

The Latest on BEPS and Beyond

September 2019

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

OECD

On 5 September 2019, the OECD released the Tax Policy Reforms 2019 report (the report) which describes the latest tax reforms across all OECD members and selected partner economies (namely, Argentina, Indonesia and South Africa). The report identifies major tax policy trends and highlights the progress of the implementation of the BEPS measures. According to the report, significant progress has been achieved, among others, on the implementation of BEPS Actions 5 (harmful tax practices), 6 (treaty abuse) and 14 (dispute resolution), with BEPS Actions 2 (hybrid mismatch arrangements), 3 (controlled foreign company) and 4 (limitations on interest deductions), rapidly being adopted by a large number of countries. The report notes that significant work has been undertaken to improve the quality of available corporate tax statistics as recommended by BEPS Action 11 and that many countries have indicated that they plan to introduce or to expand mandatory disclosure rules, in line with Action 12. In the context of Action 1 and the challenges arising from the digital economy, the report outlines the commitment made by members of the IF to deliver a consensus-based solution in 2020, noting that the countries that are considering interim measures will continue efforts to reach a multilateral agreement and have agreed to remove measures when an international solution is found. The report also provides information on the measures proposed by

countries that have taken unilateral action on digital taxation and the estimated revenues from same. Furthermore, the report highlights that many countries have introduced new legislation to implement domestically all or part of the guidance developed under BEPS Actions 8 to 10.

On 3 September 2019, the OECD released the compilation of outcomes of the second phase of peer reviews (the Compilation) of the minimum standard on Action 13 (*Transfer Pricing Documentation and Country-by-Country Reporting*) of the BEPS project.

According to the Compilation, over 80 jurisdictions have already introduced legislation to impose a filing obligation for Country-by-Country (CbC) Reporting on multinational enterprise (MNE) groups, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbC Reporting has been found to be largely consistent with the Action 13 minimum standard. However, 41 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework, and 17 jurisdictions received one or more recommendations to make improvements to specific areas of their framework.

The next annual peer review (phase three) was launched in July 2019 and will aim to review all the jurisdictions participating in the OECD's IF, focusing on progress made by jurisdictions to address recommendations in the phase two peer report.

In addition, the OECD has updated its website on country-specific information on CbC Reporting. The updated website includes an enhanced table providing high-level information on jurisdictions' implementation of CbC Reporting. The table covers whether a jurisdiction has introduced CbC Reporting, the effective date of the CbC Reporting rules, the threshold for CbC Reporting, the deadline for filing reports, whether local filing and notification requirements have been introduced, whether the jurisdiction is a signatory of the CbC Multilateral Competent Authority Agreement (CbC MCAA), whether the jurisdiction has reciprocal or non-reciprocal status with respect to exchanges under the CbC MCAA, and whether there are controls in place to ensure the appropriate use of CbC reports.

See EY Global Tax Alert, [OECD releases outcomes of the second phase of peer reviews on BEPS Action 13 and announces public consultation](#), dated 9 September 2019.

On 30 August 2019, the OECD updated the list of signatories of the CbC MCAA. According to this latest update, British Virgin Islands and Seychelles signed the CbC MCAA on 8 July 2019 and on 9 July 2019 respectively. The total number of jurisdictions that have joined the CbC MCAA is now 82.

On 29 August 2019, the OECD announced that Canada and Switzerland 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 33. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Canada and Switzerland confirmed their MLI positions, but they made some changes. Among others, Canada added nine additional treaties (with Algeria, Armenia, Ivory Coast, Kuwait, Oman, PNG, Peru, Trinidad and Tobago, and UAE) to its list of covered tax agreements (CTAs) and it removed the reservation for the entirety of Article 5 (Application of Methods for Elimination of Double Taxation), Article 8 (Dividend Transfer Transactions) and of Article 9 (Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property). Among others, Switzerland confirmed its MLI positions, but it removed the treaties with India, Liechtenstein and Poland from its list of CTAs and it added the treaty with Mexico to the same list. The MLI will enter into force for Canada and Switzerland 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 December 2019.

On 13 August 2019, the OECD released the first batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Belgium, Canada, Netherlands, Switzerland, United Kingdom and the United States (the batch 1 jurisdictions) of the BEPS minimum standard on dispute resolution under Action 14 of the BEPS project. This is the first of multiple batches of Stage 2 reviews covering all of the jurisdictions that are being assessed. Stage 2 focuses on monitoring the follow-up of any recommendations that resulted from the batch 1 jurisdiction's Stage 1 peer review reports that were released on 26 September 2017.

The outcome of the Stage 1 peer review process for the batch 1 jurisdictions was that overall the six jurisdictions met almost all or most of the elements of the Action 14

minimum standard with respect to dispute resolution. Where deficiencies were identified, the Stage 2 monitoring showed that the jurisdictions have worked to address them. The Stage 2 reports for the batch 1 jurisdictions conclude that the majority of these jurisdictions have addressed almost all or most of the identified deficiencies.

