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Global Tax Alert

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OECD

On 20 April 2016 the OECD announced in a press release that Bermuda had signed the Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports (CbC MCAA), becoming the 33rd signatory of this instrument. The OECD had an initial CbC MCAA signing ceremony on 27 January 2016, during which 31 countries signed. Following this ceremony, the OECD announced that Senegal had also signed the CbC MCAA. The OECD will hold a second signing ceremony during the OECD Forum on Tax Administration meeting in Beijing on 12 May 2016.

On 19 April 2016, the OECD released a communiqué announcing that together with the International Monetary Fund (IMF), the United Nations and the World Bank (collectively referred to as the "International Organizations") have joined efforts to boost global cooperation in tax matters. The joint initiative, named "Platform for Collaboration on Tax" or simply "the Platform," aims to produce concrete joint outputs and deliverables under an agreed work plan, strengthen dynamic interactions between standard setting, capacity building and technical assistance, and share information on activities more systematically.

Building a better working world

The Platform will work on:

- Developing appropriate tools for developing countries in the taxation of multinational enterprises
- Supporting interested developing countries to participate in the implementation of the BEPS package
- Building effective tax systems through capacity building
- Improving awareness to build comprehensive and effective exchange of information mechanisms
- Addressing the taxation of the "informal" economy

In addition to these proposed work streams, the Platform provides a venue for coordination and information sharing on a set of high priority tax issues.

The G20 also requested that the International Organizations develop toolkits to assist developing countries to address a set of issues, some of which are featured in the BEPS outcomes with others outside the scope of the BEPS work.

The first of the toolkits addresses tax incentives and was issued in November 2015. The remaining seven toolkits will address the indirect transfer of assets (September 2016), transfer pricing comparability (October 2016), transfer pricing documentation (October 2016), tax treaty negotiation capacity (December 2016), base eroding payments (June 2017), supply chain management (March 2018), and BEPS risk assessment (March 2018).

European Union

On 12 April 2016, the European Commission published a draft directive (the Draft Directive) that, if adopted, would amend the existing European Union (EU) Directive on disclosure of income tax information (the Accounting Directive). This initiative is separate from the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) action on country-by-country (CbC) reporting. It is also different from the Commission proposal for the non-public exchange of tax-related CbC reporting information among the Member States' tax authorities. The proposed amendments to the Accounting Directive would require large multinational companies operating in the European Union to draw up and publically disclose reports on income tax information, including a breakdown of profits, revenues, taxes and employees. The information would be required to be reported separately for each Member State and each jurisdiction listed on a "Common Union list of certain tax jurisdictions," and on an aggregated basis for the rest of the world. The "Common Union list of certain tax jurisdictions," i.e., the specific tax jurisdictions to be included, is still to be determined. These reporting obligations would apply to both EU and non-EU multinational companies doing business in the European Union.

See EY Global Tax Alert, *European Commission proposes Directive for public CbC reporting of tax information*, dated 13 April 2016.

Israel

On 11 April 2016, the Israeli Tax Authorities released a circular on the internet activity of foreign companies in Israel, from both income tax and VAT perspectives. For corporate income tax purposes, the circular focuses on instances in which the digital activity of a foreign company shall be taxable in Israel. It distinguishes between digital activity of a foreign company that resides in a treaty country and a foreign company that is not. For the latter, as no treaty protection is granted, taxation in Israel could apply in wider circumstances including in cases of so-called "significant digital presence," even if only preparatory or auxiliary in nature and without any need for physical presence. In the case of a foreign company resident in a treaty country, a physical presence or dependent agent would still be required for taxing situations of significant digital presence. The circular provides the criteria for significant digital presence, including cases in which the online service is adjusted or fitted to Israeli users, for example, by using the Hebrew language, Israeli currency, cases in which there is high web traffic by Israeli users, etc.

See EY Global Tax Alert, *Israeli Tax Authorities publish official circular on internet activity of foreign companies in Israel*, dated 15 April 2016.

Netherlands

On 15 April 2016, the Dutch State Secretary for Finance issued a letter to the lower house of Parliament clarifying how the Dutch government intends to express Parliament's position on the draft EU Anti-tax Avoidance Directive. The Dutch Parliament favors a split of the EU Anti-Avoidance Directive into measures based on the OECD BEPS recommendations and measures not included in those recommendations (such as the switch-over clause). The Dutch State Secretary further indicated in the letter that he does not have objections to the proposed exit tax and GAAR measures. Moreover, there is substantial support for these two measures within the Council of the European Union.

