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Global Tax Alert

The Latest on BEPS and Beyond

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EY Tax News Update: Global Edition

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Highlights

As this edition of *The Latest on BEPS and Beyond* goes to press, crucial negotiations on Public Country-by-Country (CbC) reporting (CbCR) have just started in Brussels. Currently, the three institutions responsible for the design of European Union (EU) legislation are discussing the final shape of the proposal that was put forward over four years ago. Moreover, a decision may be made within a few months.

What began as a reporting requirement for tax administrations under the OECD/G20 BEPS minimum standard of Action 13, became an inspiration for the European Commission (the Commission) to make a proposal for public reporting by amending the Accounting Directive (Directive 2013/34/EU). The Commission, having the right of initiative to propose EU legislation, has proposed that large multinational enterprises (MNEs) and stand-alone undertakings operating in the EU must draw up and publicly disclose on their website income tax information, including a breakdown of profits, revenues, taxes paid and employees per country.

Building a better working world

The European Parliament has long advocated far-reaching reporting and disclosure requirements for MNEs, in line with a broader call for tax transparency. However, the proposal did not meet with immediate approval of the Member States. At least 15 of the 27 Member States were needed to approve a proposal. Until recently, this majority did not exist. But as reported in prior EY Global Tax Alert, *EU negotiations on public CbCR move forward as majority of Member States back proposal*, dated 26 February 2021, this changed on 25 February during a meeting between the Member States Finance Ministers.

This allowed the legislative process to move on to the next and final stage: negotiations between the Commission, Member States and Parliament on the final wording in the Directive. The objective is to reach a swift compromise. Yet, important issues remain to be decided. Where Parliament and Member States agree is that the Directive should cover any large MNE that has a permanent presence in the EU, whether it is headquartered there or not. In any case, it would have to report on a per-country basis for each of the Member States. However, the Parliament insists that per-country data would also be reported for all third countries. The Commission in return has proposed aggregate reporting for all third countries that are not on EU list for non-cooperative jurisdictions.

Clearly, these and other potential design elements have significant implications from the viewpoint of administrative costs, exposure and competitiveness for in-scope multinationals, but also for the jurisdictions that host them. This may also explain why Germany has not yet supported the public CbCR proposal. It is expected that more time will be spent on the so-called safeguard clause, that would allow a business to defer disclosing information for a limited number of years as publication would in certain cases be seriously prejudicial to the commercial position of a business.

It will also be interesting to see how the CbCR Directive relates to the EU's wider review of Environmental Social Governance (ESG) reporting obligations in the form of the Non-Financial Reporting (NFR) Directive. One of the most widely used voluntary NFR standards, the Global Reporting Initiative (GRI), includes tax reporting, including CbCR, as part of the standard. Also, the World Economic Forum supports tax as an NFR metric. If the EU would also adopt this approach, the key question becomes how this relates to the separate CbCR Directive which is also under development.

So, while it is yet unclear how the negotiations will unfold, it is clear that developments around public CbCR are developing fast and that the Portuguese Presidency has the ambition to adopt the Directive before July. With the chances of adoption increasing by the week, businesses should closely monitor the developments and assess the impact on their tax strategy.

OECD

On 26 February 2021, the first G20 Finance Ministers and Bank Governors meeting was held under the Italian Presidency. In advance of this meeting, the OECD presented a report to the G20 Finance Ministers and Bank Governors. Subsequently, the OECD held one of their regular Tax Talks webcasts.

The OECD's Secretary-General Report to G20 Finance Ministers and Central Bank Governors (the report) consists of two parts; Part I of the report is an update on the activities with respect to the OECD's international tax agenda, including an update on the work to address the tax challenges arising from the digitalization of the economy (the BEPS 2.0 project). Part II is a progress report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

During the G20 Finance Ministers and Central Bank Governors virtual meeting, there was continued support for the aim to reach global agreement on both pillars of the BEPS 2.0 project on addressing the tax challenges arising from the digitalization of the economy by mid-2021.

On 4 March 2021, the OECD held the 18th Tax Talks webcast. Members of the OECD Secretariat provided an overview of the outcomes of the G20 Finance Ministers meeting and an update on the OECD›s international tax work.

See EY Global Tax Alert, *OECD issues report to G20 finance ministers and Central Bank governors and hosts webcast on the outcomes of the G20 meeting and other tax developments*, dated 5 March 2021.