See EY Global Tax Alert, [OECD releases first batch of Stage 2 peer review reports on dispute resolution](#), dated 14 August 2019.

European Union

In July 2019, the European Union (EU)'s Joint Transfer Pricing Forum (JTPF) released two reports containing Statistics on Advance Pricing Agreements (APAs) in the EU at the end of 2018 (Statistics on APAs) and Statistics on Pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention at the end of 2018 (Statistics on pending MAPs).

The Statistics on APAs provides an overview by Member State on the APA practice in the respective country. The overview shows that not all Member States have a (formal) APA practice yet (i.e., Bulgaria, Cyprus, Estonia and Malta) and more than half of the Member States apply a filing fee for APA requests. When compared to the figures from 2017, the total number of unilateral APAs in force decreased, whereas the number of bilateral or multilateral APAs in force increased. The total number of APA requests received by the Member States remained similar to 2017, but the number of granted APAs significantly decreased, largely due to a reduction in granted APAs in Belgium.

The Statistics on pending MAPs shows the current state of play with respect to the cases pending under the Arbitration Convention as of the end of 2018. The total number of pending cases remained relatively similar, with an almost equal amount of cases initiated and completed during 2018. Compared to the 2017 statistics, the number of MAP cases initiated and completed both increased significantly. Approximately half of the almost 2,000 cases were pending for more than two years in 2018. In general, the average cycle time of cases is comparable to 2017.

See EY Global Tax Alert, [EU Joint Transfer Pricing Forum releases reports containing 2018 statistics on APAs and pending MAPs under the Arbitration Convention](#), dated 28 August 2019.

G7 declaration

On 26 August 2019, at the conclusion of their three-day Summit in Biarritz, France, the leaders of the G7 group of nations issued a brief declaration that includes a short reference to international tax.

In addition, at a post-Summit press conference, President Macron of France commented on the future of France's Digital Services Tax (DST), which entered into force on 25 July 2019.

The Summit followed the two-day meeting of the G7 Finance Ministers and Central Bank Governors group in July, where international tax issues were discussed in detail.

See EY Global Tax Alert, [G7 leader's declaration addresses international tax, France discusses future of French Digital Services Tax](#), dated 28 August 2019.

United Nations

On 4 September 2019, the United Nations (UN) Conference on Trade and Development (UNCTAD) issued a report named "Digital Economy Report 2019 - value creation and capture: implications for developing countries." The report examines the implications of the emerging digital economy for developing countries in terms of value creation and capture. It also highlights the two main drivers of value creation in the digital era - digital data and platformization - and explores how current trends of wealth concentration could be replaced by ways leading to more equitable sharing of the gains from digitalization. The report includes five chapters: chapter one - recent trends in the digital economy; chapter two - value in the digital economy; chapter three - measuring value in the digital economy; chapter four - value creation and capture in the digital economy: a global perspective; chapter five - assessing the scope for value creation and capture in developing countries; and chapter six - policies aimed at value creation and capture.

On 5 August 2019, the [provisional agenda](#) of the nineteenth session of the UN Committee of Experts on International Cooperation in Tax, which will take place on 15-18 October 2019 in Geneva, Switzerland, was released. According to the provisional agenda, among the substantive issues that will be discussed during the session are: (i) the report of the Subcommittee on updating the UN Model Double Taxation Convention between developed and developing countries; (ii) the update of the UN practical manual on

transfer pricing for developing countries; (iii) environmental tax issues; (iv) dispute avoidance and resolution; and (v) tax consequences of the digitalized economy – issues of relevance for developing countries.

Argentina

On 31 July 2019, the Argentine Federal Tax Authorities (*Administración Federal de Ingresos Públicos*, AFIP) issued General Resolution 4538 (the Resolution) extending the deadline for filing transfer pricing documentation. The Resolution extends the deadlines for filing forms F.741 (for imports and exports of commodities with independent entities, not located in non-cooperative or low or no taxation countries), F.743 (for transactions with related entities located in foreign countries or companies located in non-cooperative or low or no taxation countries), F.867 (for imports and exports of tangible goods (non-commodities) with independent entities, not located in non-cooperative or low or no taxation countries), F.4501 (for filing the required Transfer Pricing Report and the certification by an independent certified public accountant) and the respective financial statements as provided by Article 18 of General Resolution 1122. The documentation must be filed between 16 and 20 December 2019 – the exact date is yet to be determined in pending regulations by the Argentine Federal Tax Authorities. The measure applies to tax years closing between 31 December 2018 and 30 April 2019. The Resolution came into force on 31 July 2019.

Argentina-Luxembourg

On 13 April 2019, Argentina and Luxembourg signed a new tax treaty (the Treaty), based on the OECD Model, which will enter into force on the date of the last notification made between the parties.

