



Mazars BEPS & International Tax journal Newsletter n°4 – May 2021

Edito

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

This fourth edition deals with the new measures published in May 2021 by the OECD, the EU, the UN and in 32 countries: Argentina, Australia, British Virgin Islands, Canada, China, Colombia, Czech Republic, Denmark, Dominican Republic, Finland, France, Gabon, Germany, Greece, Hong Kong, Hungary, India, Kenya, Latvia, Nigeria, Philippines, Poland, Puerto Rico, Qatar, Romania, Russia, Singapore, Switzerland, Thailand, Turkey, UK, Uruguay.



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OECD

OECD released Ireland and Japan Stage 2 peer review reports on implementation of Action 14 minimum standard.

European union

To support the cash flow of companies particularly affected by the economic situation resulting from the current health crisis, the European Commission encourages the Member States of the European Union, including France, to authorize companies subject to corporation tax to carry back their deficits over 3 financial years.

The Court of Justice of the EU (CJEU) confirmed the Commission's decision to qualify the tax regime of four Spanish football clubs as incompatible State aid.

The EU General Court (the Court) has annulled the European Commission's finding that Luxembourg gave Amazon an unfair tax break but upheld a separate state aid decision concerning a tax advantage that the same country granted to Engie.

CJEU rules that Hungarian and Polish progressive taxes on turnover do not violate EU State aid rules.

On 12 May 2021, in *Luxembourg v. Commission*, the Court found that the European Commission erred in concluding that a Luxembourg company of a multinational group had received illegal State aid and therefore had to pay €250 million plus interest to Luxembourg (consisting of the tax benefit that the taxpayer received between 2006 and 2014, when the company changed its operating structure). According to the Court, the Commission failed to prove that a transfer pricing methodology, which had been endorsed in a tax ruling, resulted in an undue reduction of the Luxembourg company's tax burden, amounting to State aid. The decision provides important clarifications regarding

the Commission's burden of proof in establishing State aid in the context of the application of transfer pricing rules. The decision may be appealed to the CJEU.

The Commission published the anticipated Communication on Business Taxation for the 21st Century (the Communication). The Communication, the release of which has been a moving target since its announcement in January 2020, sets out the Commission's short-term and long-term vision to provide a fair and sustainable European Union (EU) business tax system and support the recovery. Among the corporate tax reforms proposed in the Communication, the Commission announced its plan to propose in 2023 a new framework for business taxation in the EU, the "Business in Europe: Framework for Income Taxation" (referred to as BEFIT), which will provide a single corporate tax rulebook for the EU, based on a common tax base and formulary apportionment of profits to Member States. This new proposal will replace the pending proposal of a Common Consolidated Corporate Tax Base (CCCTB), which will be withdrawn. In the communication, the Commission also comments on the EU approach to BEPS 2.01 and outlines how the global agreement will be implemented in the EU. Although the Communication does not include details on the EU Digital Levy, a proposal for which is expected to be published on 14 July 2021, it reiterates the fact that it will be designed in such a way that it is independent of the forthcoming global agreement at the OECD.

On 1 July 2021, EU member states must introduce important changes to their legislation in the taxation of the supplies of goods and services that are generally contracted online by end consumers (B2C) and sent or rendered by businesses from another member state or third countries.

Every operator involved in the e-commerce supply chain is affected, from online sellers and platforms established both in or outside the EU, to couriers, customs brokers and administrations, with consumers and the consumer experience also being impacted. These developments mean that B2C e-commerce transactions will be subject to VAT at the destination, that is, in the member state of the arrival of the goods or the member state in which the consumer is resident. The rules are aimed at overcoming the administrative barriers resulting from multiple registrations and the effects of market distortion, by doing the following:

- increasing tax revenues for member states, reducing collection losses and tackling cross-border trade fraud
- guaranteeing the impartiality of consumer purchasing decisions, thereby protecting competition between EU and non-EU suppliers
- simplifying the existing rules by reducing administrative burdens and VAT management costs for operators

The VAT management related to e-commerce transactions will be based on the expansion of the One-Stop Shop (OSS), which is to become the general procedure for managing and collecting VAT on e-commerce transactions at an EU level. Likewise, electronic interfaces that facilitate e-commerce (i.e., platforms/marketplaces) will be required to assist in the collection, management and control of VAT.

United Nations

The United Nations (UN) published the Practical Manual on Transfer Pricing for Developing Countries (2021). This version intends to reflect the latest developments in transfer pricing (TP) and contribute to a common understanding of how the arm's-length principle applies in order to avoid

double taxation and prevent tax disputes. The TP manual includes a new chapter on financial transactions and additional guidance on group synergies and centralized procurement functions. It also includes revised guidance on profit splits and looks at country practices in selected developing countries including Brazil, China, India, Mexico, and South Africa.

