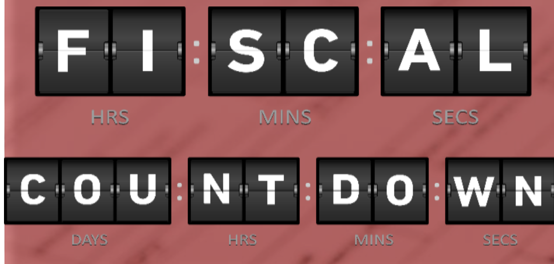
INTRODUCTION OF THE BEPS INITIATIVE AND INTERNATIONAL TAX NEWS



International Tax

INTRODUCTION

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 thirty sixth edition deals with the new measures published in April 2019 by the OECD, the EU and in 39 countries: Algeria, Austria, Australia, Canada, Colombia, China, Cyprus, Czech Republic, Denmark, Egypt, Greece, India, Ireland, Italy, Japan, Kazakhstan, Luxembourg, Malaysia, Mexico, Morocco, New Zealand, Netherlands, Nigeria, Norway, Panama, Poland, Russia, Saudi Arabia, Singapore, South Korea, Taiwan, Thailand, Turkey, UAE, Uganda, UK, Uruguay, USA and Zambia.

OECD (1/3)

The OECD released additional exchange relationships that have been activated under the Country-by-Country Multilateral Competent Authority Agreement (CbC MCAA). Currently, together with the exchange relationships under the European Union (EU) Council Directive 2016/881/EU and the bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements, there are over 2,000 automatic exchange relationships established among jurisdictions committed to exchanging Country-by-Country (CbC) reports. The full list of automatic exchange relationships that are in place and an update on the implementation of the domestic legal framework for CbC reporting (CbCR) in jurisdictions are available on the OECD website. With this update, San Marino has been included on the list of countries that have activated for the first time exchange relationships for CbCR.

The OECD announced that three additional jurisdictions, i.e., Curacao, Georgia and the Netherlands, have deposited their instrument of ratification, acceptance or approval of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI) – bringing the total number to 24. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Curacao and Georgia confirmed their MLI positions without any change. The Netherlands also deposited its definitive MLI positions and added a reservation to Article 12 of the MLI (artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies).

OECD (2/3)

The MLI will enter into force for Curacao, Georgia and the Netherlands on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by these jurisdictions of their instrument of ratification, i.e., on 1 July 2019.

The OECD's Forum on Tax Administration (FTA) held its 12th plenary meeting which took place in Santiago, Chile on 26-28 March 2019. At this year's plenary, the FTA focused on four priorities: (i) Delivering on base erosion and profit shifting (BEPS) and tax certainty; (ii) Improving tax cooperation; (iii) Supporting the continued digitalization of tax administrations; and (iv) Building capacity for developing countries. The FTA is a subsidiary body of the OECD. It was created in July 2002 by the OECD's Committee on Fiscal Affairs, with the aim of promoting dialogue between tax administrations and identifying good tax administration practices. At the time of the Chile meeting, the FTA comprised 53 member countries. At the plenary, FTA members welcomed the publication of seven reports which will provide direct practical assistance to tax administrations on the four priorities. Given that tax certainty is high on the agenda of the FTA, the FTA members recognized that they should focus on improving dispute prevention and dispute resolution mechanisms. To that end, alongside a new report on joint audits, FTA members also announced a second pilot of the International Compliance Assurance Programme (ICAP 2.0). A new handbook that will guide the second pilot (the handbook) was also endorsed and published by the FTA. The handbook builds on the first ICAP pilot, and remains a working document which will continue to be revised based upon the continuing experiences of participating tax administrations and multinational enterprises (MNEs). The handbook does not provide any specific results of ICAP 1.0.

Also, the OECD's FTA published a report titled "Joint Audit 2019 – enhancing tax co-operation and improving tax certainty" (the report).

OECD (3/3)

The report identifies both the benefits that may arise from the greater use of joint audits, as well as the challenges that must be overcome to ensure that those benefits can be realized as effectively and efficiently as possible, for both tax administrations and taxpayers. The report is divided into seven chapters. The first chapter outlines the approach of the FTA Joint Audits Project, the second chapter illustrates the role that joint audits can play in enhancing tax certainty, and the third chapter provides an overview of the key benefits and the cost associated with the conduct of joint audits. The fourth chapter describes the current international landscape from the perspective of the exchange of taxpayer information in connection with joint audits, and the fifth chapter addresses the role of the taxpayer during the joint audit. The sixth chapter deals with building capacity, relationships and trust in a dedicated network for international cooperation in joint audits. The report concludes with a summary of the joint audit process and includes practical guidance and best practices for conducting joint audits.

At the 12th plenary meeting, the FTA members welcomed the publication of seven reports which will provide direct practical assistance to tax administrations on the aforementioned four priorities.

