# The latest on BEPS — 2019 midyear review

## A review of OECD and country actions in midyear 2019

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EY teams have been reporting on the BEPS Project from its outset. Since 2014, we have tracked BEPS-related developments, both at the OECD and country level. A summary of each of these BEPS-related developments has been included in our biweekly newsletter, *The Latest on BEPS,* and a biannual special edition that highlights and recapitulates the past six months in review. The present report covers the period 1 January 2019 through 30 June 2019. We have also developed an interactive tool that allows users to browse and filter this content based on geographical location, the relevant BEPS Action and by date. The interactive tool is available at ey.com/beps.

# Overview

The Base Erosion and Profit Shifting (BEPS) Project was initiated by the G20 countries (G20) in conjunction with the Organisation for Economic Co-operation and Development (OECD) in 2012. The BEPS Project was designed to bring coherence, transparency and substance to the international tax rules, which had been under pressure in preceding years due to the pace of globalization and the heightened sophistication of international business transactions and global value chains.

The OECD and G20 finalized work on the BEPS Project in 2015 and published their reports in relation to the 15 BEPS focus areas. These focus areas, or BEPS Actions as they are more commonly referred to, cover the digital economy, hybrid mismatch arrangements, treaty abuse and transfer pricing. The 2015 final reports detailed a comprehensive package of measures that were intended to equip governments with the domestic and international instruments to tackle BEPS, along with recommendations developed by the OECD and G20 for significant changes to key elements of international tax systems.

The issuance of the 2015 reports marked the end of the recommendation phase of the BEPS Project and the commencement of the implementation phase. Over the last four years, countries and jurisdictions have been working together on implementing the BEPS package on a global basis. The OECD has been focused on supporting these efforts to implement the BEPS measures to ensure effective and consistent implementation of the BEPS minimum standards, while developing further standards to address the remaining BEPS issues outlined below.

### The Inclusive Framework

Due to the necessity for an effective international tax framework with the involvement of developing countries, the OECD established the Inclusive Framework on BEPS (IF on BEPS) in January 2016. The IF on BEPS continues to grow from 82 members at the inaugural meeting to 129 members (until 30 June 2019) and 14 observers, including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions. These members are working together on an equal footing not only to implement the BEPS measures agreed upon in 2015 but also to design the new international tax rules, including the fundamental discussions on how to address the tax challenges arising from digitalization.

The BEPS Actions included minimum standards (BEPS Minimum Standards) that all members of the IF on BEPS have committed to implement. The BEPS Minimum Standards refer to some elements contained in Action 5 on harmful tax practices, Action 6 on tax treaty abuse, Action 13 on transfer pricing documentation and country-by-country (CbC) reporting, and Action 14 on dispute resolution. The BEPS Minimum Standards are all subject to a peer review process that began in 2016 and has continued throughout 2019. The peer reviews are carried out by the OECD's Working Party, with all members of the IF on BEPS entitled to participate in the work on an equal footing.

## Impact of the implementation of the BEPS Actions

The OECD in its Progress report July 2018–May 2019 stated that the changes arising from the implementation of the BEPS package have been significant. The OECD specifically referenced the following key tangible results as of June 2019:

- Action 5 (Harmful Tax Practices) — 255 preferential tax regimes have been reviewed to ensure that there is substance associated with the activities they are intended to attract, and more than half have already been amended or abolished. Exchanges of information on more than 21,000 tax rulings took place, thereby ensuring greater transparency of the arrangements between tax administrations and taxpayers.
- Action 6 (Tax Treaty Abuse) — The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) now covers 88 jurisdictions, which will impact more than 1,500 bilateral tax treaties once governments finalize the ratification process.
- Action 13 (Country-by-Country Reporting) — There are currently more than 2,000 relationships in place for the exchange of CbC reports, and 80 jurisdictions (up from 62 jurisdictions in 2018) have engaged in the exchange of CbC reports on the activities, income and assets of multinational enterprises.

## Looking ahead

The OECD considers that the global implementation of the BEPS Actions has been very successful. In its view, the constant efforts of the OECD and the G20 over the past 10 years have dramatically changed the environment, improving the efficiency and fairness of international tax. However, the OECD considers that more progress is needed to address the tax challenges arising from digitalization, which are high on the political agenda. The tax challenges of the digitalization of the economy were identified as one of the main areas of focus of the BEPS Project, leading to the 2015 BEPS Action 1 Report that concluded that the whole economy was digitalizing and, as a result, it would be difficult to ring-fence the digital economy. As such, the work of the OECD and G20 will not be limited to highly digitalized businesses. It will go beyond the existing BEPS standards to explore fundamental changes to the international tax architecture. This work is a key priority for the OECD and G20 for the remainder of 2019 and into 2020.

In respect of future MLI developments, up to 30 June 2019, 89 jurisdictions have signed the MLI, and 29 of these jurisdictions have already deposited their instrument of ratification. This number will increase as more signatories deposit their instruments of ratification throughout the remainder of 2019, with the potential for the MLI to impact up to 3,500 bilateral tax treaties.