During the 22nd session of the UN Committee of Experts on International Cooperation in Tax Matters:

- the committee decided not to include the proposed drafting changes related to Article 12 (Royalties) of the UN Model Tax Convention (UN MTC). The proposed changes intended to amend the definition of royalties to include payments for computer software. Although the committee decided not to amend the definition of royalties, it included in the Commentaries of Article 12 of the UN MTC a minority view supporting the inclusion of computer software payments as royalties.
- the committee approved the text of the new Article 12B (Automated Digital Services) and its commentaries for inclusion in the UN MTC 2021. This new article allocates taxing rights to jurisdictions where income from automated digital services arises. The final text contains a minority opinion which sets out the views of those countries which do not support this provision.

Argentina

Argentine entities with controlling ultimate parent entities in the United States should determine whether they have to file the local CbC report.

Australia

Australia issues 2021-22 Federal Budget.

Australian Taxation Office issued compliance guidelines on intangible arrangements.

The Australian Taxation Office (ATO) released for public consultation Draft Practical Compliance Guideline PCG 2021/D3 (the guideline) on the imported hybrid mismatch rules. The proposed guideline provides a framework of eight color-coded risk zones ranging from the white zone (where the ATO has provided clearance to the taxpayer) through green (low risk) to red (high risk). Taxpayers may be required to self-assess the risk of the imported hybrid mismatch rule applying to their related-party arrangements where a Reportable Tax Position Schedule is required to be filed. Where the taxpayer's risk rating is outside of the white or blue (low risk) zone, there is no presumption that the arrangements do not comply with Australian tax law, but the ATO may be more likely to conduct an assessment. With respect to structured arrangements, the expectation is that Australian taxpayers should have or be able to obtain information in relation to hybrid mismatch arrangements forming part of the same structured arrangement as the importing payment. The guideline also outlines the ATO's approach in reviewing whether a taxpayer has undertaken reasonable inquiries in relation to the rules for non-structured arrangements. Further, Australian taxpayers should not rely on an analysis of the application of foreign hybrid mismatch rules but instead must perform an analysis under the Australian hybrid mismatch rules. Comments were due by 21 May 2021. The final guidance will apply before and after its issuance such that the guidance practically may apply from 1 January 2019.

British Virgin Islands

The International Tax Authority (ITA) of the British Virgin Islands announced the

extension of the deadline for filing the Country-by-Country (CbC) report. The filing deadline is normally no later than 12 months after the last day of the reporting fiscal year of the multinational enterprise (MNE) Group. In this update, the ITA mentioned that those entities that have not reported yet and such reporting is due, the filing of the CbC report is extended to 30 June 2021.

Canada

Canada issued its federal budget 2021-22 containing some new tax measures.

Among other items, the budget includes interest limitation rules related to BEPS Action 4 (interest deduction rules) which would restrict the net interest expense that a corporation may deduct in computing its taxable income to no more than a fixed ratio of "Tax Earnings Before Interest, Tax, Deduction, Amortization (EBITDA)." The new rules provide for a fixed ratio of 40% of EBITDA for taxation years beginning on or after 1 January 2023 but before 1 January 2024 (the transition year) and 30% for taxation years beginning on or after 1 January 2024.

The budget also includes hybrid mismatch rules related to BEPS Action 2 (hybrid mismatch arrangements) to disallow payments in different scenarios (e.g., deduction/non-inclusion, double deduction, imported mismatches).

Further, the budget outlines a proposal to implement BEPS Action 12 (mandatory disclosure rules) in order to obtain early information on potentially aggressive or abusive tax planning schemes and their users. Canada's Federal Budget 2021 proposes to expand the disclosure rules for certain transactions, which is in line with the: Final Report (BEPS Action 12 Report). The proposed expansion of mandatory disclosure rules contemplates: (i) changes to the Income Tax Act's (ITA) existing reportable transaction

rules; (ii) a new requirement to report notifiable transactions; (iii) a new requirement for specified corporations to report uncertain tax treatments; and (iv) an extension of the reassessment period in respect of transactions that are subject to the new disclosure rules and addition of penalties for failure to comply. Budget 2021 indicates that the amendments would apply to taxation years beginning after 2021 (for measures applied to taxation years) and transactions entered into on or after 1 January 2022 (for measures applied to transactions). However, the related penalties would not apply to transactions that occur before the date on which the enacting legislation receives Royal Assent.