The fifth meeting of the Global Forum on Valued Added Tax (VAT) was held in Melbourne, Australia. At the meeting, the report on "the Role of Digital Platforms in the Collection of VAT/GST on Online Sales" (the report) was presented for consideration and was published shortly at the end of the meeting. The report provides practical guidance to tax authorities on the design and implementation of a variety of solutions for enlisting the platforms economy, including e-commerce marketplaces and other digital platforms, in the effective and efficient collection of VAT/GST on digital sales. The report seeks to present a range of possible approaches and the associated policy considerations that will serve as a point of reference and assist policy makers in their efforts to evaluate and develop the appropriate legal and administrative measures taking into account their specific economic, legal, institutional, cultural and social circumstances. The report is structured as follows: Chapter 1 provides the overall context for the report, its scope and an overview of the examined measures; Chapter 2 analyzes aspects and design considerations of the full VAT/GST liability regimes; Chapter 3 focuses on the way digital platforms can assist with collection of VAT/GST on online sales. Chapter 3 emphasizes the importance of information sharing and formal co-operation agreements between tax authorities and platforms; and Chapter 4 considers supporting measures to encourage compliance, particularly by international exchange of information and administrative cooperation in order to enhance the risk analysis process.

EUROPEAN UNION (1/3)

The Regulation (EU) 2019/532 of 28 March 2019 amending Implementing Regulation (EU) 2015/2378 as regards the standard forms, including linguistic arrangements, for the mandatory automatic exchange of information on reportable cross-border arrangements was published in the Official Journal of the EU. The Directive 2011/16/EU as amended by Council Directive (EU) 2018/822 (MDR Directive) provides for mandatory automatic exchange of information on reportable cross-border arrangements. As a standard form should be used for those exchanges, the Commission Implementing Regulation (EU) 2015/2378 is amended in order to provide for such a standard form.

EUROPEAN UNION (2/3)

In order to ensure that the mandatory automatic exchange of information on reportable cross-border arrangements is effective, especially where more than one intermediary or relevant taxpayer is liable to file information, an additional field containing a reference number of the reportable cross-border arrangement is now included on annex XIII to this Regulation. If more than one intermediary or relevant taxpayer is obliged to file information, one single reference number should feature on all exchanges of the same arrangement so that these exchanges can be linked to a single arrangement on the central directory. The Regulation will enter into force on the twentieth day following its publication in the Official Journal of the EU, i.e., on 18 April 2019. It will apply from 1 July 2020.

The European Parliament voted to conclude the first reading stage of its draft report on public CbCR. The vote took place even though there is still no position from the Council on the draft report.

The European Parliament's TAX3 Committee adopted a report and recommendations for rendering the EU more resilient against tax evasion, tax avoidance and money laundering. Among others, the report discusses the BEPS action plan and its implementation in the EU. The report states that, although the BEPS project was meant to tackle in a coordinated manner the causes and circumstances creating BEPS practices, the degree of willingness and commitment to cooperate on the BEPS action plan varies among countries and the particular actions concerned. In that regard, the European Parliament highlights in the report that the 2016 EU anti-tax-avoidance package supplements existing provisions so as to implement the 15 BEPS actions in a coordinated manner across the EU in the single market. In addition, the European Parliament reiterates its call for a clear definition of permanent establishment and significant economic presence so that companies cannot artificially avoid having a taxable presence in a Member State in which they have economic activity. The report is not legally binding and therefore the European Commission or the EU Member States are not required to take its recommendations into account.

EU Joint Transfer Pricing Forum releases report on application of profit split method within the EU and provides summary of achievements of present mandate.

The Commission submitted to the European Parliament and the Council a report providing an overview and assessment of the statistics and information on the automatic exchanges of information (AEOI) in the field of direct taxation based on the implementation of the Directive on Administrative Cooperation or DAC (EU Directive 2011/16/EU). The report provides an overview and assessment of AEOI under DAC1 (AEOI for five categories of income and capital), DAC2 (AEOI of financial account information), and DAC3 (AEOI for tax rulings and advance pricing agreements), and it covers the period starting from 2015 until mid-2018. Although the DAC was further expanded in 2016 and 2018, there was not enough available data at the time of preparing the report. However, future reports will also cover, inter alia, data on DAC4 (AEOI of the CbC reports) and DAC6 (AEOI of information on cross-border arrangements). Among others, the report highlights that under DAC1 Member States have exchanged information concerning nearly 16 million taxpayers, and it related to incomes and capital amounting to over €120 billion. Further, the DAC3 has resulted in a major increase in the transparency of information on advance tax rulings and advance pricing arrangements.

EUROPEAN UNION (3/3)

Almost 18,000 rulings were recorded in the central directory in 2017 compared to hardly any being spontaneously exchanged in the years up to 2015. The report concludes that Member States have recognized that the tax information received via AEOI can be used in different ways. The tax authorities mainly use the information for risk assessment and personal income tax assessment. However, several Member States still make very limited use of the information they receive. Also, AEOI has required significant development investments by Member States, and even if the recurring costs are lower, there are annual costs to maintain the exchange activities. As regards the benefits of AEOI, it appears that the main benefits lie in the increased tax compliance and in the deterrent effect for taxpayers. As a way forward, two main areas of improvement are identified, i.e. the improvement of the quality of information and the better use of the data received via AEOI.