The IF on BEPS members have committed to report aggregate and anonymized data in respect of the CbC reports that they receive under Action 13, which is vital to the work under Action 11 on measuring the impact of BEPS. In June 2019, the first aggregated and anonymized statistics from data collected on CbC reports prepared by the IF on BEPS were provided to the OECD for processing. The OECD expects that further statistics to be released in 2020 will provide a fuller picture of the true cost of tax avoidance and the benefit of the BEPS Project.

Finally, the peer reviews of the BEPS Minimum Standards will continue, including preventing the granting of treaty benefits in inappropriate circumstances under Action 6, the Action 13 standard on CbC reporting and a full schedule of reviews of mutual agreement procedures under Action 14.

# BEPS 2.0 — digital taxation and the global anti-base erosion (GloBE) proposals

## Background

On 5 October 2015, the OECD released its final report on the tax challenges of the digital economy (Action 1) under its BEPS Action Plan. The final report indicated that there would be follow-up work carried out in this area and that a supplementary report reflecting the outcomes of continued work on the overall taxation of the digitalization economy would be released by 2020. Following a mandate by G20 Finance Ministers in March 2017, the Inclusive Framework (IF) on BEPS, working through the OECD's Task Force on the Digital Economy (TFDE), delivered an interim report on 16 March 2018, titled *Tax Challenges Arising from Digitalisation – Interim Report 2018*. The OECD's interim report provided an in-depth analysis of value creation across new and changing business models in the context of digitalization and the tax challenges they presented. While members of the IF on BEPS did not converge on the conclusions to be drawn from the analysis included in the interim report, they committed to continue working together toward a final report in 2020 aimed at providing a consensus-based, long-term solution, with an update in 2019.

## 2019 midyear developments

On 29 January 2019, the OECD issued a press release and a Policy Note in relation to its work on Addressing the Tax Challenges of the Digitalisation of the Economy. According to the Policy Note, the features of the digitalizing economy exacerbate BEPS risks and enable structures that shift profits to entities that escape taxation or are taxed at only very low rates. A solution would therefore require comprehensive work that covers the overall allocation of taxing rights through revised profit allocation rules and revised nexus rules, as well as anti-BEPS rules.

The Policy Note confirmed that agreement had been reached among the members of the IF on BEPS to examine proposals involving two pillars that could form the basis for consensus. Pillar One focuses on the allocation of taxing rights and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules. Pillar Two focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.

The OECD issued a public consultation document on 13 February 2019 seeking public comments on possible solutions. The consultation document contained proposals that, if implemented, would represent a significant departure from current international tax systems. For example, some of the proposals go beyond current internationally accepted transfer pricing norms. As is acknowledged in the consultation document, some of the proposals would have implications for a very wide range of businesses, whether digitalized or more traditional. The consultation document sought comments from the public on a number of policy issues and technical aspects. The response from stakeholders was robust, with more than 200 written submissions totaling over 2,000 pages of written comments. Stakeholders also had the opportunity to express their views at the public consultation meeting that was held at the OECD Conference Centre in Paris on 13 and 14 March 2019. A comment letter was submitted by EY teams and EY representatives across the globe participated in the consultation. You can read the EY letter here.

On 31 May 2019, the OECD announced that the members of the IF on BEPS have agreed on a road map for resolving the tax challenges arising from the digitalization of the economy and committed to continue working toward a consensus-based, long-term solution by the end of 2020. More specifically, the IF on BEPS will work on agreeing the policy and technical details of a consensus-based, long-term solution to the challenges of the digitalization of the economy throughout 2020 and will deliver a final report by the end of 2020. According to the document, consideration will be given to the holding of public consultations as necessary to obtain stakeholder feedback as the various proposals are refined.

**For further information, see also:**

- EY Global Tax Alert, OECD and country officials discuss OECD workplan for new rules for taxing multinational businesses and ongoing projects, dated 10 June 2019.
- EY Global Tax Alert, OECD hosts public consultation on document proposing significant changes to the international tax system, dated 18 March 2019.
- EY Global Tax Alert, OECD opens public consultation on addressing tax challenges arising from digitalization of the economy: time-sensitive issue impacting all multinational enterprises, dated 14 February 2019.
- EY Global Tax Alert, OECD's new insights describe growing support on comprehensive changes to international tax policy, beyond digital, dated 29 January 2019.

## Country-specific developments

The BEPS 2.0 proposals set out above are based on the premise that in the absence of multilateral action, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all countries, large and small, developed and developing, as well as taxpayers. However, a growing number of countries and jurisdictions have or are seeking to impose various digital tax measures or interpretations of the current rules in their domestic law on a unilateral basis. During the period under review, Italy enacted laws that will introduce a digital services tax (DST) into its domestic law, France and Spain published a draft DST bill and New Zealand released a detailed discussion document in relation to the introduction of a DST. The Czech Republic, France, Poland and the UK have also publicly announced that they are considering implementing a DST; however, no legislative proposal has been released for these jurisdictions. Australia has announced that its DST proposal that was previously announced has been put on hold pending an OECD agreed solution, while the Belgian proposal has been rejected.

