The Latest on BEPS - 28 June 2019

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OECD

In June 2019, the OECD announced that Russia, India and Belgium had deposited their instrument of ratification, acceptance or approval of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI) on 18, 25 and 27 June 2019 respectively – bringing the total number of jurisdictions to 29. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Russia confirmed its MLI positions, but it added eight additional tax treaties (Albania, Algeria, Belarus, Botswana, Cuba, Ecuador, Montenegro and Venezuela) to its list of covered tax agreements (CTAs) and it removed three tax treaties (Brazil, Germany and Switzerland) from its list of CTAs. Russia also added reservations to Article 35 of the MLI (entry into effect). India confirmed its MLI positions, but it added the treaty with Hong Kong to its list of CTAs and it removed the treaty with China. India removed the reservation on Article 5 (Application of Methods for Elimination of Double Taxation) and it chose to apply option C with respect to this article. It also expressed a statement of acceptance of the Principal Purpose Test as an interim measure and it removed the reservation of Article 35(7) of the MLI (Entry into effect). Belgium confirmed its MLI positions, but it added the treaties with Botswana and the Netherlands to its list of CTAs and it removed the treaty with Taiwan. Belgium also removed the reservation on Article 12 (Artificial Avoidance of Permanent Establishment Status through

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Commissionaire Arrangements and Similar Strategies). The MLI will enter into force for Russia, India and Belgium on the first day of the month following the expiration of a period of three-calendar months beginning on the date of the deposit by these jurisdictions of their instrument of ratification, i.e., on 1 October 2019.

On 25 June 2019, the OECD announced that Morocco signed the MLI. At the time of signature, Morocco submitted a list of its tax treaties in force that it would like to designate as CTAs. Together with the list of CTAs, Morocco also submitted a preliminary list of its reservations and notifications in relation to the CTAs (MLI positions) in respect of the various provisions of the MLI. The definitive MLI positions for Morocco will be provided upon the deposit of its instrument of ratification, acceptance or approval of the MLI. As part of the options contained in the MLI, jurisdictions may opt into mandatory binding arbitration, an element of BEPS Action 14 on dispute resolution. Morocco did not opt in for mandatory binding arbitration.

Recently, the OECD updated the list of signatories of the Multilateral Competent Authority Agreement on the exchange of Country-by-Country (CbC) reports (CbC MCAA). According to this latest update, Anguilla and Morocco signed the CbC MCAA on 11 April 2019 and on 25 June 2019 respectively. The total number of jurisdictions that have joined the CbC MCAA is now 79.

On 20 June 2019, the OECD released the report "The Role of Digital Platforms in the Collection of VAT/GST on Online Sales" (the report). The report analyzes the possible roles of digital platforms in supporting the collection of value added tax (VAT) and Goods and Services Tax (GST) on online sales of goods and services/intangibles, and provides guidance on possible implementation measures.

The report includes information on possible new measures that would potentially make digital platforms liable for the VAT/GST on sales made by online traders through these platforms, as well as for the VAT/GST payable by private consumers. Recent examples of this phenomenon include Germany and the United Kingdom.

The report also discusses a range of other measures including data sharing and enhanced cooperation between tax authorities and the owners of digital platforms. It further describes the range of other measures beyond possible VAT/GST obligations for digital platforms that tax authorities may implement to further enhance the effectiveness of VAT/GST collection on online trade.

The report, submitted to the tax authorities and international organizations that were invited to the fifth Global Forum on VAT meeting in January 2019, does not aim to make detailed prescriptions for national legislation, but rather seeks to present a range of possible approaches designed to assist policy makers in their efforts to evaluate and develop the legal and administrative framework in their jurisdictions.

According to the report, international consistency will facilitate improved tax compliance, lower compliance costs and administrative burdens, and improve the effectiveness of VAT/GST collection, recognizing that digital platforms are likely to be faced with multi-jurisdictional obligations. The report complements the 2017 OECD report "Mechanisms for the Effective Collection of VAT/GST" which provides detailed guidance for the consistent and effective implementation of the mechanisms for collection of VAT/GST on online sales as recommended in the International VAT/GST Guidelines and in the final report of BEPS Action 1.

