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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

On 11 July 2021, Venice was once again the center of the world when it comes to bringing together political leaders. [G20 finance ministers gathered there to address pressing economic issues](#), including progress in global negotiations on BEPS 2.0. [The ministers endorsed a statement issued by the OECD](#) on the interim status of these negotiations on the well-known two pillars: a new approach to taxation of the world's largest multinational enterprises (MNEs) and the possible introduction of global minimum tax. The first would particularly affect MNE groups with an annual turnover of at least €20 billion and profitability of more than 10% per cent according to the OECD statement. In addition, a minimum tax of at least 15% was announced, which would be introduced by a web of optional measures that could affect a large group of cross-border businesses.

While media around the world [reported](#) on a "historic tax agreement," the loyal readers of the Latest on BEPS and Beyond may recognize that the G20 meeting merely marked one of many steps in a lengthy negotiation process. A process in which a possible outcome seems to be emerging, but in which countries' positions also still remain quite far apart when it comes to some of the specific design elements of the pillars. The latter is demonstrated by the seven holdouts in the Inclusive Framework on BEPS that have not endorsed the deal. For example, [Ireland has highlighted](#) its reservation about the proposed minimum tax rate of 15%. Similarly, [Hungary](#) denounced tax increases that

weaken competitiveness. Besides that, many other countries have communicated publicly that their support for the OECD statement is conditional. This is illustrated by [a press release of Switzerland](#). Furthermore, the statement did not address many important design elements of the rules under consideration, which is a sign that significant work still needs to be done and alignment needs to be found on these aspects.

The next few months will be crucial for the further course of the negotiations and the possibility of settling the contentious remaining issues before the G20 ministers meet again in October.

What does this mean concretely? The governments and intragovernmental organization will continue their simultaneous positioning and negotiations, with chess pieces sometimes moving publicly, but often behind closed doors. An important public move came on 13 July, when [the European Commission announced a deferral of the publication of its EU digital levy](#) until, at least, October. While this move will ease tensions in the transatlantic discussions, Brussels bureaucrats could face a funding gap and may need to consider new EU tax measures. The technical experts involved in the BEPS 2.0 negotiations will also need to advance their work. They will need to address growing concerns expressed by businesses and other stakeholders about the compatibility of the new measures with [treaty rules](#) and [EU law](#). Businesses and investors should make use of the narrow time window of the next two months to share their insights and concerns with policy makers at all relevant levels.

Wherever you are in the world, the coming months are expected to be another hot season for international tax. The team of *The Latest on BEPS and Beyond* looks forward to reporting back to you on the latest developments in our next edition in September.

OECD: G-20 endorses BEPS 2.0 project

On 9-10 July 2021, the G20 Finance Ministers and Central Bank Governors met in Italy and a joint [communiqué](#) was issued after the meeting. Among other topics discussed, the project on addressing the tax challenges arising from the digitalization of the economy (the "BEPS 2.0 project") was part of the agenda. The Finance Ministers endorsed the key components of the two pillars on reallocation of profits and a global minimum tax as set out in the Statement released

by the Inclusive Framework on BEPS on 1 July 2021. They also called on the Inclusive Framework to swiftly address the remaining issues of the BEPS 2.0 project and provide an implementation plan by October 2021. Further, they invited the Inclusive Framework members that have not yet joined the agreement to do so.

See EY Global Tax Alert, [G20 Finance Ministers endorse key components of global tax changes and invite holdouts to back the agreement](#), dated 11 July 2021.

OECD: Inclusive Framework released statement on the BEPS 2.0 project

On 1 July 2021, the OECD released a Statement on a *Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy* ([the Statement](#)) agreed by 130 members of the Inclusive Framework on BEPS. The Statement describes, on a high-level basis, the components with respect to both elements of the BEPS 2.0 project: Pillar One on revisions to nexus and profit allocation rules and Pillar Two on new global minimum tax rules. The Statement further indicates that remaining issues and a detailed implementation plan will be finalized by October 2021.

