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Global Tax Alert

The Latest on BEPS and Beyond

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EY Tax News Update: Global Edition

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Highlights

Last week, the OECD published the public consultation document containing a Secretariat Proposal for a "unified approach" under Pillar 1 of the new OECD project on addressing the challenges of the digitalization of the economy. The key aim of the proposal is to allocate more taxing rights to market jurisdictions for all consumer-facing businesses and to do so in a way that goes beyond the existing nexus rules and the arm's-length principle. However, non-consumer facing businesses are not out of the danger zone yet, as the approach seems to focus on businesses or business lines being included unless explicitly excluded.

Contrary to expectations, the document was not issued by the OECD/G20 Inclusive Framework on BEPS itself, nor did it include anything on Pillar 2 or on impact assessments. The accompanying OECD Secretary-General Tax Report to the G20 indicates it is a "Secretariat proposal which, it is hoped, will be the basis for a negotiation that could result in a political agreement by mid-2020." As in earlier communications, January 2020 was mentioned as the date of agreement, but progress seems to be slower than expected. Moreover, the paper also states that the preliminary impact assessments show that "the combined effect of Pillars One and Two would lead to a significant increase in global tax revenues as well as redistribution of taxing rights to market jurisdictions." One of the key questions is where the redistributed profits will come from. The paper suggests: "Investment hubs, where the analysis suggests that the levels of residual profits

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are high, would experience significant losses in tax base." With that, the paper shows that the stakes are high both for businesses and investment-hub jurisdictions. Accordingly, the developments summarized below are important to better understand today's international tax environment and the current OECD developments on BEPS 2.0.

OECD

As highlighted above, the OECD released, on 9 October 2019, a public consultation document outlining a proposal from the OECD Secretariat for a "unified approach" under Pillar One (Secretariat Proposal) of the ongoing project titled "Addressing the Tax Challenges of the Digitalisaton of the Economy" (the Consultation Document). The Secretariat Proposal does not represent the consensus view of countries that are members of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The Secretariat Proposal provides high-level suggestions on the scope of the new rules being developed under Pillar One, an approach to the new nexus concept, and an approach for new and revised profit allocation rules. It is intended to facilitate negotiations among the countries, with the aim of achieving the objective of a political agreement among the Inclusive Framework jurisdictions by the first half of 2020.

Interested parties are invited to submit comments on the Consultation Document no later than 12 November 2019. The OECD will hold a consultation meeting in Paris on 21 and 22 November 2019 to give stakeholders an opportunity to discuss their comments with the Inclusive Framework countries.

See EY Global Tax Alert, *The OECD takes next step on BEPS 2.0 – Proposal for a "unified approach" for additional market country tax*, dated 10 October 2019.

On 27 September 2019, the "Platform for Collaboration on Tax" (the Platform) – a joint effort of the OECD, United Nations (UN), International Monetary Fund (IMF) and World Bank Group (WBG) – released a draft toolkit (the Toolkit) designed to help developing countries with the implementation of effective transfer pricing documentation requirements. In this respect, an important aspect is finding the right balance between the tax authorities' needs and avoiding excessive and unnecessary compliance costs.

The Toolkit considers measures concerning transfer pricing documentation of all stages of a taxpayer's transfer pricing analysis that governments could put in place. It takes into account current international approaches and country practices for transfer pricing documentation and discusses various policy considerations and options to guide developing countries.

The Platform is seeking comments on the Toolkit by 8 November 2019 from all interested stakeholders. It aims to release the final toolkit in early 2020.

On 26 and 30 September 2019, the OECD announced that Iceland and Denmark 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 35. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Iceland confirmed its MLI positions without making any changes. Denmark confirmed its MLI positions, but it removed the treaties with Germany and Switzerland from its list of covered tax agreements (CTAs) and it added the treaty with Azerbaijan to the same list. Also, Denmark amended its reservations and has now opted in for every provision, including permanent establishment provisions and mandatory binding arbitration. The MLI will enter into force for Iceland and Denmark 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 January 2020.

On 16 September 2019, the OECD held its first OECD Tax Certainty Day (the event) at the OECD headquarters in Paris. The event was organized by the OECD Forum on Tax Administration. Over 200 tax policymakers, tax administration officials, business representatives (including EY professionals) and other stakeholders from over 50 jurisdictions participated. The discussion focused on the state of the tax certainty agenda and ways to make further improvements to both dispute prevention and dispute resolution.