On 18 June 2019, the OECD published additional Transfer Pricing Country Profiles (TPCPs) for three countries reflecting the existing transfer pricing legislation and practices for each country (namely, Chile, Finland and Italy). In addition, the profiles of Colombia and Israel have been updated. The profiles, prepared by means of questionnaires filled out by the countries, focus on the domestic legislative measures based on major transfer pricing issues including the transfer pricing methods, arm's-length principle, transfer pricing documentation, comparability analysis, intangible property, intra-group services, cost contribution agreements, administrative approaches to avoiding and resolving disputes, safe harbors and other implementation measures. The TPCPs also compare the state of the countries domestic legislation with the OECD Transfer Pricing Guidelines to reflect the extent to which the countries are following the guidelines. The TPCPs for Argentina and Iceland are forthcoming.

European Union

On 14 June 2019, the Economic and Financial Affairs Council (ECOFIN) removed Dominica from the European Union (EU)'s list of non-cooperative jurisdictions for tax purposes, as it was found that Dominica has implemented its commitments and addressed EU concerns regarding the automatic exchange of financial information. More specifically, Dominica completed the necessary steps to sign and ratify the OECD multilateral convention on mutual administrative assistance. The decision leaves

11 jurisdictions on the list of non-cooperative jurisdictions out of the 17 announced initially on 5 December 2017. These are American Samoa, Belize, Fiji, Guam, Marshall Islands, Oman, Samoa, Trinidad and Tobago, United Arab Emirates, US Virgin Islands and Vanuatu.

United Nations

In June 2019, the Report on the Eighteenth Session of the Committee of Experts on International Cooperation in Tax Matters (Committee), which was held by the United Nations (UN) on 23-26 April 2019 in New York, was released. The report describes a number of substantive issues related to tax cooperation in tax matters that were discussed during the session. Among others, the session addressed: (i) the next update of the UN Model Double Taxation Convention between developed and developing countries; (ii) the update of the UN Transfer Pricing (TP) Manual; (iii) dispute avoidance and resolution; and (iv) tax consequences of the digitalized economy.

According to the Eighteenth Session report, the presenters discussed the work of the Subcommittee for the taxation on the digitalization of the economy. During the session, a paper on tax issues related to the digitization of the economy (E/C.18/2019/CRP.12), which was an outcome of the Subcommittee meeting held in Paris in January 2019 was presented. Taking stock of the work on the Inclusive Framework and further reviewing the differing positions from members, in the paper, the Subcommittee identified the tax challenges of the digitalization of the economy as fundamentally relating to the inability of the jurisdiction under the physical presence criteria of tax treaties, to tax the business profits of certain new business models that did not require a physical presence in the market to derive such profits. To respond to those challenges, the Subcommittee proposed, in section II of the paper, a working approach agreed at its meeting in Paris and raised a series of questions for discussion by the Committee. Based on the discussions that followed during the session, the Committee agreed that the way forward with respect to the tax consequences of the digitalized economy would be for the Subcommittee to draft a paper for presentation at the Nineteenth Session of the Committee. In the forthcoming paper, the Subcommittee will: (i) include an explanation and evaluation of proposals internally developed or developed in other forums; (ii) describe the advantages and disadvantages of the abovementioned proposals; (iii) give special attention to the interests of developing countries and to administrability, fairness and certainty; (iv) take into account different economies and market forces; and (v) consider where relevant, expert commentaries on issues relating to the digitalized economy with the aim of finalizing proposals within the term of the current membership of the Committee.

Regarding the update of the UN TP manual, the draft of a new chapter on financial transactions, which addressed the importance of corporate financing decisions within multinational groups, was presented during the session. The draft chapter includes a detailed discussion of intra-group loans and financial guarantees. Also, the presenters discussed the work on a substantial revision to the guidance contained in the UN TP Manual on the transactional profit split method. According to the report, the focus of the Subcommittee was on considering the work done in the context of the Inclusive Framework on BEPS, while providing more practical examples.

For the last two years the Committee has been working on a comprehensive handbook on dispute minimization and resolution which will look at what countries can do to avoid and resolve disputes at the domestic and international levels, including a greater use of mediation and other alternative dispute resolution mechanisms and the use of Mutual Agreement Procedure (MAP) and mandatory arbitration. The aim is to finalize the text by 2020. The presenters discussed two chapters of the proposed handbook, i.e., Chapter 5 on MAP and Chapter 3 on domestic dispute resolution mechanisms.

Furthermore, the members of the Committee approved during the session the update of the manual for the negotiation of bilateral tax treaties between developed and developing Countries.

