Global Tax Alert

The Latest on BEPS - 17 August 2015

OECD

On 7 August 2015, the OECD issued three documents related to the initiative for automatic exchange of financial account information: an implementation handbook on the so-called "common reporting standard," updated guidance on the design and implementation of offshore voluntary disclosure programs, and a model protocol to the OECD model tax information exchange agreement to incorporate automatic and spontaneous exchange of information.

On 11 August 2015, the OECD issued a report titled Tax Administration 2015, a survey of tax administration practices in 56 jurisdictions which identifies key performance trends, recent innovations and examples of good practice.

Africa

On 16 July 2015, the Commissioners General and Heads of Delegation of the Revenue Authorities of South Africa, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zambia gathered in South Africa to discuss the effects of BEPS on their respective tax bases and the developmental goals of the Southern African region. Among the key outcomes of the meeting was consensus around the importance of developing appropriate measures to counter BEPS effectively within the region. This included agreement that the country-by-country reporting threshold as set by the OECD is too high for multinationals headquartered in the Southern African region and that it should be adjusted downward in order for such reporting to be effective within the region. The participants also agreed to share information (as fast and as efficiently as possible) on aggressive tax schemes employed domestically and sub-regionally in accordance with existing bilateral or multilateral treaty provisions. The participants noted South Africa's offer to host a meeting on transfer pricing for technical experts from the region as well as to share with countries its tax gap methodology. The next meeting of the participants will be convened in South Africa at the end of October 2015.

See EY Global Tax Alert, *African tax authorities meet to address regional tax issues including BEPS, indirect tax and transfer pricing*, dated 22 July 2015.

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Australia

On 6 August 2015, the Australian Treasury released exposure draft law for Australia to implement transfer pricing documentation requirements effective from 1 January 2016 for large multinational businesses in line with the Action 13 recommendations by the OECD and G20. The draft law will implement the three-tier approach to transfer pricing documentation requiring a country-by-country (CbC) report, a master file and a local file in Australia for entities that are part of a group whose annual global revenue exceeds an AUD 1 billion threshold, with such entities required to provide a statement to the Australian Taxation Office (ATO) before the end of the next income year. For entities whose income year commences 1 January 2016, the reports would be due by 31 December 2017. The reporting required by the draft law is expected to be as follows: each local subsidiary will be required to submit a local file; every group identified under the draft law will be required to submit their OECD master file; and CbC reports will be required to be submitted in the jurisdiction of the multinational group's ultimate parent entity and shared under automatic exchange of information with tax authorities in other jurisdictions in which the group operates. An Australian subsidiary of a global group would be required to submit the group's CbC report in Australia if the group's parent entity is not in a jurisdiction that implements CbC reporting and with which Australia has arrangements in place for the automatic exchange of CbC reports or if the ATO is not, in practice, able to obtain CbC reports from the parent jurisdiction. The draft law also doubles the penalty for tax avoidance and transfer pricing where the taxpayer does not have a reasonably arguable position.

See EY Global Tax Alert, *Australia releases draft law implementing country-by-country reporting and increasing penalties for tax avoidance and transfer pricing*, dated 7 August 2015.

Brazil

On 12 August 2015, a Brazilian Senator presented a report which, among other things, proposes to eliminate the "interest on net equity" (INE) regime. This regime currently allows companies to deduct distributions from taxable income up to a certain percentage of their net equity (the "long-term interest rate," TJLP), subject to some limitations. The report proposes to gradually phase out the INE regime through a 50% and 75% reduction in the TJLP in 2016 and 2017, respectively, followed by complete elimination in 2018. The proposal has now been tabled with the Senate and will be discussed over the coming months.

See EY Global Tax Alert, *Brazil's Congress considers report and new proposal on increased taxation for financial firms and interest on net equity*, dated 14 August 2015.

Chile

On 25 May 2015, Chile's Internal Revenue Service (IRS) issued a resolution with instructions on the contents of a sworn statement required from foreign residents who seek to apply treaty benefits. The requirement for a sworn statement to be provided by the foreign resident to the Chilean payer was introduced in 2012 but no instructions had been made available until now. The foreign resident must state that he or she is the beneficial owner of the income and does not have a permanent establishment in Chile. This development reflects an increased focus on treaty shopping issues in Chile, and can be seen as part of a wider trend in Latin America.

See EY Global Tax Alert, *Chile issues guidance on statement required to benefit from a Tax Treaty*, dated 4 August 2015.

Europe

On 20 July 2015, the European Parliament's Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (also known as the TAXE committee) published a 36-page interim report setting out its initial findings, conclusions and draft recommendations following its investigation into the tax ruling practices of EU Member States. A final report is expected in November 2015. The draft recommendations are wide-ranging, going further than the examination of existing tax ruling practices and covering other issues such as country-by-country reporting, the regulation of tax advisers and BEPS issues generally. The interim report provides some insight into the perspectives of the TAXE committee and measures that the European Parliament may eventually recommend to the European Commission.

