

## The Latest on BEPS - 8 April 2019

---

### **NEW!** EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### EY OECD BEPS project

Stay up-to-date on the OECD's project on Base Erosion and Profit Shifting with EY's online site containing a comprehensive collection of resources, including news, Alerts and [EY's BEPS developments tracker](#).

---

### OECD

In April 2019, the OECD released additional exchange relationships that have been activated under the Country-by-Country Multilateral Competent Authority Agreement (CbC MCAA). Currently, together with the exchange relationships under the European Union (EU) Council Directive 2016/881/EU and the bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements, there are over 2,000 automatic exchange relationships established among jurisdictions committed to exchanging Country-by-Country (CbC) reports. The full list of automatic exchange relationships that are in place and an update on the implementation of the domestic legal framework for CbC reporting (CbCR) in jurisdictions are available on the OECD website. With this update, San Marino has been included on the list of countries that have activated for the first time exchange relationships for CbCR.

On 29 March 2019, the OECD announced that three additional jurisdictions, i.e., Curacao, Georgia and the Netherlands, have deposited their instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI) - bringing the total number to 24. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Curacao and Georgia confirmed their MLI positions without any change. The Netherlands also deposited its definitive MLI positions and added a reservation to Article 12 of the MLI (artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies). The MLI will enter into force for Curacao, Georgia and the Netherlands 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 these jurisdictions of their instrument of ratification, i.e., on 1 July 2019.

On 28 March 2019, the OECD's Forum on Tax Administration (FTA) held its 12th plenary meeting which took place in Santiago, Chile on 26-28 March 2019. At this year's plenary, the FTA focused on four priorities: (i) Delivering on base erosion and profit shifting (BEPS) and tax certainty; (ii) Improving tax cooperation; (iii) Supporting the continued digitalization of tax administrations; and (iv) Building capacity for developing countries. The high level outcomes of the plenary are discussed in EY Global Tax Alert, [\*OECD's Forum on Tax Administration agrees on collective actions on tax certainty, cooperation and digital transformation\*](#), dated 29 March 2019.

The FTA is a subsidiary body of the OECD. It was created in July 2002 by the OECD's Committee on Fiscal Affairs, with the aim of promoting dialogue between tax administrations and identifying good tax administration practices. At the time of the Chile meeting, the FTA comprised 53 member countries.

At the plenary, FTA members welcomed the publication of seven reports which will provide direct practical assistance to tax administrations on the four priorities. Given that tax certainty is high on the agenda of the FTA, the FTA members recognized that they should focus on improving dispute prevention and dispute resolution mechanisms. To that end, alongside a new report on joint audits, FTA members also announced a second pilot of the International Compliance Assurance Programme (ICAP 2.0). A new handbook that will guide the second pilot (the handbook) was also endorsed and published by the FTA. The handbook builds on the first ICAP pilot, and remains a working document which will continue to be revised based upon the continuing experiences of participating tax administrations and multinational enterprises (MNEs). The handbook does not provide any specific results of ICAP 1.0.

See EY Global Tax Alert, [\*OECD's Forum on Tax Administration announces International Compliance Assurance Programme \(ICAP\) 2.0 and publishes new Pilot Handbook\*](#), dated 4 April 2019.

Also on 28 March, the OECD's FTA published a report titled "Joint Audit 2019 - enhancing tax co-operation and improving tax certainty" (the report). The report identifies both the benefits that may arise from the greater use of joint audits, as well as the challenges that must be overcome to ensure that those benefits can be realized as effectively and efficiently as possible, for both tax administrations and taxpayers.

The report is divided into seven chapters. The first chapter outlines the approach of the FTA Joint Audits Project, the second chapter illustrates the role that joint audits can play in enhancing tax certainty, and the third chapter provides an overview of the key benefits and the cost associated with the conduct of joint audits. The fourth chapter describes the current international landscape from the perspective of the exchange of taxpayer information in connection with joint audits, and the fifth chapter addresses the role of the taxpayer during the joint audit. The sixth chapter deals with building capacity, relationships and trust in a dedicated network for international cooperation in joint audits. The report concludes with a summary of the joint audit process and includes practical guidance and best practices for conducting joint audits.

See EY Global Tax Alert, [\*OECD's Forum on Tax Administration releases Joint Audit 2019 report on enhancing tax cooperation and improving tax certainty\*](#), dated 4 April 2019.