On 22 February 2021, the G20/OECD Inclusive Framework on BEPS published the new peer review transparency framework on BEPS Action 5 for the years 2021 through 2025. Overall, the transparency framework remains similar to the initial transparency framework covering the years 2017 to 2020.

The transparency framework contains two main sections: (i) the terms of reference; and (ii) the methodology for the conduct of the peer reviews. The terms of reference capture key elements such as the information gathering process, exchange of information, confidentiality and statistics. The methodology sets out the procedural mechanisms by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow-up process.

By the end of 2021, the OECD is planning to release the fifth annual peer review report, covering jurisdictions for the 2020 calendar-year period. The report should include country-specific recommendations for improvement and will be adopted under the updated transparency framework.

See EY Global Tax Alert, *OECD releases new transparency framework for Action 5 for 2021 through 2025*, dated 26 February 2021.

On 18 February 2021, the OECD Forum on Tax Administration (FTA) released a new handbook for the International Compliance Assurance Programme (ICAP). ICAP is a voluntary risk assessment and assurance program facilitating the cooperation of multilateral engagement between large MNE groups that are willing to engage actively and transparently and tax administrations in jurisdictions where the MNE groups have business activities. ICAP will be open to all 53 FTA member tax administrations.

In broad terms, the handbook released is very similar to the ICAP-pilot launched in March 2019, with no significant changes in scope nor in the key drivers underpinning the approach. The core focus areas remain the same, including: (i) the assessment and assurance of transfer pricing (TP) risk, (ii) permanent establishment (PE) risk; (iii) other categories of international tax risk (e.g., hybrid mismatch arrangements, withholding taxes, or treaty benefits) as agreed by the MNE group, the lead tax administration, and other covered tax administrations. The new handbook contains some modifications to the procedural and administrative elements of the ICAP program.

See EY Global Tax Alert, *OECD Forum on Tax Administration releases new handbook for International Compliance Assurance Programme (ICAP)*, dated 24 February 2021.

Also, on 18 February, Croatia and Malaysia deposited their instrument of ratification of the *Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting* (MLI) with the OECD. At the time of depositing the instrument of ratification, jurisdictions must confirm their MLI positions. Accordingly, Croatia added three tax treaties (Kazakhstan, United Arab Emirates (UAE), Vietnam) to its list of Covered Tax Agreements (CTAs) and changed its preliminary positions by removing the reservations on Article 3 (transparent entities), Article 9 (anti-abuse rules for capital gains), Article 11 (restrict a party's right to tax its own residents) and Article 35 (entry into effect).

Malaysia did not add or remove any tax treaty from its list of CTAs and did not make any changes to its preliminary MLI positions. The MLI will enter into force for these jurisdictions 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 their instrument of ratification, i.e., on 1 June 2021.

On 16 February 2021, the OECD released the 10th batch of peer review reports on BEPS Action 14, covering Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, UAE, and Vietnam.

Altogether, the reports conclude that most of the assessed jurisdictions meet almost all or the majority of the peer review elements of Action 14, with the exception of Kazakhstan and Vietnam, that meet less than half of the elements of Action 14. Further, none of the assessed jurisdictions included in the batch requested the OECD's feedback concerning their adoption of the best practices, hence, no best practice reports were prepared.

See EY Global Tax Alert, *OECD releases 10th batch of peer review reports on BEPS Action 14 related to improving dispute resolution*, dated 17 February 2021.

European Union

On 10 March 2021, the Commission launched a public consultation process on the future revision of the Directive on Administrative Cooperation to also address the use of alternative means of payments and investment (DAC8). The consultation runs until 2 June 2021 and it allows the public to provide feedback through a questionnaire and to attach free-form comments. The consultation includes two sections.

The first section aims to capture views from all stakeholders on crypto-assets and e-money and the provision of services by intermediaries. In that first section, stakeholders' responses will help the Commission determine whether an EU legislative initiative to target tax revenue losses due to the underreporting of income/revenues generated by crypto-assets and e-money is needed. The second section will seek views of stakeholders on the strengthening of the EU framework on administrative cooperation, in particular on the compliance measures with respect to the reporting obligations following from the EU rules on administrative cooperation.

On 4 March 2021, the Commission presented a roadmap for the design of its Communication on Business taxation for the 21st century (the Communication). Interested parties can provide input regarding the elements to be included in this Communication until 1 April 2021. The Commission expects to publish the Communication in the second quarter of 2021, after the input received has been assessed.