The Treaty contains a number of treaty-based recommendations from the BEPS project. More specifically the Treaty contains the new preamble language which clarifies that the Treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. Moreover, the Treaty includes a provision dealing with fiscally transparent entities to tackle potential hybrid mismatches in which certain entities are transparent for tax purposes in one Contracting State, but non-transparent in the other Contracting State (Action 2). The Treaty also includes an anti-abuse provision that is similar to the principal purpose test of the MLI (Action 6) and enables taxpayers to

present a case for MAP to the competent authorities of either Contracting State (Action 14). 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.

See EY Global Tax Alert, [Argentina and Luxembourg sign new tax treaty](#), dated 26 August 2019.

Australia

On 28 August 2019, the Australian Taxation Office (ATO) released draft guidance, PCG 2019/D3 (draft PCG), which sets out the ATO's proposed compliance approach for the use of the arm's-length debt test (ALDT) for the purposes of Australia's thin capitalization regime. The draft PCG augments the April draft ruling TR 2019/D2.

This guidance is significant for taxpayers using ALDT and warrants careful review of capital structure and intra-group financing arrangements. More specifically, the draft PCG increases the analysis and documentation required to apply the ALDT, justifies a "more rigorous analysis than the safe harbor and worldwide gearing tests" on the basis that Australian businesses outside regulated utilities would not be expected to gear at levels greater than 60% of their net assets and contains "risk zones" (white, low and medium-high) for results of ALDT which will determine the ATO's compliance approach.

See EY Global Tax Alert, [Australian Taxation Office releases draft guidance on arm's-length debt test for purposes of Australia's thin capitalization regime](#), dated 28 August 2019.

Bulgaria

On 2 September 2019, the Bulgarian Ministry of Finance launched a public consultation on a draft bill for amendment of the *Corporate Income Tax Act* implementing the exit taxation measure of EU Anti-Tax Avoidance Directive 2016/1164 (2016) (ATAD I) and the anti-hybrid mismatches rules of EU Directive 2017/952 (2017) (ATAD II). The public consultation is open until 2 October 2019.

According to the draft bill, corporate taxpayers must include in their taxable results the deemed profit arising from a cross-border transfer of an asset or a going concern to a permanent establishment (PE) or head office of the same enterprise outside of Bulgaria. The new rules will apply to transfers of assets or going concerns within the

same enterprise and will not cover transactions between subsidiaries of multinational groups of companies. The draft bill also introduces measures countering the tax effects of hybrid mismatches, which result in a deductible payment that is not taxed at the level of the recipient or subject to a double deduction for the same payment in the two jurisdictions.

If the draft bill is adopted, it will enter into force on 1 January 2020.

On 13 August 2019, supplementations to the Bulgarian Tax and Social Insurance Procedure Code (the Code) providing that the transfer pricing (TP) of transactions between related parties that occur as from 1 January 2020 must be analyzed and documented by 31 March of the following year were promulgated in the *Bulgarian State Gazette*. According to the adopted rules, the Master File and Local File requirements will not apply to taxpayers that: (i) had assets with a balance sheet value not exceeding BGN38m (approximately €19m) at the end of the previous financial year, and (ii) had annual net revenue not exceeding BGN76m (approximately €39m) for the previous financial year, or (iii) has personnel of less than 250 people for the reporting period. Only material related-party transactions should be analyzed and documented in the TP file. For example, for controlled transactions in goods, the threshold is BGN400k, and for all other intragroup transactions, the threshold is BGN200k. When it comes to documenting loans, an exception applies, as the obligation for documenting will arise when the loan principal granted or received exceeds BGN1m or a total financial and interest income/expense above BGN50k has been accrued. The Local File is required to be prepared by 31 March of the year following the year of the transaction and must be presented to the tax authorities upon request during tax reviews and audits. The Master File should be prepared no later than 12 months following the deadline for the Local File. Failure to comply with these requirements will trigger a penalty of up to 0.5% of the volume of the related-party transactions required to be documented, could be imposed.

See EY Global Tax Alert, [Bulgaria adopts mandatory transfer pricing documentation](#), dated 20 August 2019.

Canada

On 13 August 2019, the OECD released the Stage 2 peer review report of Canada relating to the outcome of the peer monitoring of the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution

mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from Canada's Stage 1 peer review report. Canada requested that the OECD also provide feedback concerning its adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.

Overall, the report concludes that Canada addressed most of the shortcomings identified in its Stage 1 peer review report. These shortcomings principally included issues with Canada's treaties related to time limits for MAP submission and settlement implementation, and the absence of time limits for making TP adjustments.

See EY Global Tax Alert, [OECD releases Canada Stage 2 peer review report on implementation of Action 14 minimum standard](#), dated 6 September 2019.

China-Hong Kong

On 19 July 2019, China and Hong Kong signed the Fifth Protocol (the Protocol) to the current China-Hong Kong Income Tax Treaty (the Treaty). The Protocol will enter into force in the tax year following the calendar year in which the ratification procedures are completed.

The Protocol contains a provision dealing with fiscally transparent entities. In cases where a person other than an individual is resident in both China and Hong Kong, 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 Protocol has also a Principal Purpose Test. In the PE clause, the Protocol introduces the new definition of agency PE.