During the event, the OECD published a report on the 2018 Mutual Agreement Procedure (MAP) statistics. For 2018, the report includes statistics from all OECD and G20 members and the members of the OECD Inclusive Framework on BEPS that joined the Inclusive Framework prior to 2019 – for a total of 89 jurisdictions, covering almost all MAP cases worldwide. For the first time, the 2018 MAP statistics compare the reporting jurisdictions' performance with respect to key indicators for each type of case through an interactive tool.

See EY Global Tax Alert, *OECD holds first Tax Certainty Day and releases 2018 Mutual Agreement Procedure statistics*, dated 20 September 2019.

In September 2019, the OECD released additional exchange relationships that have been activated under the Multilateral Competent Authority Agreement (MCAA) on the exchange of Country-by-Country (CbC) reports. Currently, there are over 2,400 automatic exchange relationships established among jurisdictions committed to exchanging CbC reports. With this update, British Virgin Islands, Saudi Arabia, Seychelles and the United Arab Emirates (UAE) have been included on the list of countries that have activated for the first-time exchange relationships for CbC reporting (CbCR). British Virgin Islands has activated 35 exchange relationships, Saudi Arabia has activated 37 exchanges relationships, Seychelles has activated 37 exchange relationships while the UAE has activated 49 exchange relationships. Further, 46 exchange partners will be sending CbC reports to Saudi Arabia and 47 exchange partners will be sending CbC reports to Seychelles. British Virgin Islands and the UAE are non-reciprocal jurisdictions, i.e., they have committed to send CbC reports to their exchange partners but will not receive CbC reports submitted to the tax authorities in other jurisdictions and will not apply local filing.

European Union

On 10 October 2019, the Economic and Financial Affairs Council (ECOFIN) removed Marshall Islands and the UAE from the European Union (EU)'s list of non-cooperative jurisdictions for tax purposes, as it was found that both jurisdictions have passed the necessary reforms to implement the commitments they had made to improve, by the end of 2018, their tax policy framework by introducing economic substance requirements. Consequently, the UAE is now compliant with all commitments on tax cooperation and was delisted. The Marshall Islands has been moved from annex I of the conclusions to annex II as the country's commitments regarding exchanges of information on request continue to be monitored by the Council's Code of Conduct group pending the results of the review of the OECD's Global Forum on transparency and exchange of information. Also, the ECOFIN removed Albania, Costa Rica, Mauritius, Serbia and Switzerland from annex II of the conclusions as they have implemented ahead of their deadline all necessary reforms to comply with EU tax good governance principles. The decision leaves 9 jurisdictions on the list of non-cooperative jurisdictions out of the 17 initially announced on 5 December 2017. These are American Samoa, Belize, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

On 24 September 2019, the European General Court annulled the decision of the European Commission that the Netherlands granted illegal State aid to Starbucks. This implies that – according to the General Court – the Dutch Government did not give Starbucks an advantage compared to other Dutch taxpayers which operated under similar facts and circumstances, by concluding an Advance Pricing Agreement (APA). The European Commission may now appeal the decision of the General Court with the European Court of Justice. Such appeal should be filed within two months and 10 days after the notification of the General Court's decision.

See EY Global Tax Alert, *The European General Court rules that the Netherlands did not grant illegal State aid to Starbucks*, dated 25 September 2019.

On 16 September 2019, the European Commission (the Commission) announced that it will open 39 individual in-depth investigations in relation to tax rulings received (between 2005 and 2014) by companies operating in Belgium allowing them to reduce their tax liability on "excess profits," i.e., profits that exceed an arm's-length profit level resulting from being part of a multinational group.

The Commission previously decided that these rulings created an illegal State-aid scheme as they may have given a selective advantage to those multinational companies. The Commission also ordered that the aid granted be recovered from the beneficiaries. However, the General Court subsequently rejected this decision, spurring the Commission to conduct further examination into individual tax rulings.

See EY Global Tax Alert, *European Commission launches 39 State-aid investigations on Belgian "excess profit" tax rulings*, dated 18 September 2019.