African Tax Administration Forum

In June 2019, the African Tax Administration Forum (ATAF) issued a paper on "The Place Of Africa In The Shift Towards Global Tax Governance: Can the taxation of the digitalised economy be an opportunity for more inclusiveness?" (the paper). The paper provides an overview of the current international tax governance landscape and inroads towards inclusiveness. It posits that setting international standards in the relatively new field of the taxation of the digitalized economy would be a natural test of a successful implementation of a framework in which international tax governance is conducted on an expanded multilateral basis characterized by a broader distribution of leadership roles and responsibilities. Only such a structure would be seen by developing countries, and African countries in particular, as a driving force for increasing participation, inclusiveness and implementation of international tax reforms. The report states that although to date the OECD, the EU and some countries bilaterally have started dealing with the issue of the taxation of the digitalized economy, it offers a relatively clean slate to developing countries and Africa in particular to proactively steer the direction of the global standard agenda rather than providing inputs into a pre-determined agenda. Thus, it represents an opportunity to better achieve global tax governance through multilateralism and, as such, to bring many countries on an equal footing in setting the global tax standards of the digitalized economy.

Argentina

On 30 May 2019, General Resolution No. 4497 (the Resolution) which amends the binding inquiry (ruling) system for tax and social security purposes in Argentina, was published in the *Official Gazette*. The Resolution adapts the Argentine ruling system to the OECD BEPS Action 5 minimum standard, which includes a commitment to transparency through the compulsory spontaneous exchange of relevant information on taxpayer-specific rulings. Among others, the Resolution adds TP issues to the list of items that the tax authorities may consider under the ruling process, except for Advance Pricing Agreements (APAs), which will be regulated separately. To obtain a ruling, taxpayers or eligible representatives must file a request before the event triggering a tax occurs or before the due date for filing the tax return for the period in which the event must be declared. The tax authorities' ruling will be binding on the taxpayer to the extent the fact pattern or other circumstances do not change. The ruling system, as amended by the Resolution, will apply to requests filed as from 6 June 2019.

See EY Global Tax Alert, *Argentina amends tax binding inquiry system*, dated 10 June 2019.

Austria-Russia

On 20 June 2019, the amending protocol to the Austria-Russia Income and Capital Tax Treaty (the Treaty) that was signed on 5 June 2018 entered into force. The protocol generally applies from 1 January 2020 and, among others, it introduces a Principal Purpose Test to the Treaty. Austria and Russia have signed the MLI, and both of them have included the Treaty as a CTA and have deposited their instrument of ratification with the OECD. Therefore, the Treaty will be further modified once the MLI affects the Treaty.

Bulgaria

On 5 June 2019, the Bulgarian Parliament voted at first reading on amendments to the Tax and Social Security Procedure Code (the Code) that include the introduction of mandatory transfer pricing documentation requirements and the implementation of the EU Tax Dispute Resolution Directive.

The amendments introduce new mandatory transfer pricing documentation requirements, in line with the requirements of the OECD's BEPS Action 13. Among others, the amendments introduce Master File and Local File requirements as of 1 January 2020. The Master File and Local File requirements will apply to taxpayers that: (i) have a book value of assets higher than BGN8 million and net revenue exceeding BGN16 million; and (ii) are engaged in related-party transactions that exceed certain thresholds. The obligation for submission is waived for: (i) persons whose net sales revenue is below BGN16 million or whose assets have a balance sheet value of less than BGN8 million; (ii) persons that are not subject to corporate taxation; and (iii) persons subject to alternative taxation. The Local File and the Master File are required to be submitted upon request in the course of tax audits or reviews. The Local File should be prepared by 31 March of the year following the year to which it relates. Members of multinational enterprises (which have an obligation to prepare a Local File) should also have in place a group Master File within 12 months following the Local File deadline. Failure to comply with these requirements will trigger fines.

Also, according to the amendments, a mechanism for resolution of disputes between EU Member States on matters concerning the interpretation and application of double tax treaties or similar conventions will be introduced. The proposed provisions aim at implementing the EU Tax Dispute Resolution Directive (2017/1852) into the Bulgarian legislation.

Canada

On 21 June 2019, the bill No. C-82 ratifying the MLI received Royal Assent in Canada. Canada now needs to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Canada on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of such instrument with the OECD.

Finland

On 12 June 2019, the Ministry of Finance sent a draft law proposal (the Draft) introducing new rules on taxation of certain cross-border hybrid mismatches for public comments. Interested parties can submit their comments up and until 15 August 2019.