Both China and Hong Kong have signed the MLI but neither of them has included the Protocol or the Treaty as a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the Protocol already includes certain of the treaty-related BEPS minimum standards.

Colombia

On 13 August 2019, the Colombian National Tax Authority (*Dirección de Impuestos y Aduanas Nacionales*, DIAN) issued Administrative Regulation 53 of 2019 (Regulation) which sets out the conditions and details for applying the MAP

for tax treaty purposes. The Regulation includes, among others, some general provisions regarding the objective, scope, definitions and procedure for initiating the MAP by the Colombian competent authority (CA) as well as the requirements for filing a MAP request. It also includes the implications of the acceptance or denial of the request for MAP by the Colombian CA and the interaction of MAP with other tax proceedings. The Regulation is in force with its publication in the *National Official Gazette* (Diario Oficial) on 21 August 2019.

Curacao

Recently, the Curacao Minister of Finance published a policy document on CA assistance under the MAP. According to the policy document, among the CA's aims are (i) the completion of the MAP within two years; (ii) the observance of transparency during MAP; (iii) the cost efficiency of the MAP; (iv) the acceptance of MAP requests in eligible cases, and (v) the early consultations on MAP.

Czech Republic

On 5 September 2019, the Ministry of Finance (MoF) issued draft legislation for the introduction of a temporary DST, which was originally announced in April 2019, to the Government of the Czech Republic.

According to the MoF, the scope of the tax is similar to the DST proposed by the European Commission with a tax rate of 7% imposed on revenues resulting from the provision of certain digital services, namely: targeted ad campaign provision, use of a multilateral digital interface and supply of user data. Only companies pertaining to a group with a total (consolidated) turnover of more than €750m (US\$825m) which realizes total sales attributable to the Czech Republic of more than CZK50m (€1.9m or US\$2.1m) per year would be subject to the DST. In addition, the legislation clarifies that the DST will only apply to revenue from targeted ad campaign provision/supply of user data (attributable to the Czech Republic) if above CZK5m (US\$200k) and with regard to multilateral digital interfaces if it has more than 200k user accounts.

The provision of a taxable service to another member entity within a group should be exempt from the tax. The MoF further states in the Explanatory Memorandum that double tax treaties will have no impact on the proposed digital tax.

The taxable period for the DST will be the calendar year and it will generally be payable three months after the end of the tax year (extension possible in some cases). The Czech Government expects the DST to enter in to force by mid-2020 and estimates it will generate CZK2.1bn (€81m or US\$90m) in additional revenue in 2020, and CZK5bn (€193m or US\$214m) annually as from 2021.

Once the legislation is adopted, the MoF also declared that the DST will continue to apply until an international solution is found and subsequently implemented in the Czech Republic.

On 20 August 2019, the Czech Government published revised draft legislation (accompanied by explanatory notes) implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). The Directive seeks to strengthen tax transparency by way of automatic exchange of information between the EU Member States on potentially aggressive planning. The revised draft legislation follows an earlier draft published in March 2019.

The draft legislation is still subject to the formal legislative process (subject to approval of the Parliament and the President) and is likely to be amended before it is signed into law. If approved, the provisions with respect to the reporting will enter into force on 1 July 2020 (with retrospective effect covering arrangements where the first step is implemented between 25 June 2018 and 1 July 2020).

Intermediaries are exempt from the obligation to report when obliged to maintain confidentiality pursuant to the *Act on Tax Advisory*, the *Act on Advocacy*, the *Act on Notaries*, the *Act on Auditors*, or the laws of another EU Member State to the extent that the intermediary is bound by professional confidentiality in the other EU Member State in relation to the reportable cross-border arrangement.

Without any material modifications, the Czech Mandatory Disclosure Rules (MDR) legislation will be substantially aligned to the requirements of the Directive (scope of taxes covered, reportable arrangements, hallmarks, main benefit test, intermediaries and reporting deadlines). Failure to meet any obligations under the MDR legislation may lead to fines up to approximately €20,000.

See EY Global Tax Alert, [Czech Government publishes revised draft legislation on Mandatory Disclosure Rules: A detailed review](#), dated 5 September 2019.

France

Recently, the French Government has started publishing the consolidated texts of the French tax treaties with certain countries as modified by the MLI. The consolidated texts reflect the agreement reached between the relevant authorities of both France and the respective jurisdictions on how the treaties should be impacted by the MLI.

On 31 July 2019, the French tax authorities published draft guidelines on the new interest deductibility rules applicable as from 1 January 2019. The new rules are the transposition into domestic law of article 4 of the EU ATAD. Broadly, under the new rules, net interest expenses are deductible from the taxable income of a company/tax consolidated group only to the extent that they do not exceed the higher of the two following thresholds: €3 million or 30% of the adjusted taxable income of the company.

The tax authorities launched a public consultation on the issued guidelines. Interested parties can submit comments via email to bureau.b1-dlf@dgfip.finances.gouv.fr until 30 September 2019.

