

INTRODUCTION OF THE BEPS INITIATIVE AND INTERNATIONAL TAX NEWS

New tax measures in the OECD, in Europe and in 19 countries

> JULY 2016



INTRODUCTION

This third edition of the Fiscal Countdown deals with the new measures released in July by the OECD, the EU and by 19 countries: Australia, Austria, China, Denmark, France, Hong Kong, Hungary, India, Indonesia, Ireland, Liechtenstein, Netherlands, New Zealand, Russia, Rwanda, Singapore, South Africa, the UK and the US.

These measures shall impact your tax obligations on a short or mid-term basis.

OECD

The **OECD released additional guidance aimed at the consistent implementation of Country-by-Country (CbC) reporting** under Action 13 of the BEPS Action Plan. The guidance is in the form of question and answers, and addresses four topics:

- Transitional filing options for multinational enterprises (MNEs) that voluntarily file in the parent jurisdiction
- Guidance on the application of CbC reporting to investment funds
- Guidance on the application of CbC reporting to partnerships
- The impact of exchange rate fluctuations on the agreed €750 million filing threshold for MNE groups

EUROPE

Anti-Tax Avoidance Directive

The Economic and Financial Affairs Council of the European Union (ECOFIN), formally **adopted the Anti-Tax Avoidance Directive (ATAD)**.

European Commission : new measures to fight tax evasion

The European Commission published a communication on further measures to **enhance transparency and fight tax evasion and avoidance**. Moreover the Commission proposed amendments to the Directive on Administrative Cooperation in the field of taxation to ensure that **tax authorities in EU Member States are given access to the data provided under the European Union's Anti-Money Laundering Directive**, namely customer due diligence information and information in the national beneficiary ownership registries. Furthermore, the Commission announced that it started to examine which legal framework is most appropriate for Member States to **automatically exchange their national information on beneficial owners of companies and trusts**. The Commission also presented its **External Strategy for Effective Taxation**. Part of this strategy in relation to non-EU Member States is the **establishment of a list of third countries that do not respect the tax good governance standards**. Together with the Council's Code of Conduct Group, the Commission is now working to identify the most relevant countries to screen under this process, in order to have a first EU list ready in 2017. The Commission also suggested to **implement measures to discourage the promoters and enablers of tax evasion and avoidance**.

AUSTRALIA

A final version of the Local TP File was released. It is required for income years starting on or after 1 January 2016, and will require a more granular disclosure of the nature of certain transactions such as derivatives and intangible property. Further steps from here will be for the ATO to release the XML schema defining the form of the electronic form of the Local File, and to progress work on practical details of the instructions and definitions (e.g., such as where there is one relevant agreement that can be provided in place of a tranche of individual agreements). Moreover, the **current OECD transfer pricing guidelines are effective in Australia with application from 1 July 2016.**

AUSTRIA

A bill including the new Austrian Transfer Pricing Documentation Law was published. The TPDL contains significant amendments including: **Constituent entities resident in Austria need to prepare a Master File and a Local File if their turnover in the previous two fiscal years exceeded €50 million;** the entire documentation package has to be prepared in German or in English. The **penalty for not filing the CBCR in time or filing the required items incorrectly was reduced to €50,000 for intent.**

CHINA

China's expanded transfer pricing reporting requirements for MNEs effective in 2016:

A value chain analysis will be required. It must include an explanation of the activities of all related parties in the value chain as well as an analysis of the allocation of profits among them. The value-chain analysis must **describe the physical flow of goods and cash within the group,** as well as **allocation principles** used and the **actual results of group profit allocations** among the members of the global value chain. Each of the group entities involved in the value chain must provide annual financial statements.

A local file is required for companies with:

- Tangible asset transfers of at least 200 million yuan (\$27 million); or
- Financial asset transfers of at least 100 million yuan; or
- Intangible asset transfers of at least 100 million yuan; or
- Other related-party transactions of at least 40 million yuan.

The local file must address the impact of location-specific factors and market premiums on the pricing of transactions and the portion of value creation from location specific factors shared by the enterprise. Moreover the local file must include an equity transfer analysis that includes the background on the transfer, the participants, date, price, payment method and other factors that affect the equity transfer. What is more the related-party services analysis must include the benefits for each party from the service transactions, the method for determining the service cost, service items, service amount, allocation standards, calculation process and results, as well as the information on any same or similar service transactions the enterprise and its group enters into with third parties. Furthermore, regarding the selected transfer pricing method, including the comparable uncontrolled transaction method, the Chinese enterprise must explain its contribution to the group's overall profit or residual profit.

A Master file will be required. It will have to have 5 parts and 18 sub-parts. The China format matches the OECD format so it is likely that the global master file should basically suffice for China. A MNE needs to submit a master file if its parent has already prepared a master file, or if the total amount of related-party transactions of the enterprise exceeds 1 billion yuan. The master file should be completed within 12 months of the close of the same fiscal year of the group's ultimate holding company.

