OECD

On 29 June 2016, the OECD released additional guidance aimed at the consistent implementation of Country-by-Country (CbC) reporting under Action 13 of the BEPS Action Plan. The guidance is in the form of question and answers, and addresses four topics: (i) transitional filing options for multinational enterprises (MNEs) that voluntarily file in the parent jurisdiction; (ii) guidance on the application of CbC reporting to investment funds; (iii) guidance on the application of CbC reporting to partnerships; and, (iv) the impact of exchange rate fluctuations on the agreed €750 million filing threshold for MNE groups. The guidance also explains that given the nature of the CbC reporting (i.e., that is one of the BEPS minimum standards), a peer review of the implementation of CbC reporting will be conducted to ensure that the implementation is timely and in accordance with the Final Report on Action 13.

On 30 June 2016, the first meeting of the OECD’s BEPS inclusive framework was held in Kyoto, Japan. The two-day meeting brought together representatives from over 80 countries and marks another milestone in the BEPS project. At the close of the first day of the meeting, the OECD issued a press release informing that 36 new countries have joined the BEPS inclusive framework bringing to 82 the number of countries participating in the BEPS project. This group of countries committed to implement the minimum standards of the BEPS package. Another 21 countries attending the meeting will participate as invitees while they consider whether to commit to the
implementation of the BEPS package. Furthermore, during the meeting, a third signing ceremony of the Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports also took place where 5 additional countries signed, bringing the total to 44.


On 4 July 2016, the OECD released a couple documents for public input. First, as part of the follow-up work on Action 7, a discussion draft on the attribution of profits to permanent establishments (PEs) which seeks further guidance regarding two fact-patterns: dependent agent PEs (including those created through commissionaire and similar arrangements) and warehouses as PEs. The discussion draft contains a number of examples wherein the OECD analyzes the attribution of profits and raises some questions for each example. Additionally, this discussion draft seeks suggestions for mechanisms that could ensure additional coordination between the application of Article 7 and Article 9 of the OECD Tax Model Convention to determine the profits of a PE.

Second, as part of the follow-up work on Actions 8-10, a discussion draft dealing with the clarification and strengthening of the guidance on the transactional profit split method was released. This draft puts forward the text to replace part III section C of chapter II of the 2010 OECD Transfer Pricing Guidelines (TPG). Among other things, the draft provides further guidance regarding the distinctions on the application of the transactional profit split to projected or actual profits, introduces the sharing of economically significant risks as a factor that may indicate a transactional profit split of actual profits may be the most appropriate method, and indicates that a transactional profit split of anticipated profits can be used in conjunction with certain valuation techniques.

The OECD invites stakeholders to submit comments on both of the above discussion drafts by 5 September 2016 and states that these drafts do not represent a consensus position of the Committee on Fiscal Affairs of the OECD or its subsidiary bodies.

Lastly, the OECD released the conforming changes to Chapter IX of the OECD TPG requesting public review. These conforming changes were agreed by Working Party No. 6 of the Committee on Fiscal Affairs of the OECD and are prompted by the changes introduced to the TPG through the Final Reports on Actions 8-10 and 13 as issued by the OECD on 5 October 2015. Interested parties are invited to review the conforming changes and submit comments by 16 August 2016.

**Austria**

On 14 June 2016, the Austrian Ministry of Finance (MoF) published the government bill of the European Union Tax Amendment Act 2016, including among other provisions, the new Austrian Transfer Pricing Documentation Law (TPDL). The government bill of the TPDL contains some significant amendments as compared to the draft TPDL, including: Constituent entities resident in Austria need to prepare a Master File and a Local File if their turnover in the previous two fiscal years exceeded €50 million; the entire documentation package has to be prepared in a language officially permitted for tax proceedings (typically German) or in English. The tax authorities are no longer permitted by the TPDL to require the taxpayer to submit a certified translation of the required documents not prepared in the official language; and the penalty for not filing the CbC report in time or filing the required items incorrectly was reduced to €50,000 for intent.


