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OECD

On 6 March 2017, Malaysia became a member of the BEPS inclusive framework. As a member of the BEPS inclusive framework, Malaysia has committed to comply with the BEPS minimum standards contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Malaysia will also participate on an equal footing with the other members of the inclusive framework with respect to the remaining standard setting under the BEPS project, and the review and monitoring of the implementation of the BEPS package.

Australia

On 3 March 2017, the Australian Taxation Office (ATO) issued guidance on the provision of International Related Party (IRP) agreements to be provided in the local file for Country-by-Country (CbC) reporting. The rules in this guidance seek to facilitate a balance between the function of the local file and the compliance cost in providing the IRP agreements in Part B of the local file.

Copies of IRP agreements generally need to be provided in Part B of the local file for the transactions shown in Part A of the local file (in relation to controlled transactions with IRPs) unless the transactions are covered by the Exclusions List (including low value service agreements or the issuance of ordinary shares, etc). The guidance states the ATO's approach in requiring the necessary agreement documentation and acknowledges that while the rules have been developed to lower the compliance cost this should not lead to creating opportunities for non-disclosure of potentially profit shifting transactions. Further, the guidance inter alia covers general principles on providing IRP

agreements, as well as specific topics including what comprises an agreement for the purposes of the local file, circumstances where a relevant material agreement instead of individual agreements may be provided for aggregated transaction and the features of such agreements, as well as special rules for offshore banking units and banks.

Canada

On 2 March 2017, the Canadian Revenue Agency (CRA) released detailed guidance on the CbC reporting (CbCR) requirements for Canadian taxpayers. The guidance provides information on the interpretation of Canadian CbCR legislation, notification requirements, obligations under the secondary filing mechanism, impact of currency fluctuations on the €750 million filing threshold, information to be included in the CbC form, rules for investment funds, penalties and the automatic exchange of CbC reports. The guidance acknowledges the intention of the CRA to provide reasonable flexibility to the multinational enterprise (MNE) groups in Canada for their initial reporting fiscal year in respect to the filing of their CbC report, considering that there may be limited interpretation available on certain issues and different approaches followed by various countries. Lastly, the guidance also acknowledges that as some countries may not be able to follow the OECD recommended date for CbCR (with respect to fiscal periods from 1 January 2016), it expressly states that the CRA would accept voluntary filing of the CbC report, following the OECD Guidance on the implementation of CbCR under BEPS Action 13.

Colombia

On 29 December 2016, Colombia enacted Law 1819 which among others introduced the three-tiered approach to transfer pricing documentation developed as part of Action 13 of the OECD's BEPS project, consisting of a CbC report, Master File and Local File. In contrast to the original draft, the enacted Law provides rules for local filing according to which MNE groups not resident in Colombia are required to file a CBC report under the circumstances where the entities jointly have a participation equal to or higher than 20% of the consolidated revenue, the parent company has not filed the CbC report in its home country and the group has consolidated revenues equal to or exceeding COP2.3 billion in the previous tax year.

There are no other major changes from the draft bill that was submitted in October 2016, regarding CbC, Master File and Local File reporting requirements. Furthermore, the Law 1819 does not contain provisions on the filing, forms, notification obligation, periods or conditions for CBC, master file and local file reporting. Those aspects will be the subject of regulations to be issued by the Government. Furthermore, the CbCR and local file requirements apply from 1 January 2016. The law does not expressly establish the date that Master File requirements would apply, it is expected that this aspect will be included in the pending regulations.

See EY Global Tax Alert, [Colombia enacts rules for implementation of BEPS Action 13](#), dated 22 February 2017.

