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Global Tax Alert

The Latest on BEPS - 29 July 2019

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OECD

On 26 July 2019, Eswatini joined the BEPS Inclusive Framework, bringing the total number of jurisdictions to 132. As a new BEPS member, Eswatini is committed to comply with the BEPS minimum standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Eswatini will also participate on an equal footing with the members of the Inclusive Framework on the remaining standard setting, as well as the review and monitoring of the implementation of the BEPS package.

On 23 July 2019, the OECD released an update on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (harmful tax practices) of the OECD/G20 BEPS Project. The results were approved on 19 July 2019 during a meeting of the Inclusive Framework on BEPS.

The updated results cover 56 regimes, bringing the number of regimes that have been reviewed, or are under review, to 287. The assessments were undertaken by the OECD Forum on Harmful Tax Practices (FHTP). The update is an indication of the extent of the ongoing work aimed at ending harmful tax practices, through the requirement that all preferential regimes require adequate levels of substance. The peer review results will continue to be updated from time to time, as approved by the Inclusive Framework on BEPS.

Building a better working world

Additionally, the OECD released the results of the review of the substantial activities factor for no or only nominal tax jurisdictions in connection with the domestic laws of the 12 jurisdictions that have been identified by the FHTP as being a no-or-only-nominal-tax jurisdiction.

See EY Global Tax Alert, *OECD releases update on peer review of preferential tax regimes and no or only nominal tax jurisdictions*, dated 24 July 2019.

On 18 July 2019, at the conclusion of the two-day meeting in Chantilly of the G7 Finance Minister and Central Bank Governors group, France issued a Chair's Summary of the discussion at the meeting.

The Chair's Summary includes a section on international taxation, which focuses on the OECD/G20 Inclusive Framework project to address the tax challenges of the digitalization of the economy through revisions to existing profit allocation and nexus rules (Pillar 1) and development of new global minimum tax rules (Pillar 2). The Chair's Summary indicates that the G7 Finance Ministers agreed that addressing these challenges is urgent and supported a two-pillar solution to be developed through the OECD workplan. The Chair's Summary reflects G7 agreement to move forward with both pillars. It also reflects G7 discussions aimed at bridging the gap between alternative proposals for new profit allocation and nexus rules that have been advanced by the United States on the one hand, and the United Kingdom, France and other European countries on the other hand, in order to focus the work on one proposed approach.

The Chair's Summary notes that the new rules to be developed should be administrable and simple and that mandatory arbitration must be a component of this global solution.

See EY Global Tax Alert, *G7 Finance Ministers support OECD two-pillar project to develop new rules for taxing multinational businesses*, dated 18 July 2019.

European Union

On 16 July 2019, Ursula von der Leyen was elected President of the European Commission (the Commission) for a five-year term by a secret ballot vote by the Members of the European Parliament with a margin of 383 votes to 327. Von der Leyen will take over the President's role from Jean-Claude Juncker on 1 November 2019. Shortly before her election, Von der Leyen published her manifesto, which includes information on her views on several tax issues. In relation to the taxation of digital economy, she states that the "EU and international corporate tax systems are in urgent need of reform." Referring to "big tech companies," she notes that proposals are currently being discussed in the Inclusive Framework to address the taxation of the digital economy, but that if no solution is agreed by the end of 2020, the European Union (EU) should act alone on a "fair digital tax." To allow for deeper integration of the single market and encourage growth, Von der Leyen states that she will "fight to make Common consolidated corporate tax base (CCCTB) a reality." She also says she will "step up the fight against tax fraud and make our action against harmful tax regimes in third countries stronger."

See EY Global Tax Alert, *European Commission elects new President of the European Commission, President-elect publishes manifesto including tax focus areas*, dated 19 July 2019.

