Executive summary

On 8 July 2017, the G20 Leaders issued a communiqué at the conclusion of their Summit in Hamburg, Germany. In advance of the Summit, the Organisation for Economic Co-operation and Development (OECD) issued a Report to G20 Leaders, updating progress in key areas of OECD/G20 tax work, including movement towards the automatic exchange of information between tax authorities and implementation of key measures to address perceived tax avoidance by multinational companies. This content of the OECD report will be covered in a subsequent EY Global Tax Alert.

It was clear before the start of the Summit that key focal points would be trade issues and climate change. Even though these indeed turned out to be the core elements of discussions, the communiqué showed sustained support for the direction already taken in the tax area, confirming continuous commitment to the implementation of the Base Erosion and Profit Shifting (BEPS) outputs, a growing focus on the work by the OECD on the taxation of the digital economy, and continued strong support for the work on enhanced tax transparency and tax certainty.

Although no tax “blacklisting” took place this time due to important progress having been made by jurisdictions previously identified by the OECD as “non-cooperative,” the option of blacklisting and associated defensive measures was left open for 2018.
Detailed discussion

The communiqué deals with various matters of global importance. The tax clauses of the G20 Leaders' communiqué, contained within the section entitled Building Resilience were as follows:

International Tax Cooperation and Financial Transparency

► We will continue our work for a globally fair and modern international tax system and welcome international cooperation on pro-growth tax policies.

► We remain committed to the implementation of the BEPS package and encourage all relevant jurisdictions to join the Inclusive Framework.

► We look forward to the first automatic exchange of financial account information under the Common Reporting Standard (CRS) in September 2017. We call on all relevant jurisdictions to begin exchanges by September 2018 at the latest.

► We commend the recent progress made by jurisdictions to meet a satisfactory level of implementation of the agreed international standards on tax transparency and look forward to an updated list by the OECD by our next Summit reflecting further progress made towards implementation. Defensive measures will be considered against listed jurisdictions.

► We continue to support assistance to developing countries in building their tax capacity.

► We are also working on enhancing tax certainty and with the OECD on the tax challenges raised by digitalisation of the economy.

► As an important tool in our fight against corruption, tax evasion, terrorist financing and money laundering, we will advance the effective implementation of the international standards on transparency and beneficial ownership of legal persons and legal arrangements, including the availability of information in the domestic and crossborder context.

The communiqué language on an “updated list” in respect of the implementation of agreed international standards on tax transparency and the call to advance work on the beneficial ownership of legal persons and legal arrangements were particular items of interest in the communiqué from a tax perspective.

Blacklists

The OECD and European Union (EU) are both working on tax “blacklists,” with the OECD revising its 2009-10 work in this area (the so-called “Black,” “Grey” and “White” lists).

OECD

The OECD’s pre-Summit report listed Trinidad and Tobago as the only country currently failing to meet the OECD transparency and/or exchange of information standards (a “non-cooperative jurisdiction” under OECD nomenclature), but noted it was making efforts to meet such standards. To avoid being considered non-cooperative by the OECD, a jurisdiction must meet two of the following three criteria:

► It receives a rating of “largely compliant” or better from the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes, as regards the “exchange of information on request” standard of Transparency.

► It commits to adopting the OECD’s automatic exchange of information standard (the CRS) and beginning exchanges by 2018 at the latest.

► It has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, or it has in place a sufficiently broad exchange network providing for the exchange of information on request and automatic exchange of information.

A “blacklist” - and associated defensive measures - was therefore not issued by the OECD prior to the G20 Summit, with the G20 Leaders instead requesting a further report to be delivered at their next meeting.

EU: Code of Conduct Group

Separately, the Code of Conduct Group continues to work on a similar “blacklist.” The Code of Conduct Group’s selection criteria include similar transparency criteria to the G20/OECD’s, but also includes a “fair taxation” standard which goes beyond the criteria set by the G20/OECD. To be considered compliant on fair taxation, the Code of Conduct Group’s guidelines state that the jurisdiction should have no preferential tax measures.

As noted in a November 2016 EY Global Tax Alert, the screening of jurisdictions by the Code of Conduct Group was to begin rapidly, enabling the European Council to endorse the EU list of non-cooperative tax jurisdictions before the end of 2017.

In February 2017, 92 countries that were selected for screening received a letter inviting them to engage in the process; there may be bilateral discussions with some jurisdictions to explore solutions and engage in the dialogue. As soon as the listing process is completed, those countries listed as non-cooperative jurisdictions will receive a letter explaining the reason for such listing and the steps required to de-list that jurisdiction.
Beneficial ownership

There are a number of issues yet to be resolved between the G20 and OECD member nations as to the appropriate approach to be taken to developing mechanisms for countries to identify “beneficial ownership,” including whether there should be a central global registry for this type of data.

