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Global Tax Alert

The Latest on BEPS - 20 May 2019

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European Union

On 17 May 2019, the Council of the European Union (the Council or ECOFIN) held a meeting where they discussed digital taxation and updated the European Union list of non-cooperative jurisdictions for tax purposes (the EU List). The Council also discussed and achieved significant progress in the negotiations of measures to improve the business environment for excise goods.

Regarding digital taxation, the Council discussed current international tax reforms with a view to preparing for the upcoming OECD and G20 leaders' meetings.

Additionally, without discussion, the Council removed Aruba, Barbados and Bermuda from the EU List, reducing the total number of jurisdictions listed to 12. Barbados and Bermuda moved from Annex I of the Council's original conclusions to annex II, which includes jurisdictions that have undertaken sufficient commitments to reform their tax policies, while Aruba was removed entirely from both Annexes.

Austria

On 14 May 2019, the Austrian Government published the English and German synthesized texts of the Austria-Singapore Income and Capital Tax Treaty displaying the modifications made to the treaty by the *Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion and Profit Shifting* (the MLI.) The synthesized texts reflect the agreement reached between the relevant authorities of Austria and Singapore on how the treaty should be impacted by the MLI. The MLI entered into force for Austria on 1 July 2018 and for Singapore on 1 April 2019.

Building a better working world

France

Recently, the French Government published consolidated versions of the French tax treaties with Lithuania, Poland, the Slovak Republic and the United Kingdom, as modified by the MLI. These consolidated MLI versions reflect the agreements reached between the relevant authorities of both France and these jurisdictions on how the treaties should be impacted by the MLI.

Hong Kong

Recently, Hong Kong signed agreements on the Exchange of Country-by-Country (CbC) Report (the Agreements) with Austria, Italy and Mexico. 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 multinational enterprise (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.

Iceland

On 7 May 2019, the Icelandic Parliament adopted certain amendments to the *Income Tax Act* in relation to CbC reporting (CbCR) following feedback received from the OECD. The amendments, among others: (i) aim to clarify the threshold (which was denominated in ISK) which will be changed to €750 million; (ii) introduce provisions on the reporting obligations of surrogate parent entities; and (iii) amend the due date of the CbCR notification submission. Accordingly, every constituent entity resident in Iceland which is part of an MNE group and which is neither an ultimate parent company nor a surrogate parent company, shall within one month from the end of the reporting fiscal year notify the Director of Internal Revenue which company in the group is the reporting entity and its residency. The older rule stipulated that the notification should be filed by end of the reporting fiscal year so the deadline has been extended by one month. In addition, the Parliament adopted amendments to the law on binding rulings for tax matters on the same date. One of the amendments relates to the limitation of the validity of a binding ruling to five years. The amendments have immediate effect.

Indonesia

On 1 April 2019, Indonesia's Minister of Finance (MOF) issued MOF Regulation No. 35/ PMK.03/2019 (PMK-35), providing guidance to determine whether a permanent establishment (PE) exists in Indonesia. PMK-35 defines a PE as a place of business that has a permanent location in Indonesia and is used by the nonresident to run its business and activities. In addition, the following activities may trigger a PE: (i) Construction project, installation or assembly project; (ii) Services activities exceeding the time test; (iii) Dependent agent; and (iv) Insurance agent. PMK-35 appears to closely reflect the OECD guidance in most respects. However, some of the provisions on service and construction project PEs could be read more broadly, particularly concerning subcontracting arrangements. PMK-35 should be viewed as the primary source of guidance from the Indonesian Tax Authority on PE matters to be taken into consideration when performing an Indonesian PE analysis. PMK-35 is effective starting as of 1 April 2019.

See EY Global Tax Alert, *Indonesia issues regulations for determination of permanent establishments*, dated 15 May 2019.

