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Global Tax Alert

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Australia

On 12 January 2016, the Australian Taxation Office (ATO) released guidance on Australia's multinational anti-avoidance law titled *MAAL client experience roadmap*. The roadmap outlines the ATO approach to the MAAL and classifies taxpayers into five categories: (i) taxpayers already under review in relation to this issue, (ii) taxpayers that are contacted by the ATO before 31 March 2016, (iii) taxpayers that voluntarily contact the ATO before 31 March 2016, (iv) taxpayers that do not contact the ATO before 31 March 2016 and are subsequently identified as being in scope, and (v) out of scope taxpayers that contact the ATO to clarify their position. The guidance outlines the ATO engagement process for the various categories of taxpayers, including risk assessment, settlement processes, penalty exposures in relation to the MAAL, the treatment of legacy compliance risks for periods prior to 1 January 2016 (which is the effective date of the MAAL) and the restructuring of commercial arrangements.

Belgium

On 11 January 2016, the European Commission (the Commission) rendered its final decision in a state aid investigation case relating to Belgium. The Commission believes that Belgium granted several tax advantages under its excess profit ruling regime that would allegedly be illegal under EU state aid

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rules. In particular, the Commission stated that the system gives multinationals that were able to obtain such a ruling a preferential, selective advantage compared to other stand-alone competitors. The alleged tax advantages were granted to several Belgium-resident companies that are members of multinational groups. These perceived advantages include intra-group synergies and economies of scale and that fact that, in order for the deduction to apply, a company must secure a ruling from the Belgian tax authorities. The Commission's decision requires Belgium to stop applying the excess profit ruling system in the future and to recover the full unpaid tax from the beneficiaries of such system. The beneficiaries and the precise amounts of tax to be recovered will now need to be determined by the Belgian authorities. As a general rule, both the Belgian authorities and the taxpayers with excess profit rulings can appeal the Commission's decision before the General Court of the European Union in Luxembourg.

See EY Global Tax Alert, *EU Commission finds Belgium granted illegal state aid and orders recovery*, dated 13 January 2016.

Chile

On 24 December 2015, Chile's Internal Revenue Service (IRS) published several resolutions creating a new sworn statement No. 1913, Global Taxpayers Characterization, and revising sworn statement No. 1851, Foreign Direct Investment, as a first step in implementing the OECD BEPS recommendations. Sworn statement No. 1913 contains 24 specific questions about a taxpayer's tax and economic profile and must be filed by taxpayers listed in the Large Business Division, as well as those considered large companies by the Chilean IRS, annually from 2016 onwards, before filing the corporate return which is due in April. In addition, with the modification of sworn statement No. 1851 taxpayers now are required to disclose foreign direct investment (FDI) of US$100,000 or more (the threshold previously was US$1 million). Such FDI information is expected to help the Chilean IRS apply the controlled foreign corporation rules.

See EY Global Tax Alert, *Chile creates new sworn statement linked to BEPS actions*, dated 7 January 2016.

Finland

On 21 December 2015, the Finnish Ministry of Finance released for consultation a draft bill for introduction of country-by-country (CbC) reporting rules. The proposal reflects the OECD recommendations under BEPS Action 13. According to the draft bill, all multinational groups with annual consolidated group revenue equal to or exceeding €750 million would be required to prepare and file a CbC report providing detailed information about the activities of the group, such as certain key financial figures of the group entities in different countries. The CbC report would be submitted in the jurisdiction where the group's ultimate parent company is tax resident and would be exchanged with the jurisdictions where the group operates (i.e., through a subsidiary or permanent establishment) by using exchange of information agreements between the competent authorities. If the ultimate parent company is a resident of a country that does not require CbC reporting, or if the Finnish tax administration is not able to obtain the information through its information exchange network, the Finnish subsidiary would be responsible for submitting the CbC information to the Finnish tax administration. If a multinational group fails to comply with the CbC reporting rules, it would be subject to penalties in the maximum amount of €25,000.