See EY Global Tax Alert, *European Parliament's Special Committee on Tax Rulings issues an interim report*, dated 30 July 2015.

Ireland

On 30 July 2015, the Irish Department of Finance published a feedback statement in relation to the public consultation on the introduction of a knowledge development box which ran from 14 January to 8 April 2015. The Department of Finance has continued its commitment that the knowledge development box meet the key objective of being the "most competitive in class," but acknowledges that the regime must comply with the findings of the OECD's Forum on Harmful Tax Practices and satisfy the complex "modified nexus" approach.

See EY Global Tax Alert, *Ireland issues knowledge development box feedback statement*, dated 5 August 2015.

Italy

On 29 July 2015, the Italian Government signed a decree which implements the patent box provisions introduced by the 2015 Budget Law. The patent box regime is an elective tax regime granting a 50% exemption (phased in at 30% for 2015 and 40% for 2016) from corporate income tax and local tax (i.e., IRES and IRAP generally levied at 27.5% and 3.9%, respectively) on income derived from the licensing or direct exploitation of qualifying intellectual property. The regime is available for taxpayers that perform research and development activities and includes a five year lock-in period.

See EY Global Tax Alert, *Italy issues implementing decree on Patent Box regime*, dated 10 August 2015.

Japan

On 10 August 2015, Japanese press reports announced that the Japanese Government is considering further reducing deductions for interest paid by corporations to related persons under earning-stripping rules. Under the current rules, net interest paid to related persons by a corporation in excess of 50% of its adjusted taxable income is disallowed as a tax deduction, and the disallowed interest deductions are carried forward for up to seven years. The Government reportedly is considering lowering this threshold to 30%. The bill proposing such change is expected to be submitted to the ordinary session of the Diet in 2017.

Korea

Effective as of 1 July 2015, the revised Value Added Tax (VAT) Law requires a foreign service provider to register for and charge VAT on the supply of electronic services to customers in the Republic of Korea. In general, "electronic services" means the supply or upgrade of games, audio or video files, electronic documents or software, etc. The foreign electronic service provider is required to register with the Korean National Tax Service (NTS) in a simplified way through the NTS website within 20 days from the date of business commencement and to pay VAT on a quarterly basis. However, if the electronic services to Korean customers are provided through an open market (e.g., open market app stores) or an intermediary agent for payment, such open market or intermediary is regarded as the service provider and is required to register and carry out the duties with respect to VAT.

See EY Global Tax Alert, *South Korea applies VAT on electronic services provided by foreign service providers*, dated 11 August 2015.

Luxembourg

On 5 August 2015, Luxembourg published a draft law which, if adopted, would (among other changes) enact the anti-hybrid provision and the anti-abuse clause included in the recently revised EU Parent-Subsidiary Directive. Based on the draft law, these clauses would only apply within the intra-EU context, and would take effect on 1 January 2016.

See EY Global Tax Alert, *Luxembourg publishes draft tax law reflecting EU-wide changes to Parent-Subsidiary Directive*, dated 7 August 2015.

Saudi Arabia

In recent internal guidelines, Saudi Arabia's Department of Zakat and Income Tax (DZIT) changed its approach to the interpretation of the permanent establishment (PE) concept with respect to services rendered by nonresidents in the Kingdom of Saudi Arabia. DZIT has introduced the concept of a "Virtual Service PE," pursuant to which, when determining whether the period during which services are rendered by a nonresident exceeds the (usually 183-day) threshold provided in a tax treaty, no consideration is to be given to the physical presence of employees or contractors of the service provider for establishing the nexus. Thus, a service PE may be created in the Kingdom even if employees of the service provider are not present there and perform their activities entirely offshore. This may result in the denial of the withholding tax relief claimed by nonresidents under the applicable double tax treaties of the Kingdom. DZIT's new approach does not seem to be in line with the Kingdom's Income Tax Law and the PE concept outlined in the double tax treaties concluded by the Kingdom or with the OECD and the UN Model Conventions.

See EY Global Tax Alert, *Saudi Arabian tax authorities introduce Virtual Service PE concept*, dated 30 July 2015.

Spain

On 4 August 2015, the Spanish Government published the Proposal of the General Budget Law for 2016, including an amendment to the Spanish patent box regime which currently provides a 60% exemption for income derived from the licensing of certain qualifying intellectual property (IP). These proposed amendments basically would represent the introduction in Spain of the modified nexus approach considered by the OECD under BEPS Action 5 (counteracting harmful tax practices) and supported by the European Union, which would allow benefits granted with respect to IP income in line with the expenditures linked to generating such income. These amendments are proposed to enter into force as from 1 July 2016. Grandfathering provisions would apply to licensing agreements carried out before that date.

See EY Global Tax Alert, *Spain announces amendments to its Patent Box regime in line with EU and OECD proposals within the BEPS framework*, dated 7 August 2015.

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EYG No. CM5699

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