Fiscal Countdown

Newsletter n°62 – June 2021

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 sixty second edition deals with the new measures published in June 2021 by the OECD, the EU, the ATAF, the IMF and in 36 countries: Argentina, Armenia, Australia, Bolivia, Brazil, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, France, Germany, Guatemala, Hong Kong, Hungary, Israel, Italy, Jordan, Kenya, Luxembourg, Malaysia, Malta, Mexico, Netherlands, Nigeria, Poland, Portugal, Qatar, Russia, Switzerland, Taiwan, Tanzania, Turkey, UAE, Ukraine, USA.

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OECD

The OECD has announced that 130 of the 139 Inclusive Framework members have agreed to revisions to its Two Pillar Proposal that bridge the gap between the October 2020 Blueprints and the deal reached between the G7 nations last month. The 5 page statement clarifies how a revised Pillar One will be re-focused on scale (an initial threshold of EUR 20 billion revenue, with a profit margin of 10%), whilst respecting previously agreed carve-outs for regulated financial services and extractive industries, and endorses the commitment to a global minimum tax of at least 15% under Pillar Two. There is much to absorb from the short statement as it resolves a number of questions, but leaves many more unanswered. Critically, this proposal appears to have the endorsement of the G20 nations, China and India in particular, and so our expectation is that the G20 Finance Ministers will lend their support to the proposals following the summit in Venice next week. A long summer of work awaits for the OECD and the Inclusive Framework as they will be charged with re-drafting the Blueprints to reflect the revised terms ahead of the next G20 Finance Minister meeting in October. There are still more challenges to come, notably 3 of the 9 dissenting members of the Inclusive Framework are EU Member States (Ireland, Estonia and Hungary) and a fourth, Cyprus, is not a member of the Inclusive Framework and has voiced concern over the global minimum tax proposal under Pillar Two. Given that the EU Commission appears to have endorsed the view that Pillar Two requires implementation via an EU Directive, a showdown on the requirement for unanimity for tax measures looks set to take place.

OECD releases Greece Stage 2 peer review report on implementation of Action 14 minimum standard.

The Finance Ministers and Central Bank Governors of the G7 countries met in London under the United Kingdom (UK) Presidency of the G7. The European Commission and the OECD Secretariat also participated in the meetings. BEPS 2.0 was one of the items on the agenda and a key announcement was made through a communiqué released after the meeting, expressing strong support for global tax changes under BEPS 2.0 and aimed at encouraging the negotiations among the 139 members of the G20/OECD Inclusive Framework on BEPS. The G7 leaders later endorsed this communique. With this communication, the G7 reinforces its commitment to continue the discussion to reach consensus on a global agreement regarding an equitable solution on the allocation of taxing rights, the removal of all Digital Services Taxes (DST) on all companies and an ambitious global minimum tax of at least 15% on a country-by-country basis, while expressing the importance of progressing agreement in parallel on both Pillars. It is important to note that the political forces motivating the G7 do not necessarily reflect all the political positions that are present in the full G20/OECD Inclusive Framework group. Given the perspectives and priorities of all the participant jurisdictions, it is difficult to predict whether an agreement will be reached in July or later in 2021 or what will be included in any agreement that is reached. However, even if no agreement is reached it is very likely that at least some countries or regions will move ahead with their own proposals which will likely draw on the BEPS 2.0 work.

European Union

The European Commission launched an extensive public consultation on the introduction of a new Directive to fight the use of shell entities and arrangements for tax purposes (ATAD III). This initiative will explore the most suitable options to ensure that legal entities and legal structures in the EU without a substantial business presence will not benefit from tax advantages. The consultation runs until 27 August. It allows the public to provide feedback through a questionnaire and to attach free-form comments.

On 1 June 2021, representatives of EU institutions, i.e., Council of the EU, the European Parliament and the European Commission, reached an agreement on the proposed public CbCR directive. The directive, initially proposed by the European Commission in 2016, requires both EU-based multinational enterprises (MNEs) and non-EU based MNEs doing business in the EU through a branch or subsidiary with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years to disclose publicly the income taxes paid in each Member State and other tax-related information such as a breakdown of profits, revenues and employees per country. The overall compromise package resulted in some changes to the proposal, including the disaggregate reporting obligation, the timing of the review clause and the transposition deadline. The duration of the safeguard clause, which allows companies to delay the publication of commercially sensitive information, remains five years. The proposal will now move forward to the formal adoption process in the Council and the European Parliament. Once adopted, Member States will have 18 months to transpose the directive into national law. The first financial year of reporting on income tax information will be the year starting on or after one year following the transposition deadline.

