BEPS and international tax newsletter

Edition 10 – November 2021

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Introduction

This newsletter provides regular updates and insights on the OECD's BEPS initiative and ongoing international tax reforms.

Our tenth edition deals with the new measures published in November by the OECD, the EU, and in 27 countries: Austria, Belgium, Colombia, Cyprus, Ecuador, Estonia, Finland, France, Ghana, Germany, Indonesia, Ireland, Italy, Mexico, Paraguay, Peru, Philippines, Poland, Romania, Singapore, Spain, Tanzania, Thailand, Turkey, UK, USA, and Vietnam.

If you have any questions, please don't hesitate to get in touch with a member of our team.

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OECD

In the Annex to the October 8 Statement by the Inclusive Framework on BEPS, a one and a half page "detailed" implementation plan is included. In this plan, it is announced that by the end of November 2021, the OECD will publish the model rules which give effect to the core of the global minimum tax rules, i.e. the Global Base erosion (GloBE) rules. Such publications have not been issued as of today.

As a reminder, the GloBE rules consist of the Income Inclusion Rule and the Undertaxed Payment Rule. These model rules will be accompanied by commentary. In addition, a model treaty provision giving effect to the Subject to Tax Rule (STTR) will be published by the end of November, along with the relevant commentary.

Following these publications, a Multilateral Instrument for the introduction of the STTR in bilateral tax treaties will be published mid-2022, and by the end of 2022, the Implementation Framework for coordinated implementation of the rules will be ready, right before the anticipated 2023 entry into force date of part of the global minimum tax rules.

The agreement reflected in the 8 October Statement on Pillar Two is limited to some key design features and does not contain any technical details. Getting all that is announced ready by the end of November is an immense job, leaving no time for soliciting coordinated and organized input from businesses. Accordingly, businesses will only see what has been decided at the Inclusive Framework level by the end of November.

Mauritania becomes a member of the Inclusive Framework on BEPS and also joins the two-pillar agreement (BEPS 2.0).

On 30-31 October 2021, the leaders of the G20 met in Rome for the G20 summit. After the meeting, they issued a declaration endorsing the global tax changes in connection with the BEPS 2.0 project. The declaration calls for swift action to ensure that the new rules come into effect globally in 2023.

Austria, France, Italy, Spain, the United Kingdom, and the United States released a joint statement on a transitional approach to the treatment of existing digital services taxes (DSTs) and other relevant similar measures during the interim period before the new Pillar One rules come into effect. According to the statement, the European countries will not withdraw their DSTs but have agreed to allow a portion of the taxes or any other unilateral measure accrued by a multinational enterprise (MNE) to be credited against Amount A when Pillar One rules are in effect. In return, the US has agreed to terminate all trade actions against the European countries concerning their existing DSTs and also commits not to impose further trade actions during the interim period before Pillar One takes effect.

Indonesia and Russia made notification to the OECD that they completed their internal procedures for the entry into effect of the Multilateral Instrument (MLI) provisions concerning specific Covered Tax Agreements, which is required when a Contracting Jurisdiction has made the reservation in Article 35(7)(a) of the MLI.

The OECD released the compilation of the outcomes of the fourth phase of peer reviews of the minimum standard on Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) of the BEPS project. According to the executive summary accompanying this compilation of outcomes, over 100 jurisdictions have already introduced legislation to impose a filing obligation for Country-by-Country Reporting (CbCR) on MNE groups, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbCR is largely consistent with the Action 13 minimum standard. However, 33 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework. Of the jurisdictions that have already introduced the legislation, 43 received one or more recommendations to make improvements to specific areas of their framework. Moreover, 83 jurisdictions have multilateral or bilateral competent authority agreements in place, which results in more than 3,000 exchange relationships. In addition, 84 jurisdictions have provided detailed information about the appropriate use of CbC reports, enabling the Inclusive Framework to obtain sufficient assurance that measures are in place to ensure the appropriate use.

The OECD released the seventh batch of Stage 2 peer review reports on BEPS Action 14 (dispute resolution). The report covers Brazil, Bulgaria, China, Hong Kong, Indonesia, Russia, and Saudi Arabia. As for the outcome of the peer review process, overall positive changes were found in all of the assessed jurisdictions. However, Brazil and Hong Kong have addressed none of the deficiencies identified in the Stage 1 review. Further, new issues were identified in Stage 2 for Indonesia. In addition, China and Russia addressed some of the identified deficiencies. The assessed jurisdictions have committed to continue working to resolve the remaining deficiencies identified during the peer review process.

EU

The European Commission has announced it will pick up the OECD global agreement on Pillar II and would translate it into a Pillar Two Directive to be released on 22 December 2021.

