

# INTRODUCTION ON THE BEPS INITIATIVE AND INTERNATIONAL TAX NEWS

Discover the latest tax measures from around the world

> MARCH 2017



## INTRODUCTION

This eleventh edition of the **Fiscal Countdown** deals with new measures released in March by the OECD, the European Union and in 22 countries: Angola, Argentina, Australia, Canada, Colombia, Germany, Hong Kong, India, Italy, Kenya, Norway, New Zealand, Panama, Russia, Saudi Arabia, South Africa, Sweden, Switzerland, Taiwan, UAE, the UK, Vietnam. These measures shall impact your tax obligations on a short or mid-term basis.

### OECD

The OECD Secretary-General sent tax update to G20 Finance Ministers, including IMF/OECD report on Tax Certainty

On 6 March 2017, Malaysia became a member of the BEPS inclusive framework.

### EU

The Court of Justice of the European Union released two Advocate General (AG) opinions on the operation of the EU Value Added Tax (VAT) cost sharing exemption (CSE). EU Member States have interpreted and implemented the CSE rules differently, leading to complexities, particularly where services flow cross-border. In summary, the AG has, among other points, opined that the CSE cannot apply to financial services institutions and that the exact reimbursement test is automatically failed where transfer pricing requires a "mark-up".

### ANGOLA

The government published a new regulation covering the professional activities of foreign employees in Angola including the maximum number of foreign national employees that local companies may hire, the length of their employment and certain rules concerning their compensation packages.

### ARGENTINA

Argentina eliminates Early Declaration System for Services and Early Declaration for Payments Abroad.

### AUSTRALIA

The ATO issued guidance on the provision of International Related Party (IRP) agreements to be provided in the local file for Country-by-Country (CbC) reporting. The rules in this guidance seek to facilitate a balance between the function of the local file and the compliance cost in providing the IRP agreements in Part B of the local file. Copies of IRP agreements generally need to be provided in Part B of the local file for the transactions shown in Part A of the local file

(in relation to controlled transactions with IRPs) unless the transactions are covered by the Exclusions List (including low value service agreements or the issuance of ordinary shares, etc.).

## CANADA

The Canada Revenue Agency (CRA) released Guide RC4651 on THE CbCR, a new filing obligation for multinational enterprise (MNE) groups with consolidated revenues of €750m or more. The guidance follows the CRA's recent release of Form RC4649 for the CbCR which will be required for fiscal years beginning on or after 1 January 2016.

## COLOMBIA

Colombia introduced the three-tiered approach to transfer pricing documentation developed as part of Action 13 of the OECD's BEPS project, consisting of a CbC report, Master File and Local File. In contrast to the original draft, the enacted Law provides rules for local filing according to which MNE groups not resident in Colombia are required to file a CBC report under the circumstances where the entities jointly have a participation equal to or higher than 20% of the consolidated revenue, the parent company has not filed the CbC report in its home country and the group has consolidated revenues equal to or exceeding COP 2.3 billion in the previous tax year. Furthermore, the Law does not contain provisions on the filing, forms, notification obligation, periods or conditions for CBC, master file and local file reporting. Those aspects will be the subject of regulations to be issued by the Government. Furthermore, the CbCR and local file requirements apply from 1 January 2016. The law does not expressly establish the date that Master File requirements would apply, it is expected that this aspect will be included in the pending regulations.

## GERMANY

The Ministry of Finance issued a final version of Administrative Principles on the Profit Attribution to Permanent Establishments

## HONG KONG

Hong Kong's 2017-18 Budget proposed to provide a dedicated tax regime offering incentives to qualifying aircraft lessors (QALs) and qualifying aircraft leasing managers (QALMs) in Hong Kong

## INDIA

India's Union Cabinet approves four Central GST laws for their passage in Parliament.

In a recent ruling, an Indian tax tribunal held that activities of international assignees in the nature of negotiations, marketing, sales and the use of business premises of a liaison office created a taxable presence in India for the non-Indian employer of those assignees.

## ITALY

The Ministry of Finance issued a decree providing detailed information regarding the application of CbC reporting rules. Further instructions on the submission mechanism and other clarifications will be provided in operational instructions to be issued by the Italian Revenue Agency.

## KENYA

Kenya Revenue Authority to disallow tax invoices not recognized by iTAX system for VAT purposes.

Kenya Revenue Authority issues guidelines on tax amnesty on foreign income.