On 10 July 2019, the European Council released the work programme under the Finnish Presidency as agreed by the Code of Conduct Group (COCG) (business taxation). Among others, the work programme mentions that the COCG will conclude the screening of Argentina, Mexico and Russia, on the basis of reports by the Commission services, and send out letters seeking commitment, if and where appropriate. Furthermore, the COCG will discuss the relevance of EU criteria for developing countries without a financial center and it will resume discussions on the draft guidance on further coordinated defensive measures in the tax area against listed jurisdictions. Following bilateral discussions between the Chair and the FHTP Chair and Secretariat, the COCG will also attempt to reach a convergence between EU's criterion 2.2 (Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity) and OECD FHTP's standard for no/only nominal tax jurisdictions.

Austria

On 22 July 2019, the bill implementing the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017, relating to tax dispute resolution mechanisms in the EU, into domestic legislation was published in the *Official Gazette* in Austria. This Federal Act shall enter into force on 1 September 2019 and shall apply to all dispute settlement complaints in respect of disputes relating to income or property arising for taxation periods commencing on or after 1 January 2018.

Botswana

On 12 July 2019, Botswana's Minister of Finance and Economic Development gazetted transfer pricing regulations (the Regulations). The Regulations are effective from 1 July 2019 and are based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG). Under the Regulations, taxpayers have an obligation to prepare and provide transfer pricing documentation. This documentation is intended to allow the tax administration to assess the arm's-length nature of intra-group transactions. The Regulations provide that this obligation is applicable for all direct or indirect transactions with "connected persons." The legislator has not specified in the Regulations, how this relationship is assessed. The assumption is that "connected persons" shall have the meaning assigned to it in the principal act. For domestic transactions, the regulations have been limited only to transactions relating to an International Financial Services Center (IFSC) company. The documentation content requirements are relatively broad, and are in line with the elements recommended by the OECD TPG. The local file should be filed together with the tax return on the prescribed return-filing date. The detailed group information (Master File), however, will be required from only those taxpayers whose transactions with connected persons exceed BWP5 million. The Master File will be filed on notification from the tax authority and the due date will be stated in the notice. For failure to submit the required documentation, a penalty not exceeding BWP500,000 will be charged.

See EY Global Tax Alert, *Botswana issues transfer pricing regulations*, dated 23 July 2019.

China–India

On 26 November 2018, India and China signed a new protocol (the Protocol) amending their existing Double Taxation Avoidance Agreement (Treaty). The Protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 7 (preventing the artificial avoidance of permanent establishment status). However, it also includes additional recommendations not part of BEPS such as additional language in preamble, broadening of the service permanent establishment (PE) definition, clarity on situations where fiscally transparent entities are considered resident, exemption on withholding tax on interest in certain cases and exchange of information.

The Protocol contains the new preamble language which clarifies that the parties intend to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance and also has a Principal Purpose Test. It also contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both India and China (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement, the Contracting State of which the person shall be deemed to be a resident. In the PE clause, the Protocol contains various changes to the definition of PE including an anti-fragmentation rule and the new definition of agency PE. Additionally, the Protocol also includes an update of the existing provisions for exchange of information aligned with the latest international standards.

Both India and China have signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and neither of them has included this tax treaty as a covered tax agreement (CTA). Therefore, it may be expected that the Protocol will not be further modified by the MLI, particularly given that the Protocol already has incorporated the treaty-related BEPS minimum standards. The Protocol has been notified by the Indian Ministry on 17 July 2019 and will be effective in India for income earned on or after 1 April 2020.

Costa Rica

On 2 July 2019, the Tax Administration released a draft Resolution that regulates the procedure and requirements for obtaining an advance pricing agreement (APA) in Costa Rica. The draft Resolution is expected to be published in the *Official Gazette* soon and once published, interested parties can submit their comments within a 10-day period from publication. Among others, the draft Resolution includes: (i) the definition of an APA; (ii) the procedure to make an APA request; (iii) the specific content to be included in the APA and in the annual report that the taxpayer must file with the Tax Administration; and (iv) the procedure to amend the APA if the circumstances have changed significantly or to renew the APA.