Italy

On 16 April 2019, the Italian Tax Authorities (ITA) issued instructions (Instructions) implementing the Cooperation and Enhanced Collaboration Procedure (CECP). The CECP is aimed at allowing eligible multinational companies to disclose the existence of an Italian PE for income tax and value added tax (VAT) purposes by way of a joint assessment with the ITA. Nonresident enterprises may apply for the CECP provided that they meet the criteria described in the Instructions. Each applicant is required to file the approved form that is available on the ITA website by including all its relevant data. After the filing of the form, the ITA are prevented from starting any tax inspections on the existence of the (potential) Italian PE for which the CECP form was submitted. Within 30 days from the filing, the ITA are to notify the applicant of the admission to the CECP. Companies adhering to the CECP may benefit from a reduction of any tax penalties (generally ranging from 120% to 240% of the unpaid tax) to 20% and from an exemption from any criminal liabilities associated with the failure to file income tax and VAT returns.

See EY Global Tax Alert, *Italy issues instructions for disclosure of hidden PE*, dated 9 May 2019.

Jersey

On 24 April 2019, the Government of Jersey issued guidance on resolving treaty disputes through the Mutual Agreement Procedure (MAP) in Jersey's double tax treaties. Among others, the guidance provides clarifications regarding the circumstances under which a taxpayer is eligible for initiating a MAP and it lists the type of information and documentation that should be submitted to support a MAP request. The guidance also describes the administrative procedure when an MAP has been initiated by a taxpayer.

Luxembourg

On 26 April 2019, Luxembourg's 2019 Budget Law (the Budget Law) was published in the *Official Gazette*.

The Budget Law incorporates the option given by the EU Anti-Tax Avoidance Directive (ATAD) to allow companies forming a fiscal unity to apply the interest limitation rules to the fiscal unity as a whole (rather than on the members of the fiscal unity individually). This will apply automatically to all new fiscal unities, unless the companies, in their written request to form a fiscal unity to be submitted to the tax authorities, opt to apply the interest limitation rules individually. Existing fiscal unities are entitled to apply the interest limitation rule to the fiscal unity as a whole, provided that all the members express their choice in a common written request to be filed before the end of the first financial year to which the interest limitation rule applies for the first time.

See EY Global Tax Alert, *Luxembourg reduces tax rates and allows interest limitation rules to apply to fiscal unities*, dated 6 May 2019.

Malaysia

On 8 April 2019, the Service Tax (Amendment) Bill 2019 was passed in the House of Representatives in Malaysia. The bill proposes to include provisions on the imposition of a 6% service tax on digital services provided by foreign service providers to consumers in Malaysia with effect from 1 January 2020. Based on the Frequently Asked Questions released by the Royal Malaysian Customs Department on 18 April 2019, the service tax registration threshold is RM500,000 (US $122,000) and the application for registration will be processed online. The Bill is currently being tabled at the Senate.

See EY Global Tax Alert, *Malaysia introduces digital service tax*, dated 8 May 2019.

Peru

On 6 May 2019, Peru's Minister of Economics issued Supreme Decree 145-2019-EF (the Decree), which contains the regulations for the Peruvian general anti-avoidance rule (GAAR) for tax purposes. The Peruvian GAAR was enacted on 19 July 2012, but was suspended until regulations were issued. With the issuance of the Decree, the suspension has been lifted. The Decree establishes a non-exhaustive list of situations/scenarios in which a tax auditor can apply the Peruvian GAAR. According to the Decree, to apply the GAAR, the Peruvian tax authorities will analyze any situation, considering the factors described in the Decree, among others. The Decree came into effect on 7 May 2019.

See EY Global Tax Alert, *Peru lifts suspension of general anti-avoidance rule*, dated 10 May 2019.

Poland

On 29 April 2019, the bill which amends the Law on Exchange of Information in Tax Matters with Other Countries of 9 March 2017 entered into force. The amendments relate inter alia to CbCR rules in Poland. The amended law, among others: (i) extends the deadline for Polish subsidiaries to notify the Ministry of Finance on the entity within the Group preparing CbCR (filling CbC-P information) to 3 months after the end of the reporting fiscal year; (ii) clarifies how the threshold triggering CbCR obligation should be calculated for companies preparing consolidated financial statements in Polish zlotys or with a financial year for a different period of time than 12 months; (iii) introduces the possibility to submit corrections of CbC reports; and (iv) clarifies that additional information requested by tax authorities on CbCR may be provided in Polish or in English.