According to the roadmap, the current corporate tax framework is out of step with the new realities of a globalized and digitalized economy, and even less fit for the challenges to come, such as climate change and population aging. This has generated a need for a holistic and ambitious vision for an EU business taxation environment fit for the 21st century. The aim of the Communication is to set out such vision and a medium-term agenda for the Commission's actions in this area. The roadmap highlights that the Communication will take stock of discussions at the OECD on the reform of the corporate taxation framework and take this into account when designing the actions at the EU level. It will also take stock of the Commission's pending proposals, such as the Common Consolidated Corporate Tax Base, and propose if and how these are (still) relevant for the way forward towards an EU business tax framework fit for the 21st century.

At the internal market and industry Council meeting on 25 February 2021, EU Ministers held a policy debate in a public session on the proposed public CbCR Directive. The Directive, as it was proposed by the Commission in 2016, requires multinational companies with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years to disclose publicly the income taxes paid in each Member State and other tax-related information.

Overall, the policy debate concluded with a qualified majority of Member States now supporting the proposal. Austria and Slovenia, who were against the proposal in 2019, reversed their position and expressed their support for the proposal. Following that, on 3 March 2021, EU ambassadors provided a mandate to the Portuguese Presidency to start negotiations with the European Parliament and the Commission in order to come to a final text. On 4 March, the European Parliament also approved the start of the negotiations aimed at reaching an agreement under the Portuguese Presidency, which ends on 30 June 2021.

See EY Global Tax Alert, *EU negotiations on public CbCR move forward as majority of Member States back proposal*, dated 26 February 2021

On 22 February 2021, the Council of the EU (the Council) updated the EU list of non-cooperative jurisdictions for tax purposes (the EU List). Annex I (the so-called "black" list) of the EU List now includes American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu. This follows from the removal of Barbados and addition of Dominica. With respect to Annex II of the EU list (the so-called "gray" list) and the state of play of pending commitments, the Council decided to extend several deadlines for these commitments. Also, the Council decided to remove three jurisdictions (Morocco, Namibia and Saint Lucia) and to add Jamaica to Annex II. Australia, Barbados, Botswana, Eswatini, Jamaica, Jordan, Maldives, Thailand and Turkey are the nine jurisdictions listed on Annex II.

The Council will continue to review and update the EU List biannually, with the next update due in October 2021.

See EY Global Tax Alert, *EU Member States adopt revised list of non-cooperative jurisdictions for tax purposes*, dated 24 February 2021.

United Nations

In February 2021, the United Nations (UN) published a discussion draft on possible changes to the UN Model Double Taxation Convention, namely on the inclusion of software payments in the definition of royalties. In particular, the UN is looking to receive input on three main concerns:

1. Is the definition of "software" included in Article 12 of the OECD Model Tax Convention (MTC) consistent with current business practice and appropriate for use, perhaps by adding the definition to Article 3 (definitions)?
2. Is there a clear distinction between what constitute "computers" and those that are not "computers"?
3. If the deletion of certain words contained in the paragraph about distribution intermediaries is the right approach.

The period for comments was from 16 February 2021 to 16 March 2021.

IOTA

On 24 February 2021, the Intra-European Organisation of Tax Administrations (IOTA) released a report on the implementation of CbCR by governments through internal rules and procedures. IOTA is a non-profit intergovernmental organization serving as a platform for exchanging experiences and best practices between tax administrations on important tax issues and current developments concerning practical aspects of administering tax laws and currently comprises 44-member tax administrations.

The report provides solutions on how to implement BEPS Action 13 in an effective and practical way. The information in this report is the result of a survey conducted with input from 25 IOTA members. More specifically, the report includes experiences of member tax administrations on the process for filing and the exchange of CbC reports, data quality, and confidentiality and risk assessment. Further, the report contains a number of case studies and country examples outlining key CbCR processes.

Platform for Collaboration on Tax

On 10 March 2021, The Platform for Collaboration on Tax (PCT), at the request of the G20, released a new toolkit on Tax Treaty Negotiations (the toolkit). The PCT is a joint effort by the International Monetary Fund, the OECD, the UN and the World Bank Group. The Platform is designed to enhance the cooperation between these International Organizations (IOs) on tax issues.