On 25 July 2019, the Law introducing the DST and putting partially on hold the progressive decrease of the standard corporate income tax (CIT) rate for large companies was published in *Official Journal no. 0171* (projet de loi portant création d'une taxe sur les services numériques et modification de la trajectoire de baisse de l'impôt sur les sociétés). The main features of the law remain similar to the bill submitted by the Government on 6 March 2019. Also, the legislation provides that the Government will have to provide Parliament with annual reports on the efficiency and use of the tax as well as on the state of the OECD and EU negotiations on digital taxation. A unique advance payment of the tax will be required in November 2019 with respect to calendar year 2019.

See EY Global Tax Alerts, [France's Parliamentary Commission agrees on Digital Services Tax](#), dated 3 July 2019 and [French President signs bill on Digital Services Tax and partial freeze of corporate income tax rate decrease](#), dated 25 July 2019.

On 17 July 2019, the French tax authorities published draft guidelines on the new tax regime applicable as of 1 January 2019 to income generated from industrial property. According to the new tax regime, taxpayers can opt for a favorable 10% rate with respect to certain intellectual property (IP) income in line with the OECD's modified nexus approach. The guidelines are currently under public consultation (comments were requested by 15 September 2019).

On 3 July 2019, the French tax authorities published guidelines on the new general anti-abuse rule (GAAR) introduced by virtue of the transposition of article 6 of the EU ATAD providing for a principal purpose test and that applies for fiscal years commencing on or after 1 January 2019.

On 16 June 2019, the Decree No. 2019-594 (the decree) was published in the *Official Journal in France*. Among others, the decree establishes new reporting requirements with respect to the new interest limitation rules that were introduced in France for the transposition of the EU ATAD. According to the new reporting requirements, companies subject to the new limitation (i.e. net interest expenses exceeding €3 million or 30% of taxable profits before deduction of net interest expenses, depreciation and amortization) must fill in a specific annual form indicating in particular the amount of non-deductible net financial expenses and the amount of unused deduction capacity.

Hong Kong

On 19 July 2019, the Hong Kong Inland Revenue Department issued Departmental Interpretation and Practice Note 60 (DIPN 60), clarifying how it will interpret the concept of PE in Hong Kong and the methodology for attributing profits to Hong Kong PEs. Whether a resident of a country with which Hong Kong has an income tax treaty has a PE is to be determined in accordance with the provisions under the relevant treaty. The PE status of a non-treaty country resident is to be determined under a newly enacted section of the Hong Kong Inland Revenue Ordinance, which generally follows the PE definition in Article 5 of the OECD Model Tax Convention. A functional and factual analysis is required to determine the attribution of profits to a PE. Profits attributable to an Agency PE should reflect its functions performed, risks assumed and assets used. In addition, a PE's interest expense deduction is limited to the PE's debt to equity ratio that is solely based on its headquarters' debt to equity ratio.

Hungary

On 24 July 2019, the Hungarian Law transposing the EU Tax Dispute Resolution Directive (2017/1852) of 10 October 2017 on tax dispute resolution mechanisms in the EU into domestic legislation entered into force. The provisions will apply to complaints - filed on or after 1 July 2019 - relating to questions of dispute in matters of income or capital earned in a tax year commencing on or after 1 January 2018.

However, the new law allows the tax authorities concerned to agree in applying the provisions to complaints filed before 1 July 2019 and/or to dispute in matters of income or capital earned in a tax year commencing before 1 January 2018.

On 12 July 2019, the Hungarian Parliament approved the *Hungarian Act LXXII of 2019 on the modification of certain tax legislation and other related laws for approximation with the European Union law* implementing 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 retroactively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The Hungarian legislation entered into force on 23 July 2019 and will be effective from 1 July 2020.

The final Hungarian MDR legislation is substantially aligned to the requirements of the Directive. The Hungarian Tax Authority has yet to publish explanatory notes or official guidance on the application of the Hungarian MDR legislation.

See EY Global Tax Alert, [Hungary passes act to implement Mandatory Disclosure Rules](#), dated 16 August 2019.

Indonesia

On 3 September 2019, Indonesia's Minister of Finance announced the Government's intention to issue new tax law, which will affect Income Tax, Value Added Tax (VAT), and General Tax Provision Laws. The legislative process is at a very early stage and many key aspects of the proposals will not be clear until the draft law is circulated to the public. The new law is expected to include the following measures aimed at addressing the digital economy, but very little detail is currently available: (i) International digital companies (including international seller, international service provider and international marketplace company) will have to register for, collect and report VAT on the import of intangible goods and services at a rate of 10%. International digital companies can appoint their representative in Indonesia to fulfill their VAT obligations; and (ii) A new domestic PE definition (without physical presence) will be introduced that may apply the "significant economic presence" concept. It appears that the PE definition in Indonesia's Income Tax Law will be updated to reflect this change that allows the Indonesian

Government to tax profits without physical presence in Indonesia. The announcement did not address the expected impact or interaction between the new PE definition and the treaty definitions of PE, but the Director General of Taxation has been subsequently quoted as stating that such treaty articles will still apply.