See EY Global Tax Alert, [OECD announces conceptual agreement in BEPS 2.0 project](#), dated 1 July 2021.

OECD: Model reporting rules for digital platforms

On 22 June 2021, the OECD published Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods ([the report](#)). The report provides a framework in the form of a Multilateral Competent Authority Agreement to exchange information in the sharing and gig economy. In particular, it supports the annual automatic exchange of information by the residence jurisdiction of platform operators with the jurisdictions of residence of the sellers. The framework also includes an optional module to extend the scope of the [Model Rules](#) to the sale of goods and the rental of means of transportation.

See EY Global Tax Alert, [OECD publishes international exchange framework and optional module for Model Reporting Rules for sellers in the sharing economy](#), dated 30 June 2021.

African Tax Administration Forum: Position on the BEPS 2.0 project

On 1 July 2021, the African Tax Administration Forum (ATAF) posted a [media release](#) on its website in relation to the *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy* (the Statement) prepared by the Inclusive Framework on BEPS. In this media release, ATAF welcomes the Statement as an achievement to reach a global consensus on the tax challenges from the digitalization of the economy. Further, ATAF states that more than ever, cooperation and multilateralism are essential in developing solutions that will help rebuild countries' economies after the COVID-19 pandemic.

ATAF also expressed its concern about how the new rules will impact those countries that are not members of the Inclusive Framework on BEPS and any member of the Inclusive Framework on BEPS that decides not to adopt the new rules. In particular, ATAF indicates that countries should join the Inclusive Framework on BEPS because they want to and not because they feel pressure to do so.

Argentina: Amendments to TP regulations

On 18 June 2021, the Argentine Federal Tax Authorities (AFIP) published [General Resolution 5010/2021](#) amending some of the transfer pricing (TP) regulations in Argentina. Among other items, the resolution modifies the requirements for the submission of the Master File. The Master File would now need to be submitted to the tax authorities if the taxpayer is part of a group of multinational entities (according to Argentine country-by-country (CbC) reporting (CbCR) definitions) and meets the following: (i) exceeds in the prior tax year ARS4 billion (approx. US\$40 million) of consolidated annual income at the multinational group level; and (ii) has transactions with foreign related parties for amounts over ARS3 million (approx. US\$30,000) in total or ARS300,000 (approx. US\$3,000) per transaction.

See EY Global Tax Alert, [Argentina issues new transfer pricing regulations](#), dated 28 June 2021.

Australia: Taxation ruling on the characterization of software as royalties

On 25 June 2021, the Australian Taxation Office (ATO) released Draft Taxation Ruling [TR2021/D4](#) - Income tax: royalties - character of receipts in respect of software. The draft ruling expands the scope of royalty withholding

tax (RWT) and outlines when payments for licensing and distribution of software will be royalties and therefore generally subject to a final RWT if paid offshore.

The draft ruling focuses on licensing and distribution agreements related to packaged software, digital software subscriptions and cloud-based software-as-a-service arrangements. However, the principles conveyed could also be relevant for broader intellectual property transactions, in particular where intermediaries are involved in data streaming and digital media distribution. Importantly, the draft ruling is not aligned with other developed economies regarding the characterization of software distribution payments, including those with which Australia may have double tax treaties, which could result in double taxation.

The ATO has stated that the final ruling is proposed to apply both before and after its date of issue. The draft ruling is open for public comment and consultation until 23 July 2021 ahead of issuance of a final ruling.

See EY Global Tax Alert, [Australian Taxation Office issues draft tax ruling expanding scope of royalty withholding tax on software related payments](#), dated 28 June 2021.

Canada: Guidance on MAP

On 1 June 2021, Canada Revenue Agency (CRA) released [Information Circular IC71-17R6](#) to provide guidance on obtaining assistance from Canada on the mutual agreement procedure (MAP). The Information Circular replaces Information Circular IC71-17R5, issued 1 January 2005 and therefore includes some revisions to existing policies and provides clarification for some key issues, including: (i) filing procedures; (ii) circumstances to accept a downward TP adjustments under a MAP request; (iii) taxpayer responsibilities and participation; and (iv) audit-level settlements.

