



Fiscal Countdown

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Edito

The Fiscal Countdown, a monthly summary of international tax news, provides you with regular insights into the introduction of the OECD's BEPS initiative and the ongoing international tax reforms.

This fifty-fourth edition deals with the new measures published in October 2020 by the OECD, the EU, United Nations, ATAF and in 28 countries: Australia, Argentina, Belgium, Czech Republic, Denmark, Egypt, India, Ireland, Israel, Italy, Japan, Kenya, Luxembourg, The Netherlands, Norway, Oman, Panama, Peru, Poland, Portugal, Russia, Saudi Arabia, Senegal, South Africa, Spain, Uruguay, UK, USA.

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OECD

On 12 October 2020, the OECD and the OECD/G20 Inclusive Framework on BEPS released a series of documents about the ongoing project on addressing the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project). The project, which began in earnest in early 2019, consists of two elements: Pillar One focused on developing new nexus and profit allocation rules and Pillar Two focused on developing global minimum tax rules. The documents include detailed reports on the Blueprints on Pillar One and Pillar Two; a lengthy Economic Impact Assessment of the Pillar One and Pillar Two proposals; a Cover Statement by the Inclusive Framework on the work to date and the next steps; a Public Consultation Document requesting comments on the Blueprints on both Pillars; and a report to the G20 Finance Ministers for their 14 October 2020 meeting. The OECD held both an on-line press conference and a webcast to update the press and the public on the latest developments in the BEPS 2.0 project. The documents make clear that the Inclusive Framework will not reach a consensus agreement in 2020, which had been the target, because there are relevant political and technical issues that still need to be resolved. However, the Inclusive Framework Cover Statement describes the Pillar One and group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbCR 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. Of the jurisdictions that have already introduced the legislation, 34 jurisdictions received one or more

recommendations to make improvements to specific areas of their framework. Moreover, 76 jurisdictions have multilateral or bilateral competent authority agreements in place, which results in more than 2500 exchange relationships. In addition, 82 jurisdictions have provided detailed information about the appropriate use of CbC reports, enabling the Inclusive Framework to obtain enough assurance that measures are in place to ensure the appropriate use. Further work will continue to monitor the implementation and operation of CbCR and to highlight progress made by jurisdictions to address the recommendations that have been made. Also, the OECD has indicated that the 2020 review of the CbCR minimum standard, which was announced in 2015 at the presentation of the BEPS final reports, will be finalized before the end of the year. In the context of this review, members of the Inclusive Framework will assess whether the design and underlying conditions of the minimum standard should be adjusted.

On 14 October 2020, the G20 Finance Ministers and Central Bank Governors met via videoconference. After the meeting, they issued a joint communiqué (the communiqué) on key topics discussed at the meeting. With respect to the ongoing G20/OECD project on addressing the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project), the communiqué reaffirms the G20's commitment to making further progress on the two-pillar approach and stresses the importance of addressing the remaining issues to reach a global and consensus-based solution by mid-2021. The meeting took place two days after the release by the OECD of a series of detailed new documents related to the BEPS 2.0 project, including an OECD Secretary-General Tax Report to the

G20 Finance Ministers and Central Bank Governors on progress on the international tax agenda in general and the BEPS 2.0 project in particular.

On 22 October 2020, the OECD released the third batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain (the batch 3 jurisdictions) of the Base Erosion and Profit Shifting (BEPS) minimum standard on dispute resolution under Action 14 of the BEPS project. These Stage 2 reports focus on evaluating the progress made by batch 3 jurisdictions in addressing any of the recommendations that resulted from the Stage 1 peer review reports that were released on 12 March 2018. Denmark, Poland and Singapore had also requested that the OECD provide feedback concerning their adoption of the Action 14 best practices, and the OECD therefore also released three accompanying best practices reports. The outcome of the Stage 1 peer review process for the batch 3 jurisdictions was that overall, the eight jurisdictions met most of the elements of the Action 14 minimum standard with respect to dispute resolution. Where deficiencies were identified, the Stage 2 monitoring reflects that most of the assessed jurisdictions have worked to address them. The Stage 2 reports for the batch 3 jurisdictions conclude that the assessed jurisdictions have addressed some or almost all of the deficiencies identified in Stage 1, with the exception of the Czech Republic and Spain.