A CBCR becomes due. The CBCR applies to MNEs with Chinese headquarters, applying a threshold of 5.5 billion yuan. China will accept surrogate filings. The tax authorities can request the report from the local affiliate in an audit when the parent country requires a CBCR and:

- China has no exchange agreement with the country;
- The parent company failed to file with its home country; or
- The country's exchange mechanism fails.

If the ultimate parent company of a MNE is a Chinese tax resident and the information may be relevant to national security, then part or all of the country-by-country report can be deemed exempt from filing.

DENMARK

Denmark announced its decision to apply the compulsory and spontaneous exchange of information of rulings and Advanced Pricing Agreements (APAs) issued on or after 1 January 2010, provided that they were valid as of 1 January 2014. Furthermore, the exchange requirements apply

for rulings and/or APAs settled on or after 1 April 2016. Exchanges must be finalized by the end of 2016.

FRANCE

A Bill was adopted in first reading by the Parliament and the Senate. It includes a public country by country reporting (CBCR) for:

- French companies with consolidated turnover equal or superior to € 750 million;
- French subsidiaries and branches of foreign groups or companies realizing a turnover of over € 750 million;
- Any subsidiary or French branch created in order to escape the obligation to publish CBCR.

The bill provides that the following information shall become public: a brief description of the nature of activities, the number of employees, the net revenue, the income before income taxes, the accrued CIT for the current year, the paid CIT and the retained earnings.

The data will be presented separately for each of the following countries:

- Member States of the European Union,
- Non cooperative tax jurisdictions on the list that will be defined by the EU,
- Other tax jurisdictions, subject to the presence of a minimum number of related companies that will be defined by decree.
- Otherwise the data will be presented in aggregate form.

The Auditors would review the report. This obligation would become effective at the latest on Jan 1, 2018.

It is to be stressed that this new obligation is now part of the group's financial communication in France, and more widely in the EU. In this context a **specific attention should be paid to alternative risk transfer schemes including SPV such as insurance, reinsurance captives, deductible funds...** Indeed, it may be expected that in certain situations these schemes would be revealed by the CBCR for the first time to employees, investors, shareholders (including when shares are held by the Public Treasury), tax authorities. **Over the potential tax risk intrinsic to these schemes, the reputation of the groups concerned is also worth to be considered.**

HONG KONG

Hong Kong announced that it will **join the OECD as an**

Associate in the inclusive framework for implementation of the package of measures against BEPS.

HUNGARY

The **Hungarian intellectual property (IP) regime was amended.** The amendments are in line with the modified nexus approach set forth by the OECD. Under the new set of rules, a 50% deduction is available in respect of qualifying IP income and research and development (R&D) expense.

INDIA

India issued a notification providing for **grandfathering of income from the transfer of investments** made before 1 April 2017 from the application of **the new domestic general anti-avoidance rule (GAAR)** and to specify that the GAAR will apply to tax benefits obtained on or after 1 April 2017.

INDONESIA

Indonesia announced that it has formed a team that will **focus on taxation of e-commerce activities.**

IRELAND

A guidelines about a **formal bilateral advance pricing agreement (APA) program effective from 1 July 2016** was published. Moreover, 33 frequently asked questions on the CBCR were released.

LIECHTENSTEIN

A consultation procedure on the implementation of CBCR and the multilateral agreement on the exchange of CBCR was initiated. The CBCR will need to be filed by Liechtenstein headquartered multinational groups with an annual consolidated group revenue of at least CHF900 million.

The draft legislation also includes a secondary filing mechanism according to which the Liechtenstein tax authorities can, under certain circumstances, require a Liechtenstein constituent entity of a foreign parent multinational to file a CBCR in Liechtenstein.

Subject to certain conditions, the draft legislation further provides the option to appoint a foreign constituent entity as the surrogate parent entity that would file the CBCR in its country of residence on behalf of the group.

The CBCR may be filed in either German or English with

figures in Swiss Francs or in the functional currency of the group.

The new CBCR will be required for fiscal years beginning on or after 1 January 2017, and should be filed within 12 months following the end of the reporting period. Non-compliance with the CbC reporting obligation may be **subject to a penalty of up to CHF250,000**. Moreover qualifying multinational enterprises will be required to **prepare a Master File and a Local File**.

NETHERLANDS

The Dutch Government released its proposed **amendments to existing interest limitation rules specifically targeting base erosion through interest deductions arising from related party and acquisition financing**. Under the proposed rules, the definition of a "related party" is expanded to also include a company that is part of a cooperating group of companies holding a total combined interest of at least one third in a Dutch company (cooperating group), and addresses certain loopholes that are perceived as circumventing the effective application of the leveraged buy-out rules.