Cyprus

On 19 July 2019, the Cypriot Tax Department launched a consultation on two draft bills implementing exit taxation rules and hybrid rules in line with the EU Anti-Tax Avoidance

Directive (ATAD) I and II. Interested parties can submit comments on the draft bills by 26 August 2019 via email to elpanayiotou@tax.mof.gov.

Finland

On 1 July 2019, the tax authorities issued guidance on how the new rules in relation to international tax disputes (the guidance) should be interpreted in Finland.

The guidance was issued following the implementation of the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017, relating to tax dispute resolution mechanisms in the EU, into domestic legislation which entered into force on 30 June 2019.

The guidance relates to international tax disputes: (i) covered by the EU Tax Dispute Resolution Directive (2017/1852); (ii) covered by a tax treaty concluded by Finland; and (iii) resulting from transfer pricing and profit allocation to a permanent establishment.

Iceland

On 12 July 2019, following comments provided by the OECD, the Minister of Finance and Economic Affairs launched a consultation in relation to the draft regulation on Country-by-Country (CbC) reporting (CbCR) in Iceland. The regulation is presented following a legislation amendment which took place on 7 May 2019 when the Parliament of Iceland adopted a bill amending Article 91 of the *Icelandic Act On Income Tax no. 90/2003*, in relation to CbCR.

The amendments aim to clarify certain items commented on by the OECD, such as the threshold amount which is currently denominated in ISK and is proposed to be changed to €750 million.

Furthermore, the OECD commented on the fact that the Icelandic rules on CbCR did not include provisions on the reporting obligations of surrogate parent entities. As a result, the law and the draft regulation provides the introduction of such provisions.

The objective of the draft regulation is to fully respond to the OECD's comments to ensure that the Icelandic rules regarding CbCR are consistent with international standards. Public comments can be submitted to the Ministry of Finance and Economic Affairs by e-mail by 12 August 2019.

India

On 5 July 2019, the Finance Minister of India presented the Union Budget for tax year 2019-20 (the Budget 2019). Among others, the Budget 2019 plans to extend Indian master file compliance requirements for constituent entities of an international group that do not need to maintain transfer pricing (TP) documentation with respect to their international transactions.

A secondary TP adjustment (SA) may be triggered when a TP adjustment results from an APA between taxpayers and tax authorities. The Budget 2019 intends to grandfather APAs signed on or before 31 March 2017 from the application of SA rules. However, refunds for taxes already paid for TP adjustments from the grandfathered APAs are not permitted. Further, Taxpayers are offered an option to pay a one-time 18% additional tax where the primary adjustment is not repatriated, subject to complying with certain conditions.

See EY Global Tax Alert, *India releases 2019-20 Union Budget: Update on corporate tax proposals*, dated 17 July 2019.

Ireland

On 22 July 2019, a new Tax and Duty Manual, was published by the Irish tax authorities in respect of the Controlled Foreign Company (CFC) rules, that were introduced by the *Finance Act 2018* and took effect from 1 January 2019. The manual provides an overview of what the CFC rules mean and how they operate. It sets out information in relation to what a CFC is, the meaning of "control" and "associated companies," how a CFC charge can arise and the relevant exemptions and reliefs.

Also on 22 July, the Department of Finance published a feedback statement to respond to the views expressed in the responses to the public consultation launched on 14 November 2018 on the implementation of anti-hybrids rules in line with the EU ATAD and to set out possible approaches to some of the technical aspects of the anti-hybrid rules. The closing date for receipt of submissions on the Feedback Statement is 6 September 2019.

On 17 July 2019, the Department of Finance published the Tax Strategy Group (TSG) papers in respect of Budget 2020. The TSG papers are used by the Department to brief stakeholders on the key policy considerations involved in framing the Budget. The Budget 2020 speech will be delivered by the Minister for Finance on 8 October 2019, with implementing legislation to be introduced in the Finance Bill in the weeks after that speech and enactment to be completed by the end of the calendar year.