The toolkit represents a joint effort to provide capacity-building support to developing countries on tax treaty negotiation. The toolkit describes the steps involved in tax treaty negotiations such as how to decide whether a comprehensive tax treaty is necessary, how to prepare for and conduct negotiations, and what follow-up measures to take after negotiations. The toolkit also provides links to publicly available resources that treaty negotiators may find useful.

Belgium

On 21 December 2020, the Constitutional Court submitted a request for a preliminary ruling with the Court of Justice of the European Union (Case C-694/20) related to the Mandatory Disclosure Rules (MDR). The preliminary ruling concerns the question whether Article 1(2) of the MDR Directive (Directive 2018/822) is compatible with Article 7 (right to respect for private life) and Article 47 (right to a fair trial) of the Charter of Fundamental Rights of the EU. The MDR Directive requires a lawyer-intermediary who wishes to invoke professional secrecy, to notify the other intermediaries (i.e., not being the relevant taxpayer) involved of their reporting obligations and to share with the other intermediaries information which the intermediary obtains in the course of the essential activities of his profession, e.g., representing or defending clients in legal proceedings and giving legal advice, even in the absence of pending legal proceedings.

Bermuda

On 31 January 2021, the Ministry of Finance of Bermuda published an updated list of reportable jurisdictions for the 2019 reporting period (starting on or after 1 January 2020) for purposes of the CbCR. The jurisdictions included in this list will receive the 2020 fiscal year CbCR information from Bermuda. The new jurisdictions included in the updated list are: Cyprus, Isle of Man, Panama, Peru, and Turkey.

Cyprus

On 26 February 2021, the Cypriot Tax Department (CTD) issued an announcement according to which administrative fines for purposes of the MDR submission will not be imposed until 30 June 2021. Further to the CTD's previous announcement for the extension of reporting deadlines until 31 March 2021, the CTD has now announced the intention to not apply fines for MDR submissions until 30 June 2021 for the following cases:

- Reportable cross-border arrangements that have been made between 25 June 2018 and 30 June 2020 and that had to be submitted by 28 February 2021.
- Reportable cross-border arrangements that have been made between 1 July 2020 and 31 December 2020 and that had to be submitted by 31 January 2021.
- Reportable cross-border arrangements made or to be made between 1 January 2021 and 31 May 2021 that had to be submitted within 30 days beginning on the day after they were/will be made available for implementation or were/will be ready for implementation or when the first step in the implementation has been/will be made, whichever occurred/will occur first.
- Reportable cross-border arrangements for which secondary intermediaries provided/will provide aid, assistance, or advice, between 1 January 2021 and 31 May 2021, and had to submit information within 30 days beginning on the day after they provided/will provide aid, assistance, or advice.

See EY Global Tax Alert, *Cyprus announces non-application of administrative fines for DAC6 submissions up until 30 June 2021*, dated 26 February 2021.

Dominican Republic

On 1 March 2021, the Dominican Republic's Directorate General of Internal Revenue launched a public consultation to amend the TP regulations. The public consultation contemplates a modification in the deadline for filing the *Declaration of Operations between Related Parties* (the Declaration) which includes details of related-party transactions and related parties, from 180 to 120 days after the fiscal year end. The public consultation provides that 180 days after the Declaration is submitted, taxpayers are obligated to submit a master file (MF) and local file (LF) to the tax authority, provided the taxpayer meets the relevant requirements. The requirement for preparation of the MF and LF include taxpayers undertaking related-party transactions amounting to DOP10m (approximately US$173,000) or more, taxpayers that engage in related-party transactions with resident related parties, provided certain conditions are met, and also include taxpayers who engage in transactions with entities located in low-tax jurisdictions. In addition, the public consultation provides that MNE groups are required to file a CbC report if they meet a number of conditions (to be determined by the tax authority).

The consultation period runs from 1 March 2021 to 5 April 2021 and the proposed amendments would be effective from 1 January 2021.

Germany

On 15 February 2021, the German Federal Ministry of Finance published a draft bill to tackle tax avoidance and unfair tax competition. The bill is intended to deter companies and individuals from maintaining business relationships with non-cooperative countries in the area of tax transparency or those engaging in unfair tax competition. The purpose of this bill is to encourage jurisdictions with harmful tax practices to change their behavior. In order to do so, the bill includes the following rules: (i) sets forth obligations for taxpayers to cooperate in terms of documentation and disclosure; (ii) introduces denial of the deduction of expenses, relief from withholding tax and the application of certain beneficial mechanisms such as the flat rate taxation of capital income and the participation exemption; and (iii) adds a provision on controlled foreign company (CFC) taxation.