See EY Global Tax Alert, [Canada Revenue Agency releases revised Information Circular on Mutual Agreement Procedures](#), dated 10 June 2021.

Denmark: Notification to withdraw a reservation on Arbitration of the MLI

On 29 June 2021, Denmark deposited a [notification](#) subsequent to its ratification of the Multilateral Instrument (MLI). In this notification, Denmark withdraws a reservation regarding Part VI (Arbitration) of the MLI. Before the notification, Denmark required the following for arbitration:

(i) the Chair of the arbitration panel shall be a judge; and (ii) Denmark shall be permitted to publish abstracts of decisions made by the arbitration panel. Denmark decided to remove this reservation after objections to the reservation on Part VI of the MLI were deposited by Australia and Canada, respectively.

Denmark: Public consultation for the simplification of TP documentation

On 23 June 2021, the Danish Ministry of Taxation published for public consultation its [proposal](#) for the simplification of TP documentation requirements in relation to domestic controlled transactions.

Currently, TP documentation should be prepared for all controlled transactions. Thus, domestic transactions are within the scope of preparing TP documentation. The proposal would exempt domestic controlled transactions from Danish TP documentation requirements except for controlled transactions where the income is taxed in a preferential regime (e.g., Tonnage Tax Act). Input on the publication consultation is expected until 18 August 2021, and it is proposed to be effective for income years starting 1 January 2021 or later.

See EY Global Tax Alert, [Denmark publishes draft bill relaxing transfer pricing documentation requirements in relation to domestic controlled transactions](#), dated 29 June 2021.

Ireland: Feedback statement on interest limitation rules

On 2 July 2021, the Irish Minister for Finance published a second [Feedback Statement](#) on the transposition of the EU Anti-Tax Avoidance Directive (ATAD) interest limitation rules (ILR). Due to the complexity the ILR and its interaction with Irish domestic legislation, a two-stage approach to the development of these rules is being taken. The focus of the earlier Feedback Statement, published December 2020, was to consider the framework of the interest limitation and carryforward on a single company basis. This Feedback Statement updates some of the single company elements following public consultation and outlines the notional local group and group ratio options. This Feedback Statement also introduces the concept of a “group of one” which could allow group ratios to be applied to companies which are not standalone entities nor a member of a worldwide group.

To assist with the legislative process, the Feedback Statement also contains consultation questions on a range of technical and policy issues relevant to the development of those options. The closing date for receipt of submissions for the consultation is 16 August 2021. The ILR will be introduced in Finance Bill 2021 with an effective date of 1 January 2022.

Ireland: Feedback statement on reverse hybrid mismatches

Also on 2 July, the Irish Minister for Finance published a [Feedback Statement](#) on “ATAD Implementation – Article 9a Reverse Hybrid Mismatches.” As required under ATAD 2, Ireland implemented the first and most substantial part of the anti-hybrid rules in Finance Act 2019. In advance of the implementation of these rules, a public consultation was held in 2018. This Feedback Statement is a follow-up to the views expressed in responses to the initial public consultation and sets out possible approaches to some of the technical aspects of the anti-reverse hybrid rules.

The consultation period ends on 3 August 2021. The reverse hybrid mismatch rule will be introduced in Finance Bill 2021 with an effective date of 1 January 2022.

See EY Global Tax Alert, [Ireland's Department of Finance opens consultation on EU ATAD Interest Limitation Rule and Anti-Reverse Hybrid Rule effective 1 January 2022](#), dated 15 July 2021.

Isle of Man: Economic substance requirements extended to partnerships

On 16 June 2021, the Isle of Man Government [approved](#) extending the economic substance requirements to partnerships.

The legislation requires resident partnerships, that are in receipt of income from a relevant sector (defined in the legislation), to demonstrate they have adequate substance. The new requirements are applicable to general partnerships, limited partnerships, limited liability companies and foreign partnerships who have their place of effective management in the Isle of Man.