The Italian Budget Law 2019 (Law no.145/2018), published in the Official Gazette (G.U.) on 1 January 2019, introduced a new tax on digital services. This new indirect tax will apply with respect to digital transactions performed by taxable persons either established or non-established in Italy, in the course of their business activity. Under the new rules, DST is due by enterprises carrying on business activities that, individually or at the group level, exceed €750 million or more and the amount of revenue derived from digital services in Italy is €5.5 million or more. For the purposes of its entry into force, some implementing decrees had to be issued. As of today, due to the lack of the decrees, the DST is not in force.

A Spanish DST bill was published in the Congress Official Gazette on 25 January 2019. Its main features are similar to the DST proposed by the European Commission on 21 March 2018, with a rate of 3% imposed on gross income derived from certain digital services for which user participation is essential for creating value. The DST will apply to companies with worldwide revenues of €750 million per annum and with a total amount of taxable revenues obtained in Spain exceeding €3 million per annum.

On 6 March 2019, the French Government submitted a draft bill detailing France's proposed tax on digital services (the GAFA tax) 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 (B to B), between businesses and consumers (B to C) or between consumers (C to C). 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 is currently being discussed by the French Parliament.

On 4 June 2019, the New Zealand Government released *Options for taxing the digital economy: a discussion document on the design of a possible DST*. The discussion document emphasizes a commitment to ensuring everyone pays their fair share of tax, including multinationals in digital businesses. It states that achieving this will require changes to the current tax rules in one of two ways: (i) the first option would be to apply a separate DST to certain digital transactions — a DST would tax 2% to 3% of the gross turnover of certain highly digitalized businesses that are attributable to the country; or (ii) the other option would be to change the current international tax framework. Countries have been discussing different ways of achieving this with the OECD. While the New Zealand Government would prefer an internationally agreed multilateral approach through the work currently underway at the OECD, it will "seriously consider" a unilateral DST at a flat rate of 2% to 3% if insufficient progress is made at the OECD during the remainder of 2019. The discussion document also indicates that the government would look to repeal any DST if and when the OECD's international solution is implemented.

# Multilateral instrument (MLI)

## Background

The final report on Action 15, Multilateral convention to implement tax treaty-related measures to prevent BEPS, explores the technical feasibility of an MLI to implement the treaty-related measures developed during the course of the BEPS project and to amend bilateral tax treaties. To that end, the MLI was developed and agreed in November 2016 by approximately 100 jurisdictions, including OECD member countries, G20 countries, and other developed and developing countries. Each provision under the MLI (Articles 3 to 17) first reflects the BEPS measures as developed during the BEPS project with certain modifications. However, the MLI is structured in a way to provide flexibility for contracting jurisdictions to implement (parts of) the MLI based on their needs.

## 2019 midyear developments

As of 30 June 2019, 89 jurisdictions have signed the MLI. At the time of signature, signatories submitted a list of their tax treaties in force that they designate as covered tax agreements (CTAs), i.e., to be amended through the MLI. Together with the list of CTAs, signatories also submitted a preliminary list of their reservations and notifications (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for each jurisdiction will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI. As of 30 June 2019, 29 jurisdictions have deposited their instrument of ratification with the OECD.

Generally, the MLI will enter into force for a jurisdiction 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 its instrument of ratification with the OECD. With respect to a specific bilateral tax treaty, the measures will generally enter into effect after both parties to the treaty have deposited their instruments of ratification, acceptance or approval of the MLI and a specified time has passed. The specified time differs for different provisions. The first modifications to bilateral tax treaties on taxes withheld at source entered into effect on 1 January 2019.

The EY MLI Tool allows businesses to quickly and easily determine whether a tax treaty is a CTA, the date of effect of the MLI for both withholding and other taxes, and the application of the MLI on a CTA. The tool is available at mli.ey.com.

## Country-specific developments

Albania, Belize, Morocco and Papua New Guinea signed the MLI during the period under review, bringing the total number of signatories to 89 as of the date of this report.

The MLI entered into force for an additional 15 jurisdictions during the period under review, Australia, France, Israel, Japan, Lithuania, Slovak Republic (1 January 2019), Malta, Singapore (1 April 2019), Ireland, Monaco (1 May 2019), Guernsey, Finland (1 June 2019), Curaçao, Georgia and the Netherlands (1 July 2019), and Belgium, India, Luxembourg, the UAE and Russia deposited their instruments of ratification with the OECD during the period under review. The MLI will enter into force for Luxembourg on 1 August 2019, for the UAE on 1 September 2019, and for Belgium, India and Russia on 1 October 2019.

Many other jurisdictions have taken steps domestically for the ratification process of the MLI, such as Canada, Denmark, Portugal, Spain, Switzerland and Ukraine.

# Country-by-country (CbC) reporting

### Background

The final report on Action 13 sets out a three-tiered standardized approach to transfer pricing documentation and introduces a new version of Chapter V of the OECD transfer pricing guidelines (TPG), covering documentation. The standardized approach consists of a local file, a master file and a CbC report.