European union

On 6 October 2020, the Council of the European Union (the Council or ECOFIN) updated the European Union (EU) list of non-cooperative jurisdictions for tax purposes (the EU List). The Council decided, by written procedure, to remove the Cayman Islands and Oman and add Anguilla and Barbados to Annex I (the so-called “Black” list) of the EU List as these Jurisdictions did not implement the tax reforms to which they had committed by the agreed deadline. The total number of jurisdictions now included in Annex I of the EU List is 12. As regards Annex II of the EU list (the so-called “Gray” list) and the state of play of pending commitments, the Council decided to extend several deadlines for these commitments due to the ongoing COVID-19 global pandemic. Also, the Council decided to remove two jurisdictions (Mongolia and Bosnia and Herzegovina) from Annex II which now contains 10 jurisdictions. The Council will continue to review and update the EU List biannually, with the next update due in February 2021.

European Commission requests feedback on proposed directive to transform EU’s VAT Committee into a ‘Comitology Committee’.

United Nations

On 10 October 2020, the United Nations prepared a progress note on the tax consequences of the digital economy, to include an amended version of the proposed Article 12B (Income from Automated Digital Services) UN Model Tax Convention (UN MTC). The progress note includes the proposed change in the definition of royalties, the reasons on why these changes were being proposed and the positions of some Committee members who opposed these changes. While the main substance of the original proposal was largely unchanged, there were several amendments:

- i. income from automated digital services is subject to the provisions of article 8 (International Shipping and Air Transport);
- ii. income from automated digital services has precedence over article 14 (independent personal services);
- iii. application of the profitability ratio of the beneficial owner's automated digital business segment to gross annual revenue from automated digital services; and
- iv. exclusion of payments qualifying as "royalties" under article 12 (Royalties) as income from automated digital services. The progress note also contains a short summary of the written and oral comments submitted by other members in preparation for, during and after a virtual meeting of the Subcommittee held on 25, 26 and 27 September.

At its 21st Session, to be held from 20-23 October and 26-29 October 2020, the UN Tax Committee has discussed the amended draft version of Article 12B UN MTC and take a decision on whether and if so how to take forward this work.

ATAF

On 30 September 2020, the African Tax Administration Forum (ATAF) released its Suggested Approach to Drafting Digital Services Tax (DST) Legislation that proposes a rate between 1% and 3% on gross annual digital services revenue earned by a company or an MNE in a country. The suggested DST Legislation proposes standard text that can be adopted by ATAF member countries in their domestic laws to tax highly digitalized businesses operating in those countries. According to the ATAF press release, "whilst efforts

continue to be made by the OECD Inclusive Framework to develop a consensus-based solution to address tax challenges arising from digitalization, the status to-date shows that a global solution is unlikely to be reached this year. This delay could cost African countries millions of dollars of tax to the ATAF membership who might wish to act now to address this potential risk. At their request ATAF has thus developed a Suggested Approach to Drafting Digital Sales Taxation as a guide."

Argentina

The Argentine Federal Tax Authorities have issued General Resolution No. 4815/2020 (published in the Official Gazette on 16 September 2020), which imposes a 35% reverse withholding tax on purchases of foreign currency without a specific purpose and certain goods and services outside of Argentina by Argentine residents.

Australia

On 6 October 2020, the Federal Treasurer presented the Australian Federal Budget 2020. Among other items, the Budget clarifies the circumstances in which a foreign incorporated company will be classified as an Australian tax resident for domestic income tax purposes. In order to qualify as an Australian tax resident, foreign entities need to have a significant economic connection with Australia as well as their central management and control in Australia. Taxpayers will have the option of applying the new rule retrospectively from 15 March 2017.

Further, the Budget announces that Australia will modernize and expand its tax treaty network to attract foreign investment and skilled workers.

On 1 October 2020, the Australian Taxation Office (ATO) published a Law Administration Practice Statement (PS LA 2020/2) to provide guidance to ATO staff on the process of applying the principal purpose

test (PPT) included in many of Australia's tax treaties.

Belgium

The coalition agreement of the new Belgian Government was finalized. Among others, the Government expresses strong support to the ongoing BEPS 2.0 negotiations and the introduction of a so-called minimum taxation for multinationals (as proposed under Pillar Two of the OECD Global Anti Base Erosion proposal, GLoBE). The Government also calls for a form of "digital taxation," preferably with an agreement on the international level (EU/OECD). The Government is planning to impose a Digital Services Tax by 2023 if an international agreement on such a tax cannot be reached.

Czech Republic

Czech Government proceeds with legislation on Digital Services Tax.

Denmark

On 7 October 2020, the Danish Minister of Taxation (re) published bill no. L 28 on international taxation. The bill is expected to be enacted before the end of 2020.