An informal ECOFIN meeting was held in Bucharest, Romania. According to a press release issued at the conclusion of the meeting, the Ministers discussed among other topics the role of taxation in supporting inclusive and sustainable growth, and digital taxation. With respect to digital taxation, the Secretary-General of the OECD, Angel Gurria, updated Ministers on the progress made in finding global solutions. In this context, the press release also mentions that the Commission calls on Member States to coordinate their positions and speak with one voice to have more impact and influence in international negotiations. This is why the Commission proposed to have a dedicated debate at the May ECOFIN meeting to coordinate the positions of the Member States ahead of the G20 summit and to propose specific options for this debate.

ALGERIA

Algerian Tax Authority issues additional guidance on limitation of technical assistance costs and interest deductions under 2019 Finance Act.

AUSTRIA (1/2)

As the EU Member States have not yet reached unanimity, the Austrian Government, a coalition of Conservatives and the Freedom Party, has introduced a draft bill for a digital advertising tax. New levies on digital advertising, online retailers and sharing platforms would potentially generate around €200m (around US$225 million) of additional tax revenue, if enacted as currently drafted. Austria's draft bill introduces a 5% tax (as compared to the 3% tax originally announced in January 2019) on Austrian digital advertising revenue for all groups with worldwide revenues of at least €750m and Austrian digital advertising revenue of at least €25m, effective 1 January 2020. This measure aims to levy taxes on international groups that currently pay minimal taxes in Austria, according to the Austrian Government. A second measure in the same bill, which shall enter into force as from 1 January 2021, strengthens Austria's value added tax (VAT) regime for imports from non-EU countries. Under current legislation, no VAT is levied on imports of goods from non-EU countries if the value of such goods does not exceed €22. The Austrian Government has taken the position that the value of many goods is incorrectly declared. As a result, that minimum threshold of €22 will now be abolished. In addition, internet selling platforms will be treated as recipients and suppliers of import distance selling and intra-EU sales to non-entrepreneurs in the EU, performed by non-EU suppliers using the platform. Insofar as such supplies have their place of supply in Austria, the platforms will have to pay VAT and will have to report all VAT information in Austria.

AUSTRIA (2/2)

In addition, as from 1 January 2021, the supply threshold for distance selling from EU countries to non-entrepreneurs in Austria (which currently stands at €35,000) will be abolished, with the consequence that distance selling from other EU countries to non-entrepreneurs in Austria will be subject to Austrian VAT from the first Euro. Sales made by small businesses (of up to €10,000 annually) will still be subject to VAT in the other state. A third measure aims to increase the reporting obligations of online platforms that connect the buyers and sellers of goods and services. Operators would be obliged to report all bookings and revenue in Austria to the tax authorities from 2020 onwards. In addition, operators could be held liable for taxes in order to enforce reporting obligations.

AUSTRALIA (1/2)

The Australian Taxation Office (ATO) released Draft Law Companion Ruling LCR 2019/D1 OECD hybrid mismatch rules – targeted integrity rule (draft ruling). The draft ruling addresses the ATO's views on specific aspects of the targeted integrity rule in Australia's hybrid mismatch rules. The targeted integrity rule affects financing structures whereby an entity (the interposed foreign entity) in a low (10% or less tax rate) or no tax jurisdiction is interposed as lender between the foreign parent (the ultimate parent entity or UPE) and the Australian borrower. Where the integrity rule applies, deductions for interest payments on the relevant financing arrangement should be disallowed. While the integrity rule was introduced to target financing structures which otherwise circumvent more "traditional" hybrid structures, this rule has more wide-ranging implications for taxpayers as it applies to any financing through low/no tax jurisdictions regardless of whether these were implemented in anticipation of the hybrid mismatch rules.

The Australian Taxation Office (ATO) released a draft ruling TR 2019/D2 (draft ruling) with respect to the requirements for the application of the arm's-length debt test (ALDT) in the thin capitalization rules. The draft ruling proposes that the guidance is to apply both before and after its date of issue, despite there being no change to the law concerning the ALDT. The eventual final ruling, along with a planned draft Practical Compliance Guideline (PCG – currently under development), will replace an existing taxation ruling. Comments on the draft ruling (and practical compliance guideline) are due by 31 May 2019. The Commissioner of Taxation's (the Commissioner) interpretation in the draft ruling regarding the application of the ALDT may require a stricter application of various elements of the ALDT than the position taken by many taxpayers. The draft ruling will need careful analysis by taxpayers using or intending to use the ALDT. At a minimum, documentation prepared by taxpayers should consider the key issues highlighted in this Tax Alert. In the analysis, the following issues should be considered:

1.The draft ruling represents useful guidance on the unchanged existing law and aims to create a foundation for a more uniform application of the rules in practice.

2.Compliance approaches currently vary substantially, and the draft ruling is aimed at achieving greater consistency through what appears to be a more robust analysis given the increasing number of taxpayers relying on the ALDT.

