The latest on BEPS – 2016 year-end review

A review of OECD and country actions from July through December 2016

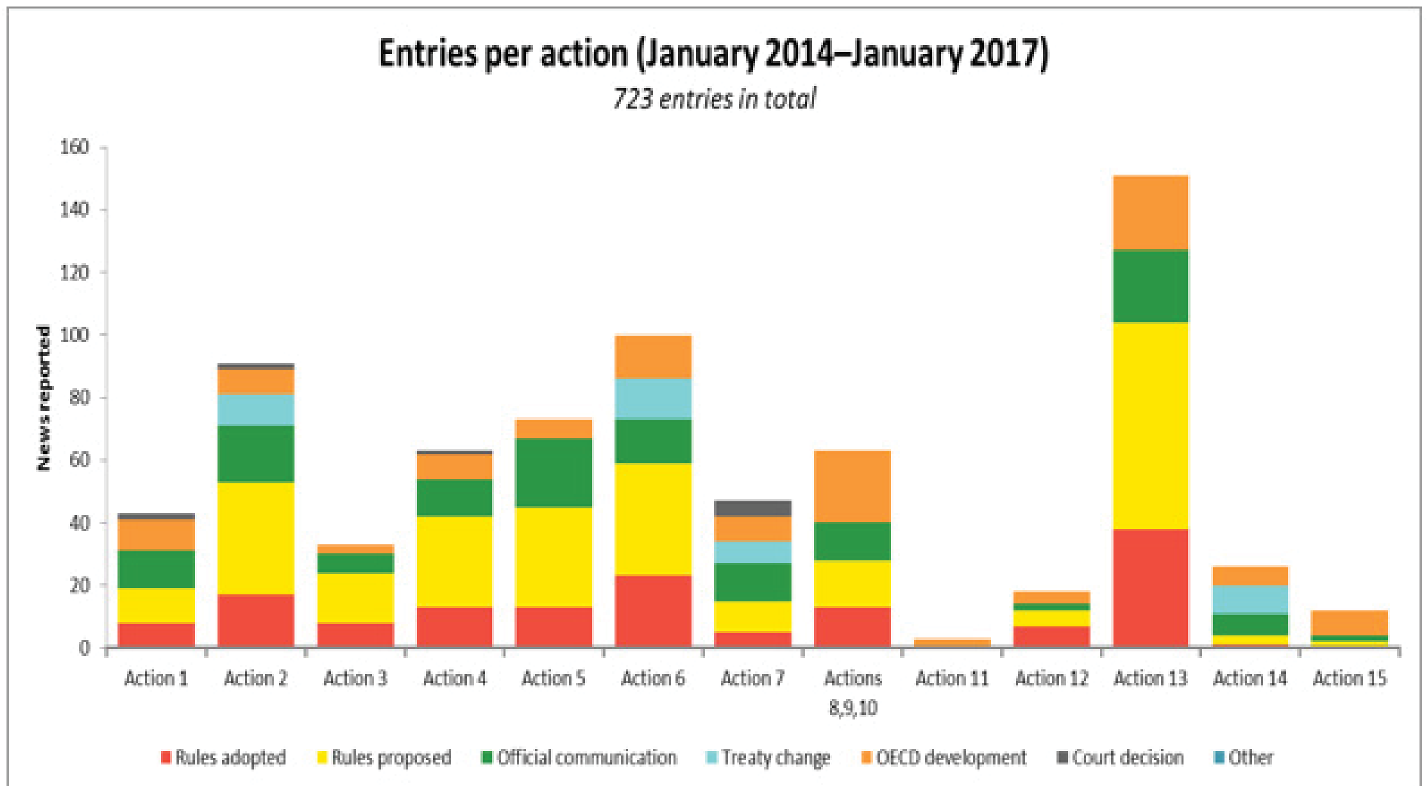
EY

Building a better working world

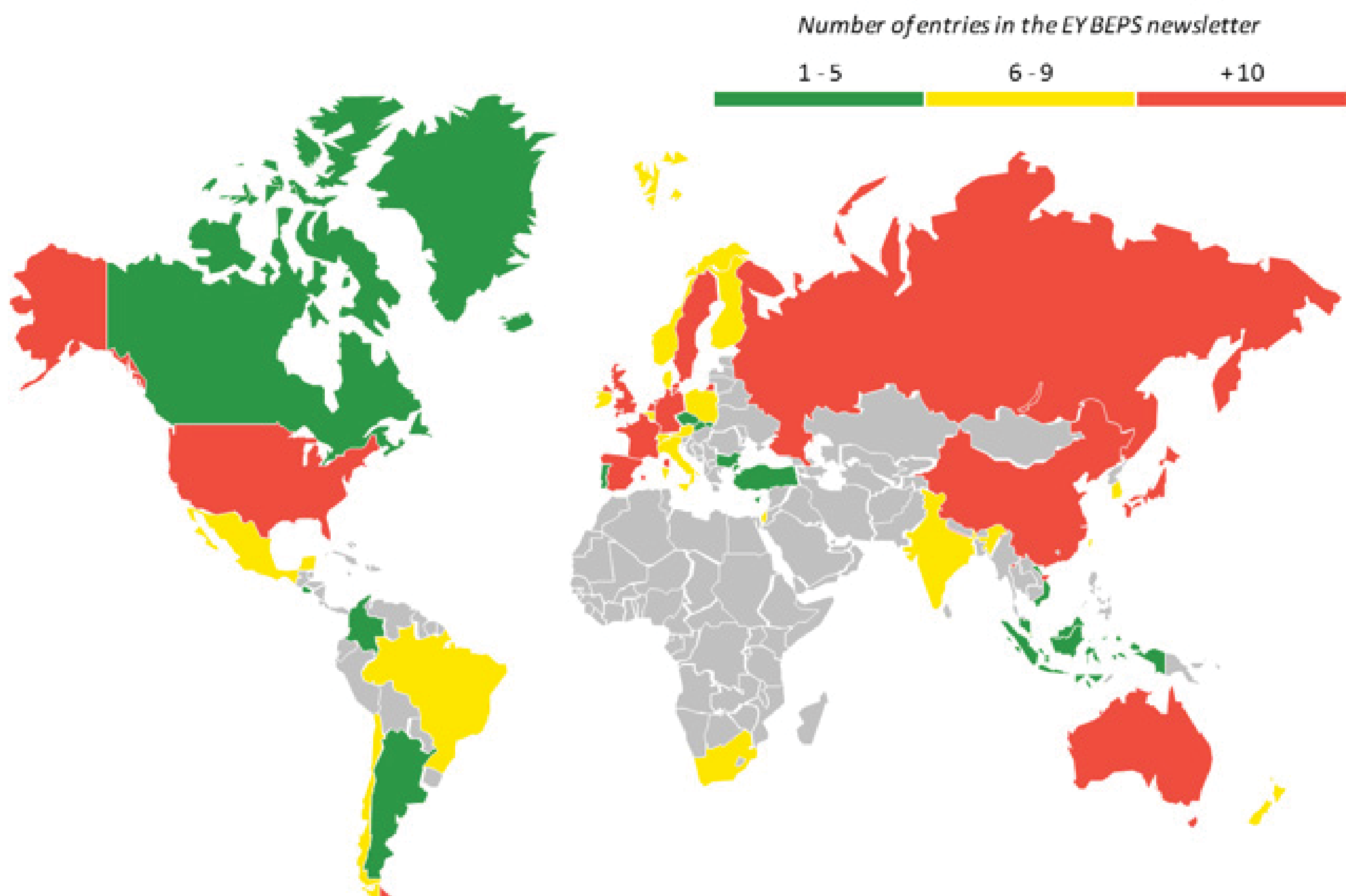
Through our series of Global Tax Alert articles "The Latest on BEPS," EY has tracked developments related to the OECD/G20 BEPS project since the beginning of 2014. Using the content of these Alerts, we maintain our BEPS developments tracker, which includes interactive maps and other visualizations that let you browse and filter this content by date, geographical location and the related BEPS Action. The interactive tool can be found on our external EY BEPS website at ey.com/beps.

Overview

EY has been reporting on the OECD/G20 Base Erosion and Profit Shifting (BEPS) project from its outset. Since 2014, we have tracked developments inspired or driven by BEPS, both at the Organisation for Economic Co-operation and Development (OECD) level and at a country level. As part of this process, there is a biweekly newsletter that summarizes the BEPS-related developments of the covered period, and a yearly special edition that highlights and recapitulates the year in review. Past editions are available through the following links: 2014 edition, 2015 edition and 2016 mid-year edition.