The scope of the draft bill is currently applicable to those jurisdictions that are on the EU list of non-cooperative jurisdictions for tax purposes (EU List). If enacted, the new rules will be effective as of 1 January 2022, irrespective of possible conflicting treaty provisions. For any jurisdiction that is not yet included on the EU List as of 1 January 2021 but added later, the law is to be applied as of 1 January 2023. The legislative process is expected to take place through the summer.

See EY Global Tax Alert, *German Ministry of Finance publishes working draft of Act to Combat Tax Avoidance and Unfair Tax Competition*, dated 17 February 2021.

Hungary

On 3 March 2021, the President of Hungary ratified the bill, that was approved by the Hungarian Parliament on 22 February 2021, promulgating the MLI in Hungary. The ratification process was completed on 4 March 2021 by publishing the approved bill in the *Official Gazette*. The instrument of ratification still needs to be deposited before the MLI will enter into force with respect to its CTAs. The Ministry of Foreign Affairs will publish a statement on the exact calendar days of the entry into force in the *Official Gazette* immediately after the exact dates are known.

Hungary submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the 74 CTAs it wishes to be covered by the MLI. A definitive list of reservations and notifications will also need to be provided upon the depositing the instrument of ratification.

India

On 2 March 2021, the Indian Supreme Court ruled in favor of nonresident taxpayers with software sales to Indian customers. The Supreme Court decided that software sales should not be characterized as "royalties" but rather as business profits, which does not trigger any tax in India, unless the nonresident is carrying on business in India through a PE and the profits can be attributable to the PE. Important to note, Indian domestic tax laws provide a very broad definition of royalties (covering payments for the transfer of all or any rights for the use of or right to use computer software). Further, the position from the Indian tax authorities has been to characterize software sales as royalties.

The Supreme Court explained that if the relevant tax treaty is aligned with the OECD MTC, the OECD MTC commentaries can be used for interpretation. The OECD Commentary supports the position that a payment to make a copy or adaptation of a computer program to enable the use of the software for which it was supplied does not constitute a royalty. Thus, the Supreme Court confirmed that the determination of the income of a nonresident chargeable to tax in India is subject to the provisions of the relevant tax treaty. If an item of income is not subject to tax under the tax treaty, then such income cannot be taxed under domestic tax law.

See EY Global Tax Alert, *Indian Supreme Court rules on taxability of software payments*, dated 5 March 2021.

Ireland

On 1 March 2021, the Irish Revenue published guidance (eBrief 040/21) – in the form of an updated Tax and Duties Manual with respect to MDR. Among other updates, the guidance has provided clarity on the meaning of «may reasonably expect» in the application of the Main Benefit Test and the meaning of "knows or could be reasonably expected to know" in the context of a whether a secondary intermediary has a reporting obligation. Furthermore, the guidance has been updated for what Irish Revenue expects in relation to: (i) the summary of the content of the reportable cross-border arrangement; (ii) the national provisions forming the basis of reportability; and (iii) the Member State(s) likely to be concerned.

On 24 February 2021, Irish Revenue published guidance (eBrief 037/21) in the form of a detailed Tax and Duties Manual on the operation of recently enacted TP rules set out in Irish tax legislation which applies to companies with accounting periods commencing 1 January 2020. The guidance specifically refers to the adoption into law of the 2017 OECD Transfer Pricing Guidelines, while also referencing the 2020 OECD Transfer Pricing Guidance on Financial Transactions (Chapter X) when determining whether the conditions for certain financial transactions are consistent with arm's-length principles. The guidance outlines what Irish Revenue expects in terms of debt capacity analysis, as it pertains to new and existing financial arrangements.

Among other updates, the guidance provides details on the simplification measures for TP documentation (Master and Local file) and penalty protection where a company demonstrates "reasonable efforts" to comply with the statutory timelines and requirements for TP documentation. Furthermore, the guidance notes that while Irish Revenue expects a full benchmarking study to be conducted every three years by taxpayers, benchmarking analysis can be relied upon for multiple periods where it is reasonably contemporaneous, the economic circumstances are not materially different and it continues to be relevant to the particular facts and circumstances of the arrangement. The guidance also details certain exclusions from TP for certain domestic Irish transactions (subject to certain anti-avoidance provisions). Changes to these exclusions are proposed which are not included in the guidance as this is subject to commencement by the Irish Finance Minister in 2021 or later.

