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Edito

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

This seventh edition deals with the new measures published in August 2021 by the OECD, the EU, Africa and in 28 countries: Australia, Chile, Cyprus, Georgia, Germany, Gibraltar, India, Indonesia, Israel, Italy, Korea, Luxembourg, Mexico, New Zealand, Peru, Poland, Romania, Singapore, Spain, South Africa, Switzerland, Thailand, Turkey, United Kingdom, Ukraine, Uruguay, USA and Vietnam.

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OECD

The OECD released the third edition of its annual Corporate Tax Statistics publication (the report) together with an updated database. The OECD describes the database as intended to assist in the study of corporate tax policy and expand the quality and range of data available for the analysis of base erosion and profit shifting (BEPS) activity. The database includes anonymized and aggregated country-by-country (CbC) reporting statistics, reflecting information for the year 2017 and including information from CbC reports filed in 38 jurisdictions. The OECD also published a list of Frequently Asked Questions on the anonymized and aggregated CbC reporting data. As highlighted in the press release accompanying the release of the report and the database, the OECD views the new data as showing the importance of the two-pillar plan being advanced by member jurisdictions of the OECD/G20 Inclusive Framework on BEPS in connection with the so-called BEPS 2.0 project "to reform international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate."

The OECD released an update on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (harmful tax practices) of the OECD/G20 BEPS Project. The results were approved on 7 June 2021 by the Inclusive Framework on BEPS. The updated results cover 18 tax regimes. According to the press release, the total number of tax regimes that have been reviewed, or are under review, is 309. The reviews were undertaken by the Forum on Harmful Tax Practices and only one regime (Trinidad and Tobago) was classified to be ''harmful.'' The rest of the regimes have been abolished, are in the process of being abolished, are being amended, are under review or are considered to be "not harmful." The Inclusive Framework will continue its reviews and will provide periodic updates.

OECD releases Colombia Stage 2 peer review report on implementation of Action 14 minimum standard.

OECD releases Latvia Stage 2 peer review report on implementation of Action 14 minimum standard.

EU

European Commission releases proposal for a Carbon Border Adjustment Mechanism.

As part of the European Green Deal and the Fit for 55 legislative package, the European Commission introduced in July 2021 a legislative proposal for a recast of the Energy Taxation Directive. The amendments are intended to assist the EU in meeting its climate policy objectives, including the 55% net emission reduction target by 2030 and climate neutrality by 2050.

Africa

The East African Community (EAC) Gazette Notice No. 14 of 2021 (the Gazette), released by the EAC Secretariat on 30 June 2021, highlights changes to the East African Community Customs Management Act, 2004 and the East African Community Common External Tariff. The Council of Ministers has, through the Gazette, implemented several changes which affect both individual EAC Partner States and the EAC region with effect from 1 July 2021. In exercise of the powers conferred upon the Council by Articles 12 (3) and 39(c) of the Protocol on the Establishment of the East African Community Customs Union, the Council has approved measures on custom duty rates on the items provided under The Harmonized Commodity Description and Coding System in Annex 1 to the Protocol.

Australia

The way companies apply for the Research and Development Tax Incentive program has changed. The government has recently updated its 2021 R&D Tax Incentive application form to an online form process, with new information requirements.

Chile

On August 13, 2021 the Chilean IRS (Servicio de Impuestos Internos) issued Exempt Resolution No. 95 (Resolución Exenta No. 95), establishing the instructions to implement the registration under the new voluntary Registry of Foreign or International Financial Institutions as well as establishing the format by which a lender must provide the Borrower a statement confirming that it has not entered into a structured agreement (acuerdo estructurado) in accordance with Article 59 N°1 (b) of the Chilean income tax law (Ley de impuesto a la renta). This statement, in the form provided by the Chilean IRS, shall be provided by the lender to the borrower at the execution of the credit agreement, and also at any time when those credits are novated, assigned or any modification is made to the credit amount or the interest rate thereon. Failure to provide this statement will result in the impossibility to apply the reduced 4% withholding tax rate (ordinary withholding tax rate is 35%) imposed on interest paid to foreign or international banks or financial institutions as well as to foreign insurance companies and foreign pension funds in accordance with Article 59 No.1 letter (b) of the Chilean income tax law. Please note that this mandatory statement was introduced by the last tax reform (Law N°21.210, published on February 24, 2020) for all credits issued as of March 1, 2020, but no specific format was stated. Therefore, this specific format shall be complied with as of August 13, 2021.