3.The upcoming PCG is anticipated to provide further ALDT application guidelines as well as guidance around ATO risk profiles. The PCG will be linked to Reportable Tax Positions and ATO Streamlined Assurance Reviews with responses informing ATO compliance approaches.

AUSTRALIA (2/2)

4.The Labor opposition has foreshadowed potential changes to the thin capitalization rules if they were to win government in the upcoming election, which could impact on the prospective availability of the ALDT. However, given the retrospective application of both the draft ruling and PCG, this issue would remain highly relevant for many taxpayers.

The first bilateral tax treaty between Australia and Israel was signed.

CANADA

Newfoundland and Labrador issues budget 2019/20. Ontario also issues budget 2019/20.

Canadian International Trade Tribunal releases safeguard inquiry report regarding certain steel goods.

CCA acceleration measures substantively enacted as part of 2019 budget implementation bill.

COLOMBIA

Colombia and Switzerland sign mutual agreement for Colombian tax residents to request refund of Swiss withholding tax on dividends and interest.

CHINA

China publishes new Individual Income Tax preferential policies in Greater Bay Area.

Representatives of China and New Zealand signed a revised income tax treaty (the Revised Treaty) and protocol (Protocol) which will replace the existing 1986 treaty. The Revised Treaty is aimed at further promoting investment and economic activities between China and New Zealand. It eliminates barriers for cross-border collaboration and offers various opportunities for both countries. The revisions are also meant to align the Revised Treaty with the OECD as well as with the recommendations in the OECD's final reports in its Action Plan on BEPS. Significant provisions in the Revised Treaty include the following:

- Introduction of a fiscally transparent entity/arrangement concept
- Tie-breaker rule for a treaty residency determination of non-individual dual resident persons
- Expanded scope of permanent establishment
- Reduced withholding tax on dividend
- Principal purpose test for the entitlement of benefits.

The Revised Treaty and Protocol will enter into force 30 days following the exchange of ratification instruments. The provisions of the Revised Treaty and Protocol will become effective as of 1 January of the year following entry into force.

China's National People's Congress approved the Foreign Investment Law of the PRC. The Foreign Investment Law will become effective on 1 January 2020 and will replace existing foreign investment laws. The key features of the Foreign Investment Law are as follows:

- Chinese subsidiaries of foreign parents will be treated in the same manner as Chinese-owned Chinese entities; however the former is subject to a negative list of foreign investment which prohibits foreign investors from investing in specific industries.
- Foreign-invested enterprises are allowed to raise funds through the public offering of stock, corporate bonds and other securities.
- New registration forms will be required for investments under the Foreign Investment Law. A five-year transition period is provided to change all required registrations forms to comply with the rules under the Foreign Investment Law.

CHINA (2/2)

The Foreign Investment Law intends to open the basic framework of investments to foreign investors, and to actively promote, protect and regulate the foreign investments. While many of the rules are still pending further interpretations, it is anticipated that the respective government authorities will provide clarifications and guidance of the rules

CYPRUS

The Cypriot House of Representatives adopted the law (the Law) implementing the provisions of the European Union (EU) Anti-Tax Avoidance Directive1 (the ATAD of Directive). The Law will come into force once it is published in the Official Gazette of the Republic, which is expected to take place within two weeks from the enactment date. Notwithstanding the date of publication in the Official Gazette, the provisions of the Law apply as of 1 January 2019 (i.e., from 2019 tax year onwards). The Law introduces controlled foreign corporation (CFC) rules, a limitation to interest deductibility provision as well as a general anti-abuse rule. The final content of the Law has been the result of intensive discussions and consultation with various stakeholders (including the EU Fiscalis Committee set up to assist Member States) which lasted almost a year. The ATAD implementation process is not, however, entirely completed as the provisions of the Directive with respect to exit taxation rules, as well as the provisions of the amending Directive2 with respect to anti-hybrid rules, will be transposed into the Cypriot domestic law during 2019 and will be effective as from 1 January 2020. The tax authorities are expected to issue tax circulars providing clarity as to the practical application of the CFC and interest limitation rules.

CZECH REPUBLIC

The Czech Government published draft legislation (accompanied by explanatory notes) implementing the European Union (EU) Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC 6 or the Directive). The Czech draft legislation is subject to the formal legislative process and may be amended before final enactment. If implemented as currently proposed, the Czech Mandatory Disclosure Rules (MDR) legislation will be broadly aligned to the requirements of the Directive.

The Bill implementing the EU Anti-Tax Avoidance Directive (ATAD) I and II and introducing changes to other tax laws was published in the Official Gazette. The Bill, signed by the President on 15 March 2019, entered into force on 1 April 2019 (for more details on the bill, see the Latest on BEPS, dated 8 October 2018).

DENMARK

The Danish Parliament enacted Bill No. L 160 adopting the OECD's MLI. The list of Denmark's covered tax agreements contains all treaties concluded that are currently in force, except for the tax treaties with Germany, Greenland, Japan, the Netherlands, the Nordic countries and Switzerland. Denmark has adopted all provisions of the MLI, including arbitration. The MLI will enter into force for Denmark on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of the instrument of ratification of the MLI with the OECD.