See EY Global Tax Alert, *Irish Revenue issues guidance on transfer pricing legislation*, dated 3 March 2021.

Italy

On 1 March 2021, Italy published Law No.21 in the *Official Gazette* to enact the postponement of the Digital Services Tax (DST) payment and return filing deadlines for 2021. The Law provides that persons in scope of this tax must pay the DST for in-scope services carried on in 2020 by no later than 16 March 2021 and submit the annual DST return by no later than 30 April 2021.

The law entered into force on 2 March 2021.

However, based on press release No. 46 of 9 March 2021 issued by the Italian Ministry of Finance, the mentioned deadlines will be further postponed by an upcoming decree. Thus, the deadline for the 2020 DST payment should become 16 May 2021 and the deadline for the 2020 DST return should become 30 June 2021.

Luxembourg

On 17 February 2021, the Luxembourg Tax Authorities (LTA) released updated guidance in relation to the EU Directive on MDR. The updated guidance addresses the impact of Brexit on the obligations under the Luxembourg implementation of the MDR and provides for further clarification with respect to the concept of a participant in an arrangement, marketable arrangements, and certain items related to the reporting process.

With regards to Brexit, there is no requirement for intermediaries and relevant taxpayers to redo an analysis previously carried out considering the United Kingdom (UK) this time as a third state for arrangements where the first step was implemented between 25 June 2018 and 31 December 2020. According to the updated guidance, the concept of participant in an arrangement does not only cover relevant taxpayers, but also their business or contractual partners with respect to the arrangement in question, e.g., the buyer or seller of a property, the tenant or owner of an economic property. Further, the guidance clarifies that an arrangement is reportable as a marketable arrangement when regular updates, particularly the addition of relevant taxpayers, are contemplated. Finally, the guidance also recommends that, when the reporting person is not aware of an item of information that is not mandatory for the report, the respective field should not be filled in. The guidance further specifies that the reporting person must indicate the relevant domestic legislation of all the countries concerned, which he/she is aware of, and on which the arrangement is based.

See EY Global Tax Alert, *Luxembourg Tax Authorities update MDR guidance*, dated 25 February 2021.

Malaysia

On 1 February 2021, Malaysia updated its guidance on DST for Foreign Service Providers. The updated guidance replaces the guidance issued on 1 August 2020. The updated guidance provides clarifications and examples for intra-group exemptions, the issuance of credit notes and debit notes and penalty provisions. The updated guidance also sets out application procedures to amend the default receipts basis of accounting to an invoice basis.

Morocco

On 31 December 2020, Morocco adopted the Royal Decree No. 1-20-92 implementing the law n°75-19 on the ratification of the MLI. On 18 January 2021, the Royal Decree was published in the *Official Gazette* N° 6953 covering the said ratification. Morocco submitted its provisional MLI positions at the time of signature, listing its reservations and notifications as well as the 76 CTAs it wishes to be covered by the MLI.

The instrument of ratification still needs to be deposited before the MLI will enter into force with respect to its CTAs. A definitive list of reservations and notifications will also need to be provided upon depositing the instrument of ratification.

Netherlands

On 4 March 2021, the Dutch Government initiated an online public consultation regarding the application of the arm's-length principle, with the aim of unilaterally addressing certain TP mismatches to avoid international double non-taxation.

The rules as included in the consultation document would impact Dutch corporate taxpayers involved in international related-party transactions (either as the payer or the payee). In the case of a transaction which is not carried out at arm's-length, a resulting downward adjustment of the taxable income (based on the Dutch "informal capital or deemed dividend" doctrine) will only be applied to the extent a corresponding upward adjustment is included in the taxable income of the counterparty. The burden of proof in this respect lies with the taxpayer and the documentation support is free format.

The proposed approach, if enacted, would apply to transactions that take place in fiscal years starting on or after 1 January 2022. However, according to the consultation document, an effective partial retroactive effect will apply to business assets acquired from an affiliated entity at a non-arm's length price in the five years preceding the first book year starting on or after 1 January 2022, by amending allowed amortizations in book years starting on or after 1 January 2022.

