The Latest on BEPS - 19 January 2015

OECD
On 12 January 2015, the OECD posted more than 800 pages of comments received from stakeholders on the discussion draft on permanent establishment (Action 7). On the same date, the OECD also posted more than 700 pages of comments received from stakeholders on the discussion draft on follow-up work on treaty abuse (Action 6).

On 19 January 2015, the OECD posted more than 400 pages of comments received from stakeholders on the discussion draft on making dispute resolution mechanisms more effective (Action 14). EY submitted global comments on all these discussion drafts.

During the week of 19 January 2015, the OECD is holding informal consultations on the discussion draft on interest deductions (Action 4) and public consultations on the discussion drafts on permanent establishment (Action 7), treaty abuse (Action 6), and dispute resolution (Action 14). EY representatives will participate in all of these consultations.

Ecuador
On 29 December 2014, Ecuador enacted a tax reform, effective 1 January 2015. Among other provisions, the tax reform increases the general corporate income tax rate to 25% in certain cases for companies that are owned at 50% or more by persons in a tax haven or low tax jurisdiction (or, if less than 50%, up to the proportion owned by shareholders or other beneficiaries in such jurisdictions) or companies that fail to provide their list of shareholders to the Ecuadorian Internal Revenue Service. The reform defines “beneficial owner” as the person who legally, economically, or in fact has power to control the attribution of income, gain or profit and to use, enjoy, or dispose of such income. In addition, the reform provides that non-commercial loans granted to shareholders and related parties should be considered as dividend payments and subject to withholding tax. For corporate income tax purposes, dividend payments abroad are considered exempt income. However, if the beneficial owner of the dividends is an Ecuadorian tax resident, the exemption does not apply and a
withholding tax between 1% and 13% applies. Additionally, a 13% withholding applies if dividends are distributed to companies that are domiciled in tax havens or low tax jurisdictions. The reform also provides that royalties and payments for technical, administrative and consultancy services provided by resident or nonresident related parties will be deductible for corporate income tax purposes only up to limited percentages to be established by regulations.

See EY Global Tax Alert, Ecuador enacts tax reform, dated 7 January 2015.

**European Union**

On 16 January 2015, the European Commission published the formal letter that had been sent to Luxembourg on 7 October 2014, when it initiated formal investigations into a case-specific ruling granted by Luxembourg to a multinational. The letter sets out the reasons for the Commission’s preliminary conclusion that the tax ruling constitutes state aid under EU rules. In a statement, the Luxembourg Government indicated that it is confident that the allegations of state aid in this case are unsubstantiated and that it will be able to convince the Commission in due time of the legitimacy of the tax ruling concerned and that no selective advantage has been granted.


**Japan**

On 30 December 2014, Japan’s coalition leading parties released an outline of the 2015 Tax Reform. It includes a proposal for an anti-hybrid rule with respect to foreign dividends in response to the report on BEPS Action 2 (Hybrid Mismatch Arrangements), as well as a proposal for consumption tax measures for digital economy services based on the report on BEPS Action 1 (Tax Challenges of the Digital Economy). The proposed anti-hybrid rule would exclude foreign dividends that are deductible in the country where the foreign subsidiary is located from the scope of the dividend exemption rules (which provide for a 95% exemption subject to certain ownership tests). This proposal would be applicable to dividends to be received in taxable years beginning on or after 1 April 2016, with a two-year grandfathering for shares held on 1 April 2015. The proposal to introduce specific measures imposing consumption taxes on digital economy services (e.g., internet-delivery of books, music, advertisement, etc.) provided to Japanese customers by foreign service providers would apply from 1 October 2015. For business-to-consumer transactions, the foreign service provider would be required to register as a taxable entity and file consumption tax returns. For business-to-business transactions, a reverse-charge mechanism would be introduced, which would require a Japanese service recipient to declare taxable sales and related tax due on its consumption tax return. A tax reform bill will be prepared based on this outline. The bill will be submitted to the Diet and is expected to be enacted by the end of March 2015.

See EY Global Tax Alert, Japan releases 2015 tax reform outline, dated 7 January 2015.

**Luxembourg**

On 18 December 2014, the Luxembourg Parliament approved the draft law on the implementation of the first part of the “Package for the Future” released in the context of the 2015 Budget Law. Among other measures, the law changes the General Tax Law by adding a provision dedicated to the tax ruling practice. Given the globalization of transactions and consequently the increased focus on transfer pricing matters, the Luxembourg Government has also decided to forge a more solid framework for the arm’s length principle to be applied between associated enterprises. To that effect, the law replaces the wording of the current transfer pricing rule (article 56 of the Income Tax Law) with a provision largely inspired by the arm’s length principle as set forth by Article 9(1) of the 2010 OECD Model Tax Convention on Income and on Capital. Furthermore, the taxpayer’s obligation to be able to justify the data contained in its tax returns with appropriate information and documentation is formally extended to transfer pricing matters. The new measures take effect as of 1 January 2015.

See EY Global Tax Alert, Luxembourg enacts tax reform, dated 7 January 2015.
Singapore
On 6 January 2015, the Inland Revenue Authority of Singapore (IRAS) released revised transfer pricing guidelines that are broadly in line with the 2010 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and the recent BEPS discussion drafts on transfer pricing. Notably, the new guidelines include a requirement to have contemporaneous transfer pricing documentation maintained and submitted within 30 days upon the IRAS’s request. The new guidelines also provide the Singapore dollar value thresholds that trigger the requirement to prepare transfer pricing documentation and a two-tiered approach toward the documentation content (i.e., group level documentation and entity level documentation). If taxpayers do not have transfer pricing documentation in place, IRAS might not be as supportive in respect of the transfer pricing positions or might not allow certain transfer pricing adjustments.

The new guidelines will have an immediate effect. However, the first year covered by the new guidelines logically would be FY 2014, although this is not explicitly stated by the IRAS. There is no country-by-country reporting requirement in the new guidelines.

See EY Global Tax Alert, Singapore Tax Authority releases updated transfer pricing guidelines, dated 8 January 2015.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax Services, Washington, DC
- Barbara Angus +1 202 327 5824 barbara.angus@ey.com
- Yuelin Lee +1 202 327 6378 yuelin.lee@ey.com

Ernst & Young LLP, Global Tax Desk Network, New York
- Gerrit Groen +1 212 773 8627 gerrit.groen@ey.com
- Daniel Brandstaetter +1 212 773 9164 daniel.brandstaetter@ey.com
About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2015 EYGM Limited.
All Rights Reserved.

EYG No. CMS114

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com