



Mazars BEPS & International Tax journal Newsletter n°2 – March 2021

Edito

This newsletter provides you with regular insights about the OECD's BEPS initiative and the ongoing international tax reforms.

This second edition deals with the new measures published in March 2021 by the OECD, the EU, the UN and in 32 countries: Argentina, Bahrain, Bulgaria, Chile, China, Costa Rica, Curaçao, Cyprus, Dominican Republic, Germany, Ghana, Greece, Hungary, India, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Netherlands, Qatar, Romania, Russia, Rwanda, Saudi Arabia, Spain, Switzerland, Thailand, UK, Ukraine, USA, Vietnam.



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OECD

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.

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.

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 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.

The OECD published a report titled *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes* that addresses tax and financial crime issues posed by professional enablers and provides guidance to countries on combating the use of professional enablers. To foster a better understanding of the issue of professional enablers, the report first describes the role of professional

enablers in tax and financial crimes. The report then outlines actions that governments can take to address the issue of professional enablers in five key areas. The report concludes with recommendations of counter-strategies for governments to consider in addressing the use of professional enablers.

European union

The European Commission has published a public consultation as part of its review of the VAT rules for financial and insurance services. The review was first announced last summer in the Commission's action plan for "fair and simple taxation supporting the recovery strategy" published in July last year and a combined evaluation roadmap/inception impact assessment was published in October. The Commission has already identified lack of neutrality, legal uncertainty and regulatory complexity as the main issues with the existing rules and plans to implement the results of its review in the final quarter of 2021. The Commission proposes two policy options:

- Remove the exemption entirely, which could simplify VAT rules for the financial and insurance sector and eliminate the costs of irrecoverable input VAT.
- Retain the exemption but narrow its scope to cover only some service types, such as those that are fee-based rather than interest-based.

The aim of the consultation is to find out stakeholders' views of the current rules and how they work in practice to inform any future legislative proposal from the Commission.

On 16 March 2021, the Council of the European Union (the Council or ECOFIN) held an informal videoconference. During their meeting, the Ministers discussed taxation challenges stemming from the digitalization of the economy and issues related to economic recovery. They discussed the recent G20 Finance Ministers

and Central Bank Governors meeting and looked forward to upcoming meetings, including the G20 and International Monetary Fund (IMF) spring meetings on 7-10 April 2021. The discussion on taxation of the digital economy followed the launch by the Commission of a public consultation for the design of a European Union (EU) digital levy, which is open for comments until 12 April 2021. In addition to this, the EU has invited public input on the following tax initiatives:

- Roadmap for the design of Commission Communication on Business taxation for the 21st century – deadline 1 April 2021.
- 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) – deadline 2 June 2021.
- Roadmap for the design of Commission Recommendation on how EU countries can simplify tax obligations and ensure taxpayers' rights are respected – deadline 2 June 2021.

On 22 March 2021, the Council adopted new rules revising the Directive on administrative cooperation in the field of taxation (Council Directive 2011/16/EU or DAC) to extend the EU tax transparency rules reporting by digital platforms on their sellers (DAC7). The new rules introduce a reporting obligation for digital platforms located both inside and outside the EU and an automatic exchange of information between Member States' tax administrations on revenues generated by sellers on these platforms as of 1 January 2023. Besides introducing this new reporting obligation for digital platforms, a number of generic changes to the DAC not limited to digital platforms were also introduced, including a legal framework for the conduct of joint audits between two or more Member States as of 1 January 2024. The new rules for information from digital platforms are inspired by the work done at the OECD but

are much wider in terms of the scope and businesses affected. The revised DAC states that although not identical, the OECD Model Rules are expected to provide for the reporting of equivalent information in relation to relevant activities that are in scope of both DAC7 and the Model Rules, which may be expanded further to cover additional relevant activities.

The Commission presented a roadmap for the design of its Communication on Business taxation for the 21st century. 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.

The Court of Justice of the European Union (CJEU) ruled that arm's length interest paid by a Swedish company to an EU/EEA resident group company on a loan of which the terms and conditions are similar as between unrelated parties cannot be denied deductibility if such interest would be deductible in a domestic situation. Such tax legislation is contrary to the freedom of establishment as provided for in article 49 of the Treaty on the Functioning of the European Union (TFEU) (C-484/19).