**European Union**

On 23 June 2016, the Code of Conduct Group on Business Taxation (the Group) submitted report 9912/16 to the European Council for Financial and Economic Affairs (ECOFIN). Among other items, the report informs that during the Netherlands Presidency, all Member States with patent box (or IP) regimes, except France, have notified the Group of the steps taken to comply with their commitment to implement the modified nexus approach. France considers that its IP regime would not be harmful and therefore no rollback (phasing out) is necessary. Italy has notified the Group that an internal consultation is in process on the provisions necessary in order for the Italian IP regime to fully comply with the minimum standard on IP regimes. Moreover, Spain has declared that the region of Navarra has started the work to amend the existing sub-national patent box regime so as to comply with the modified nexus approach.
Furthermore, the report includes guidance and explanatory notes on the treatment of hybrid PE mismatches involving third countries that was approved by the ECOFIN on 17 June 2016. It also discusses the state of play on the implementation of the Model Instruction on the exchange of information relating to rulings and unilateral advance pricing agreements which should have been implemented by all Member States as from 1 January 2016. Finally, the document reports on the progress achieved with respect to guidelines on the issuing of tax rulings, stating that further work needs to be done.

Hong Kong

On 20 June 2016, Hong Kong announced that it will join the OECD as an Associate in the inclusive framework for implementation of the package of measures against BEPS. As a BEPS Associate, Hong Kong will comply with the BEPS minimum standards encompassing Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Hong Kong will also work with other jurisdictions to help develop the implementation and monitoring phase of the BEPS Project.

See EY Global Tax Alert, Hong Kong joins OECD BEPS project as an Associate, dated 24 June 2016.

India

On 22 June 2016, the Government of India issued a notification providing for grandfathering of income from the transfer of investments made before 1 April 2017 from the application of the new domestic general anti-avoidance rule (GAAR) and to specify that the GAAR will apply to tax benefits obtained on or after 1 April 2017.

See EY Global Tax Alert, Indian Minister releases Notification to grandfather foreign investments under the GAAR, dated 23 June 2016.

Indonesia

On 9 June 2016, Indonesia's Ministry of Finance announced that it has formed a team that will focus on taxation of e-commerce activities. Earlier in the year, the Government initiated an investigation of four Internet-based companies for any unpaid taxes including value added tax (VAT) after finding evidence that the companies did not register their local business units as PEs in Indonesia. Although the companies claim that the income is earned by their headquarters' operations in Singapore, the Government asserted that revenues from online advertisements are taxable and expressed its intent to pursue taxation on the income.

Ireland

On 23 June 2016, the Irish Revenue published the guidelines (eBrief No. 60/16) for a formal bilateral advance pricing agreement (APA) program that will be effective from 1 July 2016. The BEPS Action 14 recommendations, as well as the need for greater certainty in relation to the taxation of cross-border transactions entered into by multinational enterprises, drove Ireland's decision to introduce an APA program.


On 23 June 2016, the Irish Revenue also published a set of 33 frequently asked questions (FAQs) on CbC reporting. The FAQs were designed to provide information in connection with the interpretation of legislation and regulations that implement CbC reporting in Ireland.


Netherlands

On 20 June, the Dutch Government released its proposed amendments to existing interest limitation rules specifically targeting base erosion through interest deductions arising from related party and acquisition financing. A consultation is opened to the public and comments can be provided by 18 July 2016. The proposed rules are expected to be included in the 2017 Dutch Budget that will be presented on 20 September 2016. Under the proposed rules, the definition of a "related party" is expanded to also include a company that is part of a cooperating group of companies holding a total combined interest of at least one third in a Dutch company (cooperating group), and addresses certain loopholes that are perceived as circumventing the effective application of the leveraged buy-out rules.