On 12 April 2019, the Polish Ministry of Finance launched a public consultation in relation to proposed guidance on the new innovation box incentive regime (the innovation box) which was introduced on 14 November 2018 via Law

No. 2860. The innovation box applies as of 1 January 2019. The preferential 5% tax rate will apply to the "qualified income" obtained from the broad definition of qualifying IP created, developed or improved by a taxpayer as part of his research and development (R&D) activity conducted in Poland. Poland has already established itself as a popular destination for Shared Services Centers and R&D activities of many international groups. This is due inter alia to the availability of skilled workforce and cost competitiveness. Therefore, it is expected that for many MNE groups benefitting from the nexus-based incentive in Poland, this will be welcomed development.

On 22 March 2019, the Polish Government published, on the website of the Governmental Legislative Center, a draft bill regarding resolution of double taxation disputes and Advance Pricing Agreements (APAs). The draft bill introduces a simplified APA procedure which was promised by the Ministry of Finance as a remedy to be used to secure tax deductibility of: (i) selected intragroup services; and (ii) license fees for the use of trademark or know-how. In contrast to the standard APA procedure, the submission of an application for a simplified pricing APA will not be affected by pending tax proceedings, will be less formalized, and the application to great extend will be based on statements provided by the management board. The Ministry of Finance decision under the simplified APA process should be issued within three months. The draft bill is now subject to tax consultation.

See EY Global Tax Alert, *Poland publishes draft bill introducing simplified APA procedure*, dated 26 April 2019.

Portugal

On 4 May 2019, the Law n. 32/2019, of 3 May 2019, that introduced amendments to the Portuguese Tax Law in line with the EU ATAD provisions, entered into force. By means of this Law, Portugal transposed rules covering interest limitation rule, controlled foreign company rules, exit taxation rules and the general anti-abuse rule. The anti-hybrid mismatches provisions are expected to be transposed during a subsequent phase to address both ATAD 1 and ATAD 2.

See EY Global Tax Alert, *Portugal transposes the EU ATAD into Portuguese Tax Law*, dated 8 May 2019.

Saudi Arabia

On 15 February 2019, Saudi Arabia's General Authority of Zakat and Tax (the GAZT) issued the final Transfer Pricing (TP) bylaws which have been available since 10 December 2018 in draft for public consultation (for more details, see The Latest on BEPS, dated 2 January 2019). The final TP bylaws introduce the OECD three-tiered transfer pricing documentation approach of BEPS Action 13 in Saudi Arabia and include several amendments compared to the draft TP bylaws. Moreover, the GAZT also published a Frequently Asked Questions (FAQs) document, which serves as a reference guide for the purposes of interpretation and practical implementation of the TP bylaws.

According to the final legislation, the concept of a surrogate parent entity has now been included in the provisions regarding CbCR. The final TP bylaws also clarify that the consolidated group's revenue threshold used to determine the applicability of CbCR requirements should be based on the immediately preceding fiscal year. With respect to the procedures for the submission of the CbCR in Saudi Arabia, based on the FAQs document, a portal will be made available to taxpayers who are part of an MNE group for filing their CbC reports. A one-time registration will be needed on the portal, the details of which will be made available in due course. The notification for CbCR is expected to be filed with the annual tax return.

Furthermore, the TP bylaws require Saudi Arabian entities and branches of foreign companies that are subject to the Corporate Income Tax Law in Saudi Arabia to maintain a Master file and Local file for fiscal year (FY) 2018. The thresholds for this requirement are connected to the aggregate annual arm's-length value of the controlled transactions. If the annual value is below SAR6m in a given fiscal year, that entity will be exempted. The deadline for the submission of the Master file and Local file is within 30 days from the date of request (for submission during FY 2019, there is a further extension of 60 days that can be requested).

See EY Global Tax Alert, *Saudi Arabia's Tax Authority releases final transfer pricing bylaws and FAQs*, dated 11 March 2019.

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