The OECD's FTA published, on 28 March 2019, a communiqué at the conclusion of its 12th plenary meeting which took place in Santiago, Chile on 26-28 March 2019. As noted above, at this year's plenary, the FTA focused on four priorities: (i) Delivering on BEPS and tax certainty; (ii) Improving tax cooperation; (iii) Supporting the continued digitalization of tax administrations; and (iv) Building capacity for developing countries.

Also, at the plenary meeting, the FTA members welcomed the publication of seven reports which will provide direct practical assistance to tax administrations on the aforementioned four priorities.

See EY Global Tax Alert, [\*OECD's Forum on Tax Administration agrees on collective actions on tax certainty, cooperation and digital transformation\*](#), dated 29 March 2019.

On 20-22 March 2019, the fifth meeting of the Global Forum on Valued Added Tax (VAT) was held in Melbourne, Australia. At the meeting, the report on "[\*the Role of Digital Platforms in the Collection of VAT/GST on Online Sales\*](#)" (the report) was presented for consideration and was published shortly at the end of the meeting. The report provides practical guidance to tax authorities on the design and implementation of a variety of solutions for enlisting the platforms economy, including e-commerce marketplaces and other digital platforms, in the effective and efficient collection of VAT/GST on digital sales. The report seeks to present a range of possible approaches and the associated policy considerations that will serve as a

point of reference and assist policy makers in their efforts to evaluate and develop the appropriate legal and administrative measures taking into account their specific economic, legal, institutional, cultural and social circumstances.

The report is structured as follows: Chapter 1 provides the overall context for the report, its scope and an overview of the examined measures; Chapter 2 analyzes aspects and design considerations of the full VAT/GST liability regimes; Chapter 3 focuses on the way digital platforms can assist with collection of VAT/GST on online sales. Chapter 3 emphasizes the importance of information sharing and formal co-operation agreements between tax authorities and platforms; and Chapter 4 considers supporting measures to encourage compliance, particularly by international exchange of information and administrative cooperation in order to enhance the risk analysis process.

## European Union

On 29 March 2019, the Regulation (EU) 2019/532 of 28 March 2019 amending Implementing Regulation (EU) 2015/2378 as regards the standard forms, including linguistic arrangements, for the mandatory automatic exchange of information on reportable cross-border arrangements was published in the *Official Journal of the EU*. The Directive 2011/16/EU as amended by Council Directive (EU) 2018/822 (MDR Directive) provides for mandatory automatic exchange of information on reportable cross-border arrangements. As a standard form should be used for those exchanges, the Commission Implementing Regulation (EU) 2015/2378 is amended in order to provide for such a standard form. In order to ensure that the mandatory automatic exchange of information on reportable cross-border arrangements is effective, especially where more than one intermediary or relevant taxpayer is liable to file information, an additional field containing a reference number of the reportable cross-border arrangement is now included on annex XIII to this Regulation. If more than one intermediary or relevant taxpayer is obliged to file information, one single reference number should feature on all exchanges of the same arrangement so that these exchanges can be linked to a single arrangement on the central directory. The Regulation will enter into force on the twentieth day following its publication in the *Official Journal of the EU*, i.e., on 18 April 2019. It will apply from 1 July 2020.

On 27 March 2019, the European Parliament voted to conclude the first reading stage of its draft report on public CbCR. The vote took place even though there is still no position from the Council on the draft report.

On 26 March 2019, the European Parliament's TAX3 Committee (the Committee) adopted a report and recommendations for rendering the EU more resilient against tax evasion, tax avoidance and money laundering. Among others, the report discusses the BEPS action plan and its implementation in the EU. The report states that, although the BEPS project was meant to tackle in a coordinated manner the causes and circumstances creating BEPS practices, the degree of willingness and commitment to cooperate on the BEPS action plan varies among countries and the particular actions concerned. In that regard, the European Parliament highlights in the report that the 2016 EU anti-tax-avoidance package supplements existing provisions so as to implement the 15 BEPS actions in a coordinated manner across the EU in the single market. In addition, the European Parliament reiterates its call for a clear definition of permanent establishment and significant economic presence so that companies cannot artificially avoid having a taxable presence in a Member State in which they have economic activity. The report is not legally binding and therefore the European Commission or the EU Member States are not required to take its recommendations into account.