In addition to all BEPS-related measures, Canada has proposed implementation of a new tax on digital services. This tax is at a rate of 3% on revenue from certain digital services, data and content of users in Canada and would be applicable from 1 January 2022 until an acceptable multilateral agreement takes effect.

China

The China State Taxation Administration (“STA”) recently published its eleventh “China Advance Pricing Arrangement Annual Report (2019)” that summarized the circumstances under which the STA signed advance pricing arrangements (“APA”) and introduced the latest APA regulations and requirements for the implementation of the APA program in China. The report included data for the period from January 1, 2005 until December 31, 2019. In the United States, the Internal Revenue Service’s (“IRS”) Advance Pricing and Mutual Agreement program (“APMA”) issued its annual report on activities of the U.S. APA program during 2020. The two reports underline the importance of APAs as tax planning tools for multinational companies operating in China and the United

States. The two tax authorities have been meeting regularly for years to discuss APA and competent authority cases, have developed a productive working relationship, and are handling an increasing number of cases.

China has recently announced a nationwide implementation of VAT e-invoices. The e-invoicing would be introduced to all the newly registered taxpayers in China by the end of January 2021, covering all invoice recipients.

Colombia

The Colombian Executive branch submitted a tax reform bill to Congress. Among other items, the bill includes the decrease of the corporate income tax from 31% to 30% in 2022. However, it introduces a temporary 3% surtax for 2022 and 2023, bringing the general tax rate to 33% for those years. In addition, several corporate income tax and individual income tax benefits are proposed to be eliminated. The bill also proposes to subject payments to domestic or foreign entities for the provision of advertising or marketing services to a withholding tax of 20%. Further, the bill proposes new taxes, such as: solidarity tax (applicable for individuals from 1 July to 31 December 2021); a wealth tax (applicable for 2022 and 2023); and environmental taxes. After the submission of the tax reform bill, the Colombian Government withdrew the tax reform bill in early May due to public protests and riots over the last days. Hence, the Government will submit a new tax reform bill in consensus with different sectors of the society.

Czech Republic

Czech Republic moves forward with Digital Services Tax.

Denmark

The High Court of Eastern Denmark (the High Court) ruled in two cases (C-166/16 and C-

117/16) on the beneficial ownership of dividends. These cases became widely known when the Court of Justice of the European Union (CJEU), in its preliminary ruling from 26 February 2019, ruled that a general principle on the prohibition of abuse exists in EU law and that beneficial ownership (BO) should also be considered in applying EU tax law. Hence, the CJEU provided guidance on when an arrangement constitutes an abuse of rights, e.g., when funds are passed shortly after being received. After the CJEU rulings, the Danish High Court had to rule on these cases. In summary, the High Court stressed the importance of acting in accordance with a business plan and having business motives for implemented transactions, as well as the importance of documentation of the transactions. The rulings provide further clarity on when interposed entities may be deemed to be conduit companies and disregarded for BO purposes. In such cases, the taxpayer needs to look beyond and determine the BO part of the arrangement.

The Danish Minister of Taxation proposed changes to Bill No L 89 on controlled foreign corporation (CFC) taxation.

Danish tax authority loses "cum-ex" case.

Dominican Republic

The Dominican Republic's Executive Power issued Decree 256-21 to modify existing transfer pricing regulations. These modifications include the adoption of a three-tiered approach to TP documentation. In particular, taxpayers need to submit a Master File (MF) and Local File (LF) within 180 days of the filing of the tax return. The decree provides an exception to submitting the MF when the transactions do not exceed an amount of RD\$12,193,981.70 (approximately US\$214,000) and do not carry out transactions with other entities resident in tax havens or preferential tax regimes. Likewise,

there is an exception to submit the LF when the intercompany transactions are conducted with related parties resident in Dominican Republic provided that such intercompany transactions do not result in a tax deferral or overall reduction of tax. The Decree also introduces Country by Country report (CbCR) requirements for fiscal year 2022 and onwards. According to the Decree, all Dominican Republic tax resident constituent entities that are ultimate parent entities (UPEs) of MNE groups which earned consolidated revenue for accounting purposes equal or greater than the threshold to be defined, have to file a CbCR. Any other entity of the group that is resident in the Dominican Republic may prepare and submit the CbCR if the UPE is not resident in the Dominican Republic provided that the UPE is not obliged to file a CbCR in its country of residence. The Dominican Tax Authority expects to release more information about the annual consolidated revenue threshold and the day to submit the CbC report.