The Draft transposes the hybrid mismatch rules in Article 9 of the EU Anti-tax avoidance Directive (ATAD) I and implements the OECD's BEPS recommendations on hybrid mismatches. The new legislation would apply to companies, partnerships and permanent establishments (PEs) in Finland.

The Draft proposes new rules in relation to hybrid financial instruments, double deductions and mismatches created by attributing income between a head office and a PE.

The Draft is scheduled to enter into force as of 1 January 2020.

Guernsey

On 20 June 2019, Guernsey published guidelines (the Guidelines) for requesting the MAP assistance in Guernsey, as amended by the Revenue Service. According to the amended Guidelines, the Guernsey competent authority will consider the MAP request on its own merits in cases where the tax treaty does not enable the taxpayer to submit its MAP request to either competent authority, and if it finds that request unjustified, it will notify the competent authority of the other country to provide its considerations on the case. Furthermore, the amended Guidelines provides the taxpayer with the possibility to submit a MAP request covering multiple years where the request in respect of a specific adjustment to income may present recurring issues that are relevant for the previous or subsequent years for which the tax return concerned was submitted. Such a request is subject to the time limit of three years from the first notification of the matter that resulted in taxation of the taxpayer not in accordance with the provisions of a relevant tax treaty.

On 17 June 2019, Guernsey's Revenue Service issued a Circular providing information on proposed changes to the economic substance regulations in Guernsey. Among others, the proposed changes include that: (i) exempt companies deriving income from a relevant activity within the scope of the economic substance legislation will be required to demonstrate that they have substance in Guernsey with effect from the date the amended regulations come into effect; (ii) collective investment vehicles will continue to be out of the scope of the economic substance legislation, however, any subsidiaries that are not regulated funds will be within the scope of such legislation; (iii) the core income generating activities for purposes of complying the economic substance requirements by companies with income from intellectual property (IP) assets will be dependent on the nature of the IP asset; (iv) the definition of the IP assets will be amended to comprise an IP right, design right, trademark, brand, patent and similar asset; and (v) pure equity holding companies will be required to comply with the applicable company law of the jurisdiction of incorporation – this takes into account the fact that a non-Guernsey incorporated company may be treated as tax resident in Guernsey and subject to the economic substance legislation.

India

On 12 June 2019, the Indian Government the MLI. Post ratification, India also deposited its instrument of ratification of the MLI with the OECD on 25 June 2019. The convention will enter into force in respect of India on 1 October 2019 and affects treaties where treaty partners have already ratified and deposited the MLI instrument. Certain modifications have been made in the final version of the MLI positions as from the time of signing the MLI in 2017 including the addition of "Statement of Acceptance of the PPT as an Interim Measure" in Article 7 (Prevention of Treaty Abuse).

Ireland

On 7 June 2019, Ireland's Revenue published eBrief No. 111/19 announcing that the Tax and Duty manual on Revenue arrangements for implementing the EU and OECD exchange of information requirements in respect of tax rulings (the Manual) has been updated.

The update relates to Annex 3 of the Manual which now includes an updated list of 128 jurisdictions covered by the OECD framework with which Ireland has a legal basis to spontaneously exchange information in relation to tax rulings.

Ireland-Netherlands

On 13 June 2019, Ireland and the Netherlands signed a new tax treaty (the New Treaty) in Dublin. The New Treaty replaces the old treaty, which dated back to 1969, and includes arrangements to prevent persons as well as companies from incurring double taxation or avoiding taxation.

The New Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements) and Action 6 (preventing the granting of treaty benefits in inappropriate circumstances).

One of the items that has been updated is the preamble language which now clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. Furthermore, the New Treaty now contains a Principal Purpose Test that prevents treaty benefits if the treaty is solely being used to avoid taxation.

Ireland-Switzerland

On 13 June 2019, Ireland and Switzerland signed a protocol amending their convention for the avoidance of double taxation with respect to taxes on income and on capital signed at Dublin on 8 November 1966 (the Treaty), as amended by the protocols signed at Dublin on 24 October 1980 and on 26 January 2012.

The amending protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective). The amending protocol contains the new preamble language that clarifies that the tax treaty is not intended to be used to create opportunities for non-taxation or reduced taxation through tax evasion and avoidance. It also contains a Principal Purpose Test. Moreover, the amending protocol enables taxpayers to present a case for MAP to the competent authorities of either Contracting State. It provides a period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty. Both Ireland and Switzerland have signed the MLI but this Treaty is not a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the amending protocol has incorporated the treaty-related BEPS minimum standards into the Treaty.