United Nations

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.

Argentina

Argentina enacts tax incentives and voluntary disclosure program to promote construction and access to housing.

Argentine Government plans to send bill to Congress that would raise corporate income tax rates.

Bahrain

Bahrain introduces Country-by-Country Reporting.

Bulgaria

Bulgaria has introduced changes to its Value Added Tax (VAT) law relating to United Kingdom (UK) businesses that are registered for VAT in the country, following the UK departure from the EU (Brexit). These rules also apply to businesses resident in other non-EU countries with which the EU has not concluded an agreement for mutual assistance similar in scope to Directive 2010/24 and Regulation 904/2010.

Chile

The Netherlands and Chile sign a Tax Treaty.

China

New SAFE guidelines on cross-border payments for transfer pricing adjustments.

Costa Rica

Costa Rica’s Ministry of Foreign Trade and Ministry of Finance issue regulations for registering for the free trade zone regime and as a Customs Public Service Assistant.

Curaçao

Curaçao publishes guidelines on territorial tax system.

Cyprus

Cyprus approves legislation to implement Mandatory Disclosure Rules.

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

German Government agrees on draft bill introducing “check-the-box” elections for partnerships and further changes.

Signed protocol to amend the UK/Germany Double Taxation Treaty.

Change in Taxation of Partnerships.

Ghana

Ghana issues 2021 Budget Statement and Economic Policy.

Greece

Greece’s Tax Authority issues guidance on Covid-19 and Transfer Pricing.

Hungary

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

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 permanent establishment (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.

Good and Service Tax E-Invoicing mandatory for suppliers with turnover exceeding 50 Crores.

Ireland

On 16 March 2021, Ireland’s Department of Finance released a public consultation on the application of the Authorized OECD Approach (AOA) to the attribution of profits to branches of nonresident companies. The proposed legislation, which follows a series of other transfer pricing updates and reforms, is planned to apply to tax years beginning on or after 1 January 2022.

The Irish Revenue published guidance (eBrief 040/21) – in the form of an updated Tax and Duties Manual with respect to the

Mandatory Disclosure Regime. 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.

Israel

In a recent conference, attended by many practitioners, tax authority personnel and academic staff, Mr. Roland Am-Shalem, the senior deputy director general of the Israel Tax Authority (ITA), indicated that the ITA is indeed considering a change in its position with respect to the taxation of R&D centers located in Israel. According to Mr. Am-Shalem, the question of whether the Israeli R&D center should be compensated on a cost-plus basis or based on the profit split method should be determined based on the facts and circumstances of each and every case. Specifically, Mr. Am-Shalem noted that the profit split method should be implemented where the R&D center is the beneficial owner of the IP it develops.

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

Liechtenstein

Liechtenstein’s transition period for simplified application of participation exemption ends in 2021.

Luxembourg

On 11 March 2021, the Luxembourg Tax Authorities updated Circular L.G. Conv. D.I. n°60 (Circular) on the application of the mutual agreement procedure (MAP). Set forth under Article 25 of the OECD Model Tax Convention and included in the various double taxation treaties (DTTs) signed by Luxembourg, the MAP aims to provide a mechanism to resolve, by means of a non-judicial procedure, cross-border tax disputes arising from the interpretation or application of a DTT provision. It should be noted that the Circular does not cover proceedings based on the Law of 20 December 2019 transposing Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU. The Circular details the mechanism of the MAP from the request to initiate the procedure to the termination of the MAP and explains the interaction with other procedures and legal remedies.

Protocol to the Double Tax Treaty with Russia has entered into force.

Luxembourg has an attractive IP regime offering an 80% tax exemption of net income and gains from qualifying IP assets. Taxpayers owning IP assets that benefitted from the former IP regime were allowed to apply it for a transitional period ending on 30

June 2021 (1 January 2021 for net wealth tax purposes).

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.