New Zealand

On 27 June 2016, the New Zealand Government released three papers related to BEPS. These papers describe work carried out to date, outline areas of work for the next 12 months and describe the Government’s intentions when designing rules for taxing foreign investment income. The Government has indicated the following developments are probable: (i) introduction of hybrid mismatch rules, with a consultation document planned for August/September 2016 and legislation to follow in early 2017; (ii) stronger interest limitation rules, also with a consultation document planned for August/September 2016 and legislation early in 2017; (iii) confirmation of New Zealand’s intention to sign-up to the OECD’s Multilateral Instrument in December 2016; and (iv) improvement of transparency and exchange of information - requiring large New Zealand-based multinationals to prepare CbC reports, including the allocation of income and taxes paid (with informal indications that supporting legislation is likely in early 2017).

Russia

On 15 June 2016, the Russian State Duma passed, in its final reading, a law that provides new VAT rules for electronic services. Electronic services include the following services: supply of computer programs via the Internet, provision of rights to use computer games, provision of advertising services via the Internet, provision of services involving posting of offers to buy (sell) goods (work and services) and property rights in the Internet, provision and (or) maintenance of a commercial or personal presence in the Internet, storage and processing of information in the Internet, provision of hosting services, sale of electronic books, images or musical works via the Internet, provision of access to the Internet search systems. According to the new place of supply rules, electronic services are to be taxed with VAT at the location of a buyer.


Spain

On 20 June 2016, the Spanish Supreme Court issued a decision upholding a prior judgment rendered by the Spanish National High Court (Audiencia Nacional) where it was concluded that a Spanish entity belonging to an international group constitutes a PE of an Irish entity of the group under both the “fixed place of business” and the “dependent agent” clauses of the Spain-Ireland tax treaty. The case is of special interest in the interpretation of the “fixed place of business” and “dependent agent” clauses because: i.) it follows the trend set by the Spanish Supreme Court in preceding judgments which upheld the Spanish tax authorities’ functional approach with regard to post-restructuring schemes and commissionaire dealings involving complex business structures in Spain; and ii.) it is in line with Action 7 of the BEPS project to prevent the artificial avoidance of PE status through the use of commissionaire arrangements.

See EY Global Tax Alert, Spanish Supreme Court confirms broad interpretation of the PE concept in line with BEPS Action 7, dated 30 June 2016.

United Kingdom

On 24 June 2016, HM Revenue & Customs (HMRC) issued guidance on the publication of the tax strategy of companies, partnerships, groups or sub-groups with either a turnover above £200 million or balance sheet over £2 billion. The guidance provides among other things that the strategy should explain the business’s tax arrangements, though no need to include amounts of tax paid or commercially sensitive information. Moreover, HMRC wants to know how partnerships as a whole manage their tax affairs. The strategy should also include what tax risks are linked to the business’s size, complexity and any changes to the business. Regarding tax planning, the guidance provides that the report should also contain an outline of the tax planning motives and the importance of each to the tax strategy. The tax strategy must be available free of charge on the internet as either a separate document and/or a self-contained part of a wider document.
United States

On 29 June 2016, the US Internal Revenue Service (IRS) and the Treasury Department released the final regulations on CbC reporting. The CbC regulations apply to reporting periods of ultimate parent entities of US MNE groups that begin on or after the first day of the taxable year of the ultimate parent entity that begins on or after 30 June 2016. According to the preamble to the regulations, Treasury and the IRS announced their intention to allow voluntary CbC reporting, under guidance to be published separately, for reporting periods that begin on or after 1 January 2016, and before the applicable date of the Final Regulations.


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On 27 June 2016, new clauses were added to the Finance Bill to widen the scope of withholding tax on royalties, further to a technical note originally released on 16 March 2016. These changes will be effective for payments on or after 28 June 2016 with no grandfathering provisions. The additional clauses make changes to the definition of royalties to more closely align with existing income tax provisions, and change the definition of whether a payment has a UK source such that a royalty will have a UK source if the obligation to pay it arises in connection with a business carried on through a UK permanent establishment. These new clauses supplement an existing provision in the Finance Bill also announced in the March technical note, which provides for treaty relief to be denied for certain intellectual property royalty (or similar) payments made to connected persons under double tax treaty avoidance arrangements. This latter measure applies for payments made on or after 17 March 2016. The Finance Bill is currently progressing through Parliament and is expected to receive Royal Assent later this year.
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