EGYPT

Egypt Tax Authority reviews VAT reverse-charge compliance.

EQUATORIAL GUINEA

Equatorial Guinea Tax Administration clarifies certain tax measures of Financial Law 2019.

GREECE

A bill adjusting the existing interest limitation rule, the CFC rule as well as the GAAR was approved by the Greek Parliament. Adjustment of the existing provisions as above was intended in order to achieve alignment to the EU ATAD. The amended rules will apply as of 1 January 2019.

INDIA

An Indian court recently held that a group of United States (US) companies (the Taxpayers) created a permanent establishment (PE) in India due to onshore sales and marketing activities carried out by employees of the Taxpayers as well as by employees of an Indian affiliate company. The visiting employees had dedicated rooms available at the offices of an Indian liaison office (LO) setup by one of the companies in India, from which they performed various sales and marketing activities that included collecting market information, performing business development, approaching potential customers, explaining products, negotiating prices, and performing supervision and administration, for and on behalf of the Taxpayers. Based on the facts, the Indian court held that the Taxpayers created a fixed place PE as well as a dependent agency PE in India under the India-US income Tax Treaty (the Treaty).

The Indian Tax Administration issued a press release which stated that the United States (US) and India had signed an Inter-Governmental Agreement for Exchange of CbC reports, which would enable the two countries to automatically exchange CbC reports filed by ultimate parent entities of MNEs located in the respective jurisdictions. The signing of the agreement before 31 March 2019 mitigated the requirement for Indian constituent entities of US-parented groups to perform a secondary CbC report filing in India, which may have been required in certain specific cases.

The Indian Tax Administration issued a circular extending the due date to locally file a Country-by-Country (CbC) report for United States (US) multinational enterprise (MNE) groups. This extension has been granted as the competent authority agreement (CAA) between the US and India is still not in effect as each party has not notified the other about the completion of all required internal procedure. Therefore, for US MNE groups with an accounting reporting year ending on or before 29 April 2018, the CbC reporting due date would now be 30 April 2019. Nonetheless, it should be noted that if the CAA is in effect by then, there would not be an obligation to locally file a CbC report by US MNE groups in India.

IRELAND

The Irish Department of Finance published the outcome of its public consultation on Ireland's implementation of interest limitation rules and hybrid mismatch rules under the EU ATAD and ATAD II. The public consultation was launched on 14 November 2018 and interested parties could submit their comments until 18 January 2019. The results of the public consultation are available on the Government's website.

ITALY (1/2)

The Italian Government has released a draft of a law decree named "Decreto Crescita", which introduces a number of urgent measures for economic growth, including significant changes to the "inbound tax regime" aimed at attracting highly remunerated workers to Italy.

ITALY (2/2)

It is expected that the draft will be approved in the upcoming weeks and will result in completely new tax landscape for individuals who transfer their tax residency to Italy.

Italy release 2019 work permit quotas for non-EU nationals.

Between 2006 and 2008, a foreign bank and an Italian bank advanced facilities for approximately €30 million to Italian borrowers. The Italian bank acted as the fronting bank and the credit risk arising from such facilities was shared among the two banks by virtue of an inter-creditor and participation agreement whereby a portion of such facilities was made available to the Italian bank by the foreign bank. According to the Italian Supreme Court ruling No. 1277 of 2019, the above-mentioned pool financing, implemented by virtue of the inter-creditor and participation agreement, implied the carrying out of lending activity in Italy by the foreign bank. Therefore, the pool financing constituted unlawful lending activity, since the foreign bank lacked the authorization to carry out any such activity in Italy. The Italian judges identified several indexes evidencing that, through the inter-creditor and participation agreement, unlawful lending activity was being carried out. Such indexes were, in particular the following:

(i) The sharing of the credit risks among the two banks

(ii) The autonomous evaluation of the credit worthiness of the borrowers carried out by the foreign bank

(iii) The request to each borrower to acknowledge the inter-creditor and participation agreement

(iv) The right attributed to the foreign bank in the management of the relationship with the borrowers

(v) The higher exposure of the foreign bank in respect of the Italian one

Italian Tax Authorities issue guidance on qualifying the purchase of a client list as a transfer of going concern.

JAPAN (1/2)

Japan submits its instrument of ratification for MLI.

Japan's 2019 tax reform bill (the Bill) was enacted following passage of the Bill by the Japanese Diet (Japanese legislature). The Bill generally follows the tax reform outline announced by Japan's coalition leading parties in December 2018. Pursuant to the BEPS Action 2 initiatives and the recommendations by the BEPS Action 4 final report, the earnings stripping rules will be amended by reducing the current 50% of adjusted taxable income (ATI) to 20% in computing interest expense disallowance. In addition, the Bill includes an ATI computation, a domestic and foreign dividend received deduction and an add-back tax adjustment of non-deductible income taxes. ATI for an operator under a silent partnership arrangement will also be amended. The Bill revises the scope of interest subject to the earnings stripping rules and the de minimis exceptions. The revision will apply to taxable years beginning on or after 1 April 2020. The scope of intangibles subject to the transfer pricing rules is clarified and defined as property other than tangible property or financial assets and investments, for which consideration would be paid for a transfer or lease of the property if the transfer or the lease were carried out between unrelated parties. The discounted cash flow recognized under the OECD Transfer Pricing Guideline is added as a new transfer pricing methodology. The Japanese tax authorities will be authorized to make an assessment if there is a discrepancy between an outcome and the projected value if the discrepancy is 20% or more without proper documentation. This revision will apply to taxable years beginning on or after 1 April 2020 and calendar years beginning 2021 for corporations and individuals, respectively.