Israel

On 20 May 2019, the Israeli Innovation Authority (IIA) published the conditions that are needed to be satisfied for innovative enterprises to qualify for the Israeli Innovation Box regime (the "Technological Enterprise" regime) that was first launched on 1 January 2017, followed by Regulations that were released on 28 May 2017. Accordingly, qualifying enterprises will be those that can establish an innovation level that is similar to or higher than the level of innovation that is accepted worldwide in the main technological field of the company. A request should be filed with the IIA within 90 days of the beginning of each tax year, and for tax years 2017-2018 – within 90 days from the day on which the conditions were published (i.e., until 18 August 2019).

See EY Global Tax Alert, *New Israeli Innovation Box Regime: An update and review of key features*, dated 31 May 2019.

Italy-China

On 19 June 2019, the Italian Council of Ministers approved the China - Italy Income Tax Treaty (the Treaty) which will enter into force 30 days after the exchanges of the ratification instruments. The Treaty contains a number of treaty-based recommendations from the BEPS project contained in Action 2 (neutralizing the effects of hybrid mismatch arrangements), Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective).

The Treaty contains the new preamble language which clarifies that the tax treaty is not intended to be used to generate non-taxation or reduced taxation through tax evasion or avoidance. In cases where a person other than an individual is resident in both China and Italy (i.e., a dual resident entity), both competent authorities shall endeavor to determine by mutual agreement the Contracting State of which the person shall be deemed to be a resident. However, due to the lack of an arbitration clause, the Contracting States are not forced to reach any agreement, meaning that in such a case the taxpayer may be exposed to double taxation. The Treaty also contains a Principal Purpose Test clause. Furthermore, the Treaty provides a period of three years for submission of a MAP request beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty. However, also in such a case, no arbitration clause has been inserted.

Both China and Italy have signed the MLI and neither of them has included this tax treaty as a CTA. Therefore, it may be expected that the Treaty will not be further modified by the MLI, particularly given that the new Treaty already has incorporated the treaty-related BEPS minimum standards.

Myanmar

On 7 June 2019, the Myanmar Parliament enacted the Tax Administration Law (TAL) which will enter into effect on 1 October 2019. Among others, the TAL introduces a section on anti-avoidance provisions to address aggressive tax avoidance schemes. Accordingly, the Myanmar tax authorities will have the power to asses and exclude transactions that were deemed fraudulent or are created to reduce the tax liability of the taxpayer. Also, the TAL provides the taxpayers with the option to request the issuance of binding advance rulings regarding a specific tax matter.

Netherlands

On 14 June 2019, the Dutch State Secretary of Finance (State Secretary) answered questions from the Dutch Parliament on the impact of the so-called "Danish cases" addressed by the Court of Justice of the European Union (CJEU) to the anti-abuse provisions of the dividend withholding tax exemption and the foreign taxpayer provisions.

The State Secretary's position is that these Dutch anti-abuse provisions are generally in line with the CJEU's rulings in the Danish cases. However, in his view, legislative changes are necessary with respect to the substance requirements that currently function as a safe harbor.

See EY Global Tax Alert, *Dutch State Secretary of Finance shares views on impact of CJEU Danish cases to anti-abuse provisions in Dutch dividend withholding tax and corporate income tax*, dated 19 June 2019.

Netherlands-Switzerland

On 12 June 2019, the Netherlands and Switzerland signed a protocol amending their convention of 26 February 2010 for the avoidance of double taxation with respect to taxes on income (the Treaty). The protocol contains arrangements against tax avoidance and the rights to tax pensions.

The amending protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits inappropriate circumstances). The amending protocol contains the new preamble language that clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. It also contains a Principal Purpose Test that prevents treaty benefits in case the treaty is being used to avoid taxation.

New Zealand

On 26 June 2019, New Zealand's Governor-General signed the *Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Act* aimed at imposing GST on low-value imported goods. The Bill was enacted with some amendments from the measure as originally introduced, notably delaying commencement of the imposition of GST on low-value imported goods from 1 October 2019 to 1 December 2019 to allow nonresident suppliers more time to prepare.