Lithuania

On 12 August 2019, the Lithuanian tax authorities published a reminder regarding the new rules for TP reporting applicable from 2019. The new rules generally reflect measures implementing recommendations under the OECD's BEPS project and include a requirement for taxpayers to prepare a Master file and Local file once certain thresholds are exceeded (i.e., revenues in excess of €15 million and €3 million respectively). In addition to the new TP rules previously reported, the tax authorities added the following measures: (i) abolition of the hierarchy of TP methods, (however, from 2019, taxpayers must justify the chosen TP method as the most appropriate); and (ii) establishment of procedures for TP dispute resolution under the MAP.

Luxembourg

On 8 August 2019, the Luxembourg Government submitted the draft law (Draft Law) implementing the EU Directive on the mandatory disclosure and exchange of information on cross-border tax arrangements (DAC6 or the Directive) to the Luxembourg Parliament. Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements as from 1 July 2020 and arrangements where the first step is implemented between 25 June 2018 and 1 July 2020 (the transitional period). The first reporting deadline is set for 31 August 2020 (in respect of the transitional period).

The Draft Law will now go through the legislative process, which involves the analysis of the text by a dedicated parliamentary commission, the collection of opinions from different advisory bodies (most importantly the Council of State), discussion and vote of the text in a parliamentary session followed by a publication in the *Official Gazette* (Memorial). It is expected that this entire process may take several months and should be completed before year-end.

If implemented without amendments, the Luxembourg MDR legislation will be aligned with the requirements of the Directive (scope of taxes covered, reportable arrangements,

hallmarks, main benefit test, intermediaries and reporting deadlines). Failure to meet any obligations under the MDR legislation may lead to monetary penalties not exceeding a maximum of €250,000.

See EY Global Tax Alert, [Luxembourg submits draft law implementing EU Mandatory Disclosure regime to Parliament](#), dated 21 August 2019.

On 8 August 2019, the Luxembourg Government submitted the draft law (Draft Law) implementing Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 (ATAD) regarding hybrid mismatches with third countries (ATAD 2) to the Luxembourg Parliament.

ATAD 1 which introduced a provision dealing only with intra-EU hybrid mismatches, was implemented into Luxembourg law effective for financial years starting on or after 1 January 2019. The Draft Law aims to extend the territorial scope of the anti-hybrid mismatch provision to third countries, and it targets hybrid PE mismatches, hybrid transfers, imported mismatches, reverse hybrid mismatches and dual resident mismatches.

The Draft Law is in line with the ATAD 2's mandatory "minimum standards" to neutralize hybrid mismatches. Luxembourg also decided to opt in for all possible exceptions provided for by ATAD 2. The Draft Law will be effective for financial years starting on or after 1 January 2020 with the exception of the provision on reverse hybrid mismatches which will be effective as from tax year 2022.

The Draft Law will need to go through the legislative process, which involves analysis of the text by a dedicated parliamentary commission, the collection of opinions from different advisory bodies (and most importantly the Council of State), a discussion and vote of the text in a parliamentary session and finally its publication in the *Official Gazette* (Memorial). The entire process may take several months.

See EY Global Tax Alert, [Luxembourg submits draft law implementing EU ATAD 2 to Parliament](#), dated 9 August 2019.

Malaysia

On 20 August 2019, the Royal Malaysian Customs Department (Customs) released its Guide on Digital Services ahead of the 1 January 2020 implementation of a 6% service tax on digital services provided by foreign service providers

(FSP) to consumers in Malaysia. Among others, the Guide clarifies that services that fall under the scope of "digital services" are those that are delivered through an information technology means with minimal or no human intervention from the service provider and sets out a non-exhaustive list of services that could be regarded as digital services. The Guide also confirms that the RM500,000 (US\$120,000) mandatory registration threshold should include the value of all digital services made to consumers in Malaysia and that the term 'consumers' should be interpreted to also include businesses. According to the Guide, the applications for registration, effective from 1 January 2020, can be submitted online as of 1 October 2019.

Mauritius

On 16 August 2019, the Mauritius Government issued the Income Tax (Amendment No. 2) Regulations 2019 (the Regulations). The Regulations set forth provisions on the substance requirements insofar as it concerns the partial exemption regime (PER) along with the substance requirements for a freeport operator or developer to benefit from the preferential tax rate of 3%). The Regulations also set forth provisions on the computation of the income attributed to a Controlled Foreign Company (CFC). The Regulations are effective as from 1 July 2019.

See EY Global Tax Alert, [Mauritius issues regulations on substance requirements and computation of income for CFC purposes](#), dated 3 September 2019.