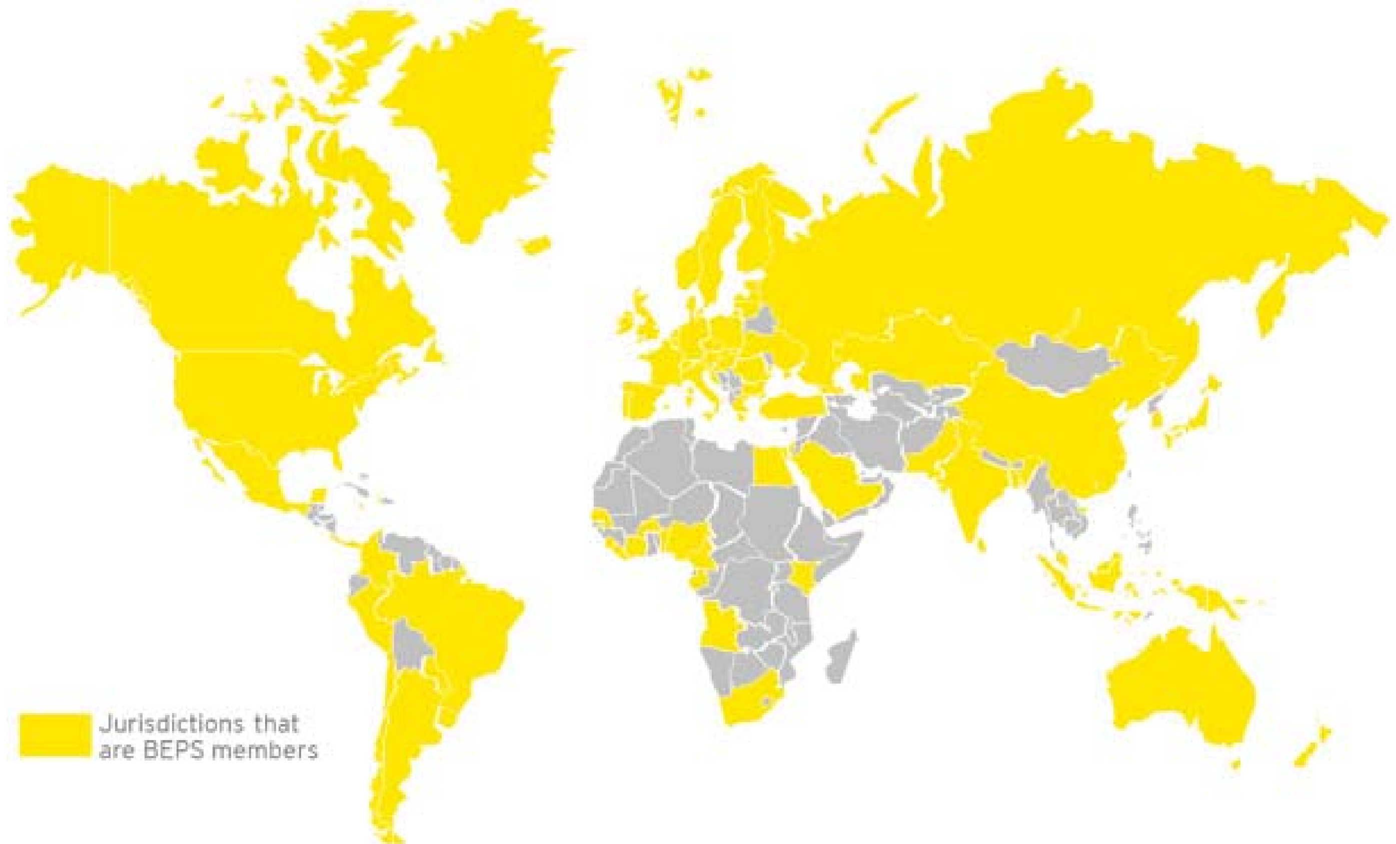
In October 2015, the OECD presented the final reports of its 15-Action plan to tackle BEPS. The G20 Leaders endorsed these reports in November 2015, and although the reports are final, the OECD has undertaken follow-up work with respect to certain BEPS action items and will continue to undertake in subsequent years. The presentation of these reports marks the end of the recommendation phase of the BEPS project, and the commencement of the implementation phase. Now countries need to consider which recommendations to implement and how to implement them. Since the beginning of the implementation phase, countries' BEPS-driven developments have proliferated, and the OECD has designed an inclusive framework that allows non-OECD/non-G20 countries to participate on an equal footing in the follow-up work of the BEPS project.



Due to the increased activity and growing interest in the subject, *The Latest on BEPS — 2016 year-end review* covers the developments reported from July through December 2016. However, due to the important level of activity at the European Union (EU) level, a separate heading now addresses the EU BEPS-related activity. For example, in October 2016, the European Commission announced a new package of corporate tax reforms. The package includes three separate legislative initiatives, namely (i) a two-stage proposal toward a Common Consolidated Corporate Tax Base (CC(C)TB); (ii) a Directive on Double Taxation Dispute Resolution Mechanisms in the EU; and (iii) amendments to the Anti-Tax Avoidance Directive (ATAD) agreed in June 2016, regarding hybrid mismatches with third countries.

Looking ahead

As of the beginning of January 2017, close to 100 jurisdictions have committed to the implementation of the BEPS outputs through their membership in the Inclusive Framework on BEPS Implementation, and many countries have begun to implement some of the recommendations made in the BEPS reports.



Andorra, Angola, Argentina, Aruba, Australia, Austria, Bangladesh, Belgium, Benin, Bermuda, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Curacao, Czech Republic, Democratic Republic of the Congo, Denmark, Egypt, Eritrea, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Haiti, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenya, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Romania, Russia, San Marino, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States and Uruguay.

The new transfer pricing guidance is already applicable in a number of countries. Governments are also broadly implementing the new transparency measures, particularly the measures on transfer pricing documentation and country-by-country (CbC) reporting. Furthermore, implementation of the measures aimed at creating more coherence between domestic tax systems, such as measures to neutralize the effects of hybrid mismatches, is in the pipeline in many countries (e.g., Australia and New Zealand). The EU is the frontrunner with such implementation, tailoring the measures to its own specific needs.

Finally, the Multilateral Instrument (MLI) was published in November 2016. The MLI is expected to fundamentally change the way bilateral tax treaties are updated. The aim of this instrument is to facilitate quick implementation of all the treaty-related BEPS changes in as many of the thousands of existing bilateral tax treaties as possible. By adopting the MLI, countries will be allowed to implement changes in a great number of their bilateral treaties at one time. The MLI is open for signature as of 31 December 2016, and a signing ceremony is anticipated for June 2017.

Besides these worldwide developments, the tax reform announced by various countries around the world would also impact the international tax environment. For example, in the United States (US), President Trump and a Republican-controlled Congress are expected to focus this year on a number of priorities, including tax reform.

This new environment requires businesses to stay informed as the landscape changes and consider operational and financing structures, identify communications strategies and assess their tax strategy, all with the aim of developing a tax framework that is sustainable for the future. Now that all key instruments for BEPS implementation have been released by the OECD (the OECD BEPS reports, Transfer Pricing Guidelines and the MLI) and the EU and countries are legislating and/or providing more clarity on how they will implement measures, businesses have or will gain sufficient information in 2017 to take stock and set a course to move forward.

Review of country developments by Action

Action 1

The final report on Action 1, *Addressing the Tax Challenges of the Digital Economy*, considers the direct and indirect tax challenges faced by the digital economy and provides an evaluation of the options to address these challenges. The report also analyzes the broader tax challenges raised by the digital economy and considers options such as a new nexus in the form of a significant economic presence, a withholding tax on certain types of digital transactions and an equalization levy. However, the report does not recommend any of these options and leaves it up to the individual countries to introduce any of them as additional safeguards against BEPS. Work in the area of Action 1 will continue to be carried out by the OECD, and a report reflecting the continued work is expected to be produced by 2020.

Following the withholding tax mechanism considered by the OECD in the final report, the Turkish Government proposed rules introducing a new withholding tax (WHT) on income derived from social media users. This initiative is a result of the high level of controversies in the area of taxing social network platforms and digital/online activities in Turkey. The new rules have already determined the WHT rates that would be applicable, but these rates could likely be re-determined by the Council of Ministers.

