

The Latest on BEPS - 25 March 2019

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OECD

On 13-14 March 2019, the OECD hosted a day and a half-long public consultation on its document entitled *Addressing the Tax Challenges of the Digitalisation of the Economy*. The sessions were chaired by the French and United States (US) government representatives who serve as co-chairs of the OECD Task Force on the Digital Economy. Government representatives from about 60 countries attended the consultation. The OECD received over 200 comment submissions on the consultation document that was issued on 13 February. Representatives from business, labor groups, non-governmental organizations (NGOs), and academia participated in the consultation to discuss their perspectives on the proposals outlined in the OECD document. EY submitted a comment letter and a global team of EY representatives participated in the consultation.

The OECD laid out a timeline through 2020 for advancing work on the proposals and reaching consensus on a coordinated global approach. Dozens of stakeholders urged caution in the development of the details of what potentially are sweeping changes to long-standing rules for determining taxing jurisdiction over business profits and broad new anti-base erosion rules that go well beyond the 2015 BEPS project recommendations. Many stakeholders also expressed the view that some changes to the international tax system are inevitable to better align the taxing rules with the new global economy. Because the consultation was intended as an opportunity to hear from stakeholders, the government representatives who attended were largely in listen mode and did not share their views during the sessions. Information regarding the consultation is to be shared with the Inclusive Framework on BEPS, which now has 129 countries participating.

See EY Global Tax Alert, [OECD hosts public consultation on document proposing significant changes to the international tax system](#), dated 18 March 2019.

European Union

On 12 March 2019, the Council of the European Union (the Council or ECOFIN) held a meeting where they, among other things updated the European Union (EU) list (the EU List) of non-cooperative jurisdictions for tax purposes and discussed the proposal for a digital services tax (DST). They also agreed on implementing rules on the Value Added Tax (VAT) regime for e-commerce adopted in December 2017.

In regard to the EU List, the Council added 10 new jurisdictions which either did not commit to addressing the EU's concerns or did not deliver their commitments on time, bringing the total number of jurisdictions listed to 15. Also, the Council amended the list of countries included in Annex II of the Council conclusions of 5 December 2017 (jurisdictions with pending commitments) by moving 10 jurisdictions to the EU List, removing 21 and adding 2 new jurisdictions. The Annex II listing was reduced from 63 jurisdictions listed to 34.

Furthermore, the Council took stock of the progress achieved in the DST negotiations on the basis of a new compromise text setting out a scope limited to digital advertising services only. The discussion revealed that despite the broad support from a large number of Member States on the new compromise text, some delegations maintain reservations either on some specific aspects of the proposal or more fundamental objections.

See EY Global Tax Alert, [ECOFIN publishes updated list of non-cooperative jurisdictions for tax purposes, fails to gain agreement on digital services tax](#), dated 14 March 2019.

International Monetary Fund

On 22 February, 2019, the International Monetary Fund (IMF) issued a paper setting out the current state of international corporate income tax arrangements. This IMF paper is the output of the first phase in a research program publicly launched at the 2018 Annual Meetings (October 2018). This current research looks at a world after the launch and implementation of the OECD's BEPS project, and concludes that even with the commitment of over 128 countries to implementing BEPS measures to protect the domestic tax base, problems and stressors still remain especially in developing countries. The IMF points out that with the rapid digitization of the global economy, "traditional approaches" to adjudicating cross-border transaction (such as the "Arms-length Principle") may not offer workable solutions especially in low-capacity, low information environments. The paper

explores alternative approaches to adjudicating cross-border transaction, namely minimum tax schemes, border-adjusted profit taxes, formula apportionment and sharing residual profit. However, the IMF does not endorse any one approach; rather it discusses conditions and situations when alternative approaches can usefully be deployed. The work and this paper will be discussed in a presentation during the IMF-World Bank Annual Meetings on 14 April 2019 in Washington DC.

Australia

On 20 March 2019, the Australian Government released a response in relation to the OECD digital tax consultation and announced the decision to continue to focus its efforts on engaging in a multilateral process and not to proceed with an interim measure, such as a DST, at this time.

Australia will join other members of the OECD's Inclusive Framework on BEPS in May to discuss responses to the consultation document and progress towards a final report due in 2020 aimed at providing a consensus-based multilateral solution to the tax challenges presented by the digitalization of the economy.

