

INTRODUCTION OF THE BEPS INITIATIVE AND INTERNATIONAL TAX NEWS

June 2018



International Tax

INTRODUCTION

The **Fiscal Count down**, 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 Twenty sixth edition deals with the new measures published in June by the OECD, European union the UN and in 36 countries: Angola, Australia, Bahamas, Brazil, Canada, Chile, Denmark, Egypt, France, Hong Kong, India, Ireland, Italy, Japan, Kenya, Luxembourg, Malta, Mexico, Nigeria, Netherlands, Panama, Peru, Philippines, Poland, Romania, Russia, Singapore, Slovenia, Sweden, Tanzania, Thailand, Turkey, UAE, UK Uruguay and the USA. A focus on the multilateral instrument and its impact is added this month.

OECD

Serbia, Kazakhstan, Peru and the UAE just signed the *MLI to Implement Tax Treaty Related Measures to Prevent BEPS*. Based on the current overall positions, it is expected that over 1,300 tax treaties will be modified based on matching of the specific provisions that jurisdictions wish to add or change within the CTAs nominated by signatories. The three new signatories listed a total of 175 tax treaties.

The OECD released the first annual peer review report (the Report) relating to the compliance by members of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) of the minimum standard on Action 13 (*Transfer Pricing Documentation and Country-by-Country Reporting*) with a focus on the domestic legal and administrative framework. The Report also comments on certain aspects relating to the exchange of information framework as well as the confidentiality and appropriate use of Country-by-Country (CbC) reports.

The OECD also released two reports containing *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles*, under Base Erosion and Profit Shifting (BEPS) Action 8 and *Revised Guidance on the Application of the Transactional Profit Split Method*, under

OECD (CONTINUED)

BEPS Action 10. The guidance on the profit split method has been formally incorporated in the OECD Transfer Pricing Guidelines, replacing the previous text on the transactional profit split method. Although it retains the basic premise for when the profit split method should be applied, it expands the guidance including many examples.

OECD Secretary-General Angel Gurría told members of the European Parliament this week that his organization is not in competition with the European Union (EU) in regard to digital taxation, but asked that the EU not create short-term measures that will impede long-term digital tax solutions. The OECD earlier announced it would release a digital taxation report in 2020, but Gurría indicated the OECD report could be released in 2019. The European Commission on 21 March released two proposals for new Directives that would provide new ways to tax digitalized forms of business activity. The Commission's controversial proposals included a two-phased approach: an interim solution, referred to as the Digital Services Tax and a longer term *Council Directive laying down rules relating to the corporate taxation of a significant digital presence*.

UN

The 2017 United Nations (UN) Model Double Taxation Convention between developed and developing countries (2017 UN MTC) became available.

The 2017 UN MTC incorporates the treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits under inappropriate circumstances), and Action 7 (preventing the artificial avoidance of permanent establishment status).

EU

On 5 June 2018, the Council of the European Union (EU) Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU with respect to mandatory automatic exchange of

EU (CONTINUED)

information in the field of taxation in relation to reportable cross-border arrangements (the Directive) was published in the *Official Journal of the European Union*. The Directive will enter into force 20 days after its publication. This means that the Directive will enter into force on 25 June 2018. The Directive will also have an impact on Swiss businesses as certain corporate transactions with EU-based taxpayers will be in scope of the rules – meaning that the transaction will have to be disclosed to the tax authorities of the relevant EU member state.

The European Commission adopted a proposal for a European Council directive amending Directive 2006/112/EC as regards the introduction of detailed technical measures for the operation of a definitive VAT system for the taxation of trade between European Union member states. The proposal is a part of the Commission's broader Action Plan on VAT, which is intended to consist of gradual steps in a move towards a single European VAT area.

The European Parliament released an interview with Petr Ježek, the chair of the EU's new Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance. In the interview, Mr. Ježek emphasized that the committee "will also look into how to tax the digital economy," stating that "current law doesn't enable the digital economy to be taxed at the level at which it should be. Some American digital companies make more than half of their revenues outside the US, but are almost exclusively taxed there."