The Commission also announced the publication of a Directive on shell companies (Anti-Tax Avoidance Directive (ATAD) III).

In addition, on 22 December 2021, the own resource package will be decided upon by the commissioners, including answering the question of what to do with the budget deficit that will exist if the European digital levy is not introduced. The introduction of a digital levy seems difficult if not impossible given the standstill on the introduction of Digital Services Taxes which was agreed in the 8 October Statement.

In January 2021, the French Presidency of the Council of the European Union will take up its role of leading the Member States. In this role, it will pick up the Commission proposal on Pillar Two and ATAD III to develop a text agreed by all the Member States by the end of June, when the French Presidency ends. Given the endorsement of all EU Member States of the 8 October Statement, the first steps towards such an agreement have already been set.

On 11 November 2021, the European Parliament formally approved the proposed public CbCR directive. This follows a provisional agreement reached by representatives of EU institutions on 1 June 2021 and formal adoption of the proposal by the Council of the EU, i.e., the EU Member States on 28 September 2021.

The rules set out in the Directive will require both EU-based MNEs and non-EU based MNEs doing business in the EU through a branch or subsidiary, with total consolidated revenue of more than €750 million in each of the last two consecutive financial years, to disclose publicly the income taxes paid and other tax-related information such as a breakdown of profits, revenues and employees per country. The reporting will need to be filed within 12 months after the fiscal year has ended.

The Directive will be signed shortly and subsequently be published in the Official Journal of the EU. It will enter into force on the 20th day following that publication. After entry into force, Member States will have 18 months to transpose the Directive into national legislation.

The commencement date for reporting will be at the latest the first financial year starting on or after two years and six months after the date of entry into force of the Directive.

This means that businesses will need to be complying with the first provisions of the directive by mid-2024.

Austria

The Austrian Ministry of Finance has published a draft bill to reduce Corporate Income Tax and introduce Carbon Tax.

Belgium

As of 1 January 2022, a new tax regime for inbound taxpayers and researchers will come into force in Belgium. As part of the 2022 federal budget measures, the Belgian Government announced that they will reform the current expatriate tax regime governed by the Circular Letter of 8 August 1983. A more simplified and transparent new system should provide more legal certainty to employers and qualifying employees/directors. The new regime will be incorporated in the Income Tax Code, providing a stronger legal basis than a Circular Letter where standard tax residency rules will apply.

Colombia

Colombia has issued regulations to identify preferential tax regimes.

Cyprus

The Cypriot Ministry of Finance issued guidelines (Decree N. 438/2021) on the Cypriot Mandatory Disclosure Rules. The guidelines are broadly aligned to the requirements of the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC6).

Ecuador

Ecuador's National Assembly to discuss tax reform bill.

Estonia

The Ministry of Finance published a frequently asked questions (FAQ) document related to its decision to join the OECD global two-pillar agreement (of the so-called BEPS 2.0 project).

Finland

The Finnish Government presented to the Parliament a law proposal (HE 204/2021) introducing reverse hybrid mismatches rules under the Anti-tax Avoidance Directive (ATAD) 2.

It has also presented a law proposal HE 188/2021 on amending the legislation regarding transfer pricing (TP) adjustments. Under the proposal, TP adjustments could be made to the full extent of the OECD TP Guidelines and the Commentary on Article 9 of the OECD Model.

France

On 9 November 2021, Belgium and France signed a new treaty to replace the 1964 treaty which will enter into force upon completion of the ratification process in both countries (expected during 2023). According to the press release issued by the French Minister of Finances, the new treaty is more closely aligned to the latest international standards, in particular, the OECD model convention and BEPS initiatives.

Ghana

Ghana has issued Budget Statement and Economic Policy for the 2022 Financial Year.

Germany

The German Ministry of Finance published a draft decree containing a list of states and territories considered to be non-cooperative for the application of the new law to prevent tax avoidance and unfair tax competition which will be effective as of 1 January 2022. The defensive measures are designed to restrict transactions with non-cooperative jurisdictions, including restrictions on the deduction of expenses, additional Controlled Foreign Company (CFC) rules, and others. The draft decree lists the following jurisdictions: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, and Vanuatu.

Indonesia

Indonesia passes wide-ranging tax law amendments.

Ireland

The Irish Government announced it is supporting the G20/OECD International Tax Proposals BEPS 2.0. Important assurances were obtained from the European Commission that the proposed implementing Directive will not go beyond the global consensus and that there will be consistent and timely implementation to provide the required certainty and stability in the international tax framework to support future investment decisions. The Agreement will allow for retention of the 12.5% Irish tax rate for businesses with annual revenue less than €750 million.