The substance requirements are applicable to resident partnerships for accounting periods commencing on or after 1 July 2021. Failure to demonstrate adequate substance in the Isle of Man will result in sanctions being imposed, which include financial penalties, exchange of information and the strike off from action.

Italy: Public consultation on CFC rules

On 5 July 2021, Italian Tax Authorities launched a [public consultation](#) on Controlled Foreign Company (CFC) rules. The public consultation includes a draft Circular that intends to clarify CFC rules and a draft measure that provides new criteria to determine the effective tax rate for CFC purposes.

Comments on these rules need to be submitted by 6 August 2021.

Jordan: Introduction of TP rules

On 7 June 2021, the Hashemite Kingdom of Jordan published [Regulations No. \(40\)](#) of 2021 in the *Official Gazette*, introducing TP rules in Jordan. Thus, taxpayers engaged in transactions with related parties (including notional transactions between a branch and its head office) with an annual value exceeding JOD500,000 (approx. US\$705,000) will need to prepare and maintain the following:

- ▶ A TP disclosure to be submitted with the annual income tax return
- ▶ A Master File on the global business operations and TP policies of the taxpayer's multinational enterprise (MNE) group
- ▶ A local file containing information on all transactions with related parties

In addition, Jordan has introduced CbCR where an MNE group has annual consolidated group revenue equal to or exceeding JOD600 million (approx. US\$846 million).

The Regulations apply from 7 July 2021 onwards, however, taxpayers will not have a filing requirement until 2022. The Minister of Finance still needs to issue Instructions to provide details about the new rules and their application.

See EY Global Tax Alert, [Jordan implements transfer pricing rules](#), dated 21 June 2021.

Luxembourg: Clarification of interest limitation rules

On 2 June 2021, the Luxembourg Tax Authority (LTA) published its updated [Circular](#) clarifying certain technical aspects of the interest limitation rules introduced in 2018. These rules follow the EU ATAD and limit the deductibility of taxpayers' borrowing costs to the higher of 30% of taxable EBITDA (Earnings (taxable profits) before Interest, Tax, Impairments, Depreciation and Amortization) or €3 million.

In this update, the LTA introduces a specific section dedicated to the safeguard clause for entities in a consolidated group, the so-called "equity escape clause." This clause gives a taxpayer, under certain conditions, the possibility to deduct the full amount of the exceeding borrowing costs it has incurred in a given financial year, irrespective of the 30% taxable EBITDA limit. The requirements include: (i) the taxpayer is a member of a consolidated group for financial accounting purposes; and (ii) the taxpayer can demonstrate that the ratio of its equity over its total assets is lower by not more than two percentage points, equal to or higher than the equivalent ratio of the group.

The application of the equity escape clause is subject to a request to be made for each financial year for which the taxpayer opts to apply it.

See EY Global Tax Alert, [Luxembourg Tax Authorities issue guidance on the "equity escape clause" under interest limitation rules](#), dated 16 June 2021.

Morocco: Guidance on MAP

In June 2021, the Moroccan Tax Authorities published [guidance](#) on the MAP to solve tax treaty-related disputes. The guidance includes the following: (i) the objective of the MAP; (ii) the initiation and procedure of a MAP; (iii) unilateral and bilateral treatment of the MAP; and (iv) the winding-up of the MAP.

The guidance also notes that MAP may be requested at the same time as available domestic law remedies, such as administrative and judicial appeals. Further, the MAP does not interrupt the legal procedures in force and does not suspend the collection of taxes. Moreover, Morocco does not provide for an arbitration provision in its tax treaties.

Oman: Suspension of local filing requirements for CbCR

On 7 July 2021, the Oman Tax Authority (OTA) [announced](#) on its website the suspension of local filing requirements for CbCR until further notice. Further, on 14 July 2021, the OTA issued a clarification to the announcement explaining that the suspension is applicable only on filing of CbC reports by foreign headquartered MNE groups with constituent entities in Oman. All other obligations under the Oman CbCR Regulations (particularly the filing of CbC Notifications) shall continue to remain applicable.