JAPAN (2/2)

The Bill contains new exceptions to the paper company test for holding company, real estate and resource development controlled foreign companies (CFCs). The Bill clarifies that local tax laws of the CFCs, such as tax consolidation and distributive share of partnership income, will be disregarded in determining the effective tax rate test, income inclusion or indirect foreign tax credit from CFCs.

KAZAKHSTAN

The President signed Law No. 241-VI. The adopted Law introduces certain amendments to the CFC rules in force. Among others, CFC rules will no longer apply to entities registered in a jurisdiction with which Kazakhstan has concluded a tax treaty. The amendments apply retroactively as of 1 January 2018 and will be effective until 1 January 2020.
Luxembourg
Luxembourg deposits instrument of approval for MLI.

LUXEMBOURG

Luxembourg submits its instrument of ratification for MLI.

MALAYSIA

Malaysia's Ministry of Finance and Inland Revenue Board issued several media releases on the Special Voluntary Disclosure Program introduced in the 2019 Budget. The Special Program offers reduced penalty rates for taxpayers to voluntarily disclose any unreported income, including income maintained in offshore accounts, for income tax, petroleum income tax and real property gains tax purposes. The reduced penalty rates apply to stamp duty as well. The Special Program was initially meant to run from 3 November 2018 to 30 June 2019.
The Malaysian Inland Revenue Board published the CbC Reporting Guidelines. The Guidelines provide information and clarifications on the reporting obligations, the preparation of the CbC report, filing procedures, the submission of the CbC report, other administrative issues and penalties for non-compliance. The Guidelines also provide greater clarity on the items to be included on the report template such as tax jurisdiction, financial results and income tax paid. In addition, the Guidelines also list the CbCR requirements for Labuan and non-Labuan entities. The Guidelines are generally in line with the OECD guidelines. The Guidelines are available on the MIRB's website.

MEXICO

The SAT published the Ninth Resolution of Amendments to the 2018 Miscellaneous Tax Regulations in the Official Gazette on 9 April 2019. The amendments are effective as of that date. In general, the published amendments to the MTRs adopt the draft provisions previously released by the SAT. The amendments extend the deadline for filing the notice to enroll in the VAT registry from 7 February 2019 to 30 June 2019. The amendments also clarify that: (1) taxpayers included on the list of non-compliant taxpayers as a result of the cancellation of fines may apply for the VAT tax incentive; (2) taxpayers that have performed any business with non-compliant taxpayers may request the income tax and VAT incentives, provided they stop doing business with those taxpayers before submitting the request and supporting documentation; and (3) certain tax incentives may be combined with the income tax incentive for the northern border region.

MOROCCO

Morocco's 2019 Finance Bill, issued on 21 December 2018, introduced the obligation for certain Moroccan taxpayers to prepare specific documentation to justify their transfer pricing policies before tax authorities. The objective of the new requirement is to improve transfer pricing control and audit procedures. This new provision is intended to align the Moroccan transfer pricing legislation with international practices, and comes after the introduction of an Advance Pricing Agreement (APA) program between tax authorities and companies, which came into effect in 2018. The introduction of the transfer pricing documentation requirement will increase the compliance and reporting burden for companies, but it also will allow multinational groups to have greater tax certainty due to the implementation of a standardized transfer pricing documentation framework. The specific documentation requirements, however have yet to be specified by the legislators.

NEW ZELAND

New Zealand rejects Tax Working Group recommendation to implement a capital gains tax.

NETHERLANDS

The Netherlands deposited its instrument of ratification of the MLI with the OECD. The MLI will therefore enter into force on 1 July 2019 and the MLI will subsequently enter into effect for withholding taxes and other taxes as of 1 January 2020, provided the tax treaty partner has also ratified the MLI.
The Dutch Ministry of Finance and Germany issued a common statement announcing that they are committed to further work out the minimum tax standard as included in the Global Base Erosion (GloBE) proposal that is under discussion within the OECD, while taking into account undesired risks of double taxation and over-excessive administrative burdens. According to the statement, Germany and the Netherlands recognize that further measures are important to ensure a sufficient level of taxation globally and that BEPS is still a pressing issue with entities that are subject to no or low taxation. The previously announced Dutch conditional withholding tax on intercompany payments to blacklisted/low tax jurisdictions which is expected to be applicable as of 2021 was also discussed.

NIGERIA

Nigeria signs Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme.