On 21 June 2018, the Court of Justice of the European Union (CJEU) decided case C-480/16, Fidelity Funds, and held that Danish tax law was incompatible with the free movement of capital in Article 63 of the Treaty on the Functioning of the EU (TFEU), because nonresident undertakings for collective investment in transferrable securities (UCITS) were not granted exemption from dividend withholding tax (WHT) on portfolio shares in Danish companies.

ANGOLA

Angola to implement VAT in 2019.

AUSTRALIA

On 24 May 2018, Australia introduced Treasury Laws Amendment (Tax Integrity and Other Measures No.2) Bill 2018 (the Bill). The Bill contains the hybrid mismatch measures previously included in the draft law released during November 2017 and March 2018.

Australia issues draft tax guidance on restructures of hybrid mismatch arrangements and the impact of tax avoidance rules.

Australia issues guidance on foreign companies' central management and control test of Australian residency.

BAHAMAS

Bahamian House of Assembly passes 2018/19 Budget to increase VAT rate.

BRAZIL

Brazil and Singapore sign treaty for the avoidance of double taxation.

CANADA

Canada to impose retaliatory tariffs on certain US origin products starting 1 July 2018.

CHILE

A taxpayer recently requested a ruling from the Tax Department on the treatment of gains from cryptocurrency transactions for income and value added tax (VAT) purposes, as cryptocurrencies are not specifically regulated in Chile or recognised as legal tender or foreign currency.

DENMARK

Denmark publishes draft bill to implement EU ATAD.

The Danish specialist tax regime has been amended with effect from 1 January 2018.

EGYPT

Egypt amends income tax law related to transfer pricing rules and electronic filing of tax returns.

FRANCE

France cuts cryptocurrency tax rate.

France and Germany publish common position paper on Common Corporate Tax Base.

HONG KONG

Hong Kong signs income tax treaty with Finland.

Hong Kong introduces an enhanced tax deduction regime for qualifying R&D expenditures.

INDIA

Indian Tax Administration invites public comments on proposal to amend rules on "secondary adjustment" provisions under APA and MAP.

IRELAND

The Irish Funds FATCA/CRS Working Group updated the Irish Funds FATCA and CRS self-certification forms for both individuals and entities.

ITALY

Italian government fully aligns its transfer pricing rules with

ITALY (CONTINUED)

international standards, transfer pricing risks are becoming increasingly relevant for the Italian tax authority and for multinational enterprises with Italian operations. With particular reference to the latter, recent history has shown that correct management of transfer pricing risks is indeed crucial, from both a corporate governance and a reputational perspective.

JAPAN

Japan passes bill on multilateral instrument.

KENYA

Kenya issues 2018/2019 budget.

LUXEMBOURG

Luxembourg-Cyprus double tax treaty enters into force.

Luxembourg to introduce a VAT group regime as of 31 July 2018.

Luxembourg tax authorities issued a new circular "Circular LG – A n.64 relating to the defensive measures in relation to the EU list of non-cooperative jurisdictions for tax purposes" (the Circular). The Circular follows the adoption by the EU Council of said EU list of non-cooperative jurisdictions for tax purposes (the List) as documented by the conclusions taken on 5 December 2017 (the 2017 Conclusions) and before that in the framework of the Council Conclusions of 8 November 2016 on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes (the 2016 Conclusions).

Luxembourg publishes draft law implementing EU Anti-Tax Avoidance Directive.

Luxembourg Government adopts draft laws implementing Multilateral Instrument.

MALTA

Malta introduces VAT grouping and increases VAT registration threshold for small undertakings.

The Maltese Government has recently confirmed its commitment towards the Shipping and Maritime cluster through the recently introduced Legal Notice 140 of 2018 aimed at attracting Ship and Yacht Management activities to Malta.

MEXICO

On June 1st, 2018, several amendments to the Federal Fiscal Code have been approved by the Federal Executive with.