On 12 September 2019, the Commission published an evaluation of the Directive on Administrative Cooperation (DAC) which assesses the effectiveness, efficiency, coherence, relevance and EU added-value of the DAC. The evaluation covers all Member States for the period of January 2013 – June 2018. The evaluation does not include in its scope DAC5 (access of anti-money laundering information – which started to apply on 1 January 2018) and DAC6 (Mandatory

Disclosure Rules). The report concludes that, on the basis of limited evidence, this evaluation shows that the DAC has been to some extent effective. There is also some, again limited, evidence concerning efficiency. Overall, the Directive remains relevant, appears coherent with other interventions, and offers EU added-value.

Furthermore, the evaluation includes, for the first time, some limited statistics on CbCR in annex 5 of the report. The Commission received statistics on CbC reports exchanged between Member States in November 2018 and the annex is based on this statistical data. According to annex 5, between June 2017 and October 2018, Member States sent 19,511 reports to other Member States. The main senders are United Kingdom (UK), Germany and Netherlands. During the same period, Member States received from each other 17,319 reports with the largest receivers being Germany, Spain and Italy.

Argentina

On 2 October 2019, the Argentine tax authorities (Administración Federal de Ingresos Públicos, AFIP) published a proposal for a General Resolution on the implementation of the transfer pricing (TP) legal provisions for public consultation. The proposal covers a number of areas on TP including not only the implementation of the changes to the TP rules included in the last tax reform but also other changes to the Argentine TP regime. The proposal is intended to replace General Resolution 1122, which currently sets forth TP rules.

The notice of the public consultation does not give a deadline for the public to provide comments, although it is expected that the consultation period will be short.

Finally, this proposal regime is a new procedure established by AFIP and the proposal itself is likely to be amended before it is enacted.

Austria

On 10 October 2019, the upper house of Austria's Parliament (Bundesrat) approved the draft bill on the digital tax package (Digitalsteuerpaket). This followed approval by the lower house of Parliament (Nationalrat) on 19 September 2019. Therefore, the digital tax package will be published in the *Federal Gazette* within the next several days and will come into force as of 1 January 2020. The digital tax package includes three key measures: (i) the introduction of a tax on revenue derived from online advertising. The tax will apply to companies with worldwide annual turnover of €750 million or more and annual turnover of €25 million or more in Austria. The tax will be levied at a rate of 5%; (ii) an amendment of the value added tax (VAT) rules applicable to online purchases of goods sold by third-country sellers; and (iii) the introduction of stricter reporting obligations for operators of online platforms active in the sharing economy.

Belgium

On 11 September 2019, the Belgian tax authorities published a circular letter (2019/C/89) clarifying the grandfathering provision included in the recently introduced interest limitation rules (30% of EBITDA (earnings before interest, taxes, depreciation and amortization)) transposed at the end of 2017 as part of the Belgian corporate income tax reform.

The new rules provide for a grandfathering of loans concluded before 17 June 2016 which have not been fundamentally modified after the grandfather date. The Circular letter clarifies the notion of 'fundamentally modified' and although the letter leaves room for further evaluation of every particular situation, it also identifies a number of fundamental modifications and non-fundamental modifications in non-exhaustive lists of examples.

See EY Tax Alert, *Belgium issues Circular letter clarifying "grandfathered loans" under new interest deduction limitation rule*, dated 30 September 2019.

Chile

On 22 August 2019, the Chilean House of Representatives approved a tax reform bill after one year of debate and political negotiation. Discussion in the Senate is expected to take place during the last quarter of 2019 and could involve further amendments to the bill, given that some members of Congress have announced their intentions to thoroughly review the bill.

The current version of the tax bill includes measures that would: (i) eliminate the 9.45% additional tax burden on withholding tax rates that currently applies to dividend distributions from Chilean companies to non-treaty foreign shareholders abroad (the formal rate remains the same, but an increased amount of corporate tax credit is to be available upon remittances); (ii) establish a 19% VAT on digital services (downloading or streaming) rendered by nonresidents from abroad to Chilean residents; and (iii) define permanent establishment following the criteria given by the OECD (notwithstanding the definition set forth in current tax treaties).

See EY Global Tax Alert, *Chilean House of Representatives approves tax reform bill*, dated 13 September 2019.

Denmark

On 12 September 2019, the Danish Ministry of Taxation published a significant draft bill proposing a number of changes to Denmark's international tax provisions. The draft bill was subject to a public hearing through 10 October 2019 and it will now be presented in the Danish Parliament. If the draft bill is presented to Parliament and enacted, the proposed effective date is 1 January 2020.