In the indirect tax domain, the final report recommends that countries apply the principles of the International Value Added Tax/Goods and Services Tax (VAT/GST) Guidelines and consider introducing the collection mechanisms included in those guidelines. In this regard, during the period under review, Taiwan has proposed to impose a business tax on foreign e-commerce service providers; Belarus and Russia have introduced VAT on electronic services; and in New Zealand, the rules requiring a GST charge on a broad range of remote services now apply as of 1 October 2016.

Action 2

The final report on Action 2, *Neutralizing the Effects of Hybrid Mismatch Arrangements,* contains detailed recommendations in two parts addressing hybrid mismatch arrangements. Part I recommendations include modifications to the domestic law provisions aimed at neutralizing mismatches such as deduction/non-inclusion (D/NI), double deduction (DD) and indirect D/NI. Part II deals with changes to be made to the OECD Model Convention and the tax treaty issues in the context of Action 2. Part II focuses on recommendations on treaty issues.

Further work by the OECD on Part I of the final report includes the release of a discussion draft on branch mismatch structures. This discussion document contemplates five types of branch mismatch arrangements that result in D/NI, DD and Indirect D/NI outcomes and provides for preliminary recommendations for domestic law rules to neutralize these mismatches. Interested parties and stakeholders submitted their comments on the draft as well as the specific questions for public consultation. These inputs were then considered by Working Party 11 in a consultation in October 2016 for advancing their work in this regard.

With respect to Part I domestic law modifications, there have been developments in New Zealand and at the EU level. New Zealand released a discussion document to address hybrid mismatch arrangements involving the use of hybrid instruments or entities. The paper relies on the OECD recommendations and sought comments on how the OECD recommendations could apply in New Zealand. The rules aim at targeting related-party funding arrangements and also structured arrangements where the mismatch is a consequence of a hybrid component. The rules will apply on a prospective basis to all payments made after the effective date of implementing the law. Although not set out in the discussion document, the anticipated date that the rules will apply will be no earlier than 1 April 2018.

On Part II, the MLI adopted on 24 November 2016 contains provisions to address fiscally transparent entities and the measures to address issues regarding the application of the exemption method to relieve double taxation. Moreover, the revised double tax treaty between Belgium and Japan includes a provision dealing with the fiscally transparent entities/arrangement concept in Article 1 as recommended under Action 2. Consequently, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the law of either Contracting State would be considered to be income of a resident of a Contracting State to the extent that the income is treated as (taxable) income of the resident of that Contracting State. This is also the case with the tax treaty between Colombia and the United Kingdom (UK).

EU activity

As part of a major corporate tax reform across the EU, the European Commission (the Commission) proposed amendments to the ATAD, agreed in June 2016, regarding hybrid mismatches with third countries. These proposed amendments are a result of the Council statement by the Economic and Financial Affairs Council (ECOFIN) on 20 June 2016 wherein the ECOFIN requested that the Commission put forward a proposal on hybrid mismatches involving third countries.

The previous hybrid rules contained in the ATAD were limited to arrangements involving hybrid instruments/entities solely between Member States, whereas the new rules seek to target arrangements between Member States and third countries. The amendments aim not only to broaden the territorial scope of the ATAD hybrid rules but also to address hybrid permanent establishment (PE) mismatches, hybrid transfers, imported mismatches and dual resident mismatches that were not previously dealt with by the ATAD.

On 6 December 2016, the Slovak Presidency of the Council of the European Union presented its compromise text on the Commission's proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (also known as the ATAD 2). During the meeting, the ECOFIN could not reach an agreement on the proposal but agreed to a stable text for most provisions, leaving just two issues to resolve: (i) rules that would allow Member States to apply limited exemptions; and (ii) the date of implementation. This proposal is high on the agenda of the Council of the European Union and will be discussed during the Maltese Presidency in the first semester of 2017.

Action 3

The final report on Action 3, *Designing Effective Controlled Foreign Company Rules*, contains recommendations in the form of building blocks to enable countries to design effective controlled foreign company (CFC) rules, and this concludes the OECD's work on CFC rules under Action 3. The recommendations contained therein are not minimum standards. Jurisdictions are at liberty to implement them as a new regime, modify an existing one or not implement at all as they see fit, taking into account their tax policy objectives. The work in this area could thus impact the taxation of global business depending on country initiatives.

Taiwan's Legislative Yuan amended the Income Tax Act and adopted final CFC rules, based on the proposal that was under examination by its Finance Committee. These rules incorporate some of the recommendations provided in the OECD's Action 3 final report. The Taiwan Tax Authority also plans to introduce CFC rules applicable to individual shareholders by incorporating CFC rules in the country's Alternative Minimum Tax (AMT) regulations. The proposal is an anti-deferral provision and would require a 10% or more individual shareholder of a CFC to include the CFC's earnings before the distributions. This proposed amendment of regulations was submitted by the Executive Yuan in July 2016 and is currently under the Legislative Yuan's review and assessment.

EU activity

The new corporate tax reform package announced by the EU, including a proposal toward a Common Consolidated Corporate Tax Base (CC(C)TB), also includes proposals incorporating the BEPS measures introduced under the ATAD, which inter alia include CFC rules. These rules are broadly in line with the Action 3 final report.

Action 4

The final report on Action 4, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*, recommends a common approach to tackle BEPS involving interest and equivalent payments. The report recommends a fixed ratio rule that would restrict an entity's net interest expense to a fixed percentage of its earnings before interest, taxes, depreciation and amortization (EBITDA), along with a group ratio rule allowing an entity in a highly leveraged group to deduct net interest expense in excess of the amount permitted under the fixed ratio rule. The final report indicated that the OECD would carry out detailed

work on the design and operation of the group ratio rule to be completed in 2016. The report also highlighted that a different approach might be required to tackle BEPS risks in the banking and insurance sector.

To this end, the OECD released two discussion drafts during the period under review, one on the elements of the design and operation of the group ratio rule and the other on the approaches to address BEPS involving interest in the banking and insurance sectors. The first draft discusses different approaches to calculating a group's net third-party interest expense, the definition of group-EBITDA, and the approaches to deal with the impact of losses on the operation of the group ratio rule. The draft does not fundamentally deviate from the final report and provides only a detailed technical analysis to assist countries in implementing the group ratio rule according to a common approach. On 22 December 2016, the OECD issued an updated version of its final report on Action 4 taking into account the comments received regarding the above two discussion drafts. The updated Action 4 report contains three parts: (i) limiting base erosion involving interest deductions and other financial payments; (ii) elements of the design and operation of the group ratio rule; and (iii) approaches to address BEPS involving interest in the banking and insurance sectors. The second draft is organized in two blocks; the first one addresses risks posed by entities engaged in the banking or insurance business and subject to capital regulation at a solo level, and the second addresses the risks posed by other entities in a group with a bank or insurance company where the application of the fixed ratio rule and the group ratio rule is discussed. This draft also does not represent consensus views of the Committee on Fiscal Affairs and includes a number of specific questions for public comment on different aspects of the relevant topics.

The US Treasury Department (the US Treasury) and the Internal Revenue Service (the US IRS) released final and temporary regulations under Internal Revenue Code Section 385 that could significantly impact the deductibility of interest expense in certain circumstances, and set forth certain documentation requirements, though the final regulations significantly narrow the scope of the proposed regulations that were released six months earlier.

The Icelandic Parliament passed a bill that introduced, among other things, a fixed ratio rule that will limit the amount of Icelandic tax relief for gross interest expense from related parties to 30% of taxable EBITDA calculated per entity. The rules contain exemptions in certain cases, as well as a de minimis allowance of ISK100 million (approx. US$876k) of related-party interest expense per annum.

EU activity

The new corporate tax reform package announced by the EU, including a proposal toward a CC(C)TB, also includes proposals incorporating the BEPS measures introduced under the ATAD which inter alia include an interest expense limitation for multinational enterprise (MNE) groups in line with the recommendation in the final report on Action 4, although not containing a Group Ratio Rule.

Action 5

The focus of the final report on Action 5, *Countering Harmful Tax Practices More Effectively*, is mainly on two topics: (i) requiring substantial activity for preferential regimes through the use of a "nexus approach" in the context of intellectual property (IP) regimes; and (ii) improving transparency through a framework for the compulsory spontaneous exchange of information on certain rulings that could give rise to BEPS concerns. With regard to the second point, the OECD released a standardized IT-format (XML schema) for the exchange on tax rulings (ETR) between jurisdictions and its related user guide during the period under review. This initiative provides the common format for implementing the exchanges of tax rulings between competent authorities, and the user guide contains guidance as well as an explanation of the information required to be included in each data element to be reported.