MEXICO (CONTINUED)

respect to the transfer of tax losses. In this regard, a new anti-abuse rule regarding the transfer of tax losses was added to the Code in the context of business restructures

NIGERIA

Nigerian Government approves Executive Orders and Amendment Bills for tax law reform.

NETHERLANDS

Dutch Government publishes draft legislation amending fiscal unity regime to be in line with EU freedom of establishment.

PANAMA

Panama issues its list of reportable jurisdictions for CRS purposes.

PERU

In Supreme Resolution 119-2018-RE (issued 22 June 2018), the Peruvian Government granted the Minister of Economics the power to sign, on behalf of Peru, the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (Multilateral Instrument – MLI). The action marks Peru's first official announcement of its intent to sign the MLI. Previously, Peru had not taken an official position on the issue.

PHILIPPINES

Philippines-Sri Lanka Income Tax Treaty enters into force.

Revised Philippines-Thailand Tax Treaty enters into force.

POLAND

A new Act is to come into force on 14 June on Support for New Investments (creating the "Polish Investment Zone") under which it will be possible to recover a major portion of outlays incurred for new investments (up to 70%).

ROMANIA

Certain amendments to the Tax Code Norms were published in the *Official Gazette*. The amendments contain, among others, measures for the implementation of the EU Anti-Tax Avoidance Directive (ATAD), specifically regarding the deductibility of exceeding borrowing costs.

RUSSIA

"Three-tier" transfer pricing documentation e-formats approved in Russia.

The Russian Federal Tax Service recently issued its new guidance summarizing Russian court practice on applying the Russian beneficial ownership rules (the "Letter"). This guidance significantly increases requirements for foreign recipients of Russian source income in order to qualify as beneficial owners

RUSSIA (CONTINUED)

eligible for tax treaty benefits. Although intended as an anti-avoidance measure, this new approach may negatively affect many proper holding and treasury companies, dramatically increasing substance requirements and forcing extensive disclosure.

SINGAPORE

On 4 May 2018, the legislation on the IP income carve-out from Singapore's existing incentive regimes was published, after extensive consultations with companies, tax advisors as well as the OECD. While the legislation on the IDI itself has not yet been released, it is important for companies to start assessing the impact arising from the above IP income carve-out provisions, which are effective from 1 July 2018, and determine if clarifications from the relevant authorities may be required.

SLOVENIA

The Ministry of Finance of the Republic of Slovenia released clarifications on the mutual agreement procedure (MAP) laid down in the MAP provision of Slovenia's tax treaty network. The clarification provides detail in the following areas: (i) general information on MAP; (ii) rules on filing a MAP request; (iii) description of the MAP; (iv) MAP technical steps; and (v) implementation of the MAP agreement.

SWEDEN

Sweden enacts major corporate income tax changes.

TANZANIA

Tanzania issues 2018/19 budget.

THAILAND

Thailand amends tax incentives for International Headquarters regime.

TURKEY

Turkish law introducing 5% tax on revaluated real estate enters into force.

Turkey notifies World Trade Organization that it is proposing increased tariffs on certain US products.

UAE

UAE addresses application of VAT on gold and diamond supplies, refund of VAT on conference and exhibition services, and Tax Invoice requirements.

UK

The United Kingdom (UK) ratified the MLI, by way of the Double Taxation Relief (Base Erosion and Profit Shifting) Order 2018. Before the MLI can enter force for the UK it needs to deposit its instrument of ratification before the OECD and confirm its final positions.

URUGUAY

On 4 June 2018, the Uruguayan Ministry of Foreign Affairs submitted to Parliament a draft bill to ratify the MLI. The Parliament's approval is required in order for Uruguay to ratify the MLI. Once the domestic ratification process has been completed, Uruguay would need to deposit its instrument of ratification, approval or acceptance of the MLI with the OECD and confirm its MLI positions. The MLI will enter into force for Uruguay on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of such instrument.