The main rules include a proposal to amend the definition of a permanent establishment (PE) to align it with the new definition set out in Article 5 of the OECD Model Convention (2017), inter alia broadening the agency PE rule and to establish an anti-fragmentation rule. The bill also proposes the possibility for Danish companies to deduct final losses incurred by their foreign subsidiaries subject to several conditions. In addition, the bill includes provisions that will significantly strengthen the Danish transfer pricing rules.

The Danish Government has also proposed amendments to the Danish Controlled Foreign Company (CFC) rules to implement the CFC rules of the ATAD into Danish law. In the latest draft, no substance test was included, however, the preparation of a bill is still in progress, and the content is not yet clear. A bill is expected to be presented in November 2020.

Egypt

On 19 October 2020, Law No. 206 of 2020 was published in Egypt's Official Gazette. The law introduces unified tax procedures for the assessment and collection of tax amounts that will be applied for income tax, value-added tax (VAT), state development tax, stamp duty and any other similar taxes. The law will apply to any procedures that were incomplete before 20 October 2020.

On 29 September 2020, the Egyptian Cabinet issued Law No. 199 of 2020 in the Official Gazette, which amends certain provisions of the Income Tax Law No. 91 of 2005 and Stamp Tax Law No. 111 of 1980 with respect to:

- Withholding tax on dividend distributions
- Capital gains tax
- Stamp tax

The law became effective on 30 September 2020.

India

On 13 October 2020, an Indian Court held that the dividend distribution tax (DDT) rates, prescribed under the Indian Domestic Tax Laws (DTL), on dividends paid to shareholders by an Indian company is required to be restricted to the rates prescribed under the applicable tax treaty, provided that the conditions for entitlement to treaty benefits are satisfied. The Tax Tribunal noted that when considering the rates for the taxation of dividend income under the India-Germany tax treaty (the tax treaty applicable to this case), it may not be relevant that the DDT is a liability of the payer company. DDT is levied on the dividend income of the shareholders, despite it being a tax "on the company" and not "on the shareholder." The legislative history of the DDT supports that the DDT is nothing more than a tax on dividend income recovered at a standard rate from the company for administrative convenience and a reduced compliance burden.

Ireland

Ireland issues Budget 2021.

Israel

Israel's Tax Authority releases draft bill to significantly amend transfer pricing rules and regulations.

Italy

Italy's Tax Authority rules reinsurance fees for Claims Handling Services are subject to VAT.

Japan

For the last several years, the National Tax Agency (NTA) of Japan's tax audit program has increasingly focused on the cross-border transactions of multinational enterprises. At the same time, with a view to strategically allocate the NTAs' audit resources, the NTA is taking a risk-based approach and has reviewed its transfer pricing audit program. This new tax audit approach has been strengthened as a result of the COVID-19 economic impact.

Kenya

Kenya's Cabinet Secretary for the National Treasury and Planning gazetted the Value Added Tax (Digital marketplace supply) Regulations 2020 on 10 September 2020. These Regulations aim at ensuring that Value Added Tax is charged on taxable services supplied in Kenya through the digital marketplace by Business to Customer transactions. The Regulations provide for a transition clause of six months from the date of publication (10 September).

Luxembourg

Luxembourg Tax Authorities publish XML schema and User Guide on submitting MDR reports.

Luxembourg Draft Budget Law 2021: Tax measures affecting individuals.

The Netherlands

On 5 October 2020, the Dutch government published further details on the legislative proposals that include a limitation on the annual utilization of tax loss carry forward for corporate income tax purposes and the extension of the carry forward term.

Norway

Norway proposes 15% withholding tax on interest, royalty and certain lease payments to related parties tax resident in a low-tax jurisdiction.

Oman

Oman ratified, on 14 September 2020, the automatic exchange of information (AEOI) through Royal Decree No. 118/2020 (RD 118/2020) to support the implementation of the Common Reporting Standard (CRS) developed by the OECD. On 17 September 2020, the Chairman of the Tax Authority issued Tax Authority Decision No. 78/2020 (TA Decision 78/2020) outlining related administrative rules.

Panama

The Panamanian National Assembly approved the MLI through Bill No. 357. For the ratification process to be complete, the approved bill will have to be sent to the President for his acceptance/signature and then be published at the Panamanian Official Gazette.

Peru

Peruvian tax authorities address merger of non-resident entities with one entity having a PE in Peru.

Peruvian Tax Court rules Peruvian payor may not consider double tax treaty benefits when determining withholding tax because the Certificate of Residency was issued retroactively.

Poland

Poland implements new charge on certain beverages from 1 January 2021.