The TSG papers are a regular fixture in Ireland's budgetary cycle and offer valuable insight into the perspective of policymakers. This year's TSG papers are particularly interesting from an international tax perspective as they contain: (i) a much-anticipated summary of Ireland's progress on implementing international tax reform (the "Corporation Tax Roadmap", BEPS, ATAD etc.); (ii) an outline of Ireland's perspective on other international tax reform matters, e.g. taxation of digital activities and the work done under the OECD/G20 Inclusive Framework on BEPS ("BEPS 2.0"); and (iii) a discussion of other reforms ongoing in the Irish domestic arena, including the research and development Tax Credit, the Tax Appeals Commission and the tax implications for the issuers of Additional Tier 1 Capital.

See EY Global Tax Alert, *Ireland publishes Tax Strategy Group papers – Budget 2020*, dated 23 July 2019.

On 11 July 2019, the contents of the "Exit Tax Provisions" Tax and Duty Manual were deleted and replaced by guidelines relating to the new exit tax provisions introduced by section 32 of the *Finance Act 2018*. That section replaced existing targeted anti-avoidance exit tax provisions in Chapter 2 of Part 20 of the *Taxes Consolidation Act 1997* with a new broad-based exit tax charge, as provided for in Article 5 of the EU ATAD. This new charge applies from 10 October 2018.

On 5 July 2019, the EU (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306/2019) (the Regulations) were published in the *Official Gazette* of the Government of Ireland.

The Regulations implement the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017, relating to tax dispute resolution mechanisms in the EU.

The Regulations entered into force on 1 July and apply to complaints submitted on or after that date in relation to disputes on income or capital for tax years starting on or after 1 January 2018.

Israel

On 1 July 2019, the Israeli Finance Minister published a Tax Order (the Order) which essentially broadens the applicability of Israel's intellectual property (IP) preferential tax regime (the Israeli Innovation Box Regime). The Order specifically expands the definition of a qualifying IP asset to also include products registered under the Israeli Pharmaceutical Ordinance or approved by foreign compatible laws. Where prior to the Order, pharmaceutical companies could only have had access to the IP tax incentives with respect to patented products, this development expands the applicability of the law to also include certain products (either patented or not) which are approved by the health regulators in Israel or in other countries. The Order entered into force retroactively for the 2019 tax year.

See EY Global Tax Alert, *Israel expands its Innovation Box Regime to pharmaceutical companies*, dated 10 July 2019.

Italy

On 17 July 2019, the Italian Tax Authorities launched a public consultation on the draft rules implementing the amendments to the patent box regime introduced by Law Decree No.34 of 30 April 2019. According to these amendments, taxpayers opting for the patent box regime with the choice or the obligation (depending on the cases) to file a tax ruling application with the Italian Tax Authorities may opt to autonomously calculate the amount of qualifying income, stating all necessary information for such determination in appropriate supporting documentation that would protect from tax penalties in the case of an audit. However, such taxpayers must spread the overall downward adjustment resulting from the application of the patent box regime in three equal amounts over the fiscal year in which such election is exercised and the following two fiscal years. The comment period was brief and ended on 24 July 2019.

Japan–United Arab Emirates

On 1 January 2019, the MLI entered into force for Japan. Following the deposit of the instrument of ratification by the United Arab Emirates (UAE) on 29 May 2019, the MLI will have effect on the tax treaty between Japan and the UAE as detailed below.

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

The provisions of the MLI will have effect with respect to (1) taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 January 2020 and (2) all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after 1 March 2020.

Latvia

On 22 July 2019, the President signed a law which ratifies the MLI.

The law, which was adopted on 8 July 2019 by the Parliament, was published in the *Official Gazette No. 147 (6486)* on the same day.

Latvia now needs to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Latvia on the first day of the month following the expiration of a period of three-calendar months beginning on the date of the deposit of such instrument with the OECD.

On 18 July 2019, the amendments to the Cabinet of Ministers' Regulations No. 677 entered into force.

The amendments introduce simplified TP requirements for low value-adding services, which are in accordance with the guidance provided on low value-adding intra-group services laid out in section D of Chapter VII of the OECD TPG, so that the administrative burden for businesses subject to TP rules is lowered.