### 2019 midyear developments

CbC reporting continues to play a key role in promoting transparency and accuracy in reporting to tax authorities. During the period under review, 80 jurisdictions (up from 62 jurisdictions last year) have engaged in the exchange of CbC reports on the activities, income and assets of multinational enterprises.

During 2019, the OECD released additional exchange relationships that have been activated under the CbC Multilateral Competent Authority Agreement (CbC MCAA). Also, Anguilla, Morocco and Panama were added to the list of signatories of the CbC MCAA during the period under review.

As of 30 June 2019, 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 2,100 automatic exchange relationships established among jurisdictions committed to exchanging CbC reports. This also includes 44 bilateral agreements with the United States. The list of automatic exchange relationships that have been activated is available on the OECD website.

For an overview of the Action 13 implementation, you can visit this EY page.

On 27 June 2019, the OECD released the updated XML schemas and guidance to support the exchange of tax information on CbC reporting (CbCR). The CbCR schemas will become effective for all exchanges on or after 1 January 2021.

### Country-specific developments

During the period under review, countries and jurisdictions have continued to amend their domestic legislation and publish guidance to introduce and/or further enhance CbC reporting compliance.

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. 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.

Poland amended its legislation to extend the deadline for providing CbC notification to the Polish Ministry of Finance on the entity responsible for CbC report preparation and clarifying how the threshold triggering the CbC reporting 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.

The Icelandic Parliament adopted certain amendments in relation to CbC reporting following feedback received from the OECD. The amendments aim to clarify that the threshold (which was denominated in ISK) will be changed to €750 million, introduce provisions on the reporting obligations of surrogate parent entities and amend the due date of the CbC reporting notification submission.

Uruguay passed a number of resolutions extending the deadline for submission of the CbC report for multinational entity (MNE) groups with a reporting fiscal year (RFY) ending on 31 December 2017. 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. In March 2019, the Uruguayan tax authorities extended the deadline again, 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.

With respect to the CbC reporting in Mongolia, the comprehensive tax reform package approved by the Mongolian Parliament in March 2019 means that all Mongolian tax resident constituent entities that are ultimate parent entities (UPEs) of an MNE group with annual consolidated group revenue equal to or exceeding MNT1.7 trillion, or approximately US$630 million, are now required to prepare a CbC report for financial years starting on or after 1 January 2020.

Panama issued a decree to introduce CbC reporting requirements on 27 May 2019. According to Article 2 of the decree, ultimate parent companies of multinational groups, tax resident in Panama, with consolidated income exceeding €750 million during the fiscal period immediately preceding the reporting fiscal period are required to submit the CbC report on an annual basis.

# Harmful tax practices

### Background

The OECD released its final report on Action 5 under its Action Plan on BEPS. The final report covers two main areas: (i) the definition of a "substantial activity" criterion to be applied when determining whether tax regimes are harmful (the nexus approach) and (ii) improving transparency through a framework for the compulsory spontaneous exchange of information on certain rulings.

### 2019 midyear developments

On 29 January, the OECD released *Harmful Tax Practices — 2018 Progress Report on Preferential Regimes* (the 2018 Progress Report), approved by the members of IF on BEPS. The purpose of this document is to provide an update to the 2017 Progress Report and to report the results of the review of all IF on BEPS members' identified preferential tax regimes. In 2017, commitments were made in respect of more than 80 regimes to be made compliant with the BEPS Action 5 minimum standard. In 2018, jurisdictions have, in almost all cases, delivered on these commitments, while the total number of regimes reviewed since the start of the BEPS project is now 255. Based on the report, the 2018 results show that all intellectual property (IP) regimes are (with one noted exception) either abolished or amended to comply with the nexus approach.

See EY Global Tax Alert, OECD releases 2018 Progress Report on Preferential Regimes under BEPS Action 5, dated 30 January 2019.

### Country-specific developments

The Thai Revenue Department issued Notification of the Director-General of the Revenue Department under the Royal Decree 674 (the Notification) on 3 May 2019, relating to conditions, compliance and reporting requirements, and the application procedure and 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 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 BEPS Action 5.

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.

# Peer reviews

## Background

Recognizing that the key element is the monitoring implementation, members of the IF on BEPS developed a monitoring process for the BEPS Project that aims to ensure that all members comply with the BEPS minimum standards, i.e., BEPS recommendations that all members of the IF on BEPS have committed to implement, and refer to some of the elements of Action 5 on harmful tax practices, Action 6 on treaty abuse, Action 13 on transfer pricing documentation and CbC reporting, and Action 14 on dispute resolution. Accordingly, each BEPS member is subject to an ongoing peer review process to ensure timely and consistent implementation of the four minimum standards.

## 2019 midyear developments

### *Action 5*

On 29 January, the OECD released Harmful Tax Practices — 2018 Progress Report on Preferential Regimes, approved by the members of the IF on BEPS. The purpose of this document is to provide an update to the 2017 Progress Report and to report the results of the review of all IF on BEPS members' identified preferential tax regimes. In 2017, commitments were made in respect of more than 80 regimes to be made compliant with the BEPS Action 5 minimum standard. In 2018, jurisdictions have, in almost all cases, delivered on these commitments, while the total number of regimes reviewed since the start of the BEPS project is now 255. The 2018 Progress Report also contains annexes containing substantive updates on the Forum on Harmful Tax Practices (FHTP) framework, including the new standard for substantial activities requirements within no or only nominal tax jurisdictions, interpretive guidance on the application of existing factors for assessing regimes, and recommendations on the data points and process for carrying out the monitoring of the grandfathering for non-IP regimes.