Exchange of information

In the context of improving transparency, China's State Administration of Taxation (SAT) issued SAT Bulletin No. 64 (Bulletin on Issues Related to Improving the Administration of Advance Pricing Arrangements) providing updated guidance on the advance pricing agreement (APA) process in China and demonstrates China's commitment to continue to improve dispute resolution processes with its treaty parties. Article 20 of the Bulletin puts taxpayers on notice that their unilateral APAs will be subject to information exchange under Action 5. Moreover, China has put additional focus on its mutual agreement procedure (MAP) and APA processes.

Switzerland adopted the respective laws and regulations for the implementation of the spontaneous exchange of information on tax rulings. The new regulations entered into force on 1 January 2017 so that the first exchange of information with selected partner states can begin in 2018. The exchange requirements apply for rulings that were issued from 1 January 2010 and are in effect on or after 1 January 2018. Besides the above, Austria, Bulgaria, Finland, Ireland and the Netherlands released draft legislation transposing the EU Directive on Automatic Exchange of Information on advance tax rulings under the amended Mutual Assistance Directive.

Moreover, according to reports in the tax press on 31 October 2016, the US IRS has agreed to exchange summaries of unilateral APAs in accordance with the recommendations under the OECD BEPS Action Item 5. In particular, the US IRS agreed to exchange unilateral APAs issued on or after 1 April 2016.

Finally, the Danish Tax Authorities (SKAT) released an announcement regarding the Danish application of compulsory and spontaneous exchange of information of rulings and APAs to reflect OECD BEPS Action 5. The announcement outlines the kind of information that will be exchanged and the jurisdictions with whom it would be exchanged. The exchange requirements apply for rulings and/or APAs issued on or after 1 January 2010, provided that such rulings and APAs were valid as of 1 January 2014. Furthermore, the exchange requirements apply for rulings and/or APAs settled on or after 1 April 2016.

Patent boxes

With respect to IP regimes, the Cypriot Parliament approved the laws amending the Income Tax Law on the application of the Cypriot IP regime. These provisions are aligned with the recommendations of the final report on Action 5 in the sense that they introduce the OECD recommended "nexus approach" wherein qualifying taxpayers will be eligible to claim a tax deduction equaling 80% of qualifying profits resulting from the business use of the qualifying assets only to the extent that the research and development (R&D) activity is undertaken by the taxpayer itself. Moreover, the definition of what constitutes qualifying IP assets under the new IP box regime has been narrowed down to exclude marketing-related IP assets in line with the OECD recommendations. The amending legislation provides for a five-year transitional period for existing IP assets provided certain conditions are met. The new legislation is effective as of 1 July 2016.

In addition, the Belgian Government formally announced the innovation deduction. This new IP regime is intended to increase the competitiveness of the Belgian economy while complying with Action 5. The innovation deduction is expected to be enacted soon and will retroactively apply as of 1 July 2016. It will replace the patent income deduction (PID), which was previously abolished as of 1 July 2016 with a five-year grandfathering period until 2021. There are significant improvements compared to the PID regime. The scope of the new innovation deduction is not limited to patents, but will be extended to other IP rights, including copyright protected software, orphan drug designations and data or marketing exclusivity granted by the authorities (notably for medical products). Next to license and product/service embedded income, income qualifying for the incentive will also include capital gains and income derived from process innovation. The tax deduction can be applied as of the year in which the IP right is requested. Unused innovation deductions can be carried forward without any cap or limitations in time. The deduction rate is increased to 85% of the net qualifying IP income. This results in a maximum effective tax rate of 5.10%.

As part of its tax budget proposals, the Dutch Ministry of Finance proposed legislation, effective from 1 January 2017, to further align the Dutch innovation box with the BEPS Action 5 recommendations. The effective corporate income tax rate of the innovation box remains 5% instead of the statutory rate of 25%. Effective 1 January 2017, Israel approved an innovation box tax regime that will be in line with the nexus approach under Action 5. The regime provides that a 6% corporate income tax rate and a 4% withholding tax on dividends to a foreign company will apply to qualifying companies with global consolidated revenues of more than ILS10 billion (approx. US$2.5 billion). Other qualifying companies are subject to 7.5% or 12% corporate income tax (depending on the location of the company within Israel) and a 4% dividend withholding tax. The rules are primarily directed at MNEs that are IP-based companies and, in particular, technology companies that will leverage their existing R&D centers in Israel into IP hubs.

Lastly, Ireland issued practical guidance on its Knowledge Development Box (KDB), which was the first OECD-compliant patent/IP box regime designed to comply with the new international guidelines under Action 5. Alongside the 12.5% trading rate for companies, the 25% R&D cash refund regime and attractive tax depreciation for intangible assets, the KDB further enhances Ireland's offering to innovation-

intensive sectors, thereby enhancing its leading position as a location for investment in R&D, intangible asset ownership, development and/or commercialization.

EU activity

During the period in review, at the EU level, the Code of Conduct Group on Business Taxation (the Group) submitted a report to the ECOFIN that outlined among other items, the steps taken by Member States to comply with their commitment to implement the modified nexus approach. In this regard, France did not inform the Group of its initiatives because it 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 on the provisions necessary for the Italian IP regime to fully comply with the minimum standard on IP regimes is in process. 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. The report further discusses the state of play on the implementation of the Model Instruction on the exchange of information relating to rulings and unilateral APAs that should have been implemented by all Member States as from 1 January 2016. Finally, the document reports on the progress achieved on guidelines on the issuing of tax rulings, stating that further work needs to be done in this regard.

Action 6

The final report on Action 6, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*, contains changes to the OECD Model Tax Convention and related changes to the commentary to address the inappropriate granting of treaty benefits and other potential treaty abuse scenarios. It includes anti-abuse provisions that provide safeguards against the abuse of treaty provisions, a revision to the title and preamble of the OECD Model Tax Convention and tax policy considerations relevant to the decision to enter into a tax treaty with another country. Some countries have implemented Action 6 recommendations in their tax treaties while others have introduced anti-abuse rules in their domestic laws.

In this regard, Belgium and Japan signed a revised income tax treaty that does not use the place of management as a tie-breaker rule. Instead, the competent authorities of the Contracting States shall endeavor to determine by mutual agreement the Contracting State of which the person, other than an individual, shall be deemed to be a resident (based on the place of head office, the place of effective management, the place of incorporation or otherwise constituted and any other relevant factors). Likewise, the treaty also contains a Limitation on Benefits clause and a Principal Purpose Test in line with Action 6. Similarly, the tax treaty between Colombia and the UK does not use the place of management as a tie-breaker rule, but the residency is determined by mutual agreement between the competent authorities. The Colombia-UK treaty also contains a principal purpose test provision.

Also, Uganda has amended its Income Tax Act (ITA) to provide more clarity on when a nonresident person is entitled to benefit from a tax exemption or reduced tax rate under a double taxation agreement. The amendments to the Ugandan ITA introduces two tests to be satisfied for the purposes of testing eligibility for treaty benefits, namely the beneficial ownership test and the economic substance test. A publicly listed company is exempt from these requirements.

Finally, the UK adopted new clauses that aim to broaden the scope of withholding tax on royalties, enhancing a technical note originally released on 16 March 2016. 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 IP royalty (or similar) payments made to connected persons under double tax treaty avoidance arrangements.

Action 7

As part of the follow-up work on Action 7, *Preventing the Artificial Avoidance of Permanent Establishment Status*, the OECD released a discussion draft on the attribution of profits to permanent establishments (PEs) (PE Discussion Draft). The PE Discussion Draft presents a number of fact patterns that would benefit from additional guidance concerning the attribution of profits, and it requests comments on specific questions related to those fact patterns. These fact patterns relate to dependent agent PEs and warehouses as fixed places of business. However, comments were not sought on the changes to the PE definition that has been agreed to under Action 7, but on the application of Article 7 to determine the attribution of profits to PEs. On receiving comments on these discussions drafts, the OECD also held a public consultation, which was an opportunity for stakeholders to engage directly with the OECD Secretariat and the country delegates who are responsible for the OECD's transfer pricing work.

Additional developments under this Action include the conclusion of a revised income tax treaty between Belgium and Japan that contains recommendations on the definition of PE as proposed under Action 7 (such as an anti-fragmentation rule as well as the new wording on agency PE). Likewise, the Colombia-UK tax treaty contains an anti-fragmentation rule and a paragraph addressing the splitting up of contracts applicable to both the construction PE and the service PE clauses, but it does not contain, nevertheless, the new language on the agency PE clause.