The Polish Government submitted, in the framework of their plan to strengthen the Polish tax system, its bill to the Parliament.

Among others, the Government aims to impose on taxpayers with revenue exceeding €50 million in the preceding tax year and on tax consolidated groups regardless of their revenue, the obligation to prepare and publish information on the execution of their tax policy including information on the planned and realized business restructurings affecting their transfer pricing policy. The bill is expected to undergo the full legislative process by the end of November 2020.

Portugal

Portuguese Government submits Draft State Budget Law for 2021 to Parliament.

Russia

Russian Supreme Court addresses withholding tax on lease payments and classification for tax treaty purposes.

Saudi Arabia

On 5 October 2020, Saudi Arabia's General Authority of Zakat and Tax (GAZT) issued the "Initiatives Extension" guideline. The guideline extends the 2020 tax filing and payment deadlines by another three months until 31 December 2020.

Senegal

Senegal announced the resumption of oil and gas activities following the Covid-19 pandemic. The GTA agreement, a tax waiver agreement between Mauritania and Senegal, applicable in both countries and piloted by a joint unit has been implemented.

This agreement provides for an exemption from taxes and duties during the exploration phase of Senegalese - Mauritanian oil and gas to the benefit of oil companies and their

subcontractors and according to special mechanisms put in place by the two states.

South Africa

The OECD developed the Standard for the Automatic Exchange of Financial Account Information in Tax Matters. The Standard encompasses the Common Reporting Standard (CRS). Reporting Financial Institutions in participating jurisdictions are required to determine and report on financial account information of foreign tax residents to the financial institutions' local Tax Authority.

Such information is then automatically exchanged annually between jurisdictions where there is a treaty and a basis for such exchange (or retained by the local Tax Authority in the absence of a legal basis for exchange). On 9 October 2020, the South African Minister of Finance, Tito Mboweni, gazetted new regulations (reflecting changes to the CRS) required to enable South Africa to comply with its treaty obligations. These new regulations will repeal the 2 March 2016 regulations (that gives effect to the CRS in South Africa). The new regulations are expected to come into effect from 1 June 2021.

Spain

The Spanish Supreme Court (Tribunal Supremo) issued a decision (case number 1996/2019) on 23 September 2020, confirming the most recent case law regarding the limits on the dynamic interpretation of tax treaties. This decision is extremely relevant for the interpretation and application of tax treaties that have not been amended in line with the latest versions of the OECD Model Tax Convention (OECD MTC). In addition, it follows a case issued on 23 March 2020, which also addressed the interpretation of the Spain-Switzerland Tax Treaty.

On 16 October 2020, Spain published the law (Ley 4/2020) on Digital Services Tax (DST) in the Spanish Official Gazette. Its main features are similar to the DST initially

proposed by the European Commission in March 2018, with a rate of 3% imposed on gross income derived from certain digital services for which user participation is essential for creating value; namely, targeted online advertising, online intermediation services and the sale of user data. The Spanish DST is applicable only to companies with worldwide revenue of at least €750 million per year and with a total amount of taxable revenue obtained in Spain exceeding €3 million per year. The Spanish DST will be effective as of 16 January 2021. The Spanish Government has acknowledged that the ideal approach to address these tax challenges would be to find a multilateral, international solution within the OECD. Nevertheless, the Spanish Government also notes that, since the adoption and implementation of practical measures are taking a long time, the adoption of a unilateral interim measure is needed to address this issue.

Spanish Parliament approves law on Financial Transaction Tax.

Uruguay

Uruguayan tax authority extends estimated tax payment deadlines due to COVID-19.

Uruguay's tax authorities issued Resolution No. 1,716, expanding the corporate income tax exemption for income from software development services.

The Resolution expands the corporate income tax exemption for income from software development services by allowing 30% of the direct costs and expenses incurred outside Uruguay to be treated as incurred in Uruguay. This benefit applies only to tax years beginning from 1 January 2020 to 31 December 2020. The Resolution requires software providers to meet certain requirements to claim the exemption.

UK

UK issues new guidance on Brexit and UK imports.

USA

US IRS concludes anti-abuse rule under Section 704(c) triggered in asset contribution to foreign partnership.

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We are committed to pragmatic, effective solutions and tailor-made to enable you to ensure that you get the most out of your rapid reporting of these new measures, in accordance with the requirements of the various tax administrations involved.

Discover our newsletter

To provide you with a regular insight into international tax news, our experts invite you to discover the Fiscal Countdown, a concentrated report available in English and French on regulatory developments, particularly about the introduction of the OECD's BEPS initiative, which could impact your tax obligations.

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