Cyprus

Cyprus to introduce new tax measures as part of its National Recovery and Resilience Plan.

Cypriot Tax Department announces update of XML Schema for DAC6/MDR submissions.

Georgia

Georgia postpones VAT on foreign suppliers of digital services to 1 October 2021.

Germany

With its letter of guidance dated 11 February 2021 the Federal Ministry of Finance (FMoF), under very strict circumstances, allowed for a temporary simplified approach regarding the withholding tax on licensing of IP registered in Germany. This simplified approach, until now, only applied if the remuneration is received by 30 September 2021. With its newest letter of guidance dated 14 July 2021 the FMoF extends the application of this simplified approach to remuneration received until 1 July 2022. The application for the exemption from the withholding tax needs to be filed with the Federal Central Tax Office until 30 June 2022 in all cases.

In its decision published on the 18 August 2021, the Federal Constitutional Court (Bundesverfassungsgericht) ruled that the interest on back taxes and tax refunds in § 233a in conjunction with § 238 of the German Fiscal Code (Abgabenordnung) is unconstitutional insofar as the interest calculation was based on an interest rate of 0.5% per month.

Gibraltar

HM Government of Gibraltar has clarified that the increase in the corporate tax rate from 10% to 12.5% applies to profits from 1 August 2021 onwards, and not to accounting periods commencing after 20 July 2021, as was initially announced in the Budget 2021.

India

The Indian Government introduced The Taxation Laws (Amendment) Bill, 2021 (the Bill) on 5 August 2021 to withdraw the retrospective application of the indirect transfer tax provisions. If and when the Bill becomes Law, indirect transfer tax provisions shall apply only on transactions occurring on or after 28 May 2012. Indian tax demands pertaining to indirect transfers for earlier tax years will be nullified; all pending assessments cancelled and taxes previously collected on the basis of prior demand orders will be refunded.

Indonesia

New Indonesia–Singapore tax treaty enters into force.

Indonesian Government Plans to Impose Carbon Tax.

Israel

The Israeli Ministry of Finance has released various tax measures to be included in the long-anticipated 2021/2022 budget. These measures vary from: (i) accelerating the tax attractiveness of the tech industry by allowing more tax efficient debt and equity to start-up companies; (ii) stimulating distributions of “trapped earnings” from historical tax regimes; (iii) increasing the financial data transfer from financial institutions (including payment apps, digital wallets, etc.) to the Israeli Tax Authority; (iv) applying value-added tax (VAT) registration and reporting requirements on non-Israeli digital service providers and sellers to the Israeli market; (v) requiring a partial tax prepayment as a prerequisite for an appeal on a tax order; and (vi) introducing a behavior-oriented tax policy to tackle climate change, among others.

Dramatic proposed change in tax litigation proceedings in Israel - Taxpayers will have to Pay 30% of the tax in dispute upon filing tax appeals in Court.

Italy

New tax incentives for electronic payment instruments.

The Italian tax authorities, in a consultation, have indicated that a transfer pricing adjustment falls within the scope of VAT when it is closely linked to the price of the product sold. Thus, the policy of ensuring a margin of x% for a certain type of transaction of a Group company would give rise to an adjustment falling within the scope of VAT insofar as the adjustment would directly modify the "provisional price" applied between the parties (i.e. presence of a direct link).

Korea

Korea’s Ministry of Strategy and Finance announced the 2021 tax reform proposals (the 2021 Proposals) on 26 July 2021. Unless otherwise specified, the 2021 Proposals will generally become effective for fiscal years beginning on or after 1 January 2022.

Luxembourg

Luxembourg Tax Authorities issued guidance on administrative fines related to tax infractions and procedures applicable to criminal tax offenses.

Mexico

Mexico publishes second list of expected effective income tax rates for additional industries.

Mexico extends deadline for complying with tax law on outsourcing services to 1 September.

