OECD

On 22 September 2016, the OECD held its third “tax talk” – a periodic webcast wherein the OECD informs stakeholders about current and upcoming developments in tax policy. In this instance, the OECD provided an update on the Multilateral Instrument (MLI), the inclusive framework, and other non-BEPS related work. On the MLI, it was announced that an agreement was reached on the core content of the MLI and to make sure it remains clear with its objectives and to maintain consistency, the MLI is being fined tuned. It will be translated to French and approved in the next meeting of the ad hoc group in November 2016. It will be titled, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, and will have a flexible approach with opt-ins, alternatives and opt-outs (except for minimum standards). In addition, it will contain an optional provision on mandatory binding MAP arbitration, an accompanying explanatory statement, and a system of notifications to ensure clarity about interaction with existing treaty provisions. The concrete details on how the opt-ins, alternatives, opt-outs and the notifications will operate will be covered in the explanatory statement. The explanatory statement will also address the interaction between the MLI and bilateral tax treaties.

On the BEPS inclusive framework, the OECD anticipates that by the next meeting of the Inclusive Framework (January 2017) there will be approximately 100 BEPS associates. There will be regional meetings across the globe. The first regional meeting was held on 21-23 September 2016 in Montevideo, Uruguay. The next meetings will be held in Tunisia, Lithuania and Philippines.
On 22 September 2016, OECD released the first edition of a new annual monitoring exercise titled, Tax Policy Reforms in the OECD. This publication provides an overview of the tax reforms that were implemented, legislated or announced across the OECD member countries in 2015. Regarding BEPS, the report highlights that addressing BEPS was a priority among many countries. A number of corporate and value added tax (VAT) reforms reflected the adoption of BEPS recommendations. Moreover, among the base-increasing reforms which were enacted in 2015, a majority aimed at tax avoidance and protecting domestic tax bases from specific tax planning strategies such as avoidance of permanent establishment (PE) status, transfer mispricing and other forms of profit shifting. The report also highlights that the European Union (EU) has also taken steps by introducing new rules for anti-avoidance, including the General Anti-Abuse Rule (GAAR) in the EU Parent-Subsidiary Directive.

On 21-23 September 2016, the first regional meeting of the Inclusive Framework on BEPS was held in Montevideo, Uruguay. This meeting gathered 57 delegates from 10 countries (Argentina, Brazil, Dominican Republic, Ecuador, El Salvador, Honduras, Jamaica, Panama, Paraguay, and Uruguay) and 8 organizations. This meeting allowed participants to share their views and provide their input into the BEPS Inclusive Framework and to discuss the latest developments on the implementation work on BEPS. Participants were also updated on the progress of the work on the toolkits aimed at addressing the specific needs of developing countries in implementing the BEPS measures. The next regional meetings will be in Tunisia, Philippines and Lithuania in November and December 2016.

Australia

On 15 September 2016, the Australian Taxation Office (ATO) released two Taxpayer Alerts (TAs) warning against international profit shifting by multinational enterprises. TAs are ATO publications that provide a summary of the ATO’s concerns about new or emerging higher risk arrangements that are being assessed by the ATO. The TAs are not formal binding ATO advice but rather provide ATO guidance to assist taxpayers who have entered into an arrangement, or who may be contemplating entering into an arrangement, to make informed decisions about their tax affairs.

The first TA concerns cross-border round robin financing arrangements that involve the funding of an overseas entity or operations by an Australian entity, where the funds are subsequently provided back to the Australian entity (or its Australian associates) in a manner which purportedly generates Australian tax deductions without generating corresponding Australian assessable income. TA 2016/10 includes simplified examples of some of the financing arrangements that the ATO is reviewing in this regard. The ATO is concerned that taxpayers may not be entitled to an Australian income tax deduction in these circumstances because the borrowing may not have the sufficient necessary nexus with the requisite kind of income required (for general Australian income tax deductibility purposes). The TA also raises ATO concerns in relation to the application of Australian transfer pricing principles and Australia’s general anti-avoidance provisions in relation to these types of financing arrangements.

Following the release of previous TAs relating to arrangements in response to the Multinational Anti-Avoidance Law (MAAL) (see TA 2016/2 and TA 2016/8), the ATO has continued to work with taxpayers restructuring into arrangements that reflect their commercial and economic circumstances. The ATO remains concerned however that some taxpayers are entering into artificial and contrived arrangements in attempts to avoid the application of the MAAL. TA 2016/11 concerns a scheme whereby a partnership is interposed between a foreign entity making supplies to Australian customers and the Australian customers. The partnership is characterized as an “Australian entity” for purposes of the MAAL and agreements entered into purport to make the partnership the distributor of the products or services and the foreign entity its agent. As a result, the foreign entity ceases to make supplies to Australian customers and can artificially circumvent the application of the MAAL by contending there is no supply being made or income being derived by a foreign entity. The ATO warns the scheme may not be legally effective in achieving its purpose and may potentially enliven other general anti-avoidance rules across the Australian taxation system.

British Virgin Islands

On 5 September 2016, the Government of British Virgin Islands (BVI) launched a private sector consultation on the impact of implementing Country-by-Country reporting (CbCR). The survey focused on the potential impact of the main elements of implementing CbCR, thus there are questions on the potential issues derived from introducing
CbC local filing, the items to be reported (revenue, profits before tax, etc.), the CbCR filing date, and the exchange of reports. Moreover, the survey contains some aspects that would be included if CbCR is implemented, e.g., tax authorities would be able to ask for information to determine the accuracy of a CbC report within no more than 14 days, and the penalties for non-compliance would be similar to those under the Common Reporting Standard. The survey also covers other elements of BEPS that are of particular importance to the BVI business, like Group IP licensing arrangements (Action 5), investment fund structures (Actions 8-10), and how to demonstrate substance. The consultation was closed on 16 September.

Guernsey

On 21 September 2016, the Policy & Resources Committee of Guernsey issued a consultation document to invite comments on the proposed introduction of CbCR in accordance with Action Item 13 of the OECD BEPS project. As an Associate, Guernsey is committed to the consistent implementation of the comprehensive BEPS Package and one aspect of this initiative is the introduction of CbCR to improve transparency between multinational businesses and tax authorities, and to help identify aggressive tax avoidance. The purpose of this consultation is to seek views on whether the OECD Model legislation could be used as the basis for Guernsey’s CbCR legislation. The consultation closes on Friday 21 October 2016.

Israel

On 11 August 2016, as part of the 2017-2018 budget approval process, the Israeli Government published draft amendments to introduce CbCR in line with the BEPS Action 13 final report and other transfer pricing documentation requirements. The proposed legislation would cover multinational enterprise groups with consolidated revenue greater than 3.4 billion New Israeli Shekels (approx. US$900 million), or a lower threshold as may be determined by the Minister of Finance. The effective dates for these measures have not been provided.

Netherlands

On 20 September 2016, the Dutch Ministry of Finance issued its tax budget proposals for fiscal year 2017 and beyond. The Proposals contain several anticipated tax law changes to be effective as of 1 January 2017. As expected on the basis of the public consultation that was held previously, the 2017 Tax Plan contains proposed legislation to further align the Dutch innovation box with the BEPS Action Item 5 recommendations. The effective corporate income tax rate of the innovation box remains 5% instead of the statutory rate of 25%.


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EYG no. 03050-161Gbl
1508-1600216 NY
ED None

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