Austria

In March 2019, the Austrian Ministry of Finance published the synthesized text of the Austria - France Income and Capital Tax Treaty displaying the modifications made to the treaty by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI). The synthesized text reflects the options and reservations chosen by both Austria and France and shows how the treaty should be impacted by the MLI. The MLI entered into force for Austria on 1 July 2018 and for France on 1 January 2019.

Belgium

On 21 March 2019, the Belgian Federal Parliament approved the draft law ratifying the MLI. The five Regional and Community Parliaments will also have to formally adopt the MLI (as of today, the only Regional and Community Parliaments which have approved the MLI are the Flemish Community and the Walloon Region one). Once the ratification process is completed, Belgium will need to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Belgium 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 such instrument with the OECD.

British Virgin Islands

On 19 February 2019, the British Virgin Islands (BVI) Government issued [Guidance](#) complementing the legislative changes made to the *Mutual Legal Assistance (Tax Matters) Act, 2003* which introduced Country-by-Country (CbC) Reporting (CbCR) rules in the BVI. Among others, the Guidance provides the definition of some key terms, prescribes the process for the submission of the CbCR notification, and discusses the CbCR rules as they were adopted in September 2018.

Regarding the CbCR notification, it should be submitted electronically through the BVI Financial Account Reporting System (BVIFARS). Entities required to submit CbCR notifications will need to register to the system and appoint a primer user. The BVI Tax Authority is in the process of updating the BVIFARS to accommodate CbCR. In the interim, all notifications are to be submitted via email to the address BVIFARS@gov.vg. Moreover, the deadlines for the submission of the CbCR notification have been adjusted as follows: (i) for those Constituent Entities where the Reporting Fiscal Year (RFY) of the multinational enterprise (MNE) group ends on or before 30 April 2019, the CbCR notification is due on 30 April 2019; and (ii) for Constituent Entities where the RFY of the MNE group ends on or after 1 May 2019, the CbCR notification is due by the last day of the RFY.

Costa Rica

On 18 March 2019, the Resolution DGT-R-008-2019 that amends the current resolution regulating the information that companies based in Costa Rica need to report for the purpose of automatic exchange of CbC reports in accordance with the OECD's BEPS Action 13, was published in the *Official Gazette*. According to the Resolution, reporting obligations would only apply to multinational entities or groups.

Czech Republic

On 12 March 2019, the lower chamber of the Czech Parliament rejected the Senate's proposed amendments to a draft law implementing (among other things) the EU Anti-Tax Avoidance Directives I and II. Some of the proposed provisions of the draft law were supposed to be effective as of 1 January 2019 but their effectiveness will be postponed due to the legislative delays. For more details, see, [The Latest on BEPS](#), dated 11 January 2019.

Finland

On 25 February 2019, the Finnish Tax Administration published an updated version of the guidance regarding controlled foreign corporations (CFC) legislation. The guidance has been updated to reflect the amendments made to the CFC legislation in light of the EU Anti-Tax Avoidance Directive.

Germany

On 30 January 2019, the German Federal Ministry of Finance sent a draft law to all other Federal Ministries for the implementation of the EU Directive (2018/822) on mandatory disclosure rules (MDR) in Germany. This draft law remains largely in line with the EU Directive. However, it goes beyond the requirements of the EU Directive since it also requires disclosure for certain domestic tax arrangements. The obligation to disclose domestic arrangements is to a large extent based on the rules set out for cross-border tax arrangements and does not create a distinct second disclosure regime. Unlike the cross-border arrangement rules, the domestic disclosure rules provide for a *de minimis* rule: (i) for individuals, it only applies if at least one of them derived income exceeding €500,000 in the calendar year preceding the arrangement and (ii) for companies, it applies if they are part of a group, foreign-controlled, or if they are subject to continuous tax audits. Moreover, in contrast to cross-border arrangements, the disclosure for domestic tax arrangements is limited to anonymous information. The notification period and the events triggering the 30-day deadline are the same for both cross-border and domestic arrangements. The legislative process in Germany is not expected to be completed before the third quarter of 2019.

See EY Global Tax Alert, [Germany publishes draft Mandatory Disclosure Rules](#), dated 20 March 2019.