Among others, the amendments provide a definition of low-value adding services, illustrate which services may and may not be regarded as low-value adding services and discuss the methodology for pricing such services.

Malaysia

On 9 July 2019, the *Service Tax (Amendment) Act 2019* (the Act) was enacted in Malaysia. Accordingly, as of 1 January 2020, a 6% service tax will be imposed on digital services provided by foreign service providers to consumers in Malaysia. For more details, see the Latest on BEPS, dated 20 May 2019.

On 28 June 2019, Malaysia issued rules limiting interest deductions on certain cross border financial assistance (the Rules). The Rules were supplemented by guidelines, which were issued on 5 July 2019. The interest limitation will apply to cross-border financial assistance from associated parties as well as cross-border financial assistance from third parties if such assistance is guaranteed by related parties in or outside of Malaysia. The Rules limit interest deductions in any year of assessment to 20% of tax-EBITDA (earnings before interest, taxes, depreciation and amortization, as defined), but will only apply if the interest expenditure incurred on such cross-border financial assistance exceeds RM500,000 (approximately US$125,000). Interest expenditures in excess of the 20% tax-EBITDA threshold can be carried forward and used against future income until fully utilized, provided that no substantial change in shareholding occurs. Individuals, licensed financial institutions, construction contractors, property developers and certain other types of entities are not subject to the new interest limitation rules.

The new Rules will be effective for basis periods beginning on or after 1 July 2019.

Malta

On 12 July 2019, Maltese regulations implementing the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017, relating to tax dispute resolution mechanisms in the EU, into domestic legislation were published in the *Official Gazette*. The regulations came into force on 1 July 2019 and shall apply to any complaint submitted on or after 1 July 2019 regarding questions in dispute relating to income or capital earned in or after the year immediately preceding the year of assessment 2019.

On 10 July 2019, the Maltese Commissioner for Revenue published the English synthesized text of the Maltese tax treaties with Guernsey and Finland as modified by the MLI. The synthesized text reflects the agreement reached between the relevant authorities of both Malta and these jurisdictions on how the treaties should be impacted by the MLI.

Netherlands

On 16 July 2019, the *Dutch Tax Arbitration Act* (DTAA), implementing the EU Tax Dispute Resolution Directive (2017/1852) relating to tax dispute resolution mechanisms in the EU, entered into force. The DTAA contains rules to improve cross-border EU tax disputes involving the

Netherlands. The DTAA aims to improve timely and effective dispute resolution within the EU by prescribing mandatory arbitration in a number of cases.

The DTAA is applicable to complaints filed as of 1 July 2019. The complaint must relate to the settlement of a dispute regarding fiscal years starting on or after 1 January 2018. The competent authorities may agree to take into consideration complaints filed before 1 July 2019 or complaints that relate to the settlement of a dispute regarding a fiscal year starting before 1 January 2018.

The final decision of the dispute resolution will be published anonymously, unless (one of) the competent authorities or the taxpayer does not agree with publishing the complete final decision. In the latter case, only a summary of the final decision will be published.

On 12 July 2019, the Dutch Government published formal draft legislation and draft explanatory notes addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

Previously a draft proposal for public consultation was issued by the Dutch Government on 19 December 2018. The Dutch formal draft legislation is subject to the formal legislative process, including debate in Parliament, and is likely to be amended before final enactment.

If implemented as currently proposed, the Dutch Mandatory Disclosure Rules (MDR) legislation will be broadly aligned to the requirements of the Directive. The explanatory notes provide clarity on the interpretation of the Dutch MDR legislation and how the Dutch Government anticipates the reporting process to operate.

See EY Global Tax Alert, *The Netherlands publishes draft proposal on Mandatory Disclosure Rules*, dated 26 July 2019.

Norway-Switzerland

On 20 June 2019, Norway and Switzerland signed a protocol (the amending protocol) in Oslo which will amend the tax treaty concluded in 1987, as modified by protocols signed in 2005, 2009 and 2015 respectively (the Treaty).

