of the *Income Tax (Amendment) Act, 2018 - Act No.38 of 2018* introducing new transfer pricing (TP) legislation and new interest deductibility legislation. Accordingly, all transactions entered into by Botswana resident persons directly or indirectly with connected persons must be at arm's length. Botswana entities entering into transactions with connected persons must prepare, keep and furnish TP documentation upon request. Also, taxpayers may apply to the Commissioner General to enter into an advanced pricing agreement (APA); the terms and conditions of the APA are still to be prescribed by the Minister through regulation. The new interest deductibility legislation is based on a fixed ratio rule which limits an entity's net interest deductions to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) except for a company whose main business is banking or insurance. The new TP legislation and the new interest deductibility legislation will come into effect on 1 July 2019.

See EY Global Tax Alert, [Botswana issues 2019 budget](#), dated 12 February 2019.

Canada

On 28 February 2019, the Canadian Standing Committee on Finance, a legislative committee appointed by the House of Commons, adopted Bill No. C-82, an Act to implement the MLI. On 1 March 2019, the Committee presented the Bill to the House for further study during which members may propose motions to amend the text of the Bill. Once the Bill has been adopted in the House, it will be sent to the Senate who can also make amendments to the bill. Such amendments might either be accepted by the House or be the object of an agreement with the Senate. Following the

Senate approval, royal assent must be granted for the Bill to become law. The MLI will enter into force for Canada 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.

Finland

On 25 February 2019, Finland deposited its instrument of ratification for the (MLI) with the OECD - bringing the total number of deposits to 21. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Finland confirmed its MLI positions, but it removed the tax treaty with Germany from its list of Covered Tax Agreements and made a few other changes to its positions. The MLI will enter into force for Finland 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 Finland of its instrument of ratification, acceptance or approval, i.e., on 1 June 2019.

France

On 6 March 2019, a draft bill detailing France's proposed tax on digital services was submitted to the French Council of Ministers. Its main features are similar to the Digital Services Tax (DST) proposed by the European Commission on 21 March 2018, with a single rate of 3% levied on gross income derived from certain digital services for which the French Government deems user participation is essential for creating value; namely, targeted online advertising, which include the sale of user data, and online intermediation services (i.e., "platforms"), whether they are provided in the context of a relationship between businesses, between businesses and consumers or between consumers. Only companies with worldwide revenues from taxable services of €750 million per annum and with a total amount of taxable revenues from taxable services obtained in France exceeding €25 million per annum, would be subject to the tax. The draft bill has been submitted to French Parliament under an accelerated procedure. According to the bill, the tax will apply with retroactive effect from 1 January 2019. Importantly, taxpayers will also be required to pay a unique advance payment computed on the 2018 taxable amounts which will be due in October 2019.

See EY Global Tax Alert, [French tax on digital services submitted to Council of Ministers](#), dated 8 March 2019.

Kazakhstan

On 24 December 2018, the Kazakhstan Ministry of Finance issued Order No. 1104 which includes the forms required for the submission of the Country-by-Country (CbC) report, the Master file and Local file and Rules for their completion. The order came into force on 1 January 2019. The first reporting period for Master and Local files in Kazakhstan is 2019, and for the CbC report it was 2016.

Luxembourg

On 22 February 2019, the Luxembourg Tax Authority issued a circular letter outlining how the tax authorities intend to apply the new domestic permanent establishment (PE) provision applicable since 1 January 2019 to determine if a resident taxpayer has a PE in a country that has concluded a tax treaty with Luxembourg. Where an existing tax treaty does not define a specific term, Luxembourg will apply its domestic PE definition, according to which a taxpayer will be considered as having a PE in the other Contracting State if the activity that is exercised in the other country constitutes an independent activity and represents a participation in the general economic life in that other country. The Circular clarifies that the focus to recognize a foreign PE is put on the analysis of the PE activity rather than on its level of substance; the mere fact of not having an extensive infrastructure or a substantial and permanent presence of human resources would not seem to automatically result in Luxembourg not recognizing the existence of a PE in the other country. There is no explicit requirement for the PE to be effectively taxed in the other country. Where the taxpayer must provide confirmation that the other contracting country recognizes the existence of a PE in its territory, such confirmation can be made by any supporting evidence such as an income tax assessment or a certification of the competent authority of the other country confirming the existence of a PE.

See EY Global Tax Alert, [Luxembourg Tax Authority clarifies application of new foreign permanent establishment definition](#), dated 25 February 2019.

Nigeria

On 21 February 2019, the Nigerian Federal Inland Revenue Service (FIRS) published detailed Guidelines on Mutual Agreement Procedure (MAP). The Guidelines are closely aligned with the recommendations of the OECD's BEPS

Action 14 (Making Dispute Resolution Mechanisms More Effective) Final Report. Among others, the Guidelines provide detailed information on the eligibility for MAP, access to MAP, overview of the MAP request process, and the implementation of a MAP decision. The Guidelines are supplemented by a Public Notice and Certificate of Residency forms for both Nigerian and foreign residents.

Slovenia

On 14 February 2019, the OECD released the fifth batch of peer review reports relating to the implementation of the minimum standard under BEPS Action 14 on improving tax dispute resolution mechanisms. Slovenia was among the assessed jurisdictions in the fifth batch.

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

See EY Global Tax Alert, [OECD releases Slovenia peer review report on implementation of BEPS Action 14 minimum standard](#), dated 26 February 2019.

Spain

On 21 February 2019, the Spanish Congress approved the bill that would ratify the MLI. Following Congress' approval, the bill has now been sent to the Spanish Senate for the next step of the ratification procedure. Once approved by the Senate without any changes, the text is ratified and can be deposited with the OECD. 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 28 February 2019, the Ukrainian Parliament (Verhovna Rada) passed the law ratifying the MLI. With this, Ukraine can now submit its instrument of ratification to the OECD. 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 the deposit of the instrument of ratification of the MLI with the OECD.

United States

On 19 December 2018, the United States Internal Revenue Service released [six statistical tables](#) with aggregated CbC report data. The data presented is collected from Form 8975 - Country-by-Country Report and Form 8975 Schedule A - Tax Jurisdiction and Constituent Entity Information and relates to the reporting fiscal year 2016. The data provides aggregated

information on the contents of Tables 1 and 2 of the CbC reports. Four of the six tables contain information organized by geographic region and selected tax jurisdictions; another table organizes the data by industry group, geographic region, and selected tax jurisdictions, and finally, the other table classifies the information by the effective tax rate of multinational enterprise sub-groups.

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