Finland

The Finnish Tax Administration published guidance clarifying when the OECD TP guidelines updates can be used as a source of interpretation and how domestic case law affects the use thereof. The guidance discusses the possibility for taxpayers to have discussions with the Finnish Tax Administration before entering into a transaction and to receive guidance accordingly. The Finnish Tax Administration confirms the application of an "ambulatory approach", i.e., updates to the commentaries of the OECD Model Tax Convention can, under certain conditions, be used as a source of interpretation. Updates to the OECD TP guidelines may also be used as a source of interpretation provided, they do not conflict with the case law of the Supreme Administrative Court.

France

The French Supreme Court (Conseil d'Etat) has issued a ruling which, in some situations, has the effect of extending by one year the deadline by which input VAT should be claimed in French VAT returns. According to Article 208 of Appendix II to the French Tax Code, VAT input amounts should be reported in French VAT returns no later than 31 December of the second year following the year in which the VAT for the underlying transaction became chargeable (the "input VAT deduction timeframe"). According to the French Tax Authorities and French lower courts, the starting point of the input VAT deduction timeframe was the exact date when the chargeability of VAT in respect of the underlying transaction took place. Example: According to the French tax authorities, for a standard service paid on 12 November 2018, the starting point of the input VAT deduction timeframe was 12 November 2018, so that the recipient was due to report this input VAT amount in a VAT return filed no later than 31 December 2020. However, according to the Conseil d'Etat, the starting point of the input VAT deduction timeframe is the date as of which the VAT return – precisely considering the input VAT amount in question – should have been filed at the latest. Since there is usually a delay of one month (and sometimes more) between (i) the exact date when the chargeability of VAT takes place for a given transaction and (ii) the filing date of the VAT return in which that transaction/amount should be reported, the choice made by the Conseil d'Etat to start the computation of the input VAT deduction timeframe as from the second date only gives more time to taxable persons to report VAT input amounts, e.g. those being initially forgotten, or to re-carry forward a VAT credit properly reported initially, but then forgotten in subsequent VAT returns. This rule would apply both to (i) the initial reporting of a VAT

input amount and to (ii) cases where a VAT credit was initially reported in a VAT return, but then not properly carried forward from one VAT return to the other.

2021 Budget bill plans to implement the VAT group on 1/01/2022.

Gabon

The Gabonese Tax Administration by official communication postponed the TP documentation (MF and LF) filing from 30 April 2021 to 31 May 2021. However, this extension does not extend the requirement to pay the requisite tax due by 30 April 2021.

Germany

Over the past several weeks, the German Parliament has moved several tax-related proposals forward. The proposals include: (i) implementation of the European Union (EU) Anti-Tax Avoidance-Directive; (ii) introduction of a check-the-box election for partnerships; (iii) changes to the Real Estate Transfer Tax Act; and (iv) a general overhaul of the withholding tax rules.

On 21 May 2021, the Federal Parliament agreed on the German "Law implementing the EU Anti-Tax Avoidance-Directive" including anti-hybrid rules. The EU Anti-Tax Avoidance Directives are set forth under Council Directives 2016/1164 of 12 July 2016, and 2017/952 of 29 May 2017, and are referred to respectively as ATAD I and II. Approval of the Federal Council is expected on 25 June 2021.

In the same session on 21 May 2021, the Federal Parliament adopted the long-discussed reform of the taxation of corporations, implementing a "check-the-box" system for entity classification for tax purposes of commercial partnerships. Approval of the Federal Council is also expected on 25 June 2021.

On 5 May 2021, the Federal Parliament adopted the draft law concerning the revision and modernization of withholding tax (WHT) procedures with respect to income from capital investment and royalties in Germany. Approval of the Federal Council is expected on 28 May 2021.

The long-discussed reform of the Real Estate Transfer Tax Act was adopted by the Federal Parliament on 21 April 2021. The Federal Council approved the proposal on 7 May 2021. Hence, the new measures will come into effect on 1 July 2021 in accordance with the new law.

Greece

The Greek Public Revenue Authority published Circular A.1092 listing the jurisdictions that will exchange CbC reports with Greece in exchange year 2021 with respect to FY19 under the Multilateral Competent Agreement (MCAA) on the exchange of CbC reports. The circular lists which jurisdictions will exchange CbC reports with Greece on a reciprocal and non-reciprocal basis. Further, Greece will exchange CbC reports with EU Member States under the EU Directive for the Exchange of Information in the Field of Taxation. Also, Greece will exchange CbC reports with the United States under the bilateral competent authority agreement in place.