New e-commerce VAT rules take effect on 1 July.

ATAF

On 7 June 2021, African Tax Administration Forum (ATAF) published a revised Pillar One proposal to the OECD Inclusive Framework following the agreement of the G7 on 5 June. This follows an initial proposal that ATAF announced on 12 May 2021. The revised version proposes a single global threshold to cover all MNEs that generate global sales revenue above a certain amount. The new rule would apply to all such MNEs irrespective of their business activities. However, it would retain the current exclusions in the Pillar One blueprint and the Pillar One domestic revenue exclusion. ATAF further proposes that the reallocation of profits which is referred as “Amount D,” would be calculated as a portion of the MNE’s total profits instead of its residual profit. The quantum of Amount D would be a Return on Market Sales based on the Global Operating Margin of the MNE group using a tiered approach whereby the higher the Global Operating Margin of the MNE, the higher the Amount D would be. Amount D would be allocated to a market jurisdiction to the extent it exceeds the arm’s-length profits reported in the market jurisdiction for that period.

IMF

The International Monetary Fund published the document titled “Taxing Multinationals in Europe” whereby it analyzes the efficacy of European corporate tax systems and weaknesses that may lead to base erosion and profit shifting. The document reviews the performance of the Corporate Income Tax (CIT) in Europe over the past decades and the role played by MNEs in Europe. Further, the document analyzes corporate tax spillovers in Europe with a focus on the channels and magnitudes of both profit shifting and CIT competition. It also examines the progress made in European

CIT coordination and discusses reforms to strengthen the harmonization of corporate tax policies, to effectively reduce both tax competition and profit shifting. Finally, the document provides conclusions including the striking feature of the decline in statutory CIT rates in Europe and that MNE’s profits tend to be taxed less than profits of domestic peers.

Argentina

On 18 June 2021, the Argentine federal tax authorities published, in the Official Gazette, General Resolution 5010/2021 (GR 5010), which includes changes to the transfer pricing (TP) regulations established by General Resolution 4717/2020 (GR 4717), extends the due dates for TP filings and introduces a simplified regime for international transactions.

Argentina enacts law raising corporate income tax rates.

Armenia

Armenian tax authorities begin transfer pricing audits.

Australia

Australian Taxation Office issues draft tax ruling on expanding scope of royalty withholding tax on software related payments.

ATO publishes draft Practical Compliance Guideline for Intangibles Arrangements with international related parties published.

Bolivia

The Bolivian Congress presented a Bill to impose Value Added Tax (VAT) on digital services provided by nonresidents. The bill proposes a 13% VAT including the purchase of goods, downloads, supply of software and data storage, streaming of music, videos, videogames and advertising. The VAT would be triggered once the local user consumes or pays for the digital service to the nonresident. Thus, the nonresident should register with the Bolivian Tax Administration and remit the tax in US dollar currency. If the nonresident does not register with the Bolivian Tax Administration, financial intermediaries would withhold VAT from the payments made by users.

Brazil

Brazilian Government proposes changes to corporate income tax system as second phase of comprehensive tax reform.

The Brazil and Switzerland treaty for the avoidance of double taxation between the countries has been ratified by the Brazilian President's sanction.

Chile

Chilean tax authorities are evaluating foreign service providers’ compliance with recently enacted VAT on digital services.

On 11 June 2021, the Chilean tax authorities issued Resolution Ex. No. 58 of 2021, amending the regulations for complying with the local tax requirements to claim reduced withholding tax rates when a double tax treaty applies. The amendments are based on changes introduced by Law 21,210 of 2020.

Costa Rica

Costa Rican Congress approves, in second and final vote, a tax incentive regime for foreign investors, rentiers and retirees.

Cyprus

Cyprus extends non-application of penalties for DAC6 submissions until 30 September 2021.

Czech Republic

Czech Republic introduces Digital Services Tax.

Denmark

Denmark transposes Controlled Foreign Company (CFC) rules from ATAD into domestic law.

France

Non-EU VAT refund claims must be filed electronically effective 1 July 2021.

French Government issues draft Amending Finance Bill for 2021.

Germany

German Parliament advances several tax proposals.

Restrictions for partnerships to be controlled companies in VAT groups are inadmissible under EU VAT law.

Guatemala

Guatemala amends the Free Zone Law.

Hong Kong

Hong Kong enacts legislation to allow a tax deduction for foreign taxes charged on gross income basis.

Hong Kong enacts legislation regarding tax treatment of court-free amalgamation of companies.

Hungary

Hungary presents draft bill for introduction of tax on cryptocurrency transactions.

Israel

Israel and United Arab Emirates sign tax treaty.