The main objectives of the draft bill are to: (i) amend the existing Danish controlled foreign company (CFC) rules in line with the EU's Anti-tax Avoidance Directive (ATAD); and (ii) amend the domestic definition of a permanent establishment (PE) to align with the new definition in Article 5 the OECD Model Income Tax Convention.

The draft bill also intends to significantly strengthen the Danish TP rules by introducing new deadlines for submission of TP documentation together with the annual corporate income tax return and by levying penalties and reversal of burden of proof in case of non-compliance.

Finally, the draft bill also addressed the decision rendered by the Court of Justice of the European Union (CJEU) (case C-650/16, *Bevola*) by proposing to allow a Danish company to claim a tax deduction for a final loss suffered by a foreign subsidiary, PE or real estate subject to a number of conditions.

See EY Global Tax Alert, *Denmark publishes draft bill on international taxation for public comment*, dated 16 September 2019.

Egypt

On 21 September 2019, the Egyptian Ministry of Finance announced the draft budget proposal for 2020. Amongst other measures, the draft budget proposes to: 1) expand the tax base scope for economic activities and strengthen measures for taxation of the digital economy.

Estonia

The Estonian Ministry of Finance has published 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 draft legislation was published on 31 July 2019.

The Estonian draft legislation is subject to the formal legislative process and is likely to be amended before final enactment. If implemented as currently proposed, the Estonian Mandatory Disclosure Rules (MDR) legislation will be broadly aligned to the requirements of the Directive. The draft explanatory notes contain some useful interpretations which clarify the concepts and terms used in the Directive.

The draft legislation is expected to be finalized by the end of 2019.

See EY Global Tax Alert, *Estonia publishes draft proposal on Mandatory Disclosure Rules*, dated 7 October 2019.

Estonia-Hong Kong

On 25 September 2019, Estonia and Hong Kong signed a new tax treaty (the Treaty) in Tallinn. 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.

The Treaty also includes an anti-abuse provision that is similar to the principal purpose test of the MLI (Action 6). In the PE clause, the treaty contains an anti-fragmentation rule and the new definition of agency PE. It also contains the specific activities exceptions subject to the preparatory or auxiliary requirement. The Treaty 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.

Moreover, in cases where a person other than an individual is resident in both Estonia 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 resident.

France

On 27 September 2019, the French Government presented the draft Finance Bill for 2020 (thedraft Bill) (projet de loi de finances pour 2020). The draft Bill was submitted to the National Assembly, where it will be discussed in the coming weeks and may be subject to amendments. The final version will be enacted by the end of December 2019. Among others, the draft Bill proposes to transpose into French domestic law, the anti-hybrid provisions provided by ATAD 1 and ATAD 2 designed to tackle hybrid instruments as well as hybrid entities. These new rules would apply to fiscal years starting on or after 1 January 2020, except for those related to reverse hybrids which would apply to fiscal years starting on or after 1 January 2022.

See EY Global Tax Alert, *French Government releases draft Finance Bill for 2020*, dated 1 October 2019

Germany

On 26 September 2019, the German Ministry of Finance (BMF) published an amended draft bill on MDR that is intended to transpose the EU Directive 2018/822/EU of 25 May 2018 (EU Directive) into German national law. It is expected that the legislative process will be finalized at the beginning of 2020 at the latest, however no exact timeline has been communicated.

The amended draft bill closely follows the wording of the EU Directive with respect to reportable arrangements and the scope of taxes covered (i.e., no extension of the rules to additional taxes and no introduction of additional hallmarks is foreseen) and is broadly in line with the first draft bill. Additionally, the draft bill describes the applicable reporting procedures with significantly more details, but without fundamentally altering the general reporting procedure.

Failure to meet any obligations under the MDR legislation after 30 June 2020 may lead to administrative fines of up to €25,000.

See EY Global Tax Alert, *German Ministry of Finance amends draft mandatory Disclosure Rules*, dated 30 September 2019.