For additional information, see OECD releases 2018 Progress Report on Preferential Regimes under BEPS Action 5, dated 30 January 2019.

### *Action 6*

On 14 February 2019, the OECD released the first peer review report relating to the compliance by members of the IF on BEPS to the minimum standard on BEPS Action 6 for prevention of treaty abuse. The report covers 116 jurisdictions and information available as of 30 June 2018 (cutoff date). Overall, the report concludes that a large majority of the IF on BEPS members have begun to translate their commitment on treaty shopping into actions and are now in the process of modifying their treaty network. According to the report, the peer review shows the efficiency of the MLI in implementing the treaty-related BEPS measures, and it is by far the preferred tool of the IF on BEPS members for implementing the minimum standard. By the cutoff date, 82 jurisdictions had some agreements that were already compliant with the minimum standard or were subject to a complying instrument. Once the complying instrument (i.e., the MLI or a protocol/treaty) takes effect, the agreements will come into compliance with the minimum standard. The OECD launched the next peer review of Action 6 during the period under review.

For additional information, see EY Global Tax Alert, OECD releases first annual peer review report on BEPS Action 6, dated 15 February 2019.

### *Action 13*

The OECD will complete the second annual peer review of the implementation of Action 13 in summer 2019. The second review will consider implementation of the minimum standard by almost 120 IF on BEPS members, compared with 95 jurisdictions in the first peer review.

### *Action 14*

On 14 February 2019, the OECD released the fifth batch of peer review reports relating to the implementation by Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey of the BEPS Action 14 minimum standard. Overall, the reports conclude that the majority of these jurisdictions meet most or almost all of the elements of the Action 14 minimum standard. Iceland meets more than half of the elements of the Action 14 minimum standard, and Romania meets less than half of these elements. On 19 February 2019, the OECD announced that it is gathering input on the implementation of the BEPS Action 14 minimum standard in relation to the review of the eighth batch of jurisdictions (Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia) and invited taxpayers to submit their input related to their experiences in these jurisdictions, via an electronic questionnaire, by 19 March 2019.

To date, 45 jurisdictions have been reviewed under stage 1 of the process, 16 more are currently in the process of being finalized and another 18 jurisdictions are scheduled for review. For the 45 jurisdictions reviewed thus far, around 990 recommendations have been issued, including recommendations for jurisdictions to maintain compliance with certain elements of the minimum standard, including the need for more resources to process MAP cases, improving timeliness of the resolution of MAP cases and updating domestic rules. At the same time, the Action 14 minimum standard is already having a broader impact on MAP worldwide. For example, there has been a marked increase in the number of cases dealt with by competent authorities that have been closed, in almost all jurisdictions under review. Also, more than a quarter of the jurisdictions updated or introduced comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP, e.g., Luxembourg and Belgium have each introduced MAP guidance for the first time, and the United Kingdom revised its MAP guidance to reflect fully the requirements of the Action 14 minimum standard.

For additional information, see EY Global Tax Alert, OECD releases fifth batch of peer review reports on BEPS Action 14, dated 18 February 2019.

# Conclusion

The international tax changes arising from the OECD BEPS Project are transforming the global tax environment at an unprecedented pace. Practically every jurisdiction is amending its domestic tax legislation to implement BEPS-inspired measures and, in particular, across the EU with the introduction of the ATAD I and II rules. In addition, the interaction between non-US tax systems and the US has been significantly impacted by the US Tax Cuts and Jobs Act. Fundamental changes to tax treaties are also being introduced as a result of the entry into force of the MLI. In addition, businesses are having to deal with satisfying the increasingly broad and complex transparency and reporting requirements, such as the exchange of tax rulings, CbC reporting and the EU MDR, and increased controversy risk.

Assessing and addressing these tax changes represents one of the most significant challenges businesses have faced in many years. It is therefore critical for businesses to keep up to date with these changes and identify how they may impact their tax position, structure, business strategy and global effective tax rate.

# EU BEPS-related developments in review

The 28 member states of the European Union (EU Member States) have embraced the OECD BEPS recommendations and have been working together on implementing the BEPS package consistently across the EU. The EU Anti-Tax Avoidance Directive (ATAD) specifically includes measures addressing Action 2 on hybrid mismatches, Action 3 on controlled foreign companies (CFCs) and Action 4 on interest deductibility. The EU Member States unanimously agreed to adopt this directive and have been gradually implementing it since 1 January 2019. In addition, all 28 EU Member States have signed the MLI. In addition, the European Commission has committed to continue to scrutinize tax rulings that might constitute illegal state aid, with a number of high-profile cases being initiated or decided during the period under review.

Due to the increased activity at the EU level, this separate sub-report specifically addresses the EU BEPS-related activity.