Italy

Italy enacts exceptional 15% Notional Interest Deduction or equivalent tax credit for 2021.

Jordan

On 7 June 2021, the Hashemite Kingdom of Jordan published Regulations No. (40) of 2021 in the Official Gazette. The Regulations introduce, for the first time in Jordan, transfer pricing rules that will apply from 7 July 2021. Taxpayers engaged in transactions with related parties (including notional transactions between a branch and its head office) with an annual value exceeding JOD500,000 (approximately US$705,000) will need to prepare and maintain the following:

- A TP disclosure to be submitted with the annual income tax return
- A master file on the global business operations and TP policies of the taxpayer's multinational enterprise (MNE) group
- A local file containing information on all transactions with related parties

Members of an MNE group also need to submit a country-by-country (CbC) report within 12 months following the end of the group's tax period if the total consolidated revenue in the group financial statements exceeds JOD600m (approximately US$846m).

Based on the Regulations, it does not appear that taxpayers will have a filing requirement until 2022. However, the Minister of Finance still needs to issue Instructions to provide details about the new rules and their application. Nevertheless, Jordan-based entities should start reviewing their TP policies and related-party pricing arrangements so they will be able to meet their compliance requirements on a timely basis.

Kenya

Kenya proposes changes to Tax Appeals Tribunal Act, 2013.

Luxembourg

Luxembourg Tax Authority issues guidance on the "equity escape clause" under interest limitation rules.

Malaysia

Malaysia allows submission of CbCR notification through company tax return from 2021.

Malta

Malta amends beneficial owner definition and introduces penalties for CbCR reporting obligations.

Mexico

Mexico repeals VAT rule that exempted certain purchases of temporarily imported goods from nonresidents from VAT withholding.

Mexico's Tax Authorities publish list of expected effective income tax rates for large taxpayers.

Netherlands

Netherlands and Cyprus sign new double tax treaty.

Nigeria

Nigeria suspends CbCR obligations for branches and subsidiaries of MNEs in Nigeria.

Poland

On 14 June, the Polish Government announced that it plans to introduce a set of broad changes to the tax laws. Certain changes are aimed at attracting new investors and supporting the economy in a post-COVID-19 environment. The proposed amendments relate to areas which have been expected by investors and would have a positive impact on the attractiveness and predictability of long-term investments in Poland. The draft law has not been published yet and detailed assessment should be made after the proposed regulations are announced to the public.

Portugal

The deadline to comply with the obligation to submit the transfer pricing documentation has been postponed.

Qatar

Qatar's General Tax Authority (GTA) issued frequently asked questions (FAQs) providing further clarity on several matters relating to TP compliance and documentation requirements. The FAQs include guidance on the scope, content and timelines of the Master File and Local File, as well as practical examples. The FAQs provide additional clarifications on the definition of associated entities, and introduces the "Main TP Method"-principle. Moreover, the FAQs provide insights as to how the GTA will use different sources of information to verify compliance with the arm's-length principle, and how it will select cases for TP audit. As for the TP documentation, it should be prepared on a contemporaneous basis, meaning that the documentation to support the arm's-length nature of the pricing of related party transactions should be prepared at the time of the transaction. Further, a materiality threshold applies in case of an aggregate amount of QAR200,000 or more per category of related party transactions.

Russia

Russia announces denunciation of the double taxation treaty with the Netherlands.

Switzerland

On Friday 18 June 2021, the Swiss parliament accepted a bill which would see the Swiss issuance stamp tax on equity contributions abolished as per 1 January 2022.

Taiwan

Taiwan's draft amendments to domestic regulations governing application of tax treaties open for public comment.

Tanzania

Tanzania's Parliament passes Finance Bill, 2021.

Turkey

Turkey sets effective date for Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Turkey approves Multilateral Competent Authority Agreement on CbCR.

Turkey approves Tax Amnesty Law.

UAE

UAE amends VAT penalty rules.

Ukraine

The Parliament introduces VAT on digital services.

USA

On 15 June 2021, the United States Trade Representative and European Union, in a joint statement, announced a cooperative framework to address the 17-year large civil aircraft dispute. The statement pronounced that both sides would suspend all existing punitive tariffs imposed in relation to the large civil aircraft subsidies for a period of five years. The five-year suspension follows a joint announcement in March 2021 to postpone punitive measures for four months, which was designed to provide additional time for ongoing negotiations and set to expire on 11 July 2021. The new agreement for the five-year suspension will now go into effect on 11 July 2021 and will relieve punitive tariffs of 15 to 25% levied under Section 301 of the Trade Act of 1974 on EU-origin products.

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