Furthermore, the Australian Government released the Exposure Draft (ED) of the proposed Australian Diverted Profits Tax (DPT) for public consultation. The DPT is intended to apply for income years beginning on or after 1 July 2017. Like the previous proposal, the ED continues to outline the DPT at a high level, with further legislation yet to come that will contain the detailed mechanics of the DPT. On a similar note, the French Assemblee Nationale proposed to introduce a DPT during discussions on the draft Finance Bill for 2017. The DPT is proposed to be levied at the same rate (33.33%) as the standard corporate income tax rate and would apply to fiscal years starting on or after 1 January 2018. The DPT would apply to the portion of profits realized by a legal entity domiciled or established outside of France and related to an activity carried out either through a PE in France or by a legal person or individual, wherein it can be "reasonably" considered that the activity of such legal person or individual aims at avoiding or reducing the tax burden that should be due in France, by not declaring a PE therein. It would also apply to enterprises exploiting electronic platforms through which persons can be connected with a view to contracting for the sale, exchange or sharing of goods or services. The proposal to introduce a DPT was modified during the Parliamentary debates and approved on 20 December 2016. In its final version, the provision became a presumption of diversion of profits outside of France that would allow the French tax authorities to subject a legal entity domiciled or established outside of France to French corporate income tax on the profits that are deemed diverted. Nevertheless, the French Constitutional Court rendered its decision to strike down the provisions related to the new presumption of diversion of profits outside of France.

In New Zealand, a Cabinet paper on measures to strengthen transfer pricing rules and prevent PE avoidance in New Zealand was released. The document reiterates the fact that New Zealand is in the process of implementing a number of such BEPS measures. The key point of discussion in the paper is New Zealand's approach toward introducing a DPT in New Zealand. It points out that a DPT has been adopted by Australia and the UK to tax diverted profits that arise from transfer pricing and PE avoidance-related BEPS strategies. However, it is considered not suitable for the current problems that are faced in New Zealand and a tailored package is contemplated by combining certain DPT features with OECD BEPS measures and some domestic law amendments. Although New Zealand's current preference is not to adopt a DPT, it is noted that New Zealand might revisit the option in case its proposed package is not effective in addressing transfer pricing and PE avoidance. The proposed package is expected to be released by the Government for public discussion in early 2017, although a new Prime Minister, Minister of Finance and Minister of Revenue have been appointed since the document's release, which means that the contents are subject to reassessment.

During the period under review, the Spanish Supreme Court upheld 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 Ireland-Spain 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.

Actions 8–10

The work under the final report on Actions 8-10, *Aligning Transfer Pricing Outcomes with Value Creation*, intends to ensure that the transfer pricing methods will allocate profits to the most important economic activities. The guidance contained therein is linked in a holistic way to the other actions to make sure that the role of capital-rich, low-functioning entities in BEPS planning will become less relevant. Broadly, the report provided guidance on applying the arm's length principle, commodity transactions, scope of applying profit split methods, intangibles, low value-adding intra-group services and cost contribution arrangements. The final report stipulated further work under these Actions on profit splits and financial transactions.

In this context, the OECD released a discussion draft on the revised guidance on profit splits (Profit Splits Discussion Draft). Comments were sought on this draft, which was discussed at a public consultation. At the conclusion of the public consultation, it was determined that more clarification was required, particularly for the interaction with chapter I of the OECD Transfer Pricing Guidelines (TPG), which has been amended as a result of BEPS Actions 8–10. The Profit Splits Discussion Draft aimed at clarifying and strengthening the guidance on the transactional profit split method in the context of global value chains. It further identified differences between splitting profits based on anticipated profits vis-à-vis actual profits. Furthermore, the role and use of a value chain analysis is explained to be a tool to assist in accurately delineating the transaction and not an indicator that the transactional profit split is the most appropriate method. The proposals in the Profits Split Discussion Draft will be particularly relevant for global businesses involved in highly integrated activities.

As part of the 2017 Budget proposals, the Irish Minister for Finance published a document titled *Update on Ireland's International Tax Strategy* (2016 Strategy Update). The 2016 Strategy Update highlights Ireland's commitment to the BEPS process and recognizes the need to ensure that it meets the standards set out in the OECD TPG. The Luxembourg Government introduced the draft Budget Law for 2017, which includes among other amendments a proposal to insert a new article that aims to clarify the concept of the "arm's length principle." This article lays down the basic principles to be followed in a transfer pricing analysis, including the approach to be used and the methodology to be selected transposing the conclusions from Actions 8–10 of the BEPS Plan into domestic law. If adopted, these measures will enter into effect as from fiscal year 2017. Moreover, the current OECD TPG as modified by BEPS Actions 8–10 are effective in Australia with application from 1 July 2016.

Action 12

The final report on Action 12, *Mandatory Disclosure Rules*, makes a series of recommendations about the key design features of mandatory disclosure regimes while focusing particularly on international tax schemes, which are viewed as an area of particular concern. The recommendations are aimed to allow maximum consistency between countries while also being sensitive to local needs and compliance costs.

The UK Finance Act 2016 received Royal Assent that enacts legislation requiring certain businesses to publish their UK tax strategy publicly. It provides that any multinational group with a turnover in excess of €750m and at least one UK subsidiary or a UK PE will be required to publish its UK tax strategy. There is no de minimis threshold in respect of the UK operations.

The legislation further gives the power to the UK Treasury to introduce regulations requiring the inclusion of a CbC report in the tax strategy. Also, the UK HM Revenue & Customs (HMRC) released updated guidance on disclosure of tax avoidance schemes (DOTAS) that supplements the DOTAS rules, which determine whether arrangements relating to tax need to be disclosed, how to make the disclosure and how to notify HMRC of the disclosure, among others. The disclosure of a tax arrangement, on its own, has no effect on the tax position of any person who provides it to HMRC. However, a disclosed tax arrangement may be rendered ineffective by Parliament, possibly with retrospective effect. Specific penalties are prescribed if a scheme is not disclosed accurately and at the right time.

EU activity

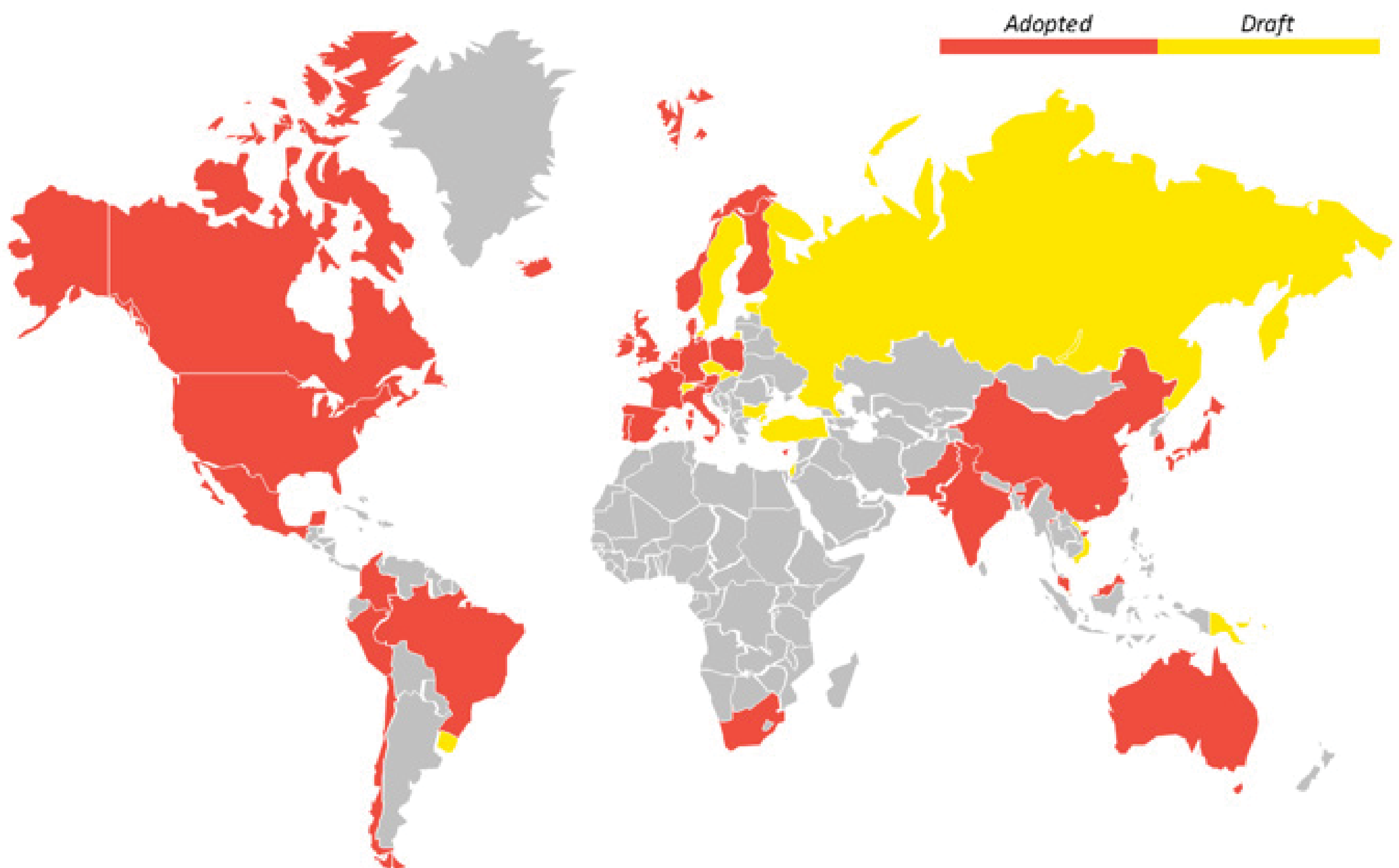
In November, the Council of the EU issued a press release setting out the Council's conclusions on tax transparency. The press release noted, among other things, that, it noted that the Commission intends to explore possibilities for Mandatory Disclosure Rules (MDRs) inspired by Action 12 of the OECD BEPS project by way of drawing on the experiences in this area of some EU Member States and to possibly come forward with a legislative proposal in 2017. Moreover, the Commission launched a public consultation to bring together views on whether there is a need for EU action directed at introducing more effective deterrents for tax advisors engaged in operations that facilitate tax evasion and tax avoidance, and on the design of such rules. It is particularly interested in gathering views on how an MDR for tax advisors could be put in place. Such rules would oblige intermediaries to give early information on schemes that could be seen as aggressive or abusive planning for tax purposes and would consider legislative initiatives on MDRs inspired by Action 12. The public consultation will run until 16 February 2017.