In addition, the Irish Government published the Finance Bill 2021 which contains several tax measures. Among other items, the Bill implements interest limitation rules which are broadly aligned with the EU Directive ATAD.

Italy

The Italian Tax Authorities launched a public consultation on the draft circular of hybrid mismatch rules governed by the Decree 142/2018 which implements ATAD in domestic law.

Mexico

Mexico and Germany sign a new protocol to tax treaty.

Paraguay

Paraguayan Tax Authority issues new transfer pricing rules, detailing the application of the special method contained in the 2019 tax law, through which the quoted price obtained in an international commodity exchange market must be used to establish the market value of the exported goods.

The special method is inspired by the so-called Latin American “sixth method” and it applies exclusively to the exportation of certain commodities from Paraguay (soybean and its derivatives, corn, rice, and wheat).

Using this special method is mandatory for the export of the aforementioned commodities.

Peru

Peru’s President asks Congress for power to enact different tax measures.

Philippines

Philippines proposes a law imposing VAT on nonresident digital service providers.

Poland

The President's office of Poland announced that the President had signed the tax reform bill (Polish Order) on 15 November. This means that the bill has been passed by all statutory bodies and only formal publication in the Journal of Law remains before its entry into force. The changes will significantly affect several areas of taxation including Corporate Income Tax, Personal Income Tax, and Value Added Tax. A majority of the provisions will be effective as of 1 January 2022.

Romania

The Romanian lower house approved Bill No. 343/2021 to ratify the MLI. The Bill has now been submitted to the Senate for further approval. Once the ratification process is completed, Romania will need to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Romania on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of such instrument with the OECD.

Singapore

The Inland Revenue Authority of Singapore released an update to the e-Tax guide on the Avoidance of Double Taxation agreements i.e. double tax treaties (DTT). This e-Tax Guide provides taxpayers with guidance on the interpretation and application of Singapore's DTTs and the mutual agreement procedure under Singapore's DTTs.

Spain

The Spanish Government presented the draft Budget Bill for 2022 to Congress. The Bill includes an amendment to the Corporate Income Tax Law to introduce a minimum tax, applicable from 1 January 2022 and generally set at 15% of the taxable base for taxpayers with turnover over €20 million during the prior fiscal year or which are taxed in a tax unity regardless of their turnover. The proposed budget must be discussed and approved by Congress and subsequently ratified by the Senate.

Tanzania

Tanzania's Minister for Finance and Planning issued Regulations on the VAT Exemption Management Procedures by Government Notice No. 715 which was published on 8 October 2021.

The stated procedures under the Regulations apply to VAT exemptions granted under Section 6(2) of the VAT Act, 2014. The said section of the law provides the Commissioner General of the Tanzania Revenue Authority the power to grant VAT exemptions on importation by or a supply of goods or services to various taxable persons including a Non-Governmental Organization or to an entity executing a strategic project under an agreement with the Government which provides for VAT exemption on goods and services. The stated regulations have revoked the Value Added Tax (Exemption Monitoring Procedures) Regulations, 2018.

Thailand

The Thai Revenue Department published notification No. 408 outlining the requirements for the submission of CbC reports for fiscal years starting on or after 1 January 2021.

Turkey

Turkey publishes draft Communiqué regarding electronic documents.

The Turkish Government published Law No. 7338 Amending Certain Provisions in the Tax Procedure Law and Some Other Laws in the Turkish Official Gazette on 26 October 2021. The Law entered into force on the same date.

It introduces among other changes, some additional provisions regarding the Mutual agreement procedures (MAP) i.e., application procedures, finalization procedures, its impact on lawsuits that are already filed before the MAP application, and the filing of lawsuits after the MAP.

Taxpayers may apply to the Turkish Revenue Administration, in accordance with the MAP provisions of the treaties, with the allegation that they have been taxed in violation of the provisions of the double tax treaties or that there are strong indications that they will be.

It is also regulated in the Law that the application should be made in due time and in line with the procedure that is stipulated in the double tax treaty. However, when there is no time limit in the double tax treaty or reference is made to the provisions of the domestic legislation, it is explained that the application must be made within three years from the date that the taxpayer first became aware of a taxation transaction alleged to violate the provisions of the double taxation agreement.

The Law provides that applying for MAP will cease the period of filing a lawsuit. The result of the agreement reached between the TRA and the competent authority of the other Contracting State will be notified to the taxpayer by letter. The taxpayer will notify the Turkish Revenue Administration of the acceptance of the decision within 30 days from the date of notification of the letter.

Adjustments will be made in taxes and penalties accordingly in the case of the taxpayer's acceptance of the agreement result in due time. The Law provides that courts will not be able to decide on the