In addition to the CbC report, the draft bill proposes amendments regarding the general transfer pricing documentation requirements (in relation to both the Master file and Local file), which would increase the level of information required in transfer pricing documentation. The proposed amendments would have implications for all taxpayers that are required to prepare transfer pricing documentation, even if they fall below the threshold for CbC reporting. Public comments on the draft bill are requested by 25 January 2016. The Government intends for the provisions to be enacted and effective as of the beginning of 2017.

See EY Global Tax Alert, *Finnish Government submits CbC reporting proposal*, dated 15 January 2016.

On 31 December 2015, the law incorporating the amendments to the EU Parent Subsidiary Directive into domestic law was published in the *Finnish Official Gazette*. There were no material changes from the draft that had previously been announced.

Greece

On 29 December 2015, the Public Revenue Authority published a circular listing countries and territories that are considered to have preferential tax regimes for the fiscal year 2015. The corporate income tax rates applicable in those countries and territories were 50% of the Greek corporate income tax rate (29% as of 1 January 2015) or lower.

Korea

On 23 December 2015, the Korean Ministry of Strategy and Finance announced a draft presidential enforcement decree providing guidance on the application of the new transfer pricing documentation requirements. According to the decree, the requirements would apply to domestic companies and foreign companies with permanent establishments in Korea with (1) an annual revenue of more than KRW100 billion (approximately US$83 million) and (2) cross-border related party transactions of a value greater than KRW50 billion (approximately US$41 million). Companies meeting these criteria would be required to submit a local file, while a master file would be required to be submitted by the parent company of the group within the same business line, unless that company is located outside Korea. In such a case, the company filing a local file must obtain and file the master file. The required content of the master file and local file is in line with the OECD recommendations under BEPS Action 13. A local file must be prepared in Korean, whereas a master file can be prepared and submitted in English, provided that the Korean translation is filed within one month after the submission of the English version. The draft presidential enforcement decree was open for public consultation until 15 January 2015.

Luxembourg

In December 2015, the Luxembourg Parliament approved several draft laws that include, among other changes, amendments to the intellectual property (IP) tax regime and the participation exemption rules. In order to comply with the nexus approach under OECD BEPS Action 5 and the related European Union (EU) activity, Luxembourg has terminated its current IP regime as of 1 July 2016. The new law provides for the internationally agreed five-year grandfathering period, but also includes a safeguard measure stating that the transitional period will expire on 31 December 2016 if the IP was acquired after 31 December 2015 from a related party and at the time of its acquisition was not already qualified for the Luxembourg IP regime or for a similar foreign IP regime. Furthermore, the Luxembourg tax authorities will be required to communicate to foreign competent authorities the identity of any taxpayer who started benefitting from the IP regime after 6 February 2015.

Luxembourg has also changed its participation exemption regime for dividends received from qualifying EU subsidiaries to incorporate the amendments to the EU Parent-Subsidiary Directive. Pursuant to the new law the Luxembourg tax exemption for income derived from an otherwise qualifying EU subsidiary will not be applicable to the extent that this income is deductible by the EU subsidiary. Luxembourg also introduced an anti-abuse rule that will apply both to the withholding tax exemption regime that covers payment of dividends by a Luxembourg subsidiary to its nonresident parent company and to the participation exemption regime that provides that profits and reserves distributed by qualified subsidiaries to a Luxembourg parent company are excluded from taxation at the parent level. Under the anti-abuse rule, those regimes do not apply to "non-genuine" arrangements for which the main purpose, or one of the main purposes, is obtaining a tax advantage in a manner that is contrary to the purpose of eliminating double taxation. Arrangements will be considered "non-genuine" if they are not carried out for valid economic reasons or do not reflect the economic reality. This new anti-abuse rule only applies to intra-EU arrangements. Also, distributions to or from a company that is resident in a treaty country and is fully liable to a tax corresponding to the Luxembourg corporate income tax (including companies resident in the EU) are not affected by this anti-abuse provision. In addition, it is understood that the anti-abuse provision does not apply to the capital gains and net wealth tax exemptions.