## ATAD

The ATAD I and II are intended to provide for a uniform legislative implementation of some of the OECD BEPS recommendations. The agreed-upon ATAD text establishes a minimum standard with respect to five areas: interest deductibility limitation, a general anti-abuse rule (GAAR), CFC rules, exit taxation and hybrid mismatches. The ATAD is applicable as of 1 January 2019. However, EU Member States will have until 31 December 2019 to transpose the rules in relation to exit taxes and hybrid mismatches (1 January 2022 for implementation) into national laws and regulations.

### Country-specific developments

During the period under review, Austria, the Czech Republic, Cyprus and Portugal all introduced a new CFC regime into their national laws and regulations. Belgium and Italy early adopted the reverse hybrid rules and transposed these into national laws and regulations. A large number of countries have also early adopted the exit taxation rule.

As of the date of this report, a number of countries still need to amend their existing domestic rules to meet the ATAD standard in respect of their GAAR, CFC rules and interest limitation rules.

In the annex of this sub-report, there is a chart listing EU Member States, noting whether the state's domestic rules meet the ATAD requirements and whether the state has implemented the relevant rules. The chart illustrates some high-level information on the rules in each Member State.

# Mandatory Disclosure Rules (MDR)

On 25 May 2018, the Council of the EU formally adopted the directive amending Directive 2011/16/EU with respect to the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. The adopted directive requires "intermediaries," such as tax advisors, accountants and lawyers, that design and/or promote tax planning arrangements to report transactions and arrangements that are considered by the EU to be potentially aggressive. If there are no intermediaries that can report, the obligation will shift to the taxpayers. Following the reporting of the arrangements, the information about the arrangements will be automatically exchanged between Member States. Member States shall apply the new reporting requirements from 1 July 2020, but such requirements will cover arrangements where the first step of implementation begins after the entry into effect of the directive, i.e., on 25 June 2018, being 20 days after publication of the directive into the Official Journal of the European Union on 5 June 2018. The first information shall be reported by 31 August 2020 and exchanged by 31 October 2020.

At the end of 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. 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.

### Country-specific developments

On 1 January 2019, the Polish Tax Code was supplemented with Chapter 11a — Mandatory Disclosure Rules, which implemented the directive and also introduced further reporting requirements. The requirements of the Polish MDR regulations are significantly broader than the requirements of the directive. The Polish MDR has a wider scope of reportable tax arrangements than the directive. In this regard, the Polish legislation extends the scope of taxes to include value-added tax (VAT) with respect to the domestic tax arrangements, in addition to all other taxes covered by the directive. In addition, the Polish definition of "reportable arrangements" also includes domestic tax arrangements and an extended catalog of hallmarks. The Polish reporting deadlines (starting from January 2019) are significantly earlier than the reporting deadlines under the directive. Recently, Poland announced further plans to modify MDR rules. Changes are expected from the beginning of 2020.

The Portuguese Government published draft legislation to implement the directive in Portugal's domestic law on 28 May 2019. The draft Portuguese legislation is subject to a formal legislative process and may be amended before final enactment. If implemented as currently proposed, the Portuguese legislation will have a wider scope in comparison to the directive. The key differences between the draft Portuguese legislation and the directive are the inclusion of certain "domestic arrangements" (as defined in the draft legislation) in the scope of the MDR; an extension of the scope of taxes covered to include VAT for domestic arrangements; and the inclusion of additional hallmarks, extensions to the scope of the DAC6 hallmarks and clarifications on the interpretation of the DAC6 hallmarks. The draft legislation is expected to be finalized by September 2019.

In addition, Germany submitted draft proposals for the implementation of the directive in its domestic law during the period under review. The proposed German legislation extends the scope of the reporting required under the directive to include certain domestic arrangements. The German legislation is expected to be finalized during 2019.

Also, on 20 June 2019, the Spanish Government published draft legislation and draft guidance addressing the implementation of the directive. The draft legislation is subject to public consultation, and comments on the proposals are requested by 12 July 2019. The Spanish draft legislation is subject to the formal legislative process and is likely to be amended before final enactment. If implemented as currently proposed, the Spanish Mandatory Disclosure Rules (MDR) legislation and guidance will be broadly aligned to the requirements of the directive.

## Taxation of the digital economy

On 21 March 2018, the European Commission issued two proposals for new directives that would deliver new ways to tax digitalized forms of business activity. The Commission's proposals focus on a two-phased approach: an interim solution, referred to as the Digital Services Tax (DST) and a longer-term Council Directive laying down rules relating to the corporate taxation of a significant digital presence. On 4 December 2018, a DST compromise text and a proposal to implement a 3% tax on turnover were discussed during the Economic and Financial Affairs Council (ECOFIN or the Council) meeting.

In March 2019, the Council reviewed the progress achieved in the negotiations on the DST, focusing on a new compromise text that would limit the DST's scope to only digital advertising services. The March 2019 discussion revealed that despite broad support from many Member States, some delegations maintained reservations, reflecting either objections to some specific aspects of the proposal or more fundamental objections. It was agreed that the Presidency of the Council would conduct work on the EU position in international discussions on digital taxation, in view of the OECD's report on the issue, which is expected in 2020.

