Mazars BEPS & International Tax journal

Newsletter n°6 – July 2021

Edito

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

This sixth edition deals with the new measures published in July 2021 by the OECD, the EU, the African Tax Administration Forum in 24 countries: China, Colombia, Ecuador, France, Georgia, Germany, Gibraltar, Ireland, Italy, Malaysia, Mexico, Morocco, Netherlands, Oman, Poland, Portugal, Qatar, Russia, Spain, United Kingdom, Ukraine, Uruguay, USA and Vietnam.

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OECD

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.

The OECD released a Statement on a Two - Pillar Solution to Address the Tax Challenges Arising From the Digitalization 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.

G20 finance ministers gathered in Venice 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," others 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.

EU

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.

The European Commission (the Commission) presented its “Fit for 55” legislative package (Fit for 55 or the package). Fit for 55 is a comprehensive step in overhauling European Union (EU) legislation to align it with its increased climate ambitions as stated in the European Green Deal (EGD). It consists of 13 interconnected legislative proposals, including revisions to existing laws and proposals of new legislation. The package is comprehensive and complex in nature and it is expected to virtually impact every industry. While months of negotiations between the 27 EU Member States and the European Parliament will follow, businesses can start to digest and analyze what the changes may mean for their operations and their sustainability transformation plans.

The EU Council approved a new tax reporting regime in March 2021 known as DAC 7 designed to enhance tax compliance in the digital economy and assist EU tax authorities identify situations where tax may be payable. Under DAC 7, digital platform operators will be required to collect and verify information on certain users and report this information annually to the tax authorities in their Member State. This information will then be shared among EU tax authorities.

The new regime will apply to EU based and non-EU based digital platforms operators with the relevant nexus within the EU. This includes any software, e.g. websites, applications, and mobile applications that connects sellers with potential purchasers for the purpose of carrying out a “relevant activity”.

Certain software or platforms are excluded from DAC 7, such as:

- Payment processing platforms, and
- Platforms that enable users to list or advertise a relevant activity or those which redirect or transfer users to another platform

The activities or transactions which will trigger a reporting requirement are:

- Rental of commercial or residential immovable property;
- Provision of personal services e.g. a lift sharing service;
- Sale of goods; and
- Rental of any mode of transport.

The reporting obligations only apply in respect of “reportable sellers”. These include individuals or entities that carry out relevant activities which are tax residents in the EU or rent out property located in the EU.

Certain entities are excluded from DAC 7. For example, listed companies, government and state bodies and casual sellers, i.e. individuals or bodies with less than 30 sales on the digital platform and turnover/sales of less than €2,000 in a given year. High frequency property rentals exceeding certain thresholds, like hotel chains or tour operators, are also excluded.

Reporting digital platforms operators will be required to register for the purposes of DAC 7 in a Member State and collect and report annually, specific details on reportable sellers on their platform. These include the tax reference, VAT and business registration numbers of the reportable seller, consideration received, bank account details, number of relevant activities, and fees or taxes withheld or charged by the operator.

The new regime will assist tax administration and tax authorities in the EU. It will centralize

the reporting obligations of digital platform operators in one Member State and standardize those obligations across Member States. DAC 7 will also introduce new co-operation procedures between tax authorities, in relation to enquiries, audits etc.

Member States will apply penalties to ensure compliance with the new regime. In addition, importantly, where a seller repeatedly fails to provide the platform operator with the relevant information, the seller's account may be closed on the platform until the information has been provided.

Timelines

Member States will be required to transpose DAC 7 into national legislation on or before 31 December 2022. The reporting obligations will apply from 1 January 2023 and first reports should be filed on or before 31 January 2024.

Next steps

Once implemented, DAC 7 will place a significant administrative burden on digital platforms. Reporting operators will need to consider the potential impact this may have on their business and customers.

As a first step, operators will want to assess and validate their existing processes and systems to determine whether they will be able to comply with the due diligence and information collection requirements of DAC 7. This may lead to potential system changes or upgrades. In addition, businesses may need to update their standard terms and conditions and consents.

ATAF

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 Digitalization 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.

China

China announces new Stamp Duty Law.