See EY Global Tax Alert, *Luxembourg Parliament approves 2016 tax measures*, dated 12 January 2016.

Netherlands

On 22 December 2015, the Dutch Parliament formally approved the Other Fiscal Measures Bill, which includes supplementary transfer pricing documentation requirements in line with the three-tiered approach of OECD BEPS Action 13. There were no material changes to what had previously been announced and included in the draft legislation. In addition, a ministerial regulation providing additional rules regarding the form and content of the CbC report, master file and local file has been published in the *Government Gazette* on 30 December 2015. The rules contained in the regulation are almost identical to the templates provided in the OECD report on BEPS Action 13. The supplementary transfer pricing documentation requirements are applicable for qualifying multinational enterprises for fiscal years starting on or after 1 January 2016.

See EY Global Tax Alert, *The Netherlands passes bill on supplementary transfer pricing documentation requirements in line with BEPS Action 13*, dated 6 January 2016.

Norway

On 14 December 2015, the Norwegian Government approved its 2016 Fiscal Budget that includes changes to the interest deduction limitation rules and a restriction on the participation exemption regime for hybrid instruments. There were no material changes from what had previously been announced and included in draft legislation. The new rules came into effect on 1 January 2016.

On 2 December 2015, the Norwegian Government published for consultation a proposal for implementing a CbC reporting obligation. According to the proposal, all multinational groups with annual consolidated group revenue equal to or exceeding NOK6.5 billion (approximately US$730 million) would be required to prepare and file a CbC report. That requirement would also apply to Norwegian resident entities that are members of groups where the ultimate parent is resident in a country that (i) does not require the filing of CbC reports, (ii) does not have an information exchange agreement in place with Norway, or (iii) does not exchange the CbC reports under the existing information exchange agreement. If the requirement to submit the CbC report applies for more than one entity within the same group, the Norwegian taxpayer should notify the Norwegian tax authority which entity will file the CbC report and in which country it is resident. A general penalty for non-compliance would apply if the CbC report is not filed as required. Public comments on the proposal are requested by 25 January 2016. No date has been set for finalization of the proposal, but it is anticipated that the first reporting would be required to be done in 2018 based on figures from 2016.

See EY Global Tax Alert, *Norwegian Government approves 2016 Fiscal Budget and submits CbC reporting proposal*, dated 13 January 2016.

Panama

In January 2016, a Panamanian Government official said that Panama will decide whether to adopt or reject the OECD BEPS recommendations by March, adding that the country has established a multidisciplinary committee to assess the potential effects of the recommendations.

Turkey

On 24 December 2015, Turkey published new rules in its *Official Gazette* requiring certain taxpayers to continuously provide information regarding electronic commerce and other business activities. The parties required to provide information include intermediary service providers that make available electronic trade media for the conduct of economic and commercial activities; banks with respect to payments related to sales and leasing transactions conducted on the internet; online advertising service providers; and certain cargo and logistic enterprises. The data format and standard to be used to submit the data will be declared via Revenue Administration Information Transfer System. Taxpayers are required to prepare the information for transactions they conduct as of 1 July 2016 and to submit such information starting the following month.

See EY Global Tax Alert, *Turkey imposes obligation on certain taxpayers to provide information regarding e-Commerce and other business activities*, dated 30 December 2015.

United Kingdom

On 14 January 2016, the period closed for making submissions in the UK Government's consultation on the OECD final report on BEPS Action 4. The consultation focused on the rules to prevent base erosion through interest expense and how specific issues could be addressed in a UK domestic policy context.

United States

On 15 January 2016, the Chairman, Ranking Member and two other members of the US Senate Committee on Finance sent a letter to the US Treasury Secretary expressing concern about the EU State aid cases. The letter notes that most of the cases involve US multinationals and indicates the serious concerns about fairness and the potential impact on the US fisc. The letter asks Treasury to consider whether US corporations are being subject to discriminatory taxes within the meaning of the Internal Revenue Code provision providing for increased taxes on residents of countries that engage in discriminatory taxation.

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