The Council again discussed this issue at the meeting on 17 May 2019. It was agreed that the Presidency of the Council would present the views expressed by ministers during preparations for the G20 Finance Ministers' meeting on 8 through 9 June in Fukuoka, Japan. In addition, the ECOFIN Chair intends to present the outcome of ECOFIN discussions at the G20 Leaders' Summit later in June. The Council also clarified that if, by the end of 2020, it appears that any agreement at the OECD level is expected to take additional time, the Council could, if necessary, revert to discussing a possible EU approach on this topic. In addition, the Presidency of the Council also confirmed in the meeting that the 2018 EU proposal for a directive on corporate taxation based on SDP remains available for future follow-up.

See also:

- EY Global Tax Alert, ECOFIN discusses digital taxation, publishes updated list of non-cooperative jurisdictions for tax purposes, dated 21 May 2019.
- 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.

## EU blacklist and harmful regimes

On 5 December 2017, the Council of the EU published a listing of uncooperative jurisdictions for tax purposes (EU list), comprising 17 jurisdictions that were deemed to have failed to meet relevant criteria established by the European Commission. The listing criteria are focused on three main categories: tax transparency, fair taxation and implementation of anti-BEPS measures.

During the first half of 2019, there were changes to the EU list. The finance and economic affairs ministers of the EU Member States agreed that a de-listing is justified in the light of an expert assessment of the commitments made by the listed jurisdictions to address deficiencies identified by the EU. On 12 March 2019, the Council added to the EU list 10 new jurisdictions that either did not commit to addressing the EU's concerns or did not deliver their commitments on time. In May and June 2019, the Council found Aruba and Dominica compliant with their commitments and removed them from the EU list. Bermuda and Barbados were removed from the EU list and added to Annex I, the list of jurisdictions that have committed to improvements on a number of criteria. Currently, 11 jurisdictions remain on the EU list: American Samoa, Belize, Guam, Samoa, Trinidad and Tobago, US Virgin Islands, Fiji, Marshall Islands, Oman, UAE and Vanuatu.

On 27 May 2019, the Council of the EU published a report from the Code of Conduct Group (COCG) that encompasses the work of the COCG in the first half of 2019 under the Romanian Presidency of the Council. Regarding the EU list, the report recalls that ECOFIN agreed in 2018 to extend the geographical scope of the EU listing exercise to Argentina, Mexico and Russia in 2019, as well as to Azerbaijan, Guyana, Kazakhstan, Kuwait, Lebanon, Moldova, New Zealand and Ukraine in 2020. Moreover, during the incoming Presidency (Finland), discussions on further coordinated defensive measures against non-cooperative jurisdictions in the tax area will resume. Furthermore, the assessment to list non-cooperative jurisdictions is made using the agreed criteria, which relate to tax transparency (criterion 1), fair taxation (criterion 2) and the implementation of OECD BEPS measures (criterion 3). On criterion 2.2 ("Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity"), the report mentions that the COCG mandated its Chair to initiate a dialogue with the OECD FHTP on a possible alignment of its new standard on no or only nominal tax jurisdictions (approved by

the IF on BEPS at the end of 2018) and EU's criterion 2.2 with a view to establish a single global standard in this field. The COCG also agreed to send a letter to all jurisdictions that have enacted sufficient legislation on criterion 2.2 requesting them to communicate to the COCG any new legislation or guidance that they may adopt in the future related to substance requirements and related transparency aspects.

Also, in June 2019, the Council of the EU published an updated overview of the preferential tax regimes examined by the COCG since its creation in March 1998. The overview is divided into three parts: (i) preferential regimes of EU Member States (including Gibraltar with regard to the United Kingdom (UK)), (ii) dependent or associated territories of EU Member States to which EU treaties do not apply (as of the date of notification of the regime) and (iii) other jurisdictions (now covered by the EU listing exercise). Among others, the overview shows the new preferential tax measures enacted by the end of 2018 and the decisions reached for a number of regimes (e.g., the COCG found that the intellectual property regimes in France, Poland and Lithuania are not harmful).

See also:

- EY Global Tax Alert, ECOFIN discusses digital taxation, publishes updated list of non-cooperative jurisdictions for tax purposes, dated 21 May 2019.
- 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.

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# Annex I | Anti-Tax Avoidance Directive
## Implementation overview

| Symbol | Meaning |
|---|---|
| ✓ | Already implemented/embedded in domestic law, i.e., domestic rule is fully aligned with ATAD standard and no further action/amendments are expected |
| ✓ (yellow) | Already embedded in domestic law but not fully aligned with ATAD standard, i.e., existing rule should be amended (even if slightly). When the tick mark is in circle, it means that there is a published draft law |
| ✗ | Not implemented and/or no existing domestic rule |
| ◯ | Draft law published |
| A | Passive income approach |
| B | Non genuine arrangement approach |
| ? | Unclear/no information |
| Year | Year by which the ATAD measure shall be applicable from |