NORWAY

The Norwegian Ministry of Finance (the Ministry) published its bill proposal (the proposal) for a statutory general anti-abuse rule (GAAR) for tax purposes. Since the 1920s, the Norwegian Supreme Court has developed a non-statutory GAAR which must be taken into account when assessing the Norwegian tax consequences of any transaction. The proposal to implement a statutory GAAR is meant to clarify the scope of the rule and to increase predictability for taxpayers. The proposal is based on the report published by Professor Emeritus Frederik Zimmer on 15 March 2016 that examined whether the GAAR should be codified, and if so, the conditions for its application.

PANAMA

Panama establishes tax amnesty program.

POLAND

The President has signed an Act of Parliament on “Regulating Several Matters in Case of The United Kingdom leaving European Union without a deal”. This Act deals with the following issues; legalizing the stay of UK nationals and their third country family members, social security, healthcare coverage and the rights to social aids and benefits. The Act will take effect from the date of any “no deal” UK departure from the EU, and provides for a transition period until 31 December 2020, after which the measures cease to apply.

RUSSIA

Russian State Duma approves new right to recover input VAT on exported services.

The Russian Tax Authority recently met with both tax and industry professionals to discuss the application of Value Added Tax (VAT) rules on electronic services (e-services). Following this meeting, the FTA prepared a draft position paper (the guidance) that they plan to officially issue this month. The guidance is intended to clarify certain issues regarding the obligations of foreign suppliers of e-services in Russia in light of the new VAT payment mechanism applicable to business to business (B2B) supplies as of 1 January 2019.

The Russian State Duma ratified the MLI. Russia now needs to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Russia on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of such instrument with the OECD.

The Russian Federal Tax Service announced that it is considering joining the OECD International Compliance Assurance Programme (ICAP). ICAP is a voluntary risk assessment and assurance program designed to facilitate open and cooperative multilateral engagement between MNE groups willing to engage actively and transparently and tax administrations in jurisdictions where the MNEs have business activities. Currently, the tax authorities from 17 jurisdictions are participating in the ICAP.

SAUDI ARABIA

Saudi Arabia’s General Authority of Zakat and Tax (GAZT) published an Arabic language press release on its website in which it indicates that Directors’ fees are essentially to be disregarded for value added tax (VAT) purposes in Saudi Arabia. This means that Directors already registered – or those considering registering – for VAT purposes in Saudi Arabia solely on the basis of fees earned as Directors may no longer be required to be registered. Any other income generated by Directors (i.e., aside from Directors’ fees or similar) continues to be taken into account for VAT purposes in the normal manner.

SINGAPORE

Singapore’s Minister for Finance issued several Orders in connection with the entry into force of the MLI in Singapore on 1 April 2019. The Orders amend Singapore’s CTAs for jurisdictions which had ratified the MLI as of 21 December 2018 (date of Singapore’s ratification of the MLI), effectively giving the relevant MLI provisions effect under domestic law for each of the CTAs with effect from 1 April 2019. As more jurisdictions ratify the MLI, new Orders will correspondingly be issued to give the MLI effect for each new CTA as they enter into force. As of 29 March 2019, Orders have been issued for CTAs with Australia, Austria, France, Isle of Man, Israel, Japan, Jersey, Lithuania, Malta, New Zealand, Poland, Slovak Republic, Slovenia and the United Kingdom.

SOUTH KOREA

Korea proposes reduced securities transaction tax rates on securities traded on the stock exchange.

TAIWAN

Taiwan’s Ministry of Finance issued a ruling (the Ruling) that provides conditions under which a Taiwanese parent company would be exempt from gain recognition when a subsidiary migrates its place of company registration from one jurisdiction to another. To fall under the exemption, all of the following conditions must be met:

1.No change in percentage of ownership and investment structure upon migration

2.Same legal personality to be maintained in the new jurisdiction

3.No dissolution and liquidation procedures required in the original jurisdiction

4.Carryover of retained earnings upon migration

It should be noted that the migration may be subject to anti-avoidance provisions if it is deemed to be an unreasonable business arrangement solely for purposes of avoiding or reducing Taiwan’s tax liability. The Ruling provides clearer guidelines under which certain subsidiary migrations are treated as a tax-free event. It is recommended that Taiwanese companies review their restructuring plans and assess feasibility of applying the Ruling criteria.

THAILAND

The Cabinet approved the repeal of the grandfathered tax incentives under the Regional Operating Headquarters (ROH) I and II, International Headquarters (IHQ), Treasury Center (TC) and International Trading Center (ITC) regimes. This measure is in response to the Harmful Tax Practices – 2017 Progress Report on Preferential Regimes (Inclusive Framework on Base Erosion and Profit Shifting (BEPS): Action 5) in which Thailand’s regional/international headquarters, trading and treasury hub regimes were identified as harmful tax practices. This action will also ensure that Thailand will not be classified as ”Potentially Harmful” or ”Actually Harmful” by the Forum on Harmful Tax Practices and BEPS. Subject to legislative processes and enactment, all entities that currently have ROH, IHQ and/or ITC status will lose their eligibility for tax incentives and will be subject to the normal corporate income tax rate of 20%, effective from 1 June 2019. Their expatriates will be subject to personal income tax at the normal progressive rates of up to 35% effective from 1 January 2020. However, they (except an ITC) may choose to convert their status to an IBC if they meet the conditions.