The amending protocol contains a number of treaty-based recommendations from the BEPS project, such as Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

The amending protocol contains the new preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. Moreover, the amending protocol includes a Principal Purpose Test. Furthermore, the amending protocol enables taxpayers to present a case for MAP to the competent authorities of either Contracting State.

Both Norway and Switzerland have signed the MLI but neither of them has included this tax treaty as a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the amending protocol already includes certain of the treaty-related BEPS minimum standards.

Poland

On 8 July 2019, the Polish Government announced that, during the third quarter of 2019, a Law will be adopted for the change of the *Corporate Income Tax Act* which covers among others the implementation of the Council Directive (EU) 2017/952 amending EU Directive 2016/1164 as regards hybrid mismatches with third countries (ATAD 2). It is assumed that the Law will apply as of 1 January 2020.

Also, the Law will amend the implementation of Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (referred to as DAC6 or the Directive). Among others, the Law should provide more clarity on retrospective reporting of cross-border arrangements and on cross-border arrangements with tax havens. The Directive was mainly implemented into domestic legislation at the end of 2018, with effect as of 1 January 2019.

Singapore

On 24 May 2019, the Inland Revenue Authority of Singapore (the IRAS) released the TP guidelines for commodity marketing and trading activities (e-Tax Guide), which provide guidance on how to analyze the economic value of commodity marketing and trading activities (commodity marketing/trading activities) in Singapore. The e-Tax Guide outlines the various factors that may affect the transfer pricing for these activities, discusses appropriate TP methods that may be applied and highlights the benefits and common roles of conducting commodity marketing/trading activities in Singapore.

See EY Global Tax Alert, *Singapore's Inland Revenue Authority releases transfer pricing guidelines for commodity marketing and trading activities*, dated 13 June 2019.

Singapore-Armenia

On 8 July 2019, Singapore and Armenia signed a new tax treaty. The new treaty contains the minimum standards of treaty-based recommendations from the BEPS project, namely Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective). The new treaty includes preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance, and also includes the Principal Purpose Test. The new treaty also includes MAP provisions.

Both Singapore and Armenia have signed the MLI, but neither of them have included this tax treaty as a CTA. Therefore, the new treaty will not be further modified by the MLI, particularly given that it has already incorporated the treaty-related BEPS minimum standards.

The new treaty is pending ratification by both countries.

Singapore-Korea

On 13 May 2019, Singapore and Korea signed a revised tax treaty. The revised treaty contains the minimum standards of treaty-based recommendations from the BEPS project, namely Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective). The revised treaty includes new preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance, and also includes the Principal Purpose Test. MAP provisions were already part of the treaty currently in force, but are now updated to incorporate Action 14 recommended language.

Both Singapore and Korea have signed the MLI, but neither of them have included this tax treaty as a CTA. Therefore, the revised treaty will not be further modified by the MLI, particularly given that it has already incorporated the treaty-related BEPS minimum standards.

The revised treaty is pending ratification by both countries.

Slovenia

The Slovenian National Assembly approved, on 28 May 2019, the Act amending the *Tax Procedure Act* (ZDavP-2L) (TPA) implementing, among other provisions, the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive).

The amendments to the Slovenian TPA were published in the *Official Gazette* of 7 June 2019 (No 36/2019) and entered into force on 22 June 2019. The rules implementing the DAC6 will be effective from 1 July 2020. However, reports will retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The final Slovenian Mandatory Disclosure Rules (MDR) legislation is significantly aligned to the requirements of the Directive.

See EY Global Tax Alert, *Slovenia passes Act amending the Tax Procedure Act to implement Mandatory Disclosure Rules*, dated 17 June 2019.

