OECD

On 24 November 2016, the OECD released the text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS under BEPS Action 15 (the multilateral instrument). The text and the related explanatory statement were formally adopted by approximately 100 countries at a ceremony hosted by the OECD following the conclusion of the negotiations during the week of 21 November 2016. The text of the multilateral instrument and explanatory notes are available on the OECD website.

The multilateral instrument under BEPS Action 15 is a key part of the OECD’s effort toward implementation of the tax treaty related BEPS measures into existing bilateral or regional tax treaties as quickly and consistently as possible. In general, the multilateral instrument will only enter into force after five countries have ratified it and will apply for a specific tax treaty, only after all parties to that particular treaty have ratified the instrument; and a certain period has passed to ensure clarity and legal certainty. It is expected that the multilateral instrument will be open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5 June 2017.

See EY Global Tax Alert, OECD releases multilateral instrument to implement treaty related BEPS measures on hybrid mismatch arrangements, treaty abuse, permanent establishment status and dispute resolution, dated 2 December 2016.

On 25 November 2016, Macau (China), Mauritius and Ukraine joined the BEPS Inclusive Framework bringing to 90 the total Members in the framework. As new BEPS Members, these three countries are committed to comply with the BEPS minimum standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing...
documentation) and Action 14 (enhancing dispute resolution). They will also participate on an equal footing with the rest of BEPS members on the remaining standard setting under the BEPS project, as well as the review and monitoring of the implementation of the BEPS package.

In November 2016, the OECD conducted two regional meeting of the inclusive framework on BEPS. One, for francophone countries on 22 to 24 November 2016 and another for the Asia Pacific region on 29 November to 1 December 2016. These meetings allowed participants to discuss the latest developments on the implementation work on BEPS, in light of the debates taking place in the Committee on Fiscal Affairs’ Working Parties. Participants were also updated on the progress of the work on the toolkits aimed at addressing the specific needs of developing countries in implementing the BEPS measures. These discussions provided the ideal forum to obtain input into the work and on the priorities of the participating countries and their needs in relation to capacity building and training.

Australia

On 29 November 2016, the Australian Government released the Exposure Draft (ED) of the proposed Australian Diverted Profits Tax (DPT) for public consultation. The DPT is proposed to apply to income years commencing on or after 1 July 2017.

Broadly, if the DPT applies to a scheme, the Commissioner may issue a DPT assessment to the relevant taxpayer. Under the DPT assessment, tax is payable on the amount of the diverted profits at a penalty rate of 40%.

The ED does not differ significantly from the proposal released in the May 2016–17 Australian Federal Budget and continues to outline the DPT at a high level, with further legislation yet to be come that will contain the detailed mechanics of the DPT. The draft explanatory memorandum accompanying the ED also refers to Australia’s adoption of the revised transfer pricing guidelines of the OECD including BEPS Actions 8 – 10 as one factor to take into account in ascertaining whether the scheme lacks economic substance.

To enable the DPT to be enacted in early 2017, there is a short consultation period with comments due by 23 December 2016.

See EY Global Tax Alert, Australia’s proposed Diverted Profits Tax to affect many multinational businesses, dated 2 December 2016.

Belgium

On 18 November 2016, the Belgian Parliament adopted the bill to implement (i) the 2014 and 2015 changes to the European Union (EU) Parent-Subsidiary Directive introducing linking rules to combat hybrid mismatches and a general anti-abuse provision and (ii) the amendments to the exit tax regime to partially implement the exit tax provisions as included in the EU Anti-Tax Avoidance Directive (ATAD)) introducing new rules for the collection of exit taxes due. The provisions regarding the EU Parent-Subsidiary Directive are retroactively applicable on income items paid or attributed as of 1 January 2016, while the exit tax provisions apply on transactions which occur as of the date of publication in the Belgian Official Gazette (expected during the week of 5 December 2016), and linked to tax year 2017 (i.e., financial year end closings as of 31 December 2016, and onwards).

On 2 December 2016, a Belgian Royal Decree completed the implementation of transfer pricing documentation and CbC reporting requirements. These requirements apply as of financial years starting on or after 1 January 2016. The documentation and filing obligations apply to all Belgian entities (including permanent establishments (Pes)) which are part of a multinational group and which exceed one of the thresholds (i.e., operating and financial income of €50m or an average number of employees of 100 full time equivalents or a balance sheet total of €1bn, during the preceding financial year as represented in the statutory accounts of the Belgian entity (or PEs).

The CbC report and master file should be filed annually with the Belgian tax authorities within 12 months after the end of the group’s financial year. For groups with a financial year ending on 31 December 2016, the first deadline is 31 December 2017. The local file should be filed annually as an attachment to the income tax return. For Belgian entities with a financial year ending on 31 December 2016, hence the local file form should likely be filed in the course of September 2017. Furthermore, the local file form includes a detailed questionnaire which should be completed for all business units of a qualifying Belgian entity which has at least one business unit with cross border transactions in excess of €1m in the relevant financial year. This part should only be completed for financial years starting on or after 1 January 2017. The CbC reporting notification should be filed with the Belgian tax authorities by the end of the financial year of the group. In anticipation of an electronic filing procedure, the notification can be filed by mail or by e-mail. However, the first deadline for filing the notification form is extended to 30 September 2017.