TURKEY (1/2)

Turkey’s Treasury and Finance Minister Berat Albayrak announced a new economic reform package with a new set of upcoming tax policy changes. Accordingly, under this package, Turkey will take steps to ensure fair taxation on higher income groups and steps that will have a minimum effect on inflation. Minister Albayrak stressed the importance of a taxpayer-centered system, stating that through a taxpayer-friendly system, all processes would be optimized. Furthermore, Minister Albayrak announced plans of establishing a kind of economy that prioritizes high-added value, based on exports and technology. Some highlights of the new economic reform package are:

- Decrease in current exemptions stated in the tax law
- Gradual decrease in the corporation tax rate
- Spreading the tax declarations
- Introduction of new progressive tax system
- Facilitation of entrepreneurship
- Voluntary compliance with tax system

TURKEY (2/2)

- Prevent false or misleading documentation
- Establishment of Taxpayer Rights Executive Board
- Making Taxpayer Rights Declaration binding
- Determination of the procedures and principles of right to listen (to the taxpayer)
- Continuous measurement of the taxpayers' satisfaction

Turkey announces change in withholding tax rates on interest obtained from deposits issued abroad and foreign exchange deposits.

UAE

The United Arab Emirates (UAE) Federal Tax Authority (FTA) has published a Cabinet decision that will permit official participants of Expo 2020 Dubai (Expo 2020) to claim a refund of value added tax (VAT) on operating expenses they incur while participating in the Expo, even if they are not UAE VAT registered. In comparison, official participants that will make taxable supplies related to Expo 2020 will need to seek any refund of VAT by registering for UAE VAT and submitting their periodic VAT returns to the FTA.

UGANDA

Uganda's Minister of Finance Planning and Economic Development tabled Tax Amendment Bills, 2019 before Parliament for debate. Once passed into law by the Parliament and assented to by the President of the Republic of Uganda, the Bills will take effect from 1 July 2019.

UK

HMRC published the synthesized text of the Malta-United Kingdom (UK) Double Taxation Convention, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the options and reservations chosen by both Malta and the UK and shows how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and for the UK on 1 October 2018.

URUGUAY

Resolution 860/2019, by which the deadline for submission of the CbC report is extended for MNE groups with a Reporting Fiscal Year (RFY) ending on 31 December 2017, was issued. As a general rule, the CbC report is due in Uruguay within 12 months after the last day of the RFY. In January 2019, the Uruguayan tax authorities extended the initial due date to 15 months after the last day of the RFY for MNE groups with an RFY ending between 31 December 2017 and 30 November 2018. With Resolution 860/2019, the Uruguayan tax authorities have extended once again the deadline, but this time only for MNE groups with an RFY ending on 31 December 2017. Accordingly, for MNE groups with an RFY ending on 31 December 2017, the deadline for RFY 2017 has been extended to 30 April 2019.

USA

The United States Trade Representative (USTR) announced it was granting an exclusion to an additional 21 Chinese-origin products meeting specific listed descriptions, increasing the percentage of granted exclusions to 10% while denials have increased to 49% of the total requested exclusions. The selected products are currently subject to a 25% punitive tariff as part of the 818 tariff lines covering US$34 billion2 worth of imports from China annually (US List 1).3 This announcement mirrors the prior two exclusion announcements of 21 December 20184 and 21 March 20195 in that it provides relief from the punitive tariffs for one year from the notice date as well as retroactive relief back to the date the tariffs were implemented (6 July 2018) for products meeting the listed descriptions.

Korea proposes reduced securities transaction tax rates on securities traded on the stock exchange.

The United States (US) Internal Revenue Service (IRS) published a revised version of "Tax Treaty Table 1" on its website. Tax Treaty Table 1 lists the income tax and withholding rates on income other than personal service income, including rates for interest, dividends, royalties, pensions and annuities, and social security payments. The table is referenced by but no longer included in IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

USTR proposes retaliatory tariffs on 326 products as countermeasure to EU subsidies.

The United States (US) Internal Revenue Service (IRS) Advance Pricing and Mutual Agreement (APMA) program issued the 19th annual Advance Pricing Agreement (APA) report (the Report) on 22 March 2019, in Announcement 2019-03. The Report provides an updated discussion of the APA program, including its activities and structure for calendar year 2018, gives useful insights into the operation of the program and provides some indications of what companies applying for an APA can expect to encounter. The Report shows that interest in APAs remains strong, with taxpayers filing 203 APA requests in 2018 compared to 101 in 2017. The total number of APAs concluded decreased from 116 to 107 and the median amount of time to finalize an APA slightly increased from 33.8 months to 40.2 months.

ZAMBIA

Zambia's Sales Tax Bill of 2019 (the Bill) has been approved by the Cabinet and will be presented to Parliament for approval and public consultation. The proposed date of commencement is 1 July 2019.

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