OECD
On 4 May 2017, the OECD provided an update on the exchange relationships and Country-by-Country (CbC) implementation. According to the OECD, close to 45 jurisdictions have implemented an obligation for the filing of CbC Reports by resident ultimate parent entities (UPEs), 10 jurisdictions have informed the OECD that they will permit voluntary parent surrogate filing by the resident UPE of a multinational enterprise (MNE) group, and around 45 countries will permit surrogate filing by constituent entities that are not the UPE of their group. The OECD also published an update on the local filing requirements in Brazil and China.

Costa Rica
On 21 April 2017, Resolution DGT-R-16-2017 (Resolution) was published in the Official Gazette of Costa Rica. The Resolution expands transfer pricing documentation requirements, namely inclusion of a master file and a local file. Costa Rican taxpayers having transactions or arrangements, during the relevant fiscal year, with associated enterprises resident in another jurisdiction shall prepare a master file and a local file and retain it for four years. Taxpayers would only need to submit this information if requested by the tax authorities. If requested, taxpayers have 10 business days to submit this information, unless an extension is requested to and accepted by the tax authorities. The content of the master file and local file follows to a large extent the recommendations in OECD BEPS Action 13. The resolution entered into force on its date of publication and should apply as of the current tax year (i.e., 2017).

EY OECD BEPS project
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Czech Republic

On 30 March 2017, following the public consultation held in August 2016, the Guarantee budget committee proposed to postpone the deadline for the first CbC reporting notification to 31 October 2017 (originally 30 September 2017). The draft legislation implementing a CbC reporting framework is currently subject to discussions in the deputies’ meeting. Given the European implementation deadline of 4 June 2017, it is proposed that the bill takes effect on the same day it is published.

Germany

On 27 April 2017, the German Federal Parliament adopted the Act against Harmful Tax Practices with regard to Licensing of Rights. The main part of the draft legislation is the implementation of a new section, 4j Income Tax Act (ITA), restricting the tax deduction of royalties and similar payments made to related parties if such payments are subject to a non-OECD compliant preferential tax regime and are taxed at an effective rate below 25%. The main changes made during the legislative process as compared to the December draft bill relate to the definition of an OECD compliant preferential tax regime. In the initial draft, the rule foresaw a custom definition of a preferential regime which was mainly based on the evidence of substantial business activities. This definition has now been replaced by a direct reference to Action Item 5 of the OECD Nexus Approach. In addition, for cases in which the German entity pays royalties to a foreign entity which is subject to the German controlled foreign corporation income inclusion, no limitation on the royalty deduction shall take place. It is expected that the German State Council (Bundesrat) will approve the legislation on 2 June 2017. The new rule shall be applicable for expenses incurred as of 1 January 2018 and later.

For a detailed overview of the rule, see EY Global Tax Alert, Germany publishes draft bill to restrict deduction of royalties to affiliated foreign entities that benefit from IP regimes without substantial local R&D activities, dated 20 December 2016 and EY Global Tax Alert, German Parliament adopts legislation on limitation of tax deduction of royalties and tax exemption of restructuring gains, dated 2 May 2017.

Israel

On 1 May 2017, the Israeli Finance Minister signed tax regulations implementing the OECD’s “nexus approach,” a BEPS requirement for intellectual property (IP) preferential tax regimes. The proposed regulations are subject to approval by the Parliament’s Finance Committee. Once approved, Israel’s new IP regime will come into effect retroactively as of 1 January 2017. The Finance Minister promulgated the regulations in order to provide the necessary guidance on the implementation of the new Israeli IP regime. Under the new Israeli tax legislation enacted in December 2016, the maximum benefit available for IP income is a reduced corporate tax rate of 6%. In line with the OECD BEPS Action 5 guidelines, IP tax incentives in Israel will be conditional on the extent of research and development (R&D) activities of taxpayers receiving benefits. Notably, with the nexus approach principles in mind, the regulations propose exceptions that allow multinationals to transfer IP trade which includes IP into Israel and still gain access to the tax benefits. As Israel is a global R&D center for hundreds of companies, this creates opportunities for them to take advantage of the benefits in a BEPS compliant manner.