On 17 December 2018, the Commission submitted to the European Parliament and the Council a [report](#) providing an overview and assessment of the statistics and information on the automatic exchanges of information (AEOI) in the field of direct taxation based on the implementation of the Directive on Administrative Cooperation or DAC (EU Directive 2011/16/EU). The report provides an overview and assessment of AEOI under DAC1 (AEOI for five categories of income and capital), DAC2 (AEOI of financial account information), and DAC3 (AEOI for tax rulings and advance pricing agreements), and it covers the period starting from 2015 until mid-2018. Although the DAC was further expanded in 2016 and 2018, there was not enough available data at the time of preparing the report. However, future reports will also cover, inter alia, data on DAC4 (AEOI of the CbC reports) and DAC6 (AEOI of information on cross-border arrangements). Among others, the report highlights that under DAC1 Member States have exchanged information concerning nearly 16 million taxpayers, and it related to incomes and capital amounting to over €120 billion.

Further, the DAC3 has resulted in a major increase in the transparency of information on advance tax rulings and advance pricing arrangements. Almost 18,000 rulings were recorded in the central directory in 2017 compared to hardly any being spontaneously exchanged in the years up to 2015.

The report concludes that Member States have recognized that the tax information received via AEOI can be used in different ways. The tax authorities mainly use the information for risk assessment and personal income tax assessment. However, several Member States still make very limited use of the information they receive. Also, AEOI has required significant development investments by Member States, and even if the recurring costs are lower, there are annual costs to maintain the exchange activities. As regards the benefits of AEOI, it appears that the main benefits lie in the increased tax compliance and in the deterrent effect for taxpayers. As a way forward, two main areas of improvement are identified, i.e. the improvement of the quality of information and the better use of the data received via AEOI.

## Austria

On 4 April 2019, the Austrian Government approved the first part of the digital tax package (*Digitalsteuergesetz*) and submitted it for expert appraisal. The digital tax package includes three key measures: (i) the introduction of a tax on revenue derived from online advertising. The tax will apply to companies with worldwide annual turnover of €750 million or more and annual turnover of €25 million or more that originated from digital advertising sales in Austria. The tax will be levied at a rate of 5%; (ii) the amendment of the VAT rules applicable to online purchases of goods sold by third-country sellers; and (iii) the introduction of stricter reporting obligations for operators of online platforms active in the sharing economy. In case of non-compliance with the reporting obligations, the operators will be liable for any tax on unreported transactions of service providers.

## China-New Zealand

On 1 April 2019, China and New Zealand signed a New Double Tax Treaty (the New Treaty), which represents a comprehensive modification to the existing version signed in 1986. The New Treaty takes on board both jurisdictions' latest developments in their domestic tax regulation and policy changes, as well as those relevant in the context of latest changes and developments in international tax

landscape, e.g., treaty-based recommendations from the BEPS project in Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

The Treaty contains a preamble which clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion. It also contains a provision dealing with fiscally transparent entities and 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 (similar to the treaties China signed with Congo, Croatia, Japan, etc.).

It is also worth noting that while China decided to opt out on BEPS Action 7 in the context of MLI, it does not mean or indicate that China disagrees with the fundamental concept of BEPS Action 7 (in particular how an agency permanent establishment (PE) should be assessed or determined), which is evident by the language adopted under the New Treaty which specifically cites that under circumstances where, rather than merely execution or signing, a person habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification (or negotiates the essential elements leading to similar outcome), could still trigger an agency PE. It is also expected that China will adopt such standard language into other Sino-foreign treaties that are being negotiated or re-negotiated (evident by the recently signed China-Argentina/China-Chile Treaties).

The New Treaty is currently pending ratification, and hence the effective and in-force date is yet to be announced.

## Curaçao

On 28 February 2019, the Minister of Finance of Curaçao issued a [notice](#) announcing that local filing of CbC reports is no longer required in Curaçao by Surrogate CbCR entities or entities which are otherwise appointed as the CbCR entity by the Curaçao tax authorities. Therefore, only qualifying MNE groups with an Ultimate Parent Entity in Curaçao will be subject to the requirement to file a CbC report with the Curaçao tax authorities. The notice has retroactive effect and is effective from 1 January 2018 and will remain in place until further notice.