USA

US IRS updates Section 965 transition tax FAQs to include late-payment penalty and filing relief — action may be needed by 15 June 2018

Trump Administration and House and Senate tax writers are working toward developing a "phase 2" tax reform bill. According to the official, the goal is to release a proposed tax reform package by the end of the summer. Although the priority for the "phase 2" reform is to make the individual tax cuts in the *Tax Cuts and Jobs Act* permanent, the official was quoted as saying there is a "larger package" in the works, although he declined to discuss details pointing to ongoing negotiations.

On 7 June 2018, the Internal Revenue Service (IRS) added Slovenia to the list of countries with which the United States (US) has signed a Competent Authority Agreement (CAA) for the automatic exchange of CbC reports. The IRS maintains a website that includes an up-to-date listing of the jurisdictions with which the US Competent Authority has entered into CAAs and the jurisdictions that are in negotiations for a CAA. The IRS is in the process of negotiating CAAs with another eight countries and is expected to update this database as other agreements are concluded.

On 21 June 2018, the United States (US) Supreme Court (the Court) issued its much anticipated ruling in the case *South Dakota v. Wayfair*. As a result of the Court's decision, US states may now begin to require all remote sellers to register, and collect and remit sales and use taxes on transactions with in-state customers regardless of the seller's physical presence (provided that they do so in a manner that does not otherwise discriminate against or impose undue burdens on interstate commerce).

Update on the MLI deployment and its impact

THE ENTRY INTO FORCE OF THE MULTILATERAL INSTRUMENT WILL SIGNIFICANTLY IMPACT THE PROVISIONS OF BILATERAL TAX TREATIES.

In the framework of its BEPS (Base Erosion and Profit Shifting) project, the purpose of which is to provide law makers with tools to tackle “aggressive tax planning”, the OECD has proposed the development of a Multilateral Instrument (“MLI”) to modify bilateral tax treaties (Action 15).

The MLI has been published in November, 2016. To this day, the MLI been signed by 78 countries. Pursuant to its ratification by five countries, it will enter into force on July 1, 2018.

The MLI contains a set of new provisions, which are aimed at modifying each bilateral tax treaty that the signatory countries deemed to be “covered”, in order to avoid a lengthy renegotiation of each tax treaty. The MLI is a flexible instrument, enabling each signatory country to make reservations and elect for optional provisions.

The MLI contains provisions implementing the following BEPS recommendations: neutralizing the effects of hybrid mismatch arrangements (Action 2), preventing the granting of treaty benefits in inappropriate circumstances (Action 6), preventing the artificial avoidance of permanent establishment status (Action 7), making dispute resolution mechanisms more effective (Action 14).

A bilateral tax treaty will be impacted by the MLI if (i) the MLI has been signed and ratified by both jurisdictions party to such tax treaty and (ii) such tax treaty is deemed “covered” by both jurisdictions.

In this situation, the bilateral tax treaty will have to be read in conjunction with the MLI, as ratified by both jurisdictions party to the tax treaty.

Our International tax partners are available to assist you in anticipating the tax impacts of the entry into force of the MLI on your business operations.

CONTACTS

Frédéric Barat

Attorney at law, Partner
Tél. : +33 (0) 1 49 97 45 86
Mobile : +33 (0) 6 63 32 84 55
frederic.barat@avocats-mazars.com



Pascal Luquet

Attorney at law, Partner
Tél. : +33 (0) 1 49 97 48 32
Mobile : +33 (0) 6 63 36 27 62
pascal.luquet@avocats-mazars.com

Frédéric Lubczinski

Attorney at law, Senior Manager
Tél. : +33 (0)1 49 97 36 24
Mobile : +33 (0)6 67 67 26 97
frederic.lubczinski@avocats-mazars.com

Mickaël Duquenne

Manager
Tél. : +33 (0)1 49 97 47 33
Mobile : +33 (0)6 63 02 81 38
mickael.duquenne@avocats-mazars.com

