

## The Latest on BEPS - 3 June 2019

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### OECD

On 31 May 2019, the OECD released the *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy* (the [Workplan](#)).

The Workplan describes the process for addressing the tax challenges of the digitalization of the economy that has been agreed upon by the 129 countries participating in the OECD/G20 Inclusive Framework on BEPS. The Workplan was approved earlier this week at the plenary meeting of the Inclusive Framework, which brought together 289 delegates from 99 countries and jurisdictions and 10 observer organizations. The Workplan will be presented by OECD Secretary-General Angel Gurría to G20 Finance Ministers for endorsement during their 8-9 June ministerial meeting in Fukuoka, Japan.

Under the Workplan, an outline of the core elements of a long-term solution to the challenges of the digitalization of the economy is to be submitted to the Inclusive Framework for agreement in January 2020. Work will continue on fleshing out the policy and technical details of the solution throughout 2020 in order to deliver consensus agreement by the end of 2020.

See EY Global Tax Alerts, [OECD adopts workplan for reaching a new global agreement for taxing multinational enterprises](#), dated 31 May 2019 and [OECD workplan envisions global agreement on new rules for taxing multinational enterprises](#), dated 3 June 2019.

On 28 May 2019, the OECD announced that Albania signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) on 28 May. At the time of signature, Albania submitted a list of its tax treaties in force that it would like to designate as Covered Tax Agreements (CTAs), i.e., treaties to be amended through the MLI. Together with the list of CTAs, Albania also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for Albania will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI. As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Albania did not opt in for mandatory binding arbitration.

## Indonesia

Indonesia's Minister of Finance (MOF) issued, on 26 April 2019, MOF Regulation No. 49/ PMK.03/2019 (PMK-49), providing guidelines for the implementation of the Mutual Agreement Procedure (MAP). PMK-49 is to implement in Indonesia the minimum standards contained in Action 14 of the OECD's BEPS Project. The regulation provides specific procedures and timelines for the MAP application. It also provides detailed discussions such as the information gathering process during the MAP and conditions which may result in MAP disagreement. PMK-49 is effective starting as of 26 April 2019.

See EY Global Tax Alert, [Indonesia issues new guidance on Mutual Agreement Procedure](#), dated 22 May 2019.

## Luxembourg

Starting from tax year 2018, the Luxembourg tax authorities have imposed specific reporting requirements in relation to transactions of Luxembourg companies with related enterprises located in jurisdictions that are included on the European Union (EU) blacklist. As per Circular L.G. - A n°64, Luxembourg resident companies are required to state in their tax return if they have entered into transactions with related enterprises located in listed jurisdictions. Details of those transactions, such as the amount of the transaction, income and expenses linked to the transaction and the detail of receivables and debts towards such related enterprises,

must be provided upon request by the tax administration. As per the Circular, reinforced control will generally be applied if taxpayers rely on structures or arrangements involving non-cooperative jurisdictions for tax purposes that are included in the EU blacklist.

It should be noted that for the disclosure requirement as mentioned above, the EU blacklist as it stands at the end of the financial year concerned needs to be consulted. For Luxembourg companies whose financial year 2018 coincides with the calendar year 2018, the following jurisdictions are relevant: American Samoa, Guam, Samoa, Trinidad and Tobago and the US Virgin Islands

See EY Global Tax Alert, [Luxembourg imposes reporting requirements for EU-designated non-cooperative jurisdictions for tax purposes](#), dated 28 May 2019.

## Malta

On 13 May 2019, the Maltese Commissioner for Revenue published the English synthesized text of the Malta - Serbia Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and Serbia on how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and on 1 October 2018 for Serbia. The provisions of the MLI will have effect with respect to the Malta - Serbia Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 October 2019 with respect to all other taxes levied by Serbia; and (iii) 1 January 2020 for all other taxes levied by Malta.

Also on 13 May, The Maltese Commissioner for Revenue published the English synthesized text of the Ireland - Malta Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and Ireland on how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and on 1 May 2019 for Ireland. The provisions of the MLI will have effect with respect to the Ireland - Malta Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 November 2019 with respect to all other taxes levied by Ireland; and (iii) 1 January 2020 for all other taxes levied by Malta.

On 15 April 2019, the Maltese Commissioner for Revenue published the English synthesized text of the Malta - United Kingdom (UK) Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and the UK on how the treaty should be impacted by the MLI and had also previously been published by the UK tax authorities. The MLI entered into force for Malta on 1 April 2019 and on 1 October 2018 for the UK. The provisions of the MLI will have effect with respect to the Malta - UK Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 April 2020 for corporation tax and from 6 April 2020 for income tax and capital gains tax levied by the UK; and (iii) 1 January 2020 for all other taxes levied by Malta.

Also on 15 April, the Maltese Commissioner for Revenue published the English synthesized text of the Malta - Slovak Republic Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and the Slovak Republic on how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and on 1 January 2019 for the Slovak Republic. The provisions of the MLI will have effect with respect to the Malta - Slovak Republic Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 October 2019 with respect to all other taxes levied by the Slovak Republic; and (iii) 1 January 2020 for all other taxes levied by Malta.

The Maltese Commissioner for Revenue published, on 15 April 2019, the English synthesized text of the Lithuania - Malta Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and Lithuania on how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and on 1 January 2019 for Lithuania. The provisions of the MLI will have effect with respect to the Lithuania - Malta Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 October 2019 with respect to all other taxes levied by the Lithuania; and (iii) 1 January 2020 for all other taxes levied by Malta.