Action 13

The final report on Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, sets out a three-tiered standardized approach to transfer pricing documentation and introduces a new version of chapter V of the OECD TPG, covering documentation. The standardized approach consists of a local file, a master file and a CbC report.

The OECD released additional guidance aimed at the consistent implementation of CbC reporting under Action 13 of the BEPS Action Plan. The guidance is in the form of question and answers, and addresses five topics: (i) transitional filing options for MNEs that voluntarily file in the parent jurisdiction; (ii) flexible approach on CbC notifications; (iii) guidance on the application of CbC reporting to investment funds; (iv) guidance on the application of CbC reporting to partnerships; and (v) 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 it 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.

CbC reporting is the BEPS recommendation that has been implemented the most. The map below depicts what countries have already implemented CbC reporting rules and those that have released draft legislation.



Australia, Austria, Belgium, Bermuda, Brazil, Canada, Chile, China, Colombia, Cyprus, Denmark, Finland, France, Germany, Guernsey, Iceland, India, Ireland, Italy, Japan, Jersey, Luxembourg, Malaysia, Malta, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Slovenia, South Africa, South Korea, Spain, United Kingdom and United States.

Bulgaria, Czech Republic, Estonia, Israel, Liechtenstein, Papua New Guinea, Russia, Slovakia, Sweden, Switzerland, Turkey, Uruguay and Vietnam.

Furthermore, the number of signatories of the Multilateral Competent Authority Agreement (MCAA) to automatically exchange CbC reports increased to 50 during 2016.

Argentina, Australia, Austria, Belgium, Bermuda, Brazil, Canada, Chile, China, Costa Rica, Curacao, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Latvia, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Senegal, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, United Kingdom and Uruguay.

Lastly, the Annex of this publication has a chart listing jurisdictions that are expected to implement CbC reporting, that have released draft legislation or that have implemented rules. The chart provides some high-level information on the rules in each jurisdiction.

Action 14

The final report on Action 14, *Making Dispute Resolution Mechanisms More Effective*, reflects the commitment of participating countries to implement substantial changes in their approach to dispute resolution. These measures are aimed at strengthening the effectiveness of the MAP, minimizing uncertainty and preventing unintended double taxation by ensuring effective and timely resolution of disputes. The final report represents an agreement reached by the countries by way of developing a minimum standard on the resolution of treaty-related disputes. Countries have further agreed to undertake effective implementation through a peer review-based mechanism to monitor the process.

In this regard, the OECD released key documents, approved by the Inclusive Framework on BEPS, which will form the basis of the MAP peer review and monitoring process under Action 14. These include the terms of reference, assessment methodology, MAP statistics reporting framework reflecting the collaborative approach competent authorities will take to resolve MAP cases and guidance on information and documentation to be submitted with a MAP request. The MAP Forum will conduct the peer review and monitoring process, with all members participating on an equal footing. Furthermore, the methodology released contains the possibility for developing countries to defer the peer review, recognizing their capacity constraints and often relatively small MAP pipeline. The actual peer reviews will be conducted in batches, with the first batch commenced in December 2016.

The OECD further published the assessment schedule of peer reviews, which covers Stage 1 of the peer review process and catalogs the assessed jurisdictions into eight batches for review. As mentioned, the first batch was launched in December 2016 and comprised the review of Belgium, Canada, Netherlands, Switzerland, the UK and the US. The assessment reports of the first batch are expected to be published in the second half of 2017. The OECD also opened the possibility for business representatives to provide input into the peer review process through the completion of a questionnaire.

Meanwhile, Brazil adopted rules regulating MAPs with a view to comply with the minimum standard recommended in the BEPS Action 14 final report. The regulation requires taxpayers to forgo their rights to present their cases in a domestic administrative or judiciary procedure if they wish to activate a MAP. The rules expressly mention transfer pricing matters, even though Brazil uses fixed margins (which it considers to be in line with the arm's length principle). As mentioned in the BEPS final report on Actions 8–10, Brazil will provide access to a MAP when a case of double taxation arises in line with the minimum standard.

Nonetheless, it is still unclear whether all the minimum standards set out in Action 14 will be adopted in practice, particularly on the deadline for concluding MAPs. Brazilian authorities may finalize the request unilaterally at their discretion. Provisions on arbitration procedures were not adopted, as the tax authorities understand that such proceedings are against Brazilian Constitutional principles.

Ireland formally introduced a bilateral APA program with the publication of guidelines effective for new APAs requested from 1 July 2016 and intended to formalize Irish Revenue's APA practice. The Irish APA program is broadly aligned with international best practices and is being implemented to comply with recommendations under Action 14. Additionally, in an official communication, the Dutch Government indicated that, subject to certain aspects to be further discussed, it supports the proposed new EU Directive on Double Taxation Dispute Resolution Mechanisms.

Finally, Belgium and Japan signed a revised income tax treaty explicitly providing for mandatory arbitration proceedings, in which the cases not being resolved between the tax authorities of the Contracting States, will be resolved within two years pursuant to decisions made by third party arbitrators if the taxpayer requests.

EU activity

The Commission announced a new package of corporate tax reforms that includes a Directive on Double Taxation Dispute Resolution Mechanisms in the EU. Currently, a double taxation dispute resolution in the EU is governed by an intergovernmental Convention, signed on 23 July 1990 (the Arbitration Convention). The new Directive proposes to include a reinforced mandatory binding dispute resolution mechanism in the EU and builds upon the Arbitration Convention. It broadens the scope to cover additional areas, beyond transfer pricing and allocation of profits to PEs, and provides features to address certain identified shortcomings of the existing process to enhance the enforceability and the effectiveness of the mechanism. It is proposed that Member States should transpose this Directive by 31 December 2017 at the latest.

Action 15

The final report on Action 15, *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*, explores the technical feasibility of an MLI to implement the treaty-related measures developed during the course of the BEPS project and to amend bilateral tax treaties. During the past year, the MLI was being developed by way of negotiations involving more than 100 jurisdictions, including OECD member countries, G20 countries and other developed and developing countries. Further to the conclusion of these negotiations, the OECD released the text of the MLI and related explanatory notes, constituting an unprecedented change in the area of international taxation. The MLI will be applied alongside existing tax treaties, modifying their application in order to implement the treaty-related BEPS measures.