Greece

On 16 September 2019, the Greek Public Revenue Authority published in the *Official Gazette* circular No. 1341 (the circular) which provides guidance regarding the timing and procedure of filing of the CbC reports and notifications in Greece. Among others, the circular indicates that the CbCR notifications will be filed as of 15 October 2019 through an electronic application hosted at the website of the authority and no longer by email to the electronic address notifications.cbcfiling@aade.gr using a specific form. The notification shall be filed via an authorized representative of the group or an authorized accountant using "taxisnet" credentials (electronic filing system of the authority).

See EY Global Tax Alert, *Greece requires online submissions of CbCR Notifications as of 15 October 2019*, dated 7 October 2019.

On 13 September 2019, the Greek Public Revenue Authority published Circular E.2167/2019 (the circular) providing clarifications on the application of the domestic general anti-abuse rule (GAAR). The circular clarifies that the GAAR will be applicable in cases where other anti-abuse provisions do not apply. According to the circular, the case law of the Court of Justice of the European Union (ECJ) will be considered when the tax administration applies the GAAR and it also provides a list of cases which, based on the ECJ case law, were not considered abusive/artificial. The circular also states that the anti-abuse provisions (such as the principle purpose test under tax treaties) take priority over the GAAR if the purpose of the wholly artificial arrangement is the obtaining of an advantage that is provided by the treaty. In all other cases, the GAAR could be applicable, resulting in the denial of tax treaty benefits.

Ireland

On 2 September 2019, Ireland's Department of Finance published a Feedback Statement (FBS) regarding proposed updates to Ireland's TP rules. The FBS summarizes the proposed updated TP legislation and provides a final short window until 13 September 2019 to obtain input from stakeholders. The intention is to legislate for the updates to the TP rules in Finance Bill 2019 with a view that the updates will be effective for accounting periods beginning on or after 1 January 2020.

The key changes proposed include: (i) adoption of the 2017 OECD Transfer Pricing Guidelines (TPG), bringing the DEMPE concept (an updated framework to align profits with value creation) into Irish law; (ii) introduction of a requirement to prepare master file and local file documentation, subject to a €250m and €50m annual group consolidated revenue threshold respectively; (iii) inclusion of language which expressly applies the substance over form provisions in the 2017 OECD TPG; (iv) extension of TP rules to non-trading transactions; (v) extension of TP rules to certain capital transactions; (vi) removal of the exemption for transactions which are grandfathered under existing legislation (i.e., outside the scope of Irish TP rules if entered into before 1 July 2010); and (vii) extension of TP rules to Small and Medium sized Enterprises where the aggregate consideration for the related-party cross-border transaction is more than €1m or value of assets is more than €25m.

The extension of TP rules to branch profit attribution will not be effective at the beginning of 2020 as this requires further consultation according to the Department of Finance.

See EY Global Tax Alert, *Ireland publishes Transfer Pricing Feedback Statement*, dated 4 September 2019.

Italy

On 20 August 2019, the Ministerial Decree of 8 August 2019 amending the rules on the CbCR obligation introduced by Law No. 208 of 28 December 2015, was published in the *Official Gazette*. Notwithstanding some of the minor amendments, the Decree continues to establish that the Italian Tax Authorities' (ITA) TP assessments cannot be based on CbCR information. However, CbCR information may indicate the need for further investigations regarding transfer prices or may lead, during tax audit investigations, to TP adjustments and may be used for the evaluation of any risks related to BEPS.

On 31 July 2019, the ITA updated the form to be used for initiating the Cooperation and Enhanced Collaboration Procedure (CECP). The CECP is aimed at allowing eligible multinational companies to disclose the existence of an Italian PE for income tax and VAT purposes by way of a joint assessment with the ITA. For more details on the CECP, see The Latest on BEPS, dated 20 May 2019. The updated form is available on the ITA's website.

Jersey

On 23 September 2019, the Jersey Minister for Treasury and Resources launched a public consultation inviting comments on the implementation of the Government's commitment to the EU Code of Conduct Group (Business Taxation) to introduce MDRs for common reporting standard (CRS) avoidance arrangements and opaque offshore structures. The MDRs will require promoters of avoidance arrangements and service providers to disclose information on the arrangement or offshore structure to the Revenue authority, including the identity of the beneficial owner, which will then be exchanged with the tax authorities of the jurisdiction where the beneficial owner is resident. The objective of the consultation is to evaluate the potential impact of the implementation of the MDRs on industries and also to inform the drafting of regulations and guidance. Interested parties can submit their comments by 1 November 2019.