Colombia

Colombia enacts law modifying tax incentives applicable to renewable energy projects.

Ecuador

Ecuador issues oil and gas policy and reduces customs tariffs.

France

On 12 July 2021, the French Parliament approved the Amending Finance Bill for 2021 (the Bill). Except for the constitutionality review by the Conseil constitutionnel (French Constitutional Council), this Bill is final and expected to be published in the coming days. It includes the following:

Temporary easing of conditions related to the carryback mechanism applicable to tax losses

Under Section 220 quinquies of the French Tax Code (FTC), companies subject to corporate income tax (CIT) that have generated tax losses during a given fiscal

year (FY) are able to elect for the carryback of those tax losses and use them to offset their taxable profit of the previous FY, within the limit of €1 million and subject to other conditions. Such a mechanism results in a credit equal to said carried-back losses multiplied by the current standard CIT rate which can be used to reduce the CIT payables of the following five years, with the balance, if any, being refunded at the end of the fifth year. In order to improve the financial situation of companies impacted by the COVID-19 pandemic, the Bill exceptionally allows the carryback of tax losses generated during a FY ended between 30 June 2020 and 30 June 2021, to be used, without limitation in the amount, to offset the taxable profit of the three previous FYs (subject to the same other conditions noted above for the existing mechanism, as well as to some specific ones applicable, in particular, in the case of a French tax consolidation and/or if a company has already elected, pursuant to the existing mechanism, for the carryback of its tax losses of the FY). The CIT rate to be used to determine the corresponding credit is the one applicable to FYs starting on or after 1 January 2022, i.e., generally 25%. The election to benefit from the exceptional carryback mechanism provided by this new measure must be made by the expiration date of the deadline to file the tax return for a FY ended on 30 June 2021 and no later than the settlement (i.e., the final payment) of the CIT liability of the FY following the one for which said election is made.

Adjustment of the French nonresident capital gain taxation rules

As per Section 244 bis B of the FTC, capital gains realized by a non-French resident entity upon the disposal of its shares in a French resident entity are subject to a nonresident capital gains tax in France if the former holds more than 25% of the economic rights in the latter. In order to comply with European Union law, the Bill provides that the following non-French resident entities will be entitled to a refund of the portion of the tax levied (under Article 244 bis B of the FTC) exceeding the one that would have been due if those entities had had their headquarters in France:

- Entities established in an EU Member State or a Member State of the European Economic Area (EEA), other than a Non-Cooperative State or Territory (NCST), that have concluded a treaty with France that has an administrative assistance provision aimed at combating tax fraud and tax evasion.
- Entities established in a third State, other than an NCST, that have concluded a treaty with France that has an administrative assistance provision aimed at combating tax fraud and tax evasion, but only if the transferor is not effectively involved in the management or the control of the entity of which the shares are disposed or redeemed.

In addition, the Bill provides that specific collective investment funds (Organismes de placement collectif) established in a Member State of the EU/EEA or in a third State, other than an NCST, that have concluded a treaty with France that has an administrative assistance provision aimed at combating tax fraud and tax evasion, are excluded from the scope of the above-mentioned nonresident capital gain taxation under certain conditions. The above described adjustments will apply to disposals and redemptions of shares, and distributions, subject to Section 244 bis B of the FTC, realized as from 30 June 2021.

The French Supreme Administrative Court has requested a preliminary ruling from the European Court of Justice regarding the new filing rules applicable to intermediaries dealing with certain reportable cross-border arrangements in application of Amending Directive to the 2011 Directive on Administrative Cooperation on reportable

cross-border arrangements (2018/822) (DAC6).

Georgia

Georgia imposes VAT on foreign suppliers of digital services.

Germany

Germany enacts EU ATAD Implementation Law including anti-hybrid rules.

German Ministry of Finance issues updated guidance on extraterritorial taxation of IP extending deadline for applicability of retroactive exemption in "clear" treaty cases.

German Federal Ministry of Finance issues draft decree on income tax treatment of virtual currencies and tokens.

Gibraltar

Gibraltar issues Budget 2021.

Gibraltar corporation tax set to rise to 12.5%.