Andorra, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Benin, Bhutan, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guernsey, Haiti, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Republic of Moldova, Romania, Russia, San Marino, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, Vietnam, Zambia and Zimbabwe.

The MLI is structured to provide flexibility for Contracting Jurisdictions to implement (parts of) the MLI based on their needs. Flexibility is provided by way of countries specifying the tax treaties to which the MLI would apply (Covered Tax Agreements), opt-ins and opt-outs and by choosing to apply optional/alternative provisions.

Each provision under the MLI (Articles 3 to 17) first reflects the BEPS measures as developed during the BEPS project with certain modifications. This is followed by compatibility clauses that describe the existing provisions that the MLI is intended to supersede, as well as the effect on Covered Tax Agreements that do not contain a provision of the same type. Subsequently, there are reservation clauses that define the reservations permitted with respect to each provision (as per the agreement reached on the relevant BEPS measure). Finally, there are notifications clauses reflecting choices of optional provisions and for ensuring clarity about existing provisions that are within the scope of the compatibility clause.

For the minimum standard provisions (i.e., articles relating to prevention of treaty abuse under Action 6 and improvement of dispute resolution under Action 14), the right to opt out exists only to the extent the Covered Tax Agreement already includes a similar minimum standard. With respect to provisions that do not reflect minimum standards (i.e., articles relating to hybrid mismatches under Action 2, avoidance of PE status under Action 7 and some on prevention of treaty abuse under Action 6), a country may reserve the right to opt out and to not apply these articles to its tax treaties or to a subset of its tax treaties. The MLI also incorporates a number of alternatives or optional provisions that generally will apply only if all Contracting Jurisdictions to a Covered Tax Agreement affirmatively choose to apply a particular alternative or option.

There would be a significant impact on the taxation of multinational companies given the expectation that the MLI may amend at least 2,000 tax treaties. Governments are currently preparing their lists of treaties to be covered by the MLI and are considering which options to select and reservations to make. Governments will need to notify the OECD, who will be the depositary of the MLI and will support governments in the process of signing, ratifying and implementing the MLI. The MLI opened for signatures as of 31 December 2016, and the first signing ceremony is expected take place in June 2017, with the expected participation of a significant group of countries.

As noted, the MLI is open for signatures as of 31 December 2016, followed by ratification, acceptance or approval per country. Timing for this will depend on domestic legal requirements. Reservations and notifications, including a list of the Covered Tax Agreements, are expected to be made at the time of signing or when depositing the instrument of ratification, acceptance or approval. A reservation may be withdrawn or replaced with a more limited reservation. For taxes withheld at source, the MLI will enter into effect on or after the first day of the next calendar year that begins on or after the latest of the dates on which the MLI entered into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. For example, if the Convention enters into force for the first Contracting Jurisdiction on 1 March 2018 and for the second Contracting Jurisdiction on 1 March 2019, the Convention will take effect with respect to all taxes that relate to an event occurring from 1 January 2020 onwards. With respect to all other taxes levied by a Contracting Jurisdiction, the first taxes for which provisions of the Convention will enter into effect are those that are levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months (or a shorter period if all Contracting Jurisdictions agree) from the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. For example, where the Contracting Jurisdictions do not agree to apply a shorter period, if the latest date of entry into force of the MLI is 1 September 2018, the provisions of the MLI will take effect, in the case of a taxable year that follows the calendar year, with respect to the taxable period beginning 1 January 2020.

Annex

Country-by-Country reporting implementation overview as of 16 January 2017

+1 = Delay in commencement of secondary filing by 1 year (🕒 represents this delay) ✓ = Yes X = No ? = Not clear	CE = Constituent Entity LF = Local Filing MCAA = Multilateral Competent Authority Agreement RFY = Reporting Fiscal Year SPE = Surrogate Parent Entity UPE = Ultimate Parent Entity	*Notification: UPE – UPE shall notify the tax administration in its country of tax residence SPE – SPE shall notify the tax administration in its country of tax residence CE – CE shall notify the tax administration in its country of tax residence

	Country-by-Country reporting											Master file		Local file	
Country	Status	For fiscal years commencing from	Voluntary filing	MCAA signatory	Secondary reporting: LF	Secondary reporting: SPE	Secondary reporting: +1 delay	Notification*: UPE	Notification*: SPE	Notification*: CE	Notification*: Date	Status	For fiscal years commencing from	Status	For fiscal years commencing from
OECD	Model	01-Jan-2016	n/a	n/a	✓	✓		✓	✓	✓	By last day of the RFY.				
EU	Adopted	01-Jan-2016	n/a	n/a	✓	✓	🕒	✓	✓	✓	By last date of the RFY or by the last day for filing of a tax return of that Notifying Entity for the preceding FY.				
Andorra	Expected	-	-	-	-			-	-	-	-				
Angola	Expected	-	-	-	-			-	-	-	-				
Argentina	Expected	-	-	✓	-			-	-	-	-				
Aruba	Expected	-	-	-	-			-	-	-	-				
Australia	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	Within 12 months after the last day of the RFY On the TP local file.	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Austria	Adopted	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By last day of the RFY.	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Bangladesh	Expected	-	-	-	-			-	-	-	-				
Belgium	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 30-Sept-17	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Benin	Expected	-	-	-	-			-	-	-	-				
Bermuda	Adopted	01-Jan-2016	-	✓	X	X		✓	X	X	By last day of the RFY. postponed 1-Sept-17	X		X	
Brazil	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By tax return due date of notifying entity.	X		X	
British Virgin Islands	Consultation	-	-	-	-			-	-	-	-				
Brunei Darussalam	Expected	-	-	-	-			-	-	-	-				
Bulgaria	Draft	01-Jan-2016	n/a	-	✓	X	🕒	✓	✓	✓	By last day of the RFY. postponed 30-Jun-17	X		X	
Burkina Faso	Expected	-	-	-	-			-	-	-	-				
Cambodia	Expected	-	-	-	-			-	-	-	-				
Cameroon	Expected	-	-	-	-			-	-	-	-				
Canada	Adopted	01-Jan-2016	n/a	✓	✓	✓		X	X	X	-	X		X	
Chile	Adopted	01-Jan-2016	n/a	✓		✓		X	✓	X	Within 30 days before the due date of the CbC report	X		X	
China	Adopted	01-Jan-2016	n/a	✓	✓	X		X	X	X	-	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Colombia	Adopted	01-Jan-2016	n/a	-	✓	✓		X	X	X	-	Adopted	01-Jan-2017	Adopted	01-Jan-2016
Congo	Expected	-	-	-	-			-	-	-	-				
Costa Rica	Expected	-	-	✓	-			-	-	-	-	Draft	Not yet provided	Draft	Not yet provided
Cote d'Ivoire	Expected	-	-	-	-			-	-	-	-				
Croatia	Expected	-	-	-	-			-	-	-	-				
Curaçao	Expected	-	-	✓	-			-	-	-	-				
Cyprus	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 20-Oct-17	X		X	
Czech Republic	Draft	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By last day of the RFY. postponed 30-Sept-17	X		X	
Denmark	Adopted	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By last day of the RFY.	Adopted	01-Jan-2017	Adopted	01-Jan-2017
Egypt	Expected	-	-	-	-			-	-	-	-				
Eritrea	Expected	-	-	-	-			-	-	-	-				
Estonia	Draft	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	Within 6 months after the last day of the RFY.	Expected		Expected	
Finland	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 31-May-17	Adopted	01-Jan-2017	Adopted	01-Jan-2017
France	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By tax return due date of notifying entity.	X		X	

Annex (continued)