Malta

On 13 August 2019, the Patent Box Regime (Deduction) Rules, 2019 (the rules) were published in the *Official Gazette* of Malta. The rules detail the conditions to be met for the application of the deduction set out in article 14(1)(p) of the *Income Tax Act* and apply to income derived from qualifying intellectual property (IP) on or after 1 January 2019. According to the rules, qualifying IP generally comprises: (i) patent(s); (ii) IP assets subject to national, European or international protection rights; and (iii) in the case of a small entity, other IP assets which are non-obvious, useful, novel and having similar features to patents, provided that certification is obtained by a Malta enterprise. The rules specifically exclude marketing-related IP assets such as brands, trademarks and trade names from the definition of qualifying IP. The taxpayer is only able to apply the regime when the relevant requirements included in the rules are met, such as, among others, the beneficiary is the owner/co-owner/holder of an exclusive license in respect of the qualifying IP and the beneficiary maintains sufficient substance in terms of physical presence, personnel, assets or other relevant indicators in the relevant jurisdiction in respect of the qualifying IP.

Malta-Kosovo

On 23 July 2019, Malta has ratified the Kosovo-Malta Income Tax Treaty (2019), (the Treaty) by way of Legal Notice 168 of 2019, as published in *Official Gazette No. 20,236* of 23 July 2019. The Treaty has not yet entered into force.

The Treaty contains 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 Principal Purpose Test. The Treaty also 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.

The MLI has no effect on the Treaty as Kosovo has not signed the MLI, and though Malta has signed the MLI, it has not included this Treaty as a CTA. For the MLI provisions to have effect on the Treaty, Kosovo 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.

Netherlands

On 17 September 2019, the Dutch State Secretary of Finance published the Dutch budget proposals (the Proposals) for fiscal years 2020 and 2021.

From a corporate income tax (CIT) perspective, the most important proposals (among other items) to be introduced as of 2020 are: (i) a limitation in the reduction of the headline CIT rate; (ii) an amendment to the domestic dividend withholding tax exemption and CFC rules whereby the substance requirements shall no longer function as a safe harbor; and (iii) minimum capital requirements for banks and insurance companies.

Furthermore, as of 1 January 2020, the Netherlands shall introduce anti-hybrid rules in line with the EU ATAD including a repeal of the unilateral decree under the US-Netherlands tax treaty (CV/BV Decree) regarding hybrid entities and the MLI shall generally have effect on CTAs.

Additionally, as of 1 January 2021, a withholding tax is proposed on (deemed) interest and royalty payments to low-taxed jurisdictions, jurisdictions included on the EU list of non-cooperative jurisdictions or in certain abusive situations.

An amendment to the liquidation loss rules was also announced in the Proposals as of 2021 along with a proposal that the effective tax rate under the innovation box shall increase to 9% (from the current 7%).

See EY Global Tax Alert, *The Netherlands publishes 2020 budget proposals*, dated 18 September 2019.

Peru

On 29 September 2019, the Resolution 188-2019-SUNAT (the Resolution) regarding the rules for filing CbC reports in Peru was published in the *Official Gazette*. The Resolution implements an electronic system through which taxpayers should submit their CbC reports as from 1 October 2019, regardless of the tax period to which the CbC report corresponds. Guidance on the filing of CbC reports through the implemented System is available on the tax authorities' website. The Resolution entered into force on 30 September 2019.

On 17 September 2019, the Peruvian Tax Administration published Administrative Guidance 116-2019-SUNAT/7T0000 of 27 August 2019 (the Guidance) clarifying the scope of application of the domestic GAAR. The GAAR was introduced to the Tax Code on 19 July 2012 however its application was suspended by virtue of Law 30230 of 12 July 2014. The suspension of the GAAR was removed with the issuance of Supreme Decree 145-2019-EF, which entered into force on 7 May 2019. The Guidance clarifies that the tax authorities are entitled to apply the GAAR to acts, situations or transactions that occurred between the date of the introduction of the GAAR to the Tax Code (i.e., 19 July 2012) and the date of the removal of the suspension of the GAAR (i.e., 7 May 2019).

Portugal

On 19 September 2019, the Portuguese Government published Law 120/2019 (the Law), which implements Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU (the Directive) into domestic law. The Law applies to tax disputes filed from 1 July 2019 relating to tax years commencing on or after 1 January 2016.