**Colombia–United Kingdom Tax Treaty**

On 1 November 2016, Colombia and the United Kingdom signed a Treaty to Avoid Double Taxation (the Treaty), that includes provisions consistent with the treaty-based recommendations from the BEPS project contained in the final reports on Actions 2, 6, 7 and 14. Among other things, the Treaty contains a provision dealing with fiscally transparent entities, and its preamble has a 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 taxpayer will not be considered a resident of either Contracting State for claiming a benefit of the Treaty, except for Article 21, 23 and 24. The Treaty also contains a savings clause and a Principal Purpose Test rule. In relation to Action 7, the Treaty contains an anti-fragmentation rule and a paragraph addressing with the splitting-up of contracts applicable to both the construction PE and the service PE clauses, but it does not contain, nevertheless, the new language on the agency PE clause. In addition, a case for mutual agreement procedure can be presented to the competent authorities of either contracting state.

See EY Global Tax Alert, *Colombia and United Kingdom sign Treaty to Avoid Double Taxation*, dated 8 November 2016

**Cyprus**

On 1 November 2016, Cyprus joined the Multilateral Competent Authority Agreement on the automatic exchange of Country-by-Country reports. The EU directive on Country-by-Country is expected to be implemented into domestic legislation by year end.

**France**

On 22 November 2016, the French Assemblee Nationale in the course of discussions on the draft Finance Bill for 2017, proposed to introduce a Diverted Profits Tax (DPT). It is proposed to be levied at the same rate (33.1/3%) as the standard corporate income tax rate, and would apply to fiscal years starting on or after 1 January 2018. A newly created DPT would apply to the portion of profits realized by a legal entity domiciled or established outside of France and related to an activity (sales of goods or provisions of services) carried out either through a PE in France or by a legal person or individual, when it can be “reasonably” considered that the activity of such legal person or individual aims at avoiding or reducing the tax burden that should be due in France, by not declaring therein a PE. It would also apply to enterprises exploiting electronic platforms through which persons can be connected with a view to contracting for the sale, exchange or sharing of goods or services. An escape clause is also provided (for both EU-based and non EU-based legal entities). The proposed DPT is still under draft stage and there may be changes before potentially being enacted by the end of December 2016.


**Iceland–Liechtenstein Tax Treaty**

On 14 December 2016, the tax treaty between Iceland and Liechtenstein will enter into force. The treaty generally applies from 1 January 2017. This treaty includes provisions consistent with the treaty-based recommendations from the BEPS project contained in the final reports on Actions 2, 6, 7 and 14. Among other things, the treaty contains a provision dealing with fiscally transparent entities, and its preamble has a clarification that tax treaties are not intended to be used to generate double non-taxation. For the purpose of tie-breaker rule, 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, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. The treaty also contains a Principal Purpose Test rule and the new language on the agency permanent establishment clause. In addition, a case for mutual agreement procedure can be presented to the competent authorities of either contracting state and any unresolved issues arising from the case shall be submitted to arbitration if the person so requests.
Switzerland

On 23 November 2016, the Swiss Federal Council adopted the administrative regulations required for the implementation of the spontaneous exchange of information on tax rulings. The domestic regulations will enter into force on 1 January 2017 so that the first exchange of information with selected partner states can begin in 2018.

The Swiss Federal Council further adopted the dispatch on the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) as well as the corresponding federal act required for its implementation in Switzerland. If the Swiss Parliament approves the proposal and a referendum is not held, the CbC MCAA as well as the federal act may enter into force at the end of 2017. Multinationals in Switzerland would then be required to file a CbC report for fiscal years beginning on or after 1 January 2018. The first exchange of CbC reports between Switzerland and its partner states would then take place in 2020.

Netherlands

On 18 November 2016, the Dutch Government sent a communication to the Dutch Parliament to inform it about the European Commission’s proposed corporate tax reform package of 25 October 2016. The Government expressed as well in this communication its initial position regarding the package. The Dutch Government has indicated that, subject to certain aspects to be further discussed, it supports the proposed new Directive on Double Taxation Dispute Resolution Mechanisms. The Government also supports the proposed amendment to the ATAD to include hybrid mismatches with third countries; however, it will seek a deferral of the effective date for these rules from 1 January 2019 to 1 January 2024. Lastly, the Dutch Government has indicated that it assesses the C(C)CTB proposals negatively. With reference to the above, the Dutch Government has reiterated in its communication that it is committed to maintaining and strengthening the Dutch investment climate for real economic activities. In this respect, the Government explicitly notes its intention to lower the corporate income tax rate.


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