## NORWAY

A proposal for public consultation, introducing amendments to the domestic tax residency rule was released. The proposed changes affect both Norwegian and foreign companies and include:

- A company incorporated in Norway will be regarded as tax resident in Norway.
- A foreign company with its place of effective management in Norway will still be regarded as tax resident in Norway. The proposal, aligns the interpretation of the term "place of effective management" with the OECD definition providing that the place of the day-to-day management is increasingly important.
- A company is nevertheless not to be considered as tax resident in Norway if it is tax resident in another country according to the rules of a tax treaty entered into between that country and Norway. However, such company will be required to file a Norwegian tax return.

## NEW ZEALAND

The New Zealand Government released three consultation papers proposing new measures to strengthen New Zealand's rules for taxing large multinationals. The proposals are far reaching and if enacted would put New Zealand at the forefront of countries implementing the G20/OECD BEPS recommendations.

## PANAMA

Panama ratified OECD's convention on Mutual Administrative Assistance in Tax Matters.

## RUSSIA

The Finance Ministry presented for public discussion a new version of the draft law aimed at the introduction of documentation requirements for multinational enterprises in accordance with the OECD's BEPS Action 13 on CbCR.

The Finance Ministry also published a draft Procedure outlining the process for handling multilateral Advanced Pricing Agreements (APAs).

## SAUDI ARABIA

Saudi Tax Authority adopted strict assessment of permanent establishments relating to service providers and agents. Saudi Arabia issued Zakat Implementing Regulations as well as excise tax regulations

## SOUTH AFRICA

The Minister of Finance proposed amendments to the policy governing the export of intellectual property (IP). Further proposals were also made to lift the "loop structure" restrictions which currently prohibit residents from holding any South African asset through a nonresident entity, provided transactions are at arm's length.

## SWEDEN

The Parliament passed new legislation on transfer pricing documentation including CbCR, Master File and Local File. An automatic exchange of the CbCR among the tax authorities within the European Union (EU) and with jurisdictions which have signed the multilateral treaty is also included. The new rules, which will come into effect on 1 April 2017. The rules regarding CbCR will be applied for financial years beginning after 31 December 2015 whereas the documentation

requirements will be applied for financial years beginning after 31 March 2017. The Notification relating to the CbCR will have to be filed by April 30, 2017.

## SWITZERLAND

The Swiss Federal Tax Administration (SFTA) recently issued the final guidelines on the Standard for the Automatic Exchange of Information (AEOI). Under the AEOI, Swiss financial institutions will start collecting information as of 1 January 2017 and report such information to the SFTA. The SFTA will then exchange this information with its partner countries as of 1 January 2018. Consequently, the Swiss bank secrecy provisions will remain applicable only in domestic circumstances going forward. Furthermore, Swiss and foreign entities might face compliance duties as well as reporting obligations under this standard. Therefore, as a new instrument for international tax transparency, the AEOI will have an important impact on both private individuals and entities in Switzerland that have an international structure with respect to their financial assets.

## TAIWAN

Taiwan issues new tax guidelines on cross-border e-commerce transactions. Under the Draft Amendments, foreign suppliers selling e-commerce services to Taiwanese individual purchasers must register for business and pay VAT directly or indirectly through appointment of a tax-filing agent.

## UAE

The UAE (and some unnamed other Gulf Cooperation Council (GCC) Member States) confirmed that they are on track to implement VAT from 1 January 2018, and that they expects to release the domestic VAT Law before the end of the first half of 2017, with detailed Executive Regulations to follow shortly after. Under the GCC VAT Framework Agreement Member States who do not commence on 1 January 2018 will have up to one year to introduce VAT.

## THE UK

The 2017 Finance Bill, introduces new rules governing corporate interest relief, the use of corporation tax losses and the reform of the substantial shareholding exemption. The Bill also includes tax law changes that will impact international assignees moving to the UK or returning from abroad.

## VIETNAM

Vietnam adopted the Decree on tax administration of enterprises with related party transactions. The Decree, adopts the three-tiered approach to transfer pricing (TP) documentation developed as part of Action 13 (CbC reporting, Master File and Local File). Further, the Decree requires taxpayers to prepare their TP documentation before the submission of their tax return. In addition, taxpayers are required to submit their TP documentation to the tax authorities within 15 working days upon the tax authority's request in case of tax/TP audit. Further details on TP documentation are awaited. Moreover, with respect to deductibility of interest expense, the Decree provides that the total deductible interest expenses paid to related parties in a tax period must not exceed 20% of EBITDA. This decree is effective from 1 May 2017.



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