Portugal

On 30 March 2016, Portugal's State Budget Law was published, introducing, among other things, country-by-country (CbC) reporting in line with the BEPS Action 13 report. There were no material changes from what was previously announced and included in the draft legislation.

See EY Global Tax Alert, *Portuguese Parliament approves country- by-country reporting requirements*, dated 20 April 2016.

South Africa

On 11 April 2016, the South African Minister of Finance released for comment draft regulations that would implement country-by-country (CbC) reporting in South Africa. According to the draft regulations, CbC reporting obligations would apply to South African resident ultimate parent entities of multinational groups with annual consolidated group revenue of at least R10 billion. The draft rules also include a CbC filing mechanism according to which a South African tax resident entity which is not the ultimate parent entity of the group would be obliged to file the CbC report if the ultimate parent entity is: (1) resident in a jurisdiction that does not require it to file CbC reports, (2) does not have a competent authority agreement for automatic exchange of CbC reports with South Africa, or (3) there is a systematic failure in the exchange. In such cases, the annual consolidated group revenue required would be at least €750 million (approx. R12 billion). Subject to certain conditions, there would be an option to appoint a constituent entity as the surrogate parent entity which would file the CbC report in its country of residence on behalf of the group. The first CbC reports would be required for fiscal years beginning on or after 1 January 2016, and should be filed within 12 months following the end of the reporting period.

See EY Global Tax Alert, *South Africa releases draft regulations on country-by-country reporting*, dated 12 April 2016.

Sweden

On 7 April 2016, the Swedish Ministry of Finance published a memorandum on the implementation of the Directive on automatic exchange of information with respect to advance tax rulings under the amended Mutual Assistance Directive. The memorandum was circulated for comment. and must be submitted to the Ministry of Finance no later than 19 May 2016. The law is scheduled to become effective from 1 January 2017.

Switzerland

On 13 April 2016, the Swiss Federal Council initiated a consultation procedure on the implementation of country-by-country (CbC) reporting and the multilateral agreement on the exchange of country-by-country reports. According to the draft federal law, CbC reporting obligations shall apply to Swiss headquartered multinational groups with annual consolidated group revenue of at least €750 million. The draft legislation also includes a secondary filing mechanism according to which the Swiss tax authorities can, under certain circumstances, require a Swiss constituent entity of a foreign parented multinational to file a CbC report in Switzerland. Subject to certain conditions, the draft legislation further provides the option to appoint a foreign constituent entity as the surrogate parent entity which would file the CbC report in its country of residence on behalf of the group. The new CbC reporting legislation is expected to enter into force on 1 January 2018. If so, the first CbC reports will be required for fiscal years beginning on or after 1 January 2018, and should be filed within 12 months following the end of the reporting period. Swiss groups will be allowed to file a CbC report for fiscal years 2016 and 2017 on a voluntary basis. Non-compliance with the CbC reporting obligation may be subject to a penalty of up to CHF 250k.

See EY Global Tax Alert, *Switzerland releases draft legislation on country-by-country reporting for consultation*, dated 18 April 2016.

Uruguay-Chile

On 1 April 2016, Chile and Uruguay signed a Double Tax Treaty (DTT) that includes a number of important recommendations from the OECD BEPS package. This DTT is one of a number treaties signed by Chile that directly contain BEPS recommendations. The other treaties in this regard are treaties with Argentina, China, Italy, Japan and the Czech Republic. The DTT follows, in particular, Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances) and Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status).

In relation to Action 6, the DTT contains in its preamble the clarification that tax treaties are not intended to be used to generate double non-taxation. The place of effective management is not used 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 shall be deemed to be a resident. If an agreement is not reached, the dual-resident entity will not be entitled to any benefit of the DTT. Moreover, the DTT contains a detailed Limitation of Benefits clause, a Principal Purpose Test rule, and a triangular provision that would deny treaty benefits when certain income is attributable to a permanent establishment (PE) outside the beneficial owner's country of residence.

Furthermore, the permanent establishment provision under the DTT contains the two recommendations in Action 7 on the avoidance of PE status through the specific activity exemption, i.e. it makes all subparagraphs in Article 5(4) subject to the preparatory or auxiliary condition, and includes an anti-fragmentation rule. The treaty also follows the recommendations on Agency PE, including the new principal role test and a definition of a closely related enterprise. The PE provision also has a paragraph dealing with the splitting-up of contracts applicable to both the construction PE and the service PE clauses.

Lastly, the DTT contains a provision dealing with transparent entities that is recommended under Action 2 (*Neutralising the Effects of Hybrid Mismatch Arrangements*). In addition, unresolved issues arising from a mutual agreement procedure shall be submitted to arbitration if the interested person so requests and the competent authorities agree.

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