	Country-by-Country reporting											Master file [i]		Local file [i]	
Country	Status	For fiscal years commencing from	Voluntary filing	MCAA signatory	Secondary reporting			Notification [*]				Status	For fiscal years commencing from	Status	For fiscal years commencing from
					LF	SPE	+1 delay	UPE	SPE	CE	Date				
Gabon	Expected	-	-	✓		-		-	-	-	-				
Georgia	Expected	-	-	✓		-		-	-	-	-				
Germany	Adopted	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By tax return due date of notifying entity. (Not for 2016)	Adopted	01-Jan-2017	Adopted	01-Jan-2017
Greece	Expected	-	-	✓		-		-	-	-	-				
Guernsey	Adopted	01-Jan-2016	-	✓	✓	✓		✓	✓	✓	By tax return due date of notifying entity, but if it is the UPE/SPE, within 6 months after the last day of the RFY.	✗		✗	
Guinea Bissau	Expected	-	-	-		-		-	-	-	-				
Guyana	Expected	-	-	-		-		-	-	-	-				
Haiti	Expected	-	-	-		-		-	-	-	-				
Hong Kong	Consultation	01-Jan-2018	✓	-	✓	✓		-	-	-	-	Consultation	01-Jan-2018 (to be confirmed)	Consultation	01-Jan-2018 (to be confirmed)
Hungary	Expected	-	-	✓		-		-	-	-	-	Expected		Expected	-
Iceland	Adopted	01-Jan-2017	n/a	✓	✓	✓		✗	✓	✓	By last day of the RFY. (Not for 2016)	✗		✗	
India	Adopted	01-Apr-2016	✗	✓	✓	✓		✗	✓	✓	Not yet prescribed.	Adopted	01-Apr-2016	✗	
Indonesia	Adopted	-	-	✓		-		-	-	-	-				
Ireland	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY.	✗		✗	
Isle of Man	Expected	-	-	✓		-		-	-	-	-				
Israel	Draft	01-Jan-2016	n/a	✓		-		-	-	-	-				
Italy [ii]	Adopted	01-Jan-2016	n/a	✓	✓	[illegible]		-	-	-	-	✗		✗	
Jamaica	Expected	-	-	-		-		-	-	-	-				
Japan	Adopted	01-Apr-2016	✓	✓	✓	✓	🕒	✓	✓	✓	By last day of the RFY.	Adopted	01-Apr-2016	Adopted	01-Apr-2017
Jersey	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	?	✓	By last day of the RFY. postponed 31-Mar-17	✗		✗	
Kazakhstan	Expected	-	-	-		-		-	-	-	-				
Kenya	Expected	-	-	-		-		-	-	-	-				
Latvia	Expected	-	-	✓		-		-	-	-	-				
Liberia	Expected	-	-	-		-		-	-	-	-				
Liechtenstein	Adopted	01-Jan-2017	✓	✓	✓	✓		✓	✓	✓	By last day of the RFY.	Draft	Not yet prescribed	Draft	Not yet prescribed
Lithuania	Draft	01-Jan-2016	-	✓		-		-	-	-	-				
Luxembourg	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 31-Mar-17	✗		✗	
Macao (China)	Expected	-	-	-		-		-	-	-	-				
Madagascar	Expected	-	-	-		-		-	-	-	-				
Malaysia	Adopted	01-Jan-2017	✗	✓	✓	✓		✓	✓	✓	By last day of the RFY.	✗		✗	
Malta	Adopted	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By tax return due date of notifying entity.	✗		✗	
Mauritania	Expected	-	-	-		-		-	-	-	-				
Mauritius	Expected	-	-	✓		-		-	-	-	-				
Mexico	Adopted	01-Jan-2016	n/a	✓	✓	✓		✗	✓	✗	By the last day for filing a CbC report.	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Monaco	Expected	-	-	-		-		-	-	-	-				
Myanmar	Expected	-	-	-		-		-	-	-	-				
Netherlands	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 1-Sept-17	Adopted	01-Jan-2016	Adopted	01-Jan-2016
New Zealand	Expected	-	-	✓		-		-	-	-	-				
Nigeria	Expected	-	-	✓		-		-	-	-	-				
Norway	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By tax return due date of notifying entity.	✗		✗	
Pakistan	Adopted	1-Jul-2016	-	-		-		-	-	-	-	Adopted	01-Jul-2016	Adopted	01-Jul-2016
Panama	Expected	-	-	-		-		-	-	-	-				
Papua New Guinea	Draft	01-Jan-2016	n/a	-	✓	✓		✓	✓	✓	By last day of the RFY. (Not for 2016)	✗		✗	
Paraguay	Expected	-	-	-		-		-	-	-	-				

Annex (continued)

Country	Country-by-Country reporting: Status	For fiscal years commencing from	Voluntary filing	MCAA signatory	Secondary reporting: LE	Secondary reporting: SPE	Secondary reporting: +1	Notification: UPE	Notification: SPE	Notification: CE	Notification: Date	Master file: Status	Master file: For fiscal years commencing from	Local file: Status	Local file: For fiscal years commencing from
Peru	Adopted	01-Jan-2018	-	-	-			-	-	-	-	Adopted	01-Jan-2018	Adopted	01-Jan-2017
Poland	Adopted	01-Jan-2016	n/a	✓	✗	✗		✗	✗	✗		Adopted	01-Jan-2017	Adopted	01-Jan-2017
Portugal	Adopted	01-Jan-2016	n/a	✓	✓	✓			✓	✓	By last day of the RFY. postponed 31-May-17	✗	01-Jan-2016	✗	01-Jan-2016
Romania	Expected	-	-	-	-			-	-	-	-				
Russia	Draft	01-Jan-2017 May be postponed	✓	✓	✓	✓		✓	✓	✓	No later than 3 months after the last day of the RFY.	Draft	01-Jan-2017 May be postponed	Draft	01-Jan-2017 May be postponed
San Marino	Expected	-	-	-	-			-	-	-	-				
Sao Tome and Principe	Expected	-	-	-	-			-	-	-	-				
Saudi Arabia	Expected	-	-	-	-			-	-	-	-				
Senegal	Expected	-	-	✓	-			-	-	-	-				
Seychelles	Expected	-	-	-	-			-	-	-	-				
Sierra Leone	Expected	-	-	-	-			-	-	-	-				
Singapore [iii]	Adopted	01-Jan-2017	✓	-	✗	✗		✗	✗	✗		Adopted	01-Jan-2018	Adopted	01-Jan-2018
Slovakia	Draft	01-Jan-2016	n/a	✓	✓	✓	🕒	✓	✓	✓	By tax return due date of notifying entity.	✗		✗	
Slovenia	Adopted	01-Jan-2016	n/a	✓	✓	✓	🕒	-	-	-	-	Adopted	01-Jan-2016	Adopted	01-Jan-2016
South Africa	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By the last day for filing a CbC report.	✗		✗	
South Korea	Adopted	01-Jan-2016	n/a	✓	✓			✓	✗	✓	Within 6 months after the last day of the RFY.	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Spain [iv]	Adopted	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY.	Adopted	01-Jan-2016	Adopted	01-Jan-2016
Sri Lanka	Expected	-	-	-	-			-	-	-	-				
Sweden	Draft	01-Jan-2016	n/a	✓	✓	✓		✓	✓	✓	By last day of the RFY. postponed 30-Apr-17	✗		✗	
Switzerland	Draft	01-Jan-2018	✓	✓	✓	✓		✓	✓	?	By last day of the RFY.	✗		✗	
Taiwan	Expected	-	-	-	-			-	-	-	-				
Thailand	Expected	-	-	-	-			-	-	-	-				
Togo	Expected	-	-	-	-			-	-	-	-				
Turkey	Draft	01-Jan-2016	n/a	-	✓	✗		?	?	?	Not yet prescribed.	Draft	01-Jan-2016	Draft	01-Jan-2016
Ukraine	Expected	-	-	-	-			-	-	-	-				
United Arab Emirates	Expected	-	-	-	-			-	-	-	-				
United Kingdom	Adopted	01-Jan-2016	n/a	✓	✓	✓		✗	✗	?	By the last day for filing a CbC report.	✗		✗	
United States [i]	Adopted	30-Jun-2016	✓	-	✗	✗		✗	✗	✗	-	✗		✗	
Uruguay	Adopted	01-Jan-2017	✗	✓	✓	✓		✓	✓	✓	Not yet prescribed.	Adopted		Adopted	
Vietnam	Draft	01-Jan-2017	n/a	-	-			-	-	-	-	Draft	01-Jan-2017	Draft	01-Jan-2017
Zambia	Expected	-	-	-	-			-	-	-	-				

Annex endnotes

i. Some countries that have not implemented the OECD's recommendations for Master File and Local File may have reporting obligations that gather similar information. For example, the US has not implemented the OECD's recommendations for Master File and Local File; however, for a foreign ultimate parent with a constituent entity in the US, the US has several reporting obligations that gather similar information (e.g., reporting obligations under IRC Section 6038A (Form 5472), and transfer pricing documentation under IRC Section 6662(e)/(h)).

ii. Although Surrogate Filing is expected to be possible in Italy, it is not yet confirmed by the competent tax authorities.

iii. Master file is not applicable to foreign multinationals, only to Singaporean multinationals.

iv. Filing through foreign surrogate entity is allowed according to the Spanish tax authorities interpretation, although not explicitly included in the text of the law.

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