Ireland

On 15 February 2017, the Irish Finance Minister in his [speech](#) at the conference on Corporate Tax: Fairness, Responsibility and Leadership repeated Ireland's commitment towards the BEPS action plan and that Ireland will continue to take the action needed to implement the BEPS report, evidenced by:

- ▶ Implementation of CbC reporting
- ▶ Signing up to all new international best practices and standards on exchanging tax information
- ▶ Agreement of the Anti-Tax Avoidance Directive with fellow European Union (EU) Finance Ministers
- ▶ Active role in the agreement to the BEPS multilateral instrument and commitment to sign up the Instrument when it becomes possible

The Minister also made reference to the fact that Ireland had moved to eliminate the double-Irish mechanism used to exploit the mismatches in tax systems, although noting that since mismatches occurs between different countries it cannot be eliminated by Ireland alone. It was further mentioned that Ireland is committed to maintain high transparency standards and that it will continue to sign the exchange of tax information with different countries.

The Minister emphasized the importance of consistent international action, which is needed for proper and full implementation of the BEPS action plan and cautioned against the inconsistent action taken by the EU to combat aggressive tax planning.

In closing the Minister stated:

- ▶ The Irish Government strongly supports global tax reform and that their commitment to the BEPS reforms stays strong
- ▶ Ireland will continue to bring forward the necessary changes to meet their International commitments by the required deadlines, while ensuring that they remain competitive and responsive to change
- ▶ That there is widespread international agreement that Ireland's 12.5% tax rate is not a BEPS issue

Lastly, it was stated that a public consultation would be facilitated in the coming days to review the Irish corporate tax code. This review has now commenced.

Italy

On 8 March 2017, the Italian Ministry of Finance issued a Decree providing detailed information regarding the application of CbC reporting rules. The Decree is in accordance with an EU Directive of 25 May 2016 requiring all EU Member States to implement a CbCR obligation in their national legislation in accordance with the recommendations of the OECD BEPS Action 13. According to the Decree, all Italian tax resident entities that are Ultimate Parent Entities (UPEs) of an MNE group with annual consolidated group revenue equal to or exceeding €750 million will need to prepare a CbC report. Alternatively, if the UPE is not resident in Italy, and not obligated to file a CbC report in its country of residence, or although obligated to file CbC report there is no exchange of information instrument in place with Italy or there is a systemic failure of the jurisdiction of tax residence of the UPE, any other entity of the group that is resident in Italy would have to prepare the CbC report. Moreover, if the MNE group appoints a surrogate entity and meets other criteria, the secondary filing mechanism will not be activated. Also in line with the provisions of the EU Directive the decree provides for the possibility to appoint an EU group member that can file on behalf of EU group companies. Finally, the decree states that, only for fiscal years commencing in 2016 and not closed as of 31 December 2016, local filing will not be required in cases where the UPE of an MNE group voluntarily files the CbC report in its country of residence. Moreover, an Italian group entity will need to notify the tax authorities in its tax return whether it is the UPE or Surrogate Parent Entity (SPE). If it is neither a UPE nor an SPE, it will have to inform the tax authorities of the identity of the UPE or SPE along with its tax residency. CbCR will be filed with the Italian Competent Authorities within 12 months

from the end of reporting period. Further instructions on the submission mechanism and other clarifications will be provided in operational Instructions to be issued by the Italian Revenue Agency.

See EY Global Tax Alert, [Italy issues Ministerial Decree implementing Country-by-Country Reporting](#), dated 10 March 2017.

New Zealand

On 3 March 2017, the New Zealand Government released three consultation papers proposing new measures to strengthen New Zealand's rules for taxing large multinationals. The proposals are far reaching and if enacted would put New Zealand at the forefront of countries implementing the G20/OECD BEPS recommendations.

BEPS - Transfer pricing and permanent establishment avoidance proposes rules to bring more entities into the New Zealand tax base, increase emphasis on transfer pricing documentation and give Inland Revenue greater powers to re-characterize transactions and to raise assessments. A new anti-avoidance rule is proposed for multinationals with over €750 million global turnover. It will target multinationals structuring their sales to avoid a taxable presence in New Zealand by deeming the existence of a permanent establishment. This rule would share many features with Australia's Multinational Anti-Avoidance Law and the UK's Diverted Profits Tax. Note that the Government has not ruled out the adoption of a diverted profits tax at some point in the future should the proposed approach prove ineffective.