New Zealand

New Zealand Introduced New Tax Loss Carry-Forward Rules.

Peru

Peru created a new tax-free zone.

Poland

The Ministry of Finance has presented a draft of a comprehensive tax reform, implementing the announcements included in the “The New Economic Polish Deal”. The key change as regards VAT is the possibility to form the so-called VAT Groups for tax purposes as of 1 January 2022. In Transfer Pricing, the most important changes concern the expansion of the obligation to prepare group transfer pricing documentation, and subjecting failure to prepare such documentation to criminal and fiscal liability, with a threat of fines running into millions of zlotys.

The Finance Ministry opened a tax preconsultation process in relation to a working paper setting out proposed amendments to transfer pricing regulations. According to the Ministry, "the purpose of the changes in transfer pricing law is to simplify a number of rules or procedures and to strip them of the bureaucratic burden". Changes are proposed to be made to the Corporate Income Tax Act of 15 February 1992 and, analogously, to the Personal Income Tax Act of 26 July 1991. Incidental changes are also planned in the Taxes Management Act of 29 August 1997 and the Fiscal Penal Code Act of 10 September 1999.

Romania

Starting this August, the fiscal unity system concerning the corporate income tax becomes functional in Romania, further to the enactment of the procedure for the implementation and management of such system through Order no. 1191 issued on August 6, 2021 by the National Agency for Fiscal Administration. The request for the approval by the competent tax authority of the implementation of the fiscal unity system must be submitted no later than 60 days before the commencement of the relevant fiscal year. Hence, in case this is intended for 2022 and the fiscal year corresponds to the calendar year, the request and all necessary documents must be submitted by November 1, 2021. Out of precaution, an earlier filing should be considered to enable swift implementation of the facility, considering that the procedure is new for the tax authorities as well, which may lead to the extension of the deadline for solving the request.

Singapore

The Inland Revenue Authority of Singapore (IRAS) updated its transfer pricing guidelines on 10 August 2021, with the release of the IRAS e-Tax Guide: Transfer Pricing Guidelines (Sixth Edition).

Spain

The Spanish National High Court recently issued three decisions regarding the application of the dividend withholding tax exemption under the European Union Parent Subsidiary Directive and the beneficial ownership requirement related to an EU holding structure. These decisions, which are favorable to the taxpayer, differ from the more general position taken by the Spanish tax authorities and tax courts post-Danish cases.

South Africa

During the 2020 budget speech the Minister of Finance proposed to limit the assessed losses a company may set off against its income to 80% of its taxable income for the year. However, the proposal was put on ice and it was unclear whether it would ever be implemented. The uncertainty has been resolved as on 28 July 2021 National Treasury issued the Draft Taxation Laws Amendment Bill, 2021, which includes an amendment to section 20 of the Income Tax Act that would restrict the assessed loss a company may set off against its taxable income to 80% of its taxable income for the year of assessment. Any amount which is not set off may then be carried forward to the following year of assessment. According to the Explanatory Memorandum released with the Taxation Laws Amendment Bill the reason behind the proposal is to provide for the fiscal space required to enable National Treasury to lower the corporate income tax rate in a revenue neutral manner. Further reasons provided include that:

- corporate income tax is the most volatile of the main tax revenue instruments and this proposal will assist in smoothing corporate income tax revenues;
- allowing full loss offsets against taxable income allows for less distortions towards less risky projects and enhances the stabilization effects of corporate income taxation; and
- although partial loss offsets may have a negative impact on business' cash flow and investment, they can help in curtailing tax avoidance.
- the nub of the proposal is that companies that are in a positive taxable income position before setting off the balance of assessed losses carried forward would only be allowed to set off assessed losses equal to 80% of their taxable income and would at a minimum have to pay corporate income tax on 20% of their taxable income. It is important to note that this proposal will only apply to companies.

Section 20 of the Income Tax Act, subsequent to the proposed amendment, will read as follows:

"For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person (a)(i) that is a company, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed 80 per cent of the amount of taxable income determined before taking into account the application of this provision". The proposed amendment to section 20 is to come into operation on 1st, April 2022 and will apply to years of assessment commencing on or after that date. The Amendment Bill is currently open to public comments, which comments need to be submitted before 28 August 2021.