The rules will apply to all goods (excluding alcoholic beverages and tobacco) valued up to NZD$1,000 that are supplied from abroad by a nonresident and delivered to New Zealand (distantly supplied goods). Offshore suppliers, and some intermediaries, will be required to register and account for GST if their annual turnover of distantly supplied goods to non-GST registered New Zealand consumers exceeds NZD$60,000. Supplies to GST-registered businesses will not be caught by the new rules.

See EY Global Tax Alert, *New Zealand GST on low value imports to apply from 1 December 2019*, dated 14 June 2019 and issued prior to Parliament's final vote in favor of the Bill.

Panama

On 27 May 2019, Panama issued Decree No. 46 which establishes the regulatory framework for CbC reporting (CbCR) in Panama. According to the Decree, all Panamanian tax resident constituent entities that are ultimate parent entities (UPEs) of a multinational enterprise (MNE) group with annual consolidated group revenue equal to or exceeding €750 million (or the equivalent amount in Balboas as of January 2015) have to prepare a CbC report for financial years starting on or after 1 January 2018. The CbC report should be submitted within 12 months after the end of the reporting fiscal year. Moreover, a Panamanian constituent entity will need to notify the tax authorities of the identity of the UPE along with its tax residency. The deadline. Form and submission mechanism of the CbCR notification will be prescribed by the tax authority in due course. Failure to comply with any of the obligations contained in the Decree (e.g., filing of a CbC report or submitting a CbCR notification) will trigger a penalty from US$1,000 to $5,000 and closure of the business for two days. However, failure to comply repeatedly could result in fines of $5,000 to $10,000 and closure of the business for 10 days. If failure to comply persists, a closure of business for 15 days will apply.

See EY Global Tax Alert, *Panama issues decree on the Country-by-Country reporting requirement*, dated 25 June, 2019.

Slovak Republic

On 29 May 2019, the Government approved a draft bill (the Bill) introducing changes to the *Income Tax Act*.

Among other things, the Bill includes a proposal for amending the Slovak anti-hybrid rules due to the implementation of the EU ATAD 2 into domestic legislation and introduces new rules for tax loss-carry forwards utilization. It is anticipated that the Law will enter into force as of 1 January 2020.

Spain

On 20 June 2019, the Spanish Government published draft legislation and draft guidance addressing the implementation of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (referred to as DAC6 or the Directive). Under DAC6, taxpayers and intermediaries are required to report cross-border reportable arrangements from 1 July 2020. However, reports will retrospectively cover arrangements where the first step is implemented between 25 June 2018 and 1 July 2020.

The draft legislation is subject to public consultation and comments on the proposals are requested by 12 July 2019. The Spanish draft legislation is subject to the formal legislative process and is likely to be amended before final enactment.

If implemented as currently proposed, the Spanish Mandatory Disclosure Rules legislation and guidance will be broadly aligned to the requirements of the Directive.

See EY Global Tax Alert, *Spain issues draft mandatory disclosure regime legislation*, dated 21 June 2019.

Sweden-Switzerland

On 19 June 2019, Sweden and Switzerland signed a protocol amending their agreement for the avoidance of double taxation on taxes on income and capital signed at Stockholm on 7 May 1965 (the Treaty), as amended by the protocol signed at Stockholm on 10 March 1992 and on 28 February 2011.

The amending protocol contains a number of treaty-based recommendations from the BEPS project contained in Action 6 (preventing the granting of treaty benefits in inappropriate circumstances) and Action 14 (making dispute resolution mechanisms more effective). The amending protocol contains the new preamble language that clarifies that the tax treaty is not intended to be used to generate double non-taxation or reduced taxation through tax evasion and avoidance. It also contains a Principal Purpose Test. Moreover, the amending protocol enables taxpayers to present a case for MAP to the competent authorities of either Contracting State. It provides a period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty.

Both the Sweden and Switzerland have signed the MLI, but this Treaty is not a CTA. It is expected that the Treaty will not be further modified by the MLI, particularly given that the amending protocol has incorporated the treaty-related BEPS minimum standards into the Treaty.

Zimbabwe

On 20 February 2019, *Finance Act No. 1 of 2019* amending certain Acts was gazetted. Among other amendments, the Act includes the introduction of a new digital tax on satellite broadcasting services and e-commerce. According to the new rule and with effect from 1 January 2019, income in excess of US$500 000 earned by foreign satellite broadcasters or e-commerce platforms from local residents shall be deemed to be earned from a source within Zimbabwe. The revenues will be taxed at a rate of 5%.

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