On 12 March 2021, some amendments and further guidance were issued on the pending bill of law for an exit tax for Dutch dividend withholding tax (DWT) purposes. The bill of law intends to tax certain cross-border mergers, demergers, migrations and share-for-share mergers. At the same time, a report

of the International Bureau of Fiscal Documentation (IBFD) on (conditional) exit withholding taxes in other countries was published. The amendments merely include changes of a more technical nature, which do not (fully) reflect the objections made by the Council of State and in Dutch tax literature. It remains uncertain whether a majority in Dutch parliament will be in favor of this initiative.

On 25 March 2021, the Dutch government published the legislative proposal to introduce an additional withholding tax (Additional WHT) on intragroup dividends to low-taxed jurisdictions as of 1 January 2024.

New Dutch legislative proposal on transfer pricing mismatches.

Qatar

Qatar issues additional guidance on transfer pricing reporting requirements.

Romania

Romanian government amends Tax Code and Accounting Law.

Russia

The Federal Tax Service clarifies its approach to investigating tax avoidance.

Rwanda

The new Rwanda Ministerial Order replaces the country's transfer pricing framework with more comprehensive rules for different types of domestic and cross-border transactions. For the most part, this Order is consistent with prevailing transfer pricing principles, closely tracking the OECD Transfer Pricing Guidelines, but it is unorthodox in its application to transactions between unrelated persons, incorporating core concepts from BEPS Action 5 relating to harmful tax practices.

Saudi Arabia

Saudi Arabia Launches its First Free Zone.

Spain

The Spanish Supreme Court (Tribunal Supremo), in two recently published Judgments, dated 24 February 2021 and 2 March 2021, has confirmed the right of a sovereign fund to obtain the refund of dividend withholding taxes (DWHT) imposed under the Nonresident Income Tax (NRIT) on its investments in Spain.

On 9 March 2021, the Spanish Council of Ministers approved the Royal-Decree Law implementing the EU Anti-Tax Avoidance Directive (Council Directive 2017/952 of 29 May 2017, "EU ATAD 2") into the Spanish legislation, which was published in the Spanish Official Gazette on 10 March 2021.

The new Tax Convention with Japan will enter into force in two months.

The International Agreement on Taxation regarding Gibraltar signed on 4 March 2019, between Spain and the UK, to improve cooperation in the field of taxation and the protection of financial interests between Spain and Gibraltar has now entered into force.

Switzerland

The Swiss Federal Council opened the consultation procedure on the Swiss Federal Law on Tonnage Tax on seagoing vessels.

Thailand

E-Commerce Tax / Foreign e-service providers are liable for the VAT.

UK

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. Multinational groups should review their structures to check whether UK-resident payers of interest or royalties to associated entities in EU Member States will need to withhold tax at source and pay it to HMRC.

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.

At Budget 2021, the government announced a review of research and development (R&D) tax reliefs, supported by a consultation seeking views from stakeholders. The government hopes that, by reducing the costs of innovation, R&D tax reliefs will play a key role in achieving its ambitious target to raise total investment in R&D to 2.4% of UK GDP by 2027.

Currently, Patent Box allows UK companies to benefit from a reduced 10% corporate tax rate for income derived from qualifying intellectual property, rather than the standard 19%. However, with the corporate tax rate set to increase from 2023, companies with profits over a certain threshold will see even greater reductions in their tax rate using Patent Box,

with some seeing up to a 15% drop in tax rates on qualifying profits.

Ukraine

New rules for registration of non-resident companies as CIT-payers.

New Laws on State Support to Major Investors.

USA

With the change of President in the US, the US has been quick to signal a change of approach in relation to BEPS 2.0. In particular, the US has announced that it is no longer looking for a “safe harbour” on Pillar 1. This change reflects a significant development and raises expectations on the likelihood of political agreement on both Pillar 1 and Pillar 2. The next few days, weeks and months are likely to see BEPS 2.0 moving forward at a much greater pace.

Vietnam

New draft regulation governing taxation of e-commerce activities.

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About Mazars

Mazars is an internationally integrated partnership, specialising in audit, accountancy, advisory, tax and legal services^[1]. Operating in **91 countries and territories** around the world, we draw on the expertise of **40,400 professionals** – 24,400 in the Mazars integrated partnership and 16,000 via the Mazars North America Alliance - to assist clients of all sizes at every stage in their development.

^[1] Where permitted under applicable country laws

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