As background, shortly after the 2013 International Consortium of Investigative Journalists’ illegal leaking of a database of information covering multiple data sources, the focus of the G20 broadened from the corporate vehicles themselves to a more critical examination of how to obtain access to the “ultimate beneficial owners.” While the concept of beneficial ownership of corporate vehicles is also important in relation to obtaining treaty benefits, the current debate at the G20 level looks at beneficial ownership from a different angle.

According to the OECD, the potential for corporate vehicles - such as trusts, foundations, partnerships and other types of legal persons and arrangements - to be misused for a variety of illicit purposes, including money laundering and the financing of terrorism, bribery and corruption, and tax fraud and evasion, has been extensively documented. While requirements for financial institutions and other regulated businesses to conduct due diligence on their customers and verify beneficial ownership information have been in place for many years under both current and earlier iterations of the OECD’s Financial Action Task Force (FATF).

Recommendations, the ongoing revelations from the “leaks” investigations make explicit the “effectiveness gap” that the FATF believes exists between countries’ technical compliance with FATF requirements on paper and actual compliance with the rules in practice.

While a central registry among OECD members has not yet been explicitly called for, the Communiqué indicates that the future focus will be on achieving better compliance and measures to build up the capacity of National Fraud Investigations Units (FIUs) and tax administrations in emerging and developing countries. This focus may also be combined with new proposals on how use modern communication technology to enable better access by national FIUs and tax administrations to existing national registries, and how all law enforcement agencies can better cooperate in identifying the ultimate owners of opaque vehicles.

This is a complex area with additional ongoing activities at both the EU and the Extractive Industries Transparency Initiative.

Implications

The messaging in the G20 Leaders’ communiqué is consistent with prior output from these meetings showing that the G20 is continuing to push for further developments in the tax area.

The focus is currently moving towards implementation of new requirements and recommendations, in particular to the development of tools to help tax administrations obtain better information and to seek to ensure that all countries align in addressing common concerns. However, work is also ongoing at the OECD on the policy impacts of the digitalization of the economy, on which a preliminary report is expected in the first half of 2018.

Separately, companies in particular should be mindful of the ongoing discussions among multiple organizations regarding the listing of tax jurisdictions that are deemed to not be meeting transparency standards as set out by such organizations. In particular, to make sure they are prepared to defend any cases in which a jurisdiction on the list has been part of their structure, should future defensive measures - such as increased withholding taxes or even the withdrawal from tax treaties by other countries - be implemented.

Companies should continue to monitor the tax work of all organizations referred to in the Hamburg Communiqué

Endnotes

1. The Code of Conduct Group (Business Taxation) was set up by Economic and Financial Affairs Council of the European Union (ECOFIN) in 1998. It mainly deals with assessing the tax measures which fall within the scope of the code of conduct (adopted in December 1997) for business taxation and overseeing the provision of information on those measures. The code of conduct is not a legally binding instrument but its adoption requires the commitment of Member States to abolish existing tax measures that constitute harmful tax competition and to refrain from introducing existing tax measures that constitute harmful tax competition and to refrain from introducing new ones in the future.

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

**Ernst & Young LLP (United Kingdom), London**
- Chris Sanger +44 20 7951 0150 csanger@uk.ey.com
- Rob Thomas +44 20 7760 5538 rthomas5@uk.ey.com

**Ernst & Young Belastingadviseurs LLP, Rotterdam**
- Marlies de Ruiter +31 88 407 7887 marlies.de.ruiter@nl.ey.com
- Ronald van den Brekel +31 88 407 9016 ronald.van.den.brekel@nl.ey.com

**Ernst & Young LLP, Global Tax Desk Network, New York**
- Jose Bustos +1 212 773 9584 joseantonio.bustos@ey.com
- David Corredor-Velasquez +1 212 773 6259 david.corredorvelasquez@ey.com

**Ernst & Young LLP, International Tax Services, Washington, DC**
- Arlene Fitzpatrick +1 202 327 7284 arlene.fitzpatrick@ey.com

***

We will continue monitoring the developments and will inform you of further significant changes.
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 works together with companies across the CIS and assists them in realizing their business goals. 4,500 professionals work at 20 CIS offices (in Moscow, St. Petersburg, Novosibirsk, Ekaterinburg, Kazan, Krasnodar, Togliatti, Vladivostok, Yuzhno- Sakhalinsk, Rostov-on-Don, Almaty, Astana, Atyrau, Bishkek, Baku, Kyiv, Tashkent, Tbilisi, Yerevan, and Minsk).

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.

Contacts
Kyiv
+380 (44) 490 3000

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.

© 2017 Ernst & Young LLC
All Rights Reserved.