## Cyprus

On 19 March 2019, the Cypriot Ministry of Finance (MoF) circulated a draft bill to transpose the EU Directive 2018/822/EU of 25 May 2018 on the mandatory disclosure and exchange of cross-border tax arrangements (the Directive) into Cypriot national legislation. The Bill appears to be fully aligned to the text and requirements of the Directive and does not include any additional provisions beyond those required under the Directive. The Bill is subject to the MoF's public consultation procedure and public comments on the proposed draft text are requested by 19 April 2019. The Cypriot draft legislation will then be subject to the formal legislative process and is expected to be enacted into law by the end of 2019.

See EY Global Tax Alert, [Cyprus publishes draft Mandatory Disclosure Rules](#), dated 28 March 2019.

## Czech Republic

On 27 March 2019, the Bill implementing the EU Anti-Tax Avoidance Directive (ATAD) I and II and introducing changes to other tax laws was published in the *Official Gazette*. The Bill, signed by the President on 15 March 2019, entered into force on 1 April 2019 (for more details on the bill, see the [Latest on BEPS](#), dated 8 October 2018).

## Denmark

On 28 March 2019, the Danish Parliament enacted Bill No. L 160 adopting the OECD's MLI. The list of Denmark's covered tax agreements contains all treaties concluded that are currently in force, except for the tax treaties with Germany, Greenland, Japan, the Netherlands, the Nordic countries and Switzerland. Denmark has adopted all provisions of the MLI, including arbitration. The MLI will enter into force for Denmark 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.

See EY Global Tax Alert, [Danish Parliament adopts OECD's MLI](#), dated 29 March 2019.

## India

On 27 March 2019, the Indian Tax Administration issued a press release which stated that the United States (US) and India had signed an Inter-Governmental Agreement for Exchange of CbC reports, which would enable the two

countries to automatically exchange CbC reports filed by ultimate parent entities of MNEs located in the respective jurisdictions. The signing of the agreement before 31 March 2019 mitigated the requirement for Indian constituent entities of US-parented groups to perform a secondary CbC report filing in India, which may have been required in certain specific cases.

## Japan

On 27 March 2019, Japan's 2019 tax reform bill (the Bill) was enacted following passage of the Bill by the Japanese Diet (Japanese legislature). The Bill generally follows the tax reform outline announced by Japan's coalition leading parties in December 2018.

Pursuant to the BEPS Action 2 initiatives and the recommendations by the BEPS Action 4 final report, the earnings stripping rules will be amended by reducing the current 50% of adjusted taxable income (ATI) to 20% in computing interest expense disallowance. In addition, the Bill includes an ATI computation, a domestic and foreign dividend received deduction and an add-back tax adjustment of non-deductible income taxes. ATI for an operator under a silent partnership arrangement will also be amended. The Bill revises the scope of interest subject to the earnings stripping rules and the de minimis exceptions. The revision will apply to taxable years beginning on or after 1 April 2020.

The scope of intangibles subject to the transfer pricing rules is clarified and defined as property other than tangible property or financial assets and investments, for which consideration would be paid for a transfer or lease of the property if the transfer or the lease were carried out between unrelated parties. The discounted cash flow recognized under the OECD Transfer Pricing Guideline is added as a new transfer pricing methodology. The Japanese tax authorities will be authorized to make an assessment if there is a discrepancy between an outcome and the projected value if the discrepancy is 20% or more without proper documentation. This revision will apply to taxable years beginning on or after 1 April 2020 and calendar years beginning 2021 for corporations and individuals, respectively.

The Bill contains new exceptions to the paper company test for holding company, real estate and resource development controlled foreign companies (CFCs). The Bill clarifies that local tax laws of the CFCs, such as tax consolidation and distributive share of partnership income, will be disregarded in determining the effective tax rate test, income inclusion or indirect foreign tax credit from CFCs.

See EY Global Tax Alert, [Japan enacts 2019 tax reform bill](#), dated 1 April 2019.

## Netherlands

On 29 March 2019, the Netherlands deposited its instrument of ratification of the MLI with the OECD. The MLI will therefore enter into force on 1 July 2019 and the MLI will subsequently enter into effect for withholding taxes and other taxes as of 1 January 2020, provided the tax treaty partner has also ratified the MLI.