Hong Kong

As of 18 March 2019, Hong Kong has signed agreements (Agreements) on the Exchange of CbC reports with France, Guernsey, Ireland, Japan, Jersey, Korea, Malta, Netherlands, New Zealand, South Africa, and the United Kingdom (UK). According to the Agreements, each Competent Authority will annually exchange on an automatic basis the CbC report received from each Reporting Entity that is resident for tax purposes in its jurisdiction with the other Competent Authority, provided that, on the basis of the information provided in the CbC report, one or more Constituent Entities

of the MNE group of the Reporting Entity are resident for tax purposes in the jurisdiction of the other Competent Authority or, are subject to tax with respect to the business carried out through a permanent establishment situated in the jurisdiction of the other Competent Authority.

India

On 15 March 2019, the Indian Ministry of Finance published a press release stating that a Bilateral Competent Authority Arrangement for the exchange of CbC Reports between India and the US has now been finalized and will be signed on or before 31 March 2019. As a result, Indian constituent entities of MNE groups whose Ultimate Parent Entity (UPE) is resident in the US, who have already filed CbC reports in the US, would not be required to do local filing of the CbC reports of their MNE groups in India.

Japan

On 1 January 2019, the (MLI) entered into force for Japan. Following the deposit of the instrument of ratification by Finland on 25 February 2019, the MLI will have effect on the tax treaty between Japan and Finland as detailed below. The tax treaty with Finland is the 11th tax treaty for Japan to which the MLI will apply (the other 10 tax treaties are the Japanese tax treaties with Australia, France, Ireland, Israel, New Zealand, Poland, Singapore, Slovakia, Sweden and the UK).

Provisions of the MLI that apply to the Treaty include, among others, the preamble language describing the intent of the Contracting Jurisdictions that the tax treaty will not create opportunities for non-taxation or reduced taxation, the provisions that deny the benefits under the tax treaty where the principal purpose or one of the principal purposes of any arrangement or transaction was to obtain those benefits (i.e., principal purpose test), the provisions for presentation of a case of taxation not in accordance with the provisions of the tax treaty for a mutual agreement procedure, the provisions regarding corresponding adjustments to taxation in accordance with the arm's-length principle and the provisions regarding arbitration for resolving a case of taxation not in accordance with the provisions of the tax treaty.

The provisions of the MLI will have effect with respect to: (1) taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 January 2020 (Japan and Finland);

(2) all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after 1 December 2019; and (3) all other taxes levied by Finland, for taxes levied with respect to taxable periods beginning on or after 1 January 2010. The provisions of arbitration will have effect with respect to: (1) cases presented to the competent authority of Japan or Finland, on or after 1 June 2019; and (2) cases presented to the competent authority of Japan or Finland prior to 1 June 2019, on the date when both Japan or Finland have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 (Mandatory Binding Arbitration).

See EY Global Tax Alert, [Japan and Finland submit instruments of ratification for MLI](#), dated 13 March 2019.

Luxembourg

On 18 March 2019, a Grand-Ducal Regulation on CbCR was published, updating the list of cooperating jurisdictions that have concluded an agreement with Luxembourg on CbCR. This updated list includes among other countries China (for fiscal year starting on or after 1 January 2017), Andorra, Monaco (for fiscal year starting on or after 1 January 2018), Mauritius (for fiscal year starting on or after 1 July 2018) and Hong Kong (for fiscal year starting on or after 1 January 2019). The Regulation will be effective as of 22 March 2019.

On 7 March 2019, Luxembourg ratified the MLI, as published in the *Official Journal* on 14 March 2019. Luxembourg now needs to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of the instrument of ratification by Luxembourg.

On 5 March 2019, the Luxembourg Government presented the 2019 draft budget law to the Parliament. The draft budget Law amends the interest limitation rules by introducing an option to apply these rules to a fiscal unity as such (rather than the individual members of a fiscal unity), decreases the nominal corporate income tax rate by 1% (decreasing the global tax rate, including municipal business tax, for a company with its statutory seat in Luxembourg-City to 24.94%) and scales down the VAT rate applicable to certain products.

See EY Global Tax Alert, [Luxembourg introduces draft budget law 2019 including amendment to interest limitation rule](#), dated 6 March 2019.