Mexico

On 8 September 2019, the 2020 Mexican Economic Proposal was submitted before Congress. It includes, among others, proposed amendments to the Income Tax Law, VAT Law and Excise Tax Law. Some of the proposed changes are as follows: (i) amendments to the definition of PE in line with BEPS Action 7; (ii) changes to Mexico's rules related to the treatment of payments to low tax jurisdictions and hybrid entities; (iii) the introduction of new rules related to the treatment of fiscally transparent entities when a treaty does not apply; (iv) the introduction of an interest deduction limitation, according to which taxpayers with more than MxP\$20 million (approximately US\$1 million) of net interest expense each year would be subject to an additional net interest deduction limitation equal to 30% of

“adjusted taxable income,” as defined similar to EBITDA. Any non-deductible interest expense for each year could be carried forward for a period of three years; (v) amendment of the existing anti-avoidance rule (GAAR) to clarify that no business reason would be deemed to exist, when the quantifiable economic benefit, present or future, is less than the tax benefit; (vi) the introduction of mandatory disclosure rules for certain aggressive tax planning scheme; and (vii) the introduction of a new chapter on the taxation of income derived by individuals from the provision of services and the sale of goods through digital platforms, mainly through withholdings carried out by the digital platform operator.

Additionally, the Proposal would amend the VAT law to expand the definition of services performed in Mexico to those performed through a digital platform to users in Mexico. For this purpose, digital services would include a broad range of services. The platform operators including nonresidents without a PE in Mexico would be required to: (1) register with the Mexican tax authorities; (2) calculate, withhold and collect the VAT along with the price of the digital service; and (3) file certain informational reports with the tax authorities. Non-compliance with tax obligations by digital platforms may result in suspension of the connection to the public telecom network in Mexico.

See EY Global Tax Alert, [Mexico's President submits comprehensive economic proposal to Congress](#), dated 13 September 2019.

On 5 September 2019, a bill amending the Mexican VAT Law and the Federal Fiscal Code was submitted to the Chamber of Deputies. The bill aims to address the tax issues arising from the provision of services through digital platforms in Mexico. The bill provides that nonresidents (not having a PE in Mexico) and who provide services through digital platforms to customers in the country, would be subject to VAT either through withholding or direct payment. Additional rules would be required in connection to the direct remittance. The bill would have to be approved by Congress and published in order to be in force. Finally, this proposal is different from the 2020 Mexican Economic Package submitted before Congress on 8 September 2019 that also contains a proposal on digital platforms taxation in Mexico. Please see above for further information.

See EY Global Tax Alert, [Mexico: VAT on digital services bill submitted to Chamber of Deputies](#), dated 11 September 2019.

Netherlands

On 13 August 2019, the OECD released the Stage 2 peer review reports of the Netherlands relating to the outcome of the peer monitoring of the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms (Stage 2 Report). Stage 2 focuses on monitoring the follow-up of any recommendations resulting from the Netherlands' Stage 1 peer review report (Stage 1 Report). The Netherlands requested that the OECD also provide feedback concerning its adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the Netherlands' implementation of best practices (Best Practices Report).

The outcome of the Stage 1 peer review was that overall the Netherlands has met most of the elements of the Action 14 minimum standard. The Stage 2 Report concludes that the Netherlands has addressed most of the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, [OECD releases the Netherlands Stage 2 peer review report on implementation of Action 14 minimum standard](#), dated 26 August 2019.

New Zealand

On 15 August 2019, Inland Revenue released a special report on the recent statutory amendments that require goods and services tax (GST) to be applied to low-value imported goods, introduced in the *Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019*. The report provides an overview of the key features of the new rules along with examples and detailed analysis. According to the amendments, GST applies to imported goods valued at or below NZ\$1,000 (such as books, clothing, cosmetics, shoes, sporting equipment and small electronic items) that are imported from offshore merchants by consumers in New Zealand. The new rules will require nonresident suppliers to register and return GST on these supplies if they exceed, or are expected to exceed, NZ\$60,000 in total over a 12-month period. The new rules apply from 1 December 2019 and nonresident suppliers can now apply to be registered, with the registration taking effect from 1 December 2019. The registration form and information about registering for GST will be located on the Inland Revenue website www.ird.govt.nz.

On 8 August 2019, the New Zealand Government released an updated tax policy work program pursuant to its 2019/20 Budget and the recommendations in the final report of the Tax Working Group. Among other work streams included in the work program, an international tax work stream was included which highlights that New Zealand will continue to support multilateral work being undertaken at the OECD, as well as considering further changes to New Zealand's tax rules to address BEPS issues. This work stream also includes double tax agreement negotiations and assisting with free trade agreements.

Poland

On 23 August 2019, Poland's Ministry of Finance issued a draft bill setting forth several provisions to implement certain anti-hybrid measures (implementing the EU ATAD 2). A consultation on the draft bill was subsequently opened with comments due by 2 September 2019.

Generally, hybrid mismatches may occur when jurisdictions have different regulations in the tax qualification of sources of income or types of entities, which results in double deduction of payments as tax deductible costs or in deduction of costs without inclusion as taxable revenues on the other side of the transaction.

The main objective of implementing the ATAD 2 into the Polish legislation is to counteract situations of double tax deductions or the tax deduction of costs without recognition of corresponding revenues. To achieve this goal, some topics have been defined differently than envisaged by ATAD 2.