NEW ZEALAND

New Zealand has indicated the following developments are probable:

- **Introduction of hybrid mismatch rules**
- **Stronger interest limitation rules**
- Confirmation of New Zealand's intention to **sign-up to the OECD's Multilateral Instrument in December 2016**
- **Improvement of transparency and exchange of information** – requiring large New Zealand-based multinationals to prepare CbC reports, including the allocation of income and taxes paid.

RUSSIA

The Russian State Duma passed a law that provides new VAT rules for electronic services.

Electronic services include the following services:

- Supply of computer programs via the Internet
- Provision of rights to use computer games
- Provision of advertising services via the Internet
- Provision of services involving posting of offers to buy (sell) goods (work and services) and property rights in

the Internet

- Provision and (or) maintenance of a commercial or personal presence in the Internet
- Storage and processing of information in the Internet
- Provision of hosting services
- Sale of electronic books
- Images or musical works via the Internet
- Provision of access to the Internet search systems

According to the new place of supply rules, electronic services are to be taxed with VAT at the location of a buyer.

RWANDA

As part of the budget, it is proposed that **Taxpayers would be required to submit TP documentation** along with their annual corporate income tax returns and prepare a TP policy detailing transactions with related entities. Additionally, the budget proposes to impose a fine of 2% of turnover for failure to comply with contemporaneous filing requirements of TP documentation.

SINGAPORE

A public consultation was launched about the CBCR.

SOUTH AFRICA

South Africa released proposed **amendments to the hybrid debt instrument provisions and hybrid equity instrument provisions**.

UNITED KINGDOM

HMRC issued guidance about the publication of the tax strategy of companies, partnerships, groups or sub-groups with either a turnover above £200 million or balance sheet over £2 billion.

The guidance provides among other things that the **strategy should explain the business's tax arrangements**, though no need to include amounts of tax paid or commercially sensitive information. The strategy should also **include what tax risks are linked to the business's size, complexity and any changes to the business**. Regarding tax planning, the guidance provides that the report should also contain an outline of the **tax planning motives and the importance of each to the tax strategy**.

The tax strategy must be available free of charge on the internet as either a separate document and/or a self-contained part of a wider document.

Moreover, new clauses were added to the Finance Bill to **widen the scope of withholding tax on royalties.**

USA

The Internal Revenue Service (IRS) released final regulations on CBCR.

The Final Regulations apply to reporting periods of ultimate parent entities of US MNEs that begin on or after the first day of the tax year of the ultimate parent entity that begins on or after 30 June 2016.

Under the Final Regulations, ultimate parent entities of a US MNE group with annual revenue of \$850 million or more for the immediately preceding accounting period must file Form 8975, "Country-by-Country Report," containing information, on a country-by-country basis, related to the US MNE group's income and taxes paid, together with certain indicators of economic activity within the US MNE group.

In the preamble to the Final Regulations (the Preamble), Treasury and the IRS announced their intention to allow voluntary CBCR, under guidance to be published separately, for reporting periods that begin on or after 1 January 2016, and before the applicable date of the Final Regulations.

MAZARS IS AN INTERNATIONAL, INTEGRATED AND INDEPENDENT ORGANISATION, SPECIALISING IN AUDIT, ACCOUNTANCY, TAX, LEGAL AND ADVISORY SERVICES. AS OF 1ST JANUARY 2016, MAZARS OPERATES THROUGHOUT THE 77 COUNTRIES THAT MAKE UP ITS INTEGRATED PARTNERSHIP. WE DRAW ON THE EXPERTISE OF 17,000 PROFESSIONALS TO ASSIST MAJOR INTERNATIONAL GROUPS, SMES, PRIVATE INVESTORS AND PUBLIC BODIES AT EVERY STAGE OF THEIR DEVELOPMENT.

MARCAN IS THE FRENCH LAW FIRM MEMBER OF MAZARS, SPECIALIZED IN BUSINESS LAW AND TAX. ITS TEAM ARE LOCATED IN PARIS, LA DÉFENSE, STRASBOURG AND LILLE. MARCAN IS ALSO MEMBER OF MARCALLIANCE, AN INTERNATIONAL ALLIANCE OF INDEPENDENT LAWYERS. FROM SEPTEMBER 2016, MARCAN BECOMES MAZARS SOCIÉTÉ D'AVOCATS.

CONTACTS

Frédéric Barat

Partner
Mazars
Tel. : +33 1 49 97 45 86
E-mail : frederic.barat@mazars.fr

Pascal Luquet

Partner, Lawyer
Marcan
Tel. : +33 1 49 97 48 32
E-mail : pascal.luquet@marcan.com

Frédéric Martineau

Partner, Lawyer
Marcan
Tel. : +33 1 49 97 36 40
E-mail : frederic.martineau@marcan.com