Qatar

In June 2019, Qatar's Ministry of Finance issued Decision No. 16 of 2019 (the Decision) repealing and replacing Decision No. 21 of 2018 on CbCR. The Decision provides that an ultimate parent entity (UPE) of a multinational enterprise (MNE) group must file a CbC report where the consolidated group revenue in the preceding fiscal year exceeds QAR3b (approx. €682m). The deadline for filing this CbC report is 12 months after the end of the reporting fiscal year. The template provided in Annex III of Chapter V of the OECD's BEPS Action 13 Final Report should be used.

Qatar will automatically exchange the CbC reports with jurisdictions with which it has established a CbCR exchange relationship (currently 56). Qatar is a non-reciprocal jurisdiction under the CbC MCAA.

Additionally, Qatar tax resident UPEs are required to submit a notification to the General Tax Authority (GTA) declaring they are the UPE of the MNE group to which they belong no later than the final day of the reporting fiscal year. However, this deadline may be extended by the President of the GTA. For the fiscal years 2018 and 2019, the deadline for this notification is set at 31 December 2019.

Failure to comply (no or late filing or incomplete filing) with the CbCR obligations may lead to financial sanctions determined by the GTA.

Russia

On 3 October 2019, the Russian Ministry of Finance released a tax policy paper as part of the 2020 budget. Among others, the paper includes proposals to create a legal framework regulating the digital economy, including data protection and anti-avoidance rules. Specifically, is the paper proposes to design and introduce new tax principles in the digital area to tax profits of digital companies based on their customers' locations. It also proposes measures to digitize and simplify tax administration for monitoring and collection purposes.

On 29 September 2019, Federal Law No. 325-FZ introducing new amendments to the Tax Code was published. Among others changes, it is clearly stated now that the regulation of MAPs at Tax Code level is effectively limited to a number of reference clauses to the effect that the conduct of MAPs is governed by the provisions of the relevant tax treaty, while the procedure and time limits for the submission of a MAP request are prescribed by the Ministry of Finance.

On 27 August 2019, the Russian Ministry of Finance published a Letter clarifying the submission of CFC notification updates. CFC notification updates may be submitted to the tax authorities if the previously submitted notification contains incomplete or erroneous information. The Letter concluded that amendments to the previously provided information, such as a change of a Russian shareholder's participation in a foreign entity, should also be regarded as grounds for resubmission of the CFC notification.

Slovenia

On 20 September 2019, the Slovenian Ministry of Finance proposed amendments to the CIT Law. The proposed amendments include, among others, the partial implementation of further parts of the EU ATAD 1 and the introduction of an exit tax and the implementation of rules for elimination and neutralization of hybrid mismatches as per the Council Directive 2017/952 amending Directive (EU) 2016/1164 regarding hybrid mismatches with third countries (ATAD 2). The amended rules will apply as of 1 January 2020.

Switzerland

On 30 July 2019, the OECD released the Stage 2 peer review report of Switzerland 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 Switzerland's Stage 1 peer review report. Switzerland 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 Switzerland addressed almost all the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, *OECD releases Switzerland Stage 2 peer review report on implementation of Action 14 minimum standard*, dated 26 September 2019.

Tunisia

On 12 September 2019, Tunisia's *Public Guideline No. 23*, which addresses the implementation of the MAP under tax treaties concluded by Tunisia (the guideline), was published.

The guideline confirms that the General Directorate of Studies and Tax Legislation is the Tunisian competent authority for MAP request purposes and outlines the persons covered, the procedure and timeline to make a MAP request along with details of the supporting documentation that must be submitted for a MAP request to be considered acceptable. The MAP request must be submitted within the timeline specified by the treaty or in cases where the timeline is not specified in the relevant treaty, the MAP request must be submitted within the statute of limitations period applicable in Tunisia. The guideline also highlights the scope of issues covered by MAP and includes examples of situations that could be relevant for MAP purposes.

The guideline clarifies that the MAP procedure is fully independent from the tax audit and court litigations procedures and the MAP request does not suspend the taxpayer's tax liabilities in Tunisia. Finally, the guideline also specifies that certain MAP decisions may be published when the subject matter of the MAP decision is relevant for several taxpayers.