If approved, the provisions will have effect from 1 January 2020. However, the provisions may also be subject to further amendments during the legislative process.

See EY Global Tax Alert, [Poland issues draft bill to implement EU ATAD 2 anti-hybrid measures](#), dated 29 August 2019.

Romania

On 22 August 2019, Romania implemented the EU Tax Dispute Resolution Directive (2017/1852) in the tax procedure code (Law no. 207/2016). The provisions apply to complaints submitted from 1 July 2019 and onwards, relating to questions of dispute in matters of income or capital earned in a tax year commencing on or after 1 January 2018; they may also apply to complaints lodged previously under the condition that the Romanian tax authority and its counterparty so agree.

Tunisia

On 20 August 2019, the Minister of Finance published a decision dated 6 August 2019 (the decision) that regulates the procedure and requirements for applying for an APA for TP purposes in Tunisia. Among others, the decision states that the APA request must include the TP method suggested by the taxpayer, the period covered by the agreement and all the documents supporting these requests. Also, according to the decision, the taxpayer may agree with the tax authorities to hold preparatory meetings before officially submitting the APA request to discuss the content of the APA request and determine the supporting documents necessary for such request. The taxpayer that concludes an APA in a specific year must provide the tax authority within the first six months of the year following the financial year covered by the APA with an annual report summarizing all of the transactions conducted the previous year and all of the information that might affect the terms and conditions of the agreement that has been concluded with the tax authorities.

Ukraine

On 16 August 2019, the Ministry of Finance (MoF) of Ukraine issued an order (order no. 345) which provides guidance on TP rules that relate to transactions between nonresidents and their PEs and/or Ukraine-based representative offices (RO).

The MoF clarifies that an RO of a nonresident, which exclusively performs ancillary and preparatory activities for the nonresident, must submit a controlled transactions report where certain thresholds are exceeded during the reporting year, i.e., where the amount of funds received from the nonresident for the maintenance of the RO or for services rendered for the nonresident exceeds UAH10 million (approximately US\$400k). However, a controlled transactions report is not required where the operations of the RO do not constitute a PE, and where only ancillary activities are carried on. In that case transactions between the RO and the nonresident are not recognized as controlled for TP purposes.

In order to determine the amount of economic transactions for TP purposes, the MoF makes it clear that funds received from the nonresident for the maintenance of a PE, taxes and fees or funds intended for the provision of services to the nonresident must be taken into account.

United Kingdom

On 13 August 2019, the OECD released the Stage 2 peer review reports of the United Kingdom (UK) relating to the outcome of the peer monitoring of the implementation of the BEPS minimum standard under Action 14 on improving tax dispute resolution mechanisms. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from the UK's Stage 1 peer review report. The UK requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices, and therefore, in addition to the peer review report, the OECD has released an accompanying document addressing the implementation of best practices.

Overall the report concludes that the UK addressed almost all of the shortcomings identified in its Stage 1 peer review report. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 minimum standard, the UK signed and ratified, without any reservations on the MAP article, the MLI. Furthermore, the UK opted for part VI of this instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a substantial number of its tax treaties have been or will be modified to meet the requirements under the Action 14 minimum standard. Where treaties have or will not be modified, upon entry into force of the MLI for the treaties concerned, the UK reported that it has put a plan in place for their renegotiation, whereby those treaties under which its competent authority has MAP cases are prioritized.

See EY Global Tax Alert, [*OECD releases United Kingdom Stage 2 peer review report on implementation of Action 14 minimum standard*](#), dated 21 August 2019.

On 22 July 2019, The UK Government issued draft 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). The UK draft legislation is subject to the usual legislative process for Statutory Instruments and is still subject to amendments.

A consultation document was issued by HM Revenue and Customs (HMRC) alongside this draft legislation requesting comments by 11 October 2019 and including a statement that leaving the EU will not reduce the UK's resolve to tackle international tax avoidance and evasion as it will remain an active and influential member of the OECD and the G20.

The current draft legislation is broadly aligned to the requirements of the Directive and applies many of the same definitions. Additionally, the draft legislation is more detailed than the underlying Directive in a number of areas and the consultation document provides further clarifications as to how HMRC may interpret and apply the UK legislation.

The draft legislation is expected to be finalized by 31 December 2019 and to enter into force on 1 July 2020.

See EY Global Tax Alert, [*United Kingdom publishes draft proposal on Mandatory Disclosure Rules*](#), dated 19 August 2019.

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

Ernst & Young LLP (United States), Global Tax Desk Network, New York

- ▶ Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- ▶ Deirdre Fenton deirdre.fenton1@ey.com
- ▶ Nadine K Redford nadine.k.redford@ey.com
- ▶ Konstantina Tsilimigka konstantina.tsilimigka1@ey.com

Ernst & Young Belastingadviseurs LLP, Rotterdam

- ▶ Marlies de Ruiter marlies.de.ruiter@nl.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam

- ▶ David Corredor-Velásquez david.corredor.velasquez@nl.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 001145-19Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com