BEPS - Strengthening our interest limitation rules proposes to reduce the amount of interest payments deductible on related party finance and also on non-related party funding given the proposed changes to the thin capitalization rules. The Government intends to strengthen the current asset-based thin capitalization test by capping the deductible interest rate on related party loans, based on the interest rate of the ultimate parent, and by excluding non-debt liabilities such as trade credits and provisions from the thin capitalization asset base. An earnings before interest, taxes, depreciation and amortization (EBITDA)-style test has not been ruled out should the proposals not prove effective.

New Zealand's implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS confirms that New Zealand will modify its existing double tax agreements in line with OECD recommendations.

New Zealand expects to be in a position to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the MLI) in mid-2017. It intends the MLI to cover the majority of our double tax agreement network and to adopt all applicable minimum standards and optional provisions.

Russia

On 6 March 2017, the Russian Finance Ministry presented for public discussion a new version of the draft law aimed at the introduction in Russia of documentation requirements for multinational enterprises (the Draft) in accordance with the OECD's BEPS Action 13 on CbCR. The new version of the Draft aligns the definitions of a UPE and an SPE of an MNE with the definitions under BEPS Action 13.

Key changes from the earlier version of the draft law *inter alia* include modified definition of consolidated financial statements and alteration of the time limit for submitting notifications from three months to eight months from the end date of the UPE's last financial year. Further, the Master File may now be requested not only from the Russian tax-resident UPE of an MNE group but also from any other constituent entities of the group, which are tax residents of Russia. The contents of the Master File has changed significantly as compared with the prior version of the Draft. The Draft eliminates uncertainty as to whether the Local File would be an additional requirement for controlled cross-border transactions between an MNE's members, stating that it would effectively replace the currently existing requirement to prepare transfer pricing documentation. The law will enter into force from the date it is signed, but will apply to MNEs' fiscal years commencing from 1 January 2017. It is stated that the new requirements will also apply to transactions concluded in prior periods if amounts of income and/or expenses relating to those transactions are recognized for taxation purposes on or after 1 January 2017.

See EY Global Tax Alert, [Russia revises draft law on BEPS Action 13 CbCR implementation](#), dated 10 March 2017.

Sweden

On 3 March 2017, the Swedish Government adopted the law on CbCR requirements. There are no substantial changes from the earlier draft law to the adopted law. The law will be effective from 1 April 2017.

See EY Global Tax Alert, [Sweden proposes implementation of OECD standard for transfer pricing documentation and automatic exchange of CbC reports](#), dated 12 May 2016.

Vietnam

On 24 February 2017, Vietnam's Government adopted the Decree on tax administration of enterprises with related party transactions. The Decree, among other items, adopts the three-tiered approach to transfer pricing (TP) documentation developed as part of Action 13 (CbC reporting, Master File and Local File). According to the Decree, a UPE in Vietnam having global consolidated revenue of VND 18,000 billion or more in a tax period, is required to prepare a CbC report. However if a UPE is not resident in Vietnam and it is obligated to prepare such report in its country of residence, then it would be required to file a CbC report in Vietnam. In the case where the CbC report is not submitted as mentioned above, then an explanation letter needs to be filed with the tax authority justifying the failure. Further, the Decree requires taxpayers to prepare their TP documentation before the submission of their tax return. In addition, taxpayers are required to submit their TP documentation to the tax authorities within 15 working days upon the tax authority's request in case of tax/TP audit. Further details on TP documentation are awaited. Moreover, with respect to deductibility of interest expense, the Decree provides that the total deductible interest expenses paid to related parties in a tax period must not exceed 20% of EBITDA. This decree is effective from 1 May 2017.

See EY Global Tax Alert, [Vietnam issues new transfer pricing decree effective 1 May 2017](#), dated 9 March 2017.

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