The consultation runs from 4 March 2021 until 2 April 2021. After, the proposal will be sent to the Dutch Parliament during the first half of 2021.

See EY Global Tax Alert, *The Netherlands starts consultation on unilaterally addressing transfer pricing mismatches*, dated 4 March 2021.

Portugal

On 20 January 2021, the Portuguese Tax Authority (PTA) issued the first version of guidance on MDR. The guidance clarifies that an individual who is linked to an intermediary or to a relevant taxpayer under an employment relationship is not deemed himself to be an intermediary or a relevant taxpayer. Further, the guidance clarifies some of the MDR hallmarks, including: (i) hallmark A3 (standardized documentation and structures); (ii) hallmark B2 (conversion of income); (iii) hallmark C1 (cross-border payments between associated enterprises); (iv) hallmark E2 (unilateral safe harbor rules); (v) hallmark E3 (intragroup transfer of functions/risks/assets with significant earnings before interest and tax (EBIT) impact).

The guidance further clarifies that the obtainment of a tax advantage does not by itself satisfy the main benefit test (MBT), i.e., the MBT is not considered satisfied when the tax advantage is fully obtained as a result of the mere fulfilment of the legal requirements which it depends upon.

The guidance provides a better understanding of the legal framework and harmonizing application of the Portuguese MDR, but it is not binding. There are still aspects to be clarified that it is anticipated will be addressed in future versions of the guidance. The guidance only binds the PTA's practice and does not prevent intermediaries and relevant taxpayers from adopting different interpretations.

See EY Global Tax Alert, *Portugal publishes MDR guidance and reporting form*, dated 26 February 2021.

South Africa

On 24 February 2021, South Africa's Minister of Finance delivered his 2021 Budget Review. The Budget includes a list of proposed changes to the current tax measures, such as: (i) strengthening interest limitation rules; (ii) amending the hybrid debt anti-avoidance rules to deem the receipt of interest on a hybrid debt instrument to be a dividend in specie; (iii) refining business restructuring rules; (iv) clarifying CFC diversionary rules; and (v) introducing an exemption declaration for withholding taxes on royalties.

See EY Global Tax Alert, *South Africa's Minister of Finance delivers 2021 Budget Review*, dated 25 February 2021.

On 19 February 2021, the South African Revenue Service extended the deadline for submission of CbC reports. CbC report filing has been extended until 30 June 2021 for persons required to file by 31 December 2020 or 31 January 2021. Also, CbC report filing has been extended until 31 July 2021 for persons required to file by 28 February 2021, 31 March 2021, 30 April 2021, 31 May 2021, and 30 June 2021.

United Kingdom

On 3 March 2021, the UK Chancellor (Finance Minister) presented his Spring Budget statement for the forthcoming financial year starting in April 2021.

The budget proposes an increase in the corporation tax rate for larger companies from 1 April 2023 from 19% to 25%. The Diverted Profits Tax rate is proposed to similarly increase from 25% to 31% effective from 1 April 2023. The Budget also proposed the repeal of the domestic law application of the EU Interest and Royalty directive, effective from 1 June 2021, meaning from this date double taxation relief will be provided only under bilateral tax treaties. To stimulate investment in the period following the COVID-19 pandemic, the UK will introduce a time limited "super-deduction" of up to 130% for expenditure on new plant and machinery during 1 April 2021 to 31 March 2023. In addition, the scope of research and development reliefs will be reviewed including possible extension to spend on data and cloud computing.

The next step in the Budget's roadmap is the publication on 11 March 2021 of the Finance Bill providing details on the implementation of the proposed tax measures. After, a series of tax consultations will be held starting on 23 March 2021. The Finance Bill is expected to be enacted in Summer 2021.

See EY Global Tax Alert, *UK issues 2021 Budget: Initial highlights*, dated 3 March 2021.

On 23 February 2021, Sweden and the UK signed an amending protocol to update the Sweden – United Kingdom income tax treaty. The amending protocol contains the new preamble language which clarifies that the tax treaty is intended to eliminate double taxation with respect to taxes on income and on capital gains without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. The amending protocol brings changes to the Mutual Agreement Procedure clause. Further, the amending protocol also includes a principal purpose test.

The amending protocol is yet to be ratified and will enter into force on the 30th day of notification of the completion of the procedures required under the UK's and Swedish' domestic law, respectively.

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