Hong Kong

On 7 May 2021, the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance (Carried Interest Ordinance) was gazetted and came into effect. The Carried Interest Ordinance amends the Inland Revenue Ordinance (Cap. 112) to introduce a concessionary 0% tax rate for 'carried interest' paid by eligible private equity (PE) funds operating in Hong Kong to their managers. The concessionary tax treatment applies retroactively to eligible

carried interest received by or accrued to qualifying PE fund managers on or after 1 April 2020. No amendments were made to the draft legislation during its passage through the Legislative Council. The 0% tax rate for carried interest is the latest initiative in a drive by the government to consolidate Hong Kong's position as Asia's premier fund hub for PE, making it comparable with offshore jurisdictions. This follows the new unified profits tax exemption for privately offered funds (effective from 1 April 2019) and the new limited partnership fund regime (effective from 31 August 2020).

Hungary

Proposed act for establishment of a central transparency register in Hungary submitted for approval.

India

India's Delhi High Court (the High Court) issued its decision in a case concerning the application of a reduced withholding tax for dividends under the tax treaty between Netherlands and India. In this case, two Dutch entities received dividends from entities resident in India and sought the application of a lower withholding tax of 5% on the dividends (instead of 10%). The protocol of the tax treaty has a Most Favored Nation (MFN) clause which states that if India enters into a tax treaty on a later date with a third country, which is an OECD member, providing a beneficial rate of tax or restrictive scope for taxation of dividends, interest and royalties, a similar benefit should be accorded to the India-Netherlands tax treaty. Some Indian tax treaties with OECD member countries such as Slovenia, Lithuania and Colombia provide for a lower withholding tax rate of 5% for dividend taxation (subject to conditions). However, these countries were not OECD members when the respective tax treaties were entered into by India but became OECD members only at a later date.

The tax authorities from India asserted application of the MFN clause contending that the benefit of the MFN clause should be available only if the country with which India enters into a tax treaty was an OECD member at the time of execution of the subject tax treaty. The High Court ruled that the MFN clause is applicable when the respective parties to the above tax treaties became members of the OECD. Once this condition is satisfied, the benefit of the lower withholding tax or the restricted scope of the tax treaty with the third state should be applicable to the India-Netherlands tax treaty from the date when the tax treaty with the third country comes into force. Further, the High Court also relied on the decree issued by the Netherlands, wherein the Netherlands has provided the benefit of 5% withholding tax with reference to participation dividends paid by companies resident in the Netherlands to a resident in India from the date when Slovenia became a member of the OECD.

Kenya

Kenyan Government presented Finance Bill, 2021 to Parliament.

Latvia

New VAT regulations.

Nigeria

VAT registration required for foreign suppliers of taxable goods and services.

Revisiting the tax liability of non-resident shipping companies in Nigeria.

Philippine

The Philippine Bureau of Internal Revenue (BIR) issued Revenue Memorandum Order (RMO) No. 14-2021 which provides updated guidelines for the processing of tax treaty relief applications on all Philippine-sourced income derived by nonresidents. The

guidelines took effect immediately upon their issuance on 31 March 2021.

Poland

Polish Ministry of Finance announced plans to further defer withholding tax pay-and-refund system to 31 December 2021.

Portugal

Due to the current Covid-19 pandemic situation, new tax deadlines extensions have been approved in Portugal.

Puerto Rico

Puerto Rico issued guidance for complying with the requirement to submit a transfer pricing study.

Qatar

Qatar released transfer pricing FAQs.

Romania

Romania's draft law to create long-term "Digital Nomad" visa discussed.

Russia

Russian Parliament approved bill on termination Russia-Netherlands tax treaty.

Singapore

The Inland Revenue Authority of Singapore updated its list of jurisdictions in which Singapore has entered into automatic exchange relationships of CbC reports. In this update, the list includes Bahrain and Macau and becomes effective for financial years 2021 and 2019, respectively.

Switzerland

First Swiss-Brazilian DTA to become reality in 2022.

Thailand

Due to the current Covid-19 pandemic situation, the Department of Business Development ("DBD") issued a Notification on 3 May 2021 allowing certain entities which

operate their businesses in Thailand to extend the period for the DBD e-filing submission of their audited financial statements. This extension applies to foreign entities, registered partnerships, and joint ventures under the Revenue Code. In order to qualify for the extension, the fiscal year end of these entities must be during the period of 1st December to 31st December 2020. These entities may extend the period for the DBD e-filing submission of their audited financial statements and other relevant documents, to 30 June 2021.

Turkey

Turkey issued guidance on financing expense deduction restriction, taxation of share buybacks and reduced income tax rate for publicly held companies.

UK

UK issued guidance on new Plastic Packaging Tax.

Uruguay

Uruguay extended reduced 13% value-added tax rate to operations in the tourism sector.

Uruguay extended due dates for filing certain tax returns and making advance payments of tax.

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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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