Italy

On 24 April 2017, Italy’s Council of Ministers enacted a Law Decree which provides for certain urgent measures on Italian tax matters, including the following BEPS developments: (i) a change in the definition of the arm’s length principle for transfer pricing purposes and the introduction of new downward adjustment mechanisms; and (ii) the exclusion of trademarks from the patent box regime to align the rules with BEPS Action 5 (Countering harmful tax practices more effectively, taking into account transparency and substance) recommendations. This Decree is already in force although it must be converted into Law by the Italian Parliament within 60 days.

Netherlands
On 28 April 2017, the US Internal Revenue Service (IRS) stated that it concluded agreements with two competent authorities to automatically exchange CbC reports on an annual basis. One of these countries is the Netherlands. At this point in time, the agreement that was reportedly concluded has yet been published, though it is likely based on the US model competent authority agreement published by the IRS on 6 April 2017.

Slovenia
On 19 April 2017, the Slovenian Ministry of Finance published a proposal for amendments to the Rules for Implementation of the Tax Procedure Act. The proposal introduces more specific requirements for CbC reporting than provided so far. For example, the proposal provides that a number of sources may be used for preparing a CbC report, namely reports on the consolidated financial statements, annual financial reports, internal financial reports for management decision-making, and financial statements for regulatory purposes. The same source should be consistently used over the years and any change should be disclosed to the Tax Authorities in the CbC report. Moreover, data on branches should be included under the tax jurisdiction where the branch is located and not under tax jurisdiction where the actual legal entity is resident. Further, the proposal would introduce CbC notification requirements that should be submitted alongside the CIT return for the relevant fiscal year. The notification form will be published on the web page of the Tax Authorities. Lastly, the proposal is accompanied by an annex which provides an overview of all items that are included in CbC report, their definitions and whether they are compulsory items or not.

Taiwan
On 21 April 2017, Taiwan’s Legislative Yuan passed the rules on a controlled foreign corporation (CFC) controlled or owned by Taiwanese individuals (the Individual’s CFC Rules). Under the Individual’s CFC Rules, a CFC is a foreign corporation located in a low-tax jurisdiction, defined as jurisdictions with a corporate income tax rate lower than 11.9%, that is directly or indirectly more than 50% owned by Taiwanese individuals and associated persons (as defined). Taiwanese individuals, together with a spouse and the specified relatives, who directly or indirectly hold more than 1% of the shares or capital of the CFC would be required to include their pro-rata share of CFC income as their foreign sourced income and calculate the individual’s Alternative Minimum Tax (the AMT). If, however, the taxpayer’s total foreign sourced income does not reach the threshold of TWD1 million in a taxable year, the individuals are exempted from the obligation to include CFC income in calculating their AMT. The detailed implementation rules will be issued by the Taiwan Ministry of Finance. The Individual’s CFC Rules are expected to be effective alongside with the general CFC rules for Taiwanese corporations, which were passed by the Legislative Yuan earlier in July 2016. It is uncertain when the Individual’s CFC Rules and the general CFC rules for Taiwanese corporations will be effective, as the following three conditions must be satisfied: (1) execution of China and Taiwan Signed Agreement on Avoidance of Double Taxation, (2) implementation of the worldwide Common Reporting Standard and Automatic Exchange of Financial Information, and (3) establishment and implementation of the relevant sub-regulation on CFC Rules.

United Kingdom
On 27 April 2016, the UK Finance Bill 2017 received Royal Assent after being agreed upon by both Houses. The timetable for the Bill was accelerated due to the UK general election to be held on 8 June 2017. The Bill has been shortened significantly with a number of contentious or complex measures being removed. Among the removed proposals are the new rules on corporate loss relief and corporate interest deductibility along with the changes to the substantial shareholder exemption. Amendments to the anti-hybrid rules and the cost-sharing rules for the patent box regime were also omitted. The expectation is however that most, if not all, of the dropped provisions will return in a bill after the election, regardless of who wins the election. What remains unclear is when, assuming that the provisions are brought back in a subsequent bill, those “deferred” provisions would then have effect from. This may create potential issues for some taxpayers; the EY Global Alert below provides more details.

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