Ireland

The Irish Minister for Finance published a

- Second Feedback Statement on the transposition of the EU Anti-Tax Avoidance Directive (ATAD) interest limitation rules.
- 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.

Italy

Public consultation on Controlled Foreign Companies rules.

Malaysia

The Malaysian Investment Development Authority (MIDA) published a Guideline on Incentive for Intellectual Property (IP) Development (Guideline). The Guideline states that 100% income tax exemption is given on qualifying IP income for up to 10 years. This exemption is subject to the guidelines on Modified Nexus Approach (MNA) to ensure that only income derived from IP developed in Malaysia is eligible for the incentive, where a formula adopted by the Forum on Harmful Tax Practices (FHTP) would be used to calculate qualifying income based on actual research and development (R&D) expenditure incurred by companies.

Mexico

Mexico's tax authority, the SAT (for its acronym in Spanish), has issued expected effective income tax rates for large taxpayers related to 40 economic activities. The SAT's goal in this is to encourage taxpayers to effectively comply with their tax obligations, to verify their effective rate, and, where appropriate, to take steps to adjust their tax position (by filing amended returns) to avoid tax audits.

Morocco

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.

Netherlands

A recently published Royal Decree formalized the entry into force date of the revised Dutch corporate income tax loss relief

rules at 1 January 2022. Following these rules, tax loss can be carried back one year and carried forward indefinitely subject to a quantitative restriction. It is recommended to analyze the impact of these changes for your business, both from a taxation and accounting perspective.

Oman

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

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 (i) Safe harbor transactions regarding loans, credits and bonds and (ii) 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: (i) TP notifications and (ii) Contents of the local documentation of transactions with a beneficial owner located in a tax haven (comparability analysis should not be obligatory).

Poland introduces VAT option on financial services to be effective 1 January 2022.

Portugal

The new model forms 22-RFI, 23-RFI and 24-RFI, which are required for the application of international double taxation conventions, were approved by Dispatch No 6403/2021 of 30 June 2021.

Qatar

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.

Russia

The President signed a law on activities of foreign Internet companies in Russia.

On 2 July 2021, Federal Law No. 305-FZ* (the law) enacting numerous changes to the Russian tax legislation was officially published. The Law is aimed at amending the Russian Tax Code in line with the "Key directions of budgetary, tax and customs-tariff policy for 2021 and the planning period of 2022 and 2023". The amendments impact not only Russian companies, but also foreign taxpayers engaged in business activities in Russia. The most notable changes, relate to:

- VAT reporting and payment obligations for certain foreign companies;

- The metrics for calculation of “safe harbour” interest rates for intragroup loans;
- The tax loss carry-forward limitation; and
- Withholding taxation.

Spain

Tax Fraud Prevention Act 11/2021 was published on Saturday, July 10. This act transposes Council Directive (EU) 2016/1164, dated July 12, 2016 (Laying Down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market), which amended various tax laws and gambling regulations. This new Act amends a vast number of regulations and affects almost every aspect of the Spanish tax system (both for companies and individuals, international taxation, indirect taxation, general tax rules...).

United Kingdom

UK publishes draft legislation for Finance Bill 2022.

The UK is introducing a new elective tax regime for asset holding companies (AHCs) from the beginning of tax year 2022/23. This is a significant and positive development for the UK asset management industry.

In addition, reforms are being made at the same time to the real estate investment trust (REIT) regime.

Ukraine

On 15th July 2021, the Parliament of Ukraine passed in the first reading the bill updating tax framework for gambling and lotteries (No. 2713-д).

Uruguay

Uruguay expands COVID-19 tax relief measures.

USA

US IRS memo addresses cost sharing agreements and inclusion of stock-based compensation costs.

Vietnam

The Ministry of Finance issued Circular 45/2021/TT-BTC guiding the application for advance pricing arrangements in tax administration for enterprises with related-party transactions. Circular 45 provides guidance on the implementation of Article 41, Decree 126/2020/ND-CP and will replace the current Circular 201/2013/TT-BTC on 3 August 2021.

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About Mazars

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[1] Where permitted under applicable country laws

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