Ukraine

On 30 August 2019, a draft bill (draft law no. 1210) was submitted to the Ukrainian Parliament containing a number of amendments to the Tax Code. The main amendments are: (i) introduction of the national GAAR and constructive dividends rules; (ii) the adoption of the OECD BEPS approach aimed at challenging the artificial avoidance of a PE through the specific activity exemptions and splitting-up of contracts; (iii) introduction of CFC rules; (iv) application of limitations on interest deductibility for corporate income tax purposes to all loans (currently only applies to transactions with nonresident related parties); (v) introduction of the three-tiered TP documentation – local file, master file and country-by-country report; and (vi) establishment of MAP guidelines.

In addition to the abovementioned proposals, the draft bill also addresses various technical (definition of related parties and dividends) and procedural (duration of tax audits, tax payments deadline, procedure for administrative appeal against decisions of the tax authorities) matters.

The Ukrainian Parliament is expected to consider the draft bill by end of this calendar year.

United Arab Emirates

On 11 September 2019, the UAE issued Ministerial Decision No. 215 of 2019 providing guidance for companies on the application of the Economic Substance Regulations (ESR), enacted in April.

A company that carries out relevant activities (to include banking, insurance, investment fund management, shipping, lease-finance, distribution and service centers, headquarters and IP activities) must satisfy the following three tests to comply with the ESR: (i) be directed and managed in the UAE for the specific activity; (ii) perform core income generating activities (CIGA) in the UAE for the specific activities; and (iii) have an adequate level of qualified employees, premises and annual operating expenditures. Also, certain notification and reporting requirements should be met (further guidance on the form and manner of this notification and reporting is expected).

Failure to meet the ESR requirements and/or failure to provide information may result in administrative penalties, spontaneous exchange of information and potentially deregistration. The regulatory authorities will apply a "strict yet pragmatic approach" in auditing the application of the rules.

See EY Global Tax Alert, *UAE issues guidance on economic substance rules*, dated 18 September 2019.

United States

On 13 August 2019, the United States (US) Internal Revenue Service (IRS) updated the website that includes an up-to-date listing of the jurisdictions with which the US Competent Authority has entered into a Competent Authority Agreement (CAA) for the automatic exchange of CbC reports and the jurisdictions that are in negotiations for a CAA. In this update, the IRS added Curacao to the list of countries with which the US is in negotiations for a CAA for the automatic exchange of CbC reports. The IRS is in the process of negotiating CAAs with another seven countries and is expected to update this database as other agreements are concluded.

Also on 13 August, the OECD released the Stage 2 peer review report of the US 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. The US was among the six assessed jurisdictions included in the first batch for which the OECD has released Stage 2 peer review reports. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from US's Stage 1 peer review report. The US 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 US addressed most of the shortcomings identified in its Stage 1 peer review report.

See EY Global Tax Alert, *OECD releases United States Stage 2 peer review report on implementation of Action 14 minimum standard*, dated 20 August 2019.

On 9 August 2019, the US Treasury Department (Treasury) and the IRS released proposed regulations (REG-130700-14, Prop. Treas. Reg. Section 1.861-19) addressing cloud-based transactions and other transactions involving digital content, such as gaming and social media. Treasury also proposed regulations that would amend current Treas. Reg. Section 1.861-18, which provides rules governing transactions involving computer programs. These proposed rules represent Treasury's first significant attempt to grapple with cloud computing and related digital tax issues. The proposed regulations apply for purposes of determining the treatment of software and cloud transactions under certain provisions enacted as part of the *Tax Cut and Jobs Act* (*e.g.*, Internal Revenue Code Sections 59A, 245A, 250 and 267A).

Uzbekistan

On 2 September 2019, the Ministry of Finance published a draft of the new Tax Code for public consultation, which is planned to be enforced from 1 January 2020.

Among other items, some of the main proposals are: (i) introduction of TP provisions, CFC rules, and thin capitalization rules; (ii) introduction of a general anti-abuse measure (substance-over-form) as well as a group tax consolidation regime; and (iii) expansion of the tax residency definition which may include foreign companies whose place of management is in Uzbekistan. In addition, taxpayers will be entitled to interest payments by tax authorities if the tax authorities unlawfully imposed/collected additional taxes or tax overpayments are not refunded to the taxpayer within established time after taxpayer's application for refund. Moreover, tax authorities will be able to use differentiated penalties depending on the specific type of tax offenses.

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