Switzerland

According to Art. 25a para. 1 of the Federal Tax Harmonisation Act (FTHA), the cantons may allow an additional R&D deduction of up to 50% on the business-related research and development expenses. Due to the wording "the cantons may" as well as "up to 50%", it is up to the cantons whether they (i) allow the R&D super-deduction in general and (ii) to what extent it will be allowed (within the limit set by the FTHA).

Thailand

Thailand's application of VAT on digital services (e-services) provided by foreign operators will apply as of 1 September 2021.

Turkey

Turkey's Ministry of Treasury and Finance published General Communiqué No.529 on Tax Procedural Law (the Communiqué) in the Official Gazette on 13 July 2021. According to the Communiqué, corporate taxpayers and other taxpayers specified in the Communiqué are required to declare the Ultimate Beneficial Owner.

United Kingdom

The United States (US) and United Kingdom (UK) competent authorities signed two arrangements regarding the interpretation of the terms "North American Free Trade Agreement (NAFTA)" and "resident of a Member State of the European Community" in the Limitation on Benefits (LOB) provision of the Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the

Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, signed on 24 July 2001, as amended by the Protocol signed on 19 July 2002 (the US-UK Treaty). The first arrangement clarifies that the references to the NAFTA in the LOB provision of the US-UK Treaty will be understood as references to the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada. The second arrangement clarifies that a "resident of a Member State of the European Community" for purposes of the LOB provision of the US-UK Treaty continues to include a resident of the UK.

The UK government published its response to its second consultation on proposals for a new legislative regime that will require large businesses to notify Her Majesty's Revenue and Customs (HMRC) of uncertain tax treatments. The uncertain tax treatment policy is designed to improve HMRC's ability to identify uncertain tax treatments adopted by large businesses and to enable HMRC to challenge such uncertain tax treatment sooner in order to raise additional tax revenue for the government. In the government's view, one of the major drivers of uncollected tax is the differing legal interpretation positions taken by some large businesses and HMRC regarding tax due. The government also published draft legislation for further comment and consultation with the intention that the new legislation will be included in the Finance Bill 2021-22 with effect from 1 April 2022. The draft legislation is open for comment until 13 September 2021.

Ukraine

Tax Amnesty Law entered into force.

Uruguay

Taxpayers that previously paid corporate income tax and net wealth tax from January to June 2021 before the exemptions were enacted may be able to recover those amounts.

Uruguayan Tax Authority extends due date for issuers of electronic receipts to submit information on invoicing software or electronic tax receipt processes.

Uruguay establishes tax incentives for investments in aeronautical infrastructure projects.

Taxpayers with tax years ending in July 2021 must use the new form to file the affidavit of corporate income tax, net wealth tax and corporate control tax.

USA

Senate-passed infrastructure bill would impose information-reporting requirements on sales of cryptocurrency and other digital assets.

Amgen intends to challenge a $3.6b tax assessment made by the IRS on cross border transactions. The issuance of the deficiency notices in this case indicates that the IRS is not shying away from large and complex cross-border tax disputes. Given the recent increase in cross-border tax disputes, taxpayers may be well served by performing a health check on their transfer pricing.

The United States Senate Finance Committee Chairman Ron Wyden introduced the Modernization of Derivatives Act, which would change the tax treatment of financial derivative transactions.

Vietnam

Vietnam has taken a new course designed to add value to its high-tech sector. It is moving toward a deeply rooted, vertically integrated industry which puts a higher premium on research and development ("R&D"). The idea is to move away from the encouragement of simple assembly work and to create a global hub of true high-tech research, innovation and development. To do this Vietnam has kept its high-tech incentives unchanged, but has adjusted the conditions to qualify in a way that favors larger, better capitalized operators or smaller operators which devote a larger part of their resources to R&D.

Recently, the Ministry of Planning and Investment issued the Draft Decree on the Government's incentives for businesses suffering from the consequence of the corona virus pandemic. It is aimed that by the end of 2021, at least 01 million businesses will have access to favorable credit policies, reduction or termination of payment of tax, land fees as well as electricity, water, telecommunication charges. The Draft Decree is pending the Prime Minister's approval..

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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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