Previously, the OTA extended the CbC notification deadline to 30 April 2021.

Poland: Draft bill to amend certain TP rules

On 28 June 2021, the Polish Ministry of Finance announced the launch of a [draft bill](#) to amend certain tax provisions. The draft bill provides, inter alia, some amendments to the TP rules, including the following:

- ▶ Extension of the deadline for submitting TP documentation at the request of the tax authority from 7 to 14 days
- ▶ Extension of the deadline for preparation of local TP documentation by the end of the 10th month after the end of the tax year and the deadline for filing TP information will be extended to the end of the 11th month after the end of the entity's fiscal year (currently it is the 9th month)
- ▶ Changes in the definition of related entities - especially regarding tax transparent entities
- ▶ Exemption from the obligation to prepare local documentation for:
 - Safe harbor transactions regarding loans, credits and bonds
 - Mere re-invoicing (under certain conditions, e.g., no added value is created, settlement takes place without the use of an allocation key)
- ▶ Simplifications with respect to:
 - TP notifications
 - Contents of the local documentation of transactions with a beneficial owner located in a tax haven (comparability analysis should not be obligatory)

Qatar: Postponement of deadline to submit TP documentation

On 17 June 2021, the Qatari General Tax Authority (GTA) postponed via [President's Decision No. 08 of 2021](#) the deadline for submitting the Master File and Local File in the Dhareeba Portal from 30 June 2021 to 30 September 2021. This extension is applicable to taxpayers whose financial years began on or after 1 January 2020.

Spain: Amendments to MAP regulations

On 9 June 2021, Spain published in the *Official Gazette* [Royal Decree 399/2021](#) to amend the MAP regulations. The Decree includes a new section (Title IV) to regulate dispute resolution according to the EU Directive 2017/1852. In particular, Title IV grants the access to an advisory commission to resolve double taxation disputes. Further, the Decree enables the Spanish competent authority to invite its counterparts from other jurisdictions to create an alternative dispute resolution commission for certain situations.

The Decree entered into force on 10 June 2021 and is applicable to MAP cases submitted from 1 July 2019 for issues referring to income or capital to taxable years starting on 1 January 2018 (or prior taxable years if agreed with the competent authorities from other Member States concerned).

Spain: Regulations on DST

Also on 9 June, Spain published in the *Official Gazette* [Royal Decree 400/2021](#) to regulate certain aspects of the Digital Services Tax (DST). In particular, the Decree addresses the measures to determine the location of user's devices. Further, the Decree requires taxpayers to keep records of the transactions subject to the DST.

The Decree is effective from 10 June 2021.

Switzerland - United Kingdom: Memorandum of Understanding of the arbitration process provided in the tax treaty

On 16 June 2021, Switzerland and the United Kingdom (UK) signed a [Memorandum of Understanding](#) (MOU) to establish the mode of application of the arbitration process provided for in Article 24(5) of the Switzerland - UK tax treaty.

The MOU is comprehensive and reflects the mutual understanding between both competent authorities on all aspects and stages of the arbitration process, from request to final decision and implementation thereof.

The MOU took effect on 16 June 2021. For cases presented before the date of signature of the MOU, the time limit for the competent authorities to request further information from the taxpayer will be 90 days from the date of signature of the MOU. The competent authorities further agreed that they may modify or supplement the MOU by an exchange of letters between them.

United Arab Emirates: Guidance on MAP

In May 2021, the United Arab Emirates (UAE) Ministry of Finance published on its official website its MAP [guidance](#) for tax treaties. The guidance sets out the process through which taxpayers can request assistance from the competent authority in the UAE to resolve disputes from taxation not in accordance with the provisions of a relevant tax treaty. Also, it provides taxpayers with the relevant information before requesting a MAP, such as: (i) overview MAP process; (ii) MAP requirements; (iii) timeline for a MAP request; and (iv) objections.

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