South Africa

On 21 July 2019, the South Africa National Treasury issued the Draft Taxation Laws Amendment Bill 2019 (the Draft Bill) which is currently under public consultation. Inter alia, the Draft Bill proposes reducing the CFC high-tax exemption threshold from 75% to 67.5%, while also extending the anti-diversionary rules in the CFC legislation to include both direct and indirect transactions in specified situations. The Draft Bill also proposes amending the definition of "permanent establishment" in the domestic legislation to align with South Africa's position under the MLI. Finally, an amendment is proposed that will extend the application of domestic TP rules to include "associated enterprises" (as contemplated in Article 9 of the OECD's Model Tax Convention) in addition to the current application to "connected persons." Interested parties can submit their written comments by 23 August

2019 via email to 2019AnnexCProp@treasury.gov.za and acollins@sars.gov.za. The Draft Bill will become law upon approval by Parliament and assent by the President.

See EY Global Tax Alert, *South African Government releases 2019 Tax Law Amendment Bills*, dated 26 July 2019.

United Arab Emirates

On 29 May 2019, the UAE ratified the MLI, which will become effective for the UAE as of 1 September 2019. Fifteen UAE double tax treaties will be modified as of 1 September 2019 and three more as of 1 October 2019. As more jurisdictions are expected to proceed with ratification of the MLI, going forward, more UAE double tax treaties will be amended in line with the MLI. Businesses operating in the UAE should review the changes introduced by the MLI to determine if the changes will affect access to treaty benefits.

See EY Global Tax Alert, *UAE ratifies Multilateral Convention to implement tax treaty related measures*, dated 19 July 2019.

United Kingdom

On 22 July 2019, the United Kingdom (UK) Government published draft secondary legislation, the International Tax Enforcement (Disclosable Arrangements) Regulations 2019, which is intended to implement the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The draft legislation is subject to public consultation and comments on the proposals are requested by 11 October 2019. In addition to the draft legislation, a consultation paper was released on 22 July 2019 by HM Revenue and Customs (HMRC) which sets out HMRC's policy intentions in relation to the draft legislation and its interpretation on the various elements of DAC6; it also invites comments from the public to assist in refining its current views. The draft legislation will be subject to the usual legislative process for Statutory Instruments and may well be amended before the final version is laid before Parliament, which is due to happen by 31 December 2019. The consultation document commits the UK Government to producing guidance relating to the application of the final legislation.

The consultation document includes a comment to the effect that leaving the EU will not reduce the UK's resolve to tackle international tax avoidance and evasion and that the UK will remain an active and influential member of the OECD and the G20.

If implemented as currently proposed in the draft legislation, the UK MDR will be broadly aligned to the requirements of the Directive, though the draft legislation is more specific than the underlying Directive in certain areas.

See EY Global Tax Alert, *UK publishes draft legislation and consultation paper on EU Mandatory Disclosure Regime*, dated 24 July 2019.

On 11 July 2019, the UK published draft legislation as part of the draft Finance Bill 2019-20 confirming its intention to introduce a Digital Services Tax (DST) to be in place for revenues arising from 1 April 2020. At the same time, it has published draft guidance which, like the draft legislation, is subject to consultation until 5 September 2019. HMRC will publish updated guidance later in 2019, reflecting comments received on the guidance and also reflecting the legislation at the time of publishing in the Finance Bill.

The UK's measure is targeted at capturing value generated by certain digital business models (being search engines, social media platforms and online marketplaces) from their UK user-base. For businesses undertaking the in-scope activities, the revenues linked to UK users will be subject to the DST at 2%. This tax can be claimed as an allowable expense against UK corporation tax, but is not creditable.

The legislation is very broad in scope and applies to revenues linked to UK users and not just to UK companies or permanent establishments. There are provisions for collecting the tax due from companies outside the UK which are within the scope of this tax.

The UK has reiterated its desire for discussions on a coordinated international measure to succeed, with a commitment to dis-applying the DST once an appropriate international solution to the perceived issue is in place and in any case reviewing the tax by the end of 2025.

See EY Global Tax Alert, *UK releases draft clauses and guidance on Digital Services Tax*, dated 12 July 2019.

United Kingdom-Israel

On 10 July 2019, the UK ratified a protocol (the amending protocol) which was signed on 17 January 2019. The amending protocol will further modify the tax treaty between Israel and the UK, concluded in 1962, and as amended by the protocol signed in 1970 (the Treaty).

