Global Tax Alert

The Latest on BEPS - 5 January 2015

**OECD**

During the last quarter of 2014, the OECD issued several discussion drafts on BEPS Action items with comments due in January. The due dates for the respective drafts are noted below.

Comments are due on 9 January 2015 on the discussion draft on permanent establishment under Action 7 issued by the OECD on 31 October 2014 and the discussion draft on follow up work on addressing treaty abuse under Action 6 issued by the OECD on 21 November 2014.

Comments are due on 14 January 2015 on the discussion draft on transfer pricing for low value adding services under Actions 8-10 issued by the OECD on 3 November 2014.

Comments are due on 16 January 2015 on the discussion draft on dispute resolution under Action 14 issued by the OECD on 18 December 2014.

**China**

On 2 December 2014, China’s State Administration of Taxation (SAT) issued administrative guidance on the general anti-avoidance rules (GAAR). Under the guidance, the SAT defines the main characteristics of tax avoidance arrangements covered by the GAAR and describes the methods to be used for tax adjustments pursuant to the substance over form principle. The guidance will apply to tax avoidance arrangements carried out on or after 1 February 2015 and to cases that are not settled by 31 January 2015.


**Germany**

On 19 December 2014, the German Bundesrat released a protocol note according to which the Government will invite the German States to form a combined Federal and State working group. This working group will prepare for the German implementation of the outcomes of the OECD BEPS project that will become
available in 2015. Based on the output of the working group, the German Government will then draft a bill that in particular will address hybrid mismatch structures. A new anti-hybrid rule had been proposed in late 2014 but was not adopted by the German Bundestag in December and did not become part of the 2014 legislation.

See EY Global Tax Alert, German proposal for new anti-hybrid rule and other amendments postponed to 2015, dated 22 December 2014.

**France**

On 29 December 2014, the French Constitutional Court rendered its decision on provisions of the year end Finance Bills that some members of Parliament had asked it to censor. The Court reviewed, among other provisions, the new measure against hybrid mismatches and struck down the denial of the participation exemption on dividend payments from exempt activities. Thus, only the section of the measure disallowing the participation exemption on dividend payments deducted by the payor (an early implementation of the amended European Union Parent Subsidiary Directive) was finally enacted. The Court also reviewed the new penalty for lack of transfer pricing documentation, in the amount of 0.5% of transaction volumes related to the documents that failed to be provided. It upheld this measure, finding that the penalty was commensurate with the nature of the breach. Both Finance Bills were published in the Official Gazette on 30 December 2014 and thus entered into force.

See EY Global Tax Alert, French Finance Bills enacted after review by Constitutional Court, 30 December 2014.

**Korea**

On 23 December 2014, the Korean 2015 tax reform was enacted. The new law includes, among other provisions: (i) a tax on excess cash accumulated by large corporations; (ii) reduction of the debt to equity ratio under the thin capitalization rules (not applicable to financial institutions) from 3:1 to 2:1; (iii) an administrative penalty, of maximum KRW 100 million (US$95,000), for the failure to report a cross-border transaction with foreign related parties; and (iv) extension of the statute of limitations period (from 10 years to 15 years) and a new 60% penalty for tax evasion involving cross-border transactions.


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

Global Tax Alert
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. CM5083

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