On 27 March 2019, the [Dutch](#) Ministry of Finance and [Germany](#) issued a common statement announcing that they are committed to further work out the minimum tax standard as included in the Global Base Erosion (GloBE) proposal that is under discussion within the OECD, while taking into account undesired risks of double taxation and over-excessive administrative burdens. According to the statement, Germany and the Netherlands recognize that further measures are important to ensure a sufficient level of taxation globally and that BEPS is still a pressing issue with entities that are subject to no or low taxation. The previously announced Dutch conditional withholding tax on intercompany payments to blacklisted/low tax jurisdictions which is expected to be applicable as of 2021 was also discussed.

## Poland

On 31 January 2019, the Polish Ministry of Finance published official guidance regarding the interpretation of the Polish mandatory disclosure rules (MDR). The guidance provides some clarity on the interpretation of the Polish legislation and sets out how the Polish tax authorities anticipate the reporting process to operate. The main purpose of the guidance is to provide some explanations and practical tips for intermediaries and relevant taxpayers who are expected to have a reporting obligation.

Although still there are many open items, the guidance sets it clear that also individuals/entities without the EU nexus can be intermediaries with reporting obligations in Poland.

According to the Polish Tax Code, taxpayers who act in accordance with the guidance in a given settlement period should be afforded the same level of protection that would apply in the case of obtaining a tax ruling (in principle, full protection). The guidance may be further supplemented in the future with new areas and comments.

See EY Global Tax Alert, [Poland publishes official tax guidelines on the Mandatory Disclosure Rules](#), dated 2 April 2019.

## Thailand

On 26 March 2019, the Cabinet approved the repeal of the grandfathered tax incentives under the Regional Operating Headquarters (ROH) I and II, International Headquarters (IHQ), Treasury Center (TC) and International Trading Center (ITC) regimes. This measure is in response to the Harmful Tax Practices - 2017 Progress Report on Preferential Regimes (Inclusive Framework on Base Erosion and Profit Shifting (BEPS): Action 5) in which Thailand's regional/international headquarters, trading and treasury hub regimes were identified as harmful tax practices. This action will also ensure that Thailand will not be classified as "Potentially Harmful" or "Actually Harmful" by the Forum on Harmful Tax Practices and BEPS.

Subject to legislative processes and enactment, all entities that currently have ROH, IHQ and/or ITC status will lose their eligibility for tax incentives and will be subject to the normal corporate income tax rate of 20%, effective from 1 June 2019. Their expatriates will be subject to personal income tax at the normal progressive rates of up to 35% effective from 1 January 2020. However, they (except an ITC) may choose to convert their status to an IBC if they meet the conditions.

See EY Global Tax Alert, [Thailand repeals grandfathered tax incentives for certain regimes](#), dated 1 April 2019.

## Uruguay

On 27 March 2019, Resolution 860/2019, by which the deadline for submission of the CbC report is extended for MNE groups with a Reporting Fiscal Year (RFY) ending on 31 December 2017, was issued. As a general rule, the CbC report is due in Uruguay within 12 months after the last day of the RFY. In January 2019, the Uruguayan tax authorities extended the initial due date to 15 months after the last day of the RFY for MNE groups with an RFY ending between 31 December 2017 and 30 November 2018. With Resolution 860/2019, the Uruguayan tax authorities have extended once again the deadline, but this time only for MNE groups with an RFY ending on 31 December 2017. Accordingly, for MNE groups with an RFY ending on 31 December 2017, the deadline for RFY 2017 has been extended to 30 April 2019.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP, International Tax Services, Washington, DC**

- ▶ Arlene Fitzpatrick [arlene.fitzpatrick@ey.com](mailto:arlene.fitzpatrick@ey.com)

**Ernst & Young LLP, Global Tax Desk Network, New York**

- ▶ Gerrit Groen [gerrit.groen@ey.com](mailto:gerrit.groen@ey.com)
- ▶ Jose A. (Jano) Bustos [joseantonio.bustos@ey.com](mailto:joseantonio.bustos@ey.com)

**Ernst & Young Belastingadviseurs LLP, Amsterdam**

- ▶ David Corredor-Velásquez [david.corredor.velasquez@nl.ey.com](mailto:david.corredor.velasquez@nl.ey.com)
- ▶ Konstantina Tsilimigka [konstantina.tsilimigka@nl.ey.com](mailto:konstantina.tsilimigka@nl.ey.com)

#### About EY

EY is a global leader in assurance, tax, transAction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](https://ey.com).

© 2019 EYGM Limited.  
All Rights Reserved.

EYG no. 001674-19Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](https://ey.com)**