The Maltese Commissioner for Revenue published, on 15 April 2019, the English synthesized text of the Isle of Man - Malta Tax Treaty, displaying the modifications made

to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and the Isle of Man on how the treaty should be impacted by the MLI and had also previously been published by the Manx tax authorities. The MLI entered into force for Malta on 1 April 2019 and on 1 July 2018 for the Isle of Man. The provisions of the MLI will have effect with respect to the Isle of Man - Malta Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; (ii) 1 October 2019 with respect to all other taxes levied by the Isle of Man; and (iii) 1 January 2020 for all other taxes levied by Malta.

The Maltese Commissioner for Revenue published, on 15 April 2019, the English synthesized text of the Austria - Malta Tax Treaty, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the agreement reached between the relevant tax authorities of both Malta and Austria on how the treaty should be impacted by the MLI and had also previously been published by the Austrian tax. The MLI entered into force for Malta on 1 April 2019 and on 1 July 2018 for Austria. The provisions of the MLI will have effect with respect to the Austria - Malta Tax Treaty on: (i) 1 January 2020 for taxes withheld at source in both jurisdictions; and (ii) 1 January 2020 with respect to all other taxes levied by Austria or Malta.

## Portugal

On 28 May 2019, the Portuguese Government published draft legislation implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The Portuguese draft legislation is subject to the formal legislative process and is likely to be amended before final enactment. If implemented as currently proposed, the Portuguese Mandatory Disclosure Rules (MDR) legislation will have a wider scope in comparison to the requirements of the Directive. It is proposed that the Portuguese MDR will cover "domestic arrangements" (as defined), will cover value added tax for so-called domestic arrangements, and will introduce additional hallmarks.

The draft legislation is expected to be finalized by September 2019.

See EY Global Tax Alert, [Portugal publishes draft proposal on Mandatory Disclosure Rules](#), dated 29 May 2019.

## Slovakia

The Government of the Slovak Republic published, at the end of 2018, [announcements](#) in relation to the amendments made by the MLI to the Slovak Republic treaties concluded with 10 countries, being [Australia](#), [Austria](#), [France](#), [Israel](#), [Japan](#), [Lithuania](#), [Poland](#), [Serbia](#), [Slovenia](#) and the [United Kingdom](#).

Moreover, a website of the Ministry of Finance dedicated to the MLI: (i) explains what the MLI is and what its provisions contain; (ii) includes references to the Slovak MLI positions; and (iii) contains a table covering the actual status of tax treaties modifications resulting from the MLI. In addition, the table includes the date on which each of the jurisdictions deposited its instrument of ratification and the entry into force of the MLI for the respective tax treaties.

## Switzerland

On 19 May 2019, Switzerland approved the *Federal Act on Tax Reform and AHV* (Old-Age and Survivors Insurance) Financing as adopted by the Federal Parliament last fall. The tax reform's objectives include: (i) securing the long-term tax attractiveness of Switzerland as a business location; (ii) restoring international acceptance of the Swiss tax system; and (iii) securing an appropriate level of tax revenue. The tax reform brings the replacement of the preferential tax regimes for holding, domicile and mixed companies as well as the practice for principal companies and Swiss Finance Branches with a new set of internationally accepted measures such as a patent box regime in line with the BEPS Action 5 minimum standard.

See EY Global Tax Alert, [Switzerland approves tax reform](#), dated 20 May 2019.

## Thailand

On 3 May 2019, the Thai Revenue Department issued Notification of the Director-General of the Revenue Department under the Royal Decree 674 (the Notification) relating to conditions, compliance and reporting requirements, and application procedure/forms of the International Business Center (IBC) regime. The Notification is effective retroactively from 29 December 2018, which is the same date as that of the Royal Decree. Among others, the Notification addresses additional conditions for foreign employees to be qualified for reduced personal income tax rate.

The Notification specifically limits the definition of qualifying royalties to those from software patent or copyright resulting from technological research and development activities performed in Thailand by the IBC or other parties engaged by the IBC, which is in line with the BEPS Action 5. It also puts in place additional tax treatment and compliance reporting requirements for the IBC having qualifying royalty income.

See Global Tax Alert, [Thailand issues guidance regarding International Business Center regime](#), dated 21 May 2019.

## United Kingdom

On 20 May 2019, HM Revenue & Customs published the English synthesized text of the tax treaties concluded by the UK with Finland, France, and Singapore. The synthesized tax treaties display the modifications made to the respective treaties by the MLI.

The MLI entered into force on 1 October 2018, and for Finland, France, and Singapore on 1 June 2019, 1 January 2019 and 1 April 2019 respectively. Unless stated otherwise in the respective synthesized texts of the different tax treaties, the provisions of the MLI will have effect on: (i) 1 January 2020 for both the UK and Singapore and Finland respectively, for taxes withheld at source (and on 1 January 2019 in relation to the tax treaty between the UK and France); (ii) 1 April 2020 for corporation tax in the UK; (iii) 6 April 2020 for income and capital gains tax in the UK; and (iv) 1 July 2019, 1 October 2019 and 1 January 2020 respectively for all other taxes levied by France, Singapore and Finland respectively.

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

**Ernst & Young LLP (United States), International Tax Services, Washington, DC**

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

**Ernst & Young LLP (United States), 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)
- ▶ Konstantina Tsilimigka [konstantina.tsilimigka1@ey.com](mailto:konstantina.tsilimigka1@ey.com)

**Ernst & Young Belastingadviseurs LLP, Amsterdam**

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

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