The amending protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits in inappropriate circumstances), Action 7 (preventing the artificial avoidance of permanent establishment status) and Action 14 (making dispute resolution mechanisms more effective).

The amending protocol contains the new preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. It also contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both the UK and Israel (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. The amending protocol has a Principal Purpose Test. In the PE clause, the amending protocol contains an anti-fragmentation rule and the new definition of agency PE. Furthermore, the amending protocol enables taxpayers to present a case for MAP to the competent authorities of either Contracting State. It provides a period of three years for submission of a 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.

Both the UK and Israel have signed the MLI but neither of them has included this tax treaty as a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the amending protocol already has incorporated the treaty-related BEPS minimum standards.

United States

On 16 and 17 July 2019, following the recommendation of the United States (US) Senate Foreign Relations Committee, the US Senate gave its advice and consent to approve the following four protocols: (i) Luxembourg- 2009 Protocol to amend 1996 Treaty (Luxembourg Protocol); (ii) Switzerland- 2009 Protocol to amend 1996 Treaty (Swiss Protocol); (iii) Japan- 2013 Protocol to amend 2003 Treaty (Japanese Protocol); and (iv) Spain- 2013 Protocol to amend 1990 Treaty (Spanish Protocol).

Before these agreements are considered to have entered into force, a few additional steps must be taken in the US, including drafting the instruments of ratification, which must be signed by the President. It is expected that there would be an announcement to indicate when the agreements have officially entered into force.

Generally, all four protocols modernize provisions in the respective tax treaties, conforming them to more recent US bilateral tax treaties as well as US law and international standards (the protocols generally conform to provisions in the 2006 US Model Treaty, which was the US's most recent model treaty at the time these protocols were under negotiation).

See EY Global Tax Alert, *US Senate approves four protocols updating the existing bilateral tax treaties with Luxembourg, Switzerland, Japan and Spain*, dated 18 July 2019.

On 10 July 2019, the US Internal Revenue Service (IRS) issued updated instructions for filing Form 8975. According to the update, if a US multinational enterprise (MNE) files Form 8975 and Schedules A (Form 8975) on paper, it must attach the Form 8975 and Schedules A (Form 8975) to the applicable paper tax return. Form 8975 filers should use the following mailing address for the applicable income tax return: *Internal Revenue Service, Mailstop 4950, 1973 N. Rulon White Blvd, Ogden, UT 84201*.

Also, the updated instructions clarify that the tax jurisdiction field in Part I of Schedule A is a mandatory field, and US MNEs are required to enter a two-letter code for the tax jurisdiction to which the Schedule A pertains. The country code for the United States is "US" and the country code for "stateless" is "X5." The instructions further state that all other country codes can be found at www.IRS.gov/CountryCodes. However, the IRS identified seven jurisdictions, namely Akrotiri, Ashmore and Cartier Islands, Clipperton Island, Coral Sea Islands, Dhekelia, Paracel Islands and Spratly Islands, that are included in the country codes list maintained by IRS but they do not correspond to a valid OECD country code for purposes of exchanging CbCR information. Accordingly, the instructions provide that none of these country codes should be entered on the tax jurisdiction line of Part I of Schedule A.

If the tax jurisdiction of one of the enumerated countries is associated with a larger sovereignty, filers should use the country code for the larger sovereignty with which the tax jurisdiction is associated. Otherwise, the country code "OC," referring to other countries, should be used for such cases.

Also on 10 July, the United States Trade Representative (USTR) announced it would commence an investigation under Section 301 of the *Trade Act of 1974* into France's pending DST. The DST legislation in France, which is moving through the French legislative process, is the farthest advanced, but many other countries around the world also are considering the enactment of such a tax that would apply to digital businesses based on the local presence of users. The US action is utilizing the trade mechanism under Section 301 to address what is seen as unfair treatment of US-based companies under the DST.

See EY Tax Alert, *US initiates action against France's Digital Services Tax, issues additional exclusions on China-origin goods and supplements list of products under EU subsidies dispute*, dated 12 July 2019.

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