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Global Tax Alert

The Latest on BEPS - 12 August 2019

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EY's *Latest on BEPS* Alert will be moving to a broader platform. After a **one-month hiatus**, the now **monthly** communication will be released on the third Tuesday of every month, beginning **17 September 2019**. The expanded Alert, renamed *The Latest on BEPS and Beyond*, will include information on countries' global and regional policy trends in addition to reports on recent BEPS-driven activity in individual countries. For questions, please reach out to any of the Alert contacts listed below.

OECD

On 8 and on 9 August 2019, Albania and Namibia respectively joined the BEPS Inclusive Framework, bringing the total number of jurisdictions to 134. As new BEPS members, Albania and Namibia are committed to comply with the BEPS minimum standards, contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Albania and Namibia 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 6 August 2019, the OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country (CbC) reports (CbC MCAA) to include Saudi Arabia as a new signatory. The total number of jurisdictions that have joined the CbC MCAA is now 80. Also, in August 2019, the OECD updated the exchange relationships that have been activated under the CbC MCAA (e.g., there are new exchange relationships for Monaco). Currently, together with the exchange relationships under the European Union (EU) Council Directive 2016/881/EU and the bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements, there are over 2,200 automatic exchange relationships established among jurisdictions committed to exchanging CbC reports. The full list of automatic exchange relationships that are in place and an update on the implementation of the domestic legal framework for CbC reporting (CbCR) in jurisdictions are available on the [OECD website](#).

In July and August 2019, the OECD announced that Norway and Ukraine respectively had deposited their instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI) - bringing the total number of jurisdictions to 31. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Norway confirmed its MLI positions without any change. Ukraine confirmed its MLI positions, but it removed the treaty with Bosnia and Herzegovina from its list of covered tax agreements (CTAs). The MLI will enter into force for Norway and Ukraine on the first day of the month following the expiration of a period of three-calendar months beginning on the date of the deposit by these jurisdictions of their instrument of ratification, i.e., on 1 November 2019 for Norway and on 1 December 2019 for Ukraine.

Australia

On 17 July 2019, the Australian Taxation Office (ATO) released Taxation Determination TD 2019/12 providing guidance on what types of expenses may be subject to "debt deduction" limitations under the thin capitalization rules.

The determination notes that debt deductions include not only interest on debt interests but may include other expenses incurred in obtaining or maintaining the received financial benefits on the debt instrument. Such costs may include advisory costs related to debt interests (including valuation costs), establishment fees, transaction restructuring fees,

stamp duties, regulatory filing fees, legal costs of preparing documentation related to the debt interests, facility fees and any other similar costs. Taxpayers should ensure that deductible expenses which relate to their debt instruments are appropriately accounted for when determining their thin capitalization position.

Belgium

On 30 July 2019, the Federal Public Service Finance published updated guidelines on the process for filing corrective CbC reports. The guidance - which is also available in English - sets out information in relation to reasons for filing corrective CbC reports, defines types of corrections and provides technical information on the creation of the corrective CbC reports. Moreover, the guidelines set out illustrative correction examples and provide further insights on the XML validation process. In Belgium, corrective CbC reports must be filed electronically through the *MyMinfin* portal, in XML format.

Colombia

On 26 June 2019, the Colombian Government issued Decree 1146, which provides new regulations for the thin capitalization rule. The new regulations implement the changes made to the thin capitalization rules as part of the tax reform enacted last year (Law 1943 of 2018). Decree 1146 defines several terms, including "warranty," "back-to-back loan" and "operation in which a related company substantially acts as a creditor." To determine whether a company is a related party, Decree 1146 requires taxpayers to apply the definitions of related party provided in the Colombian transfer pricing rules. Additionally, Decree 1146 includes the methodology for calculating whether there is an interest that is not deductible and/or capitalizable. The Decree also sets forth the requirements and content of the certification that should be issued by the creditor to establish that the loan is not a related-party debt.

See EY Global Tax Alert, [Colombian Government issues new thin capitalization regulations](#), dated 31 July 2019.

Gibraltar

On 26 July 2019, the Gibraltar Tax Dispute Resolutions 2019 (the Resolutions) implementing the EU Tax Dispute Resolution Directive were published in the *Official Gazette*. The Resolutions came into effect on the same date of

their publication. The Resolutions apply to any complaint submitted from 1 July 2019 onwards regarding tax disputes related to income or capital earned in a tax year commencing on or after 1 January 2018 and that arise from the interpretation and application of tax agreements and conventions that provide for the elimination of double taxation and that apply to Gibraltar.

Guernsey

On 29 July 2019, Guernsey adopted amendments to the Income Tax (Substance Requirements) Regulations. Among others, the adopted amendments: (i) include clarifications on the core income generating activities required for an Intellectual Property (IP) company; (ii) amend the definitions of a high-risk IP company and an IP asset; (iii) specify the type of information required to not be presumed that a high-risk IP company fails the substance requirements; and (iv) extend the substance requirements to companies exempt from tax that are not collective investment vehicles. The amendments came into force on 1 August 2019.

Hong Kong

On 19 July 2019, the Hong Kong Inland Revenue Department issued Departmental Interpretation and Practice Note 58 (DIPN 58) providing detailed instructions on the preparation of transfer pricing documentation and CbCR. DIPN 58 reiterates that Hong Kong has adopted the OECD's three-tiered standardized approach to preparing and maintaining documentation (for more details, see [The Latest on BEPS](#), dated 30 July 2018).

See EY Tax Alert, [Hong Kong Tax Authority clarifies requirements for transfer pricing documentation and Country-by-Country reporting](#), dated 30 July 2019.

Hong Kong-Cambodia

On 26 June 2019, Hong Kong and Cambodia signed a tax treaty (the Treaty). The Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements) and Action 14 (making dispute resolution mechanisms more effective).

In cases where a person other than an individual is resident in both Hong Kong and Cambodia (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. Furthermore, the Treaty also enables taxpayers to present a case for mutual agreement procedure (MAP) to the competent authorities of either Contracting State. The Treaty also 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.

The MLI has no effect on the Treaty as Cambodia has not signed the MLI, and though Hong Kong has signed the MLI, it has not included this Treaty as a CTA. For the MLI provisions to have effect on the Treaty, Cambodia would need to first sign the MLI, and then both jurisdictions would need to include the Treaty in their respective list of CTAs, indicating whether the Treaty falls within the scope of any of the reservations made by that respective jurisdiction.

See EY Global Tax Alert, [Hong Kong and Cambodia sign income tax treaty](#), dated 16 July 2019.

Jersey

On 4 June 2019, Jersey adopted the amended Taxation (Companies - Economic Substance) (Amendment). Among others, the adopted law clarifies that the economic substance test is only fulfilled if the resident company conducts all of its core-income generating activities in Jersey. The adopted law also provides that the requirement to exchange information when a resident company has not met the economic substance test will include the competent authorities of any country or territory if it is permitted under a bilateral or multilateral agreement.

Lithuania

On 30 July 2019, the President of Lithuania signed the primary legislation implementing the EU Directive on the mandatory disclosure and exchange of reportable cross-border tax arrangements (referred to as DAC6 or the Directive) into Lithuanian law. 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 Lithuanian Mandatory Disclosure Rules (MDR) legislation will enter into force on 1 July 2020 and will be effective from that date.

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