New Zealand

On 18 February 2018, the Government announced plans to consult on the introduction of a DST to target “highly digitalized companies” that earn income in New Zealand. The Government intends the DST to be an interim measure until wider agreement in the OECD has been reached on the international income tax framework. Specific design features of the tax have not been provided but the approach will be drawn from proposals in other jurisdictions and the European Commission. While specific details have not been announced, a discussion document will be released later this year for public consultation.

See EY Global Tax Alert, [New Zealand announces proposal to implement Digital Services Tax](#), dated 26 February 2019.

Peru

On 14 March 2019, the Peruvian tax authorities (SUNAT) issued Ruling No. 054-2019 postponing the deadline for filing the CbC report for tax years 2017 and 2018 for Peruvian taxpayers that are members of a MNE group whose UPE is a nonresident related party. According to the Ruling, the deadline for submitting the CbC report for the 2017 and 2018 tax years will be the last business day of the month following the month in which the SUNAT publishes on its website the Action 13 peer review report that states that Peru has met the standard of confidentiality and security for information, as required by the OECD.

See EY Global Tax Alert, [Peruvian tax authorities postpone deadline for filing 2017 and 2018 country-by-country reports](#), dated 18 March 2019.

Poland

On 6 February 2019, the Polish Ministry of Finance published the 1991 synthesized texts of the Australia-Poland Double Tax Convention, displaying the modifications made to the treaty by the MLI. The MLI entered into force for Poland on 1 July 2018 and for Australia on 1 January 2019. The provisions of the MLI will have effect with respect to the Australia-Poland Double Tax Convention on: (i) 1 January 2019 for taxes withheld at source in both jurisdictions; and (ii) 1 July 2019 with respect to all other taxes levied in both jurisdictions.

Portugal

On 21 March 2019, the Portuguese Council of Ministers approved the Draft Resolution, for Parliament's discussion and approval, of the MLI, which should further be ratified by the Portuguese President and afterwards published in the *Official Journal*, within the next months. Once the ratification process is completed, Portugal will need to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Portugal 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.

Slovakia

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 (Action 14) on improving tax dispute resolution mechanisms. Slovakia was among the assessed jurisdictions in the fifth batch.

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

See EY Global Tax Alert, [OECD releases Slovakia peer review report on implementation of BEPS Action 14 minimum standard](#), dated 5 March 2019.

Slovenia

On 15 March 2019, the Slovenian Ministry of Finance published the synthesized texts of the Slovenian tax treaties with France, Israel, Lithuania and Slovak Republic as modified by the MLI. The synthesized texts reflect the agreement reached between the relevant authorities of the correspondent country and Slovenia on how the treaties should be impacted by the MLI. The MLI entered into force for Slovenia on 1 July 2018 and for France, Israel, Lithuania and the Slovak Republic on 1 January 2019.

South Africa

On 20 February 2019, the South African Minister of Finance presented the Budget for 2019/20 before Parliament. Among others, the Budget proposes the following: (i) a special interest deduction relating to debt-financed acquisitions of controlling shares in an operating company; (ii) the introduction of additional robust measures in the controlled foreign company rules to address the circumvention of the anti-diversionary rules; and (iii) the review of the definition of permanent establishment in domestic legislation in line with South Africa's positions under the BEPS MLI.

See EY Global Tax Alert, [South Africa's Finance Minister delivers 2019 Budget Review](#), dated 21 February 2019.

Switzerland

On 22 March 2019, both the Swiss Council of States and the Swiss National Assembly approved in the final vote the Federal Decree regarding the enactment of the MLI. The Federal Decree is still subject to an optional referendum and cannot enter into force before the expiration of a 100-day period. With the enactment of the Federal Decree, the Federal Council will be authorized to ratify the MLI.

Once the ratification process is completed, Switzerland will deposit its instrument of ratification of the MLI with the OECD. Based on the Swiss position, the MLI is directly amending the covered tax agreements if the counterparties to the covered tax agreements: (i) share the view that the MLI has the same effect as an amendment protocol; and (ii) agree to confirm the exact wording of the covered tax agreement as amended by the MLI.

For all other jurisdictions, Switzerland will conclude amendment protocols or negotiate new double tax treaties.

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