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| | GAAR (2019) | Interest limitation rule (2019/2024*) *extension possible under Art 11(6) | | | | | | CFC rule (2019) | | Exit tax (2020) | | Hybrids (2020) | | Reverse hybrids (2022) | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Implementation Status | Implementation Status | Effective date | De minimis rule | Grandfathering | Group ratio rule | Carry forward and/or back | Implementation Status | CFC income approach | Implementation Status | Effective date | Implementation Status | Effective date | Implementation Status | Effective date |
| Austria | ✓ | ✗ | ? | - | - | - | - | ✓ | A | ✓ | Already in force | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Belgium | ✓ | ✓ | Already in force | Yes | Yes | No | CF | ✓ | B | ✓ | Already in force | ✓ | Already in force | ✓ | Already in force |
| Bulgaria | ✓ | ✓ | Already in force | Yes | No | No | CF | ✓ | A/B | ✓ (yellow) | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Croatia | ✓ | ✓ | Already in force | Yes | No | No | Yes | ✓ | A | ✗ | 01 January 2020 | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| Cyprus | ✓ | ✓ | Already in force | Yes | Yes | Yes | CF | ✓ | B | ✗ | 01 January 2020 | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| Czech Republic | ✓ | ✓ | Already in force | Yes | Yes | No | CF | ✓ | A | ✓ | 01 January 2020 | ✓ | 01 January 2020 | ✗ | 01 January 2020 |
| Denmark | ✓ | ✓ | Already in force | Yes | No | No | CF | ✓ (yellow) | ? | ✓ | 01 January 2020 | ✓ | 01 January 2020 | ✓ | 01 January 2020 |
| Estonia | ✓ | ✓ | Already in force | Yes | No | Yes | Yes | ✓ | B | ✓ | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Finland | ✓ | ✓ | Already in force | Yes | Yes | Yes | Yes | ✓ | - | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| France | ✓ | ✓ | Already in force | Yes | No | Yes | Yes | ✓ (yellow) | ? | ✓ | Already in force | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Germany | ✓ | ✓ (yellow) | ? | - | - | - | - | ✓ | ? | ✓ | Already in force | ✓ (yellow) | Already in force | ✗ | 01 January 2022 |
| Greece | ✓ | ✓ | 01 January 2024 | Yes | No | No | Yes | ✓ | A | ✓ (yellow) | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Hungary | ✓ | ✓ | Already in force | Yes | Yes | Yes | Yes | ✓ | B | ✗ | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Ireland | ✓ | ✓ (yellow) | ? | - | - | - | - | (✗) | B | ✓ | Already in force | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| Italy | ✓ | ✓ | Already in force | No | Yes | No | CF | ✓ | A | ✓ | Already in force | ✓ | 01 January 2020 | ✓ | 01 January 2022 |
| Latvia | (✓) (yellow) | ✓ | Already in force | Yes | No | No | No | ✓ | B | ✗ | 01 January 2020 | ✓ | Already in force | ✗ | 01 January 2022 |
| Lithuania | ✓ | ✓ | Already in force | Yes | Yes | Yes | Yes | ✓ | A | ✗ | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Luxembourg | ✓ | ✓ | Already in force | Yes | Yes | Yes | Yes | ✓ | B | ✓ | 01 January 2020 | ✓ (yellow) | 01 January 2019 and 2020 | ✗ | 01 January 2022 |
| Malta | ✓ | ✓ | Already in force | Yes | Yes | No | Yes | ✓ | B | ✓ | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2020 |
| Netherlands | ✓ | ✓ | Already in force | Yes | No | No | Yes | ✓ | B/A | ✓ | Already in force | ✗ | 01 January 2020 | ✗ | 01 January 2020 or 2022 |
| Poland | ✓ | ✓ | Already in force | Yes | No | No | Yes | ✓ | A | ✓ | Already in force | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2020 |
| Poland | ✓ | ✓ | Already in force | Yes | No | No | CF | ✓ | A | ✓ | Already in force | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| Romania | ✓ | ✓ | Already in force | Yes | NO | No | CF | ✓ | A | ✓ | Already in force | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Slovakia | ✓ | ✓ (yellow) | 01 January 2024 | No | No | No | No | ✓ | B | ✓ | Already in force | ✓ | Already in force | ✗ | 01 January 2022 |
| Slovenia | ✓ | ✓ (yellow) | 01 January 2024 | - | - | - | - | ✓ | A | ✗ | 01 January 2020 | ✗ | 01 January 2020 | ✗ | 01 January 2022 |
| Spain | ✓ | ✓ (yellow) | 01 January 2024 | Yes | No | No | Yes | (✓) (yellow) | A | (✓) (yellow) | 01 January 2020 | ✓ (yellow) | 01 January 2020 | ✗ | 01 January 2022 |
| Sweden | ✓ (yellow) | ✓ | Already in force | Yes | No | No | Yes | ✓ | B | ✓ (yellow) | 01 January 2020 | ✓ (yellow) | Already in force | ✓ | Already in force |
| United Kingdom | ✓ | ✓ | Already in force | Yes | No | Yes | Yes | (✓) | B | (✓) (yellow) | 01 January 2020 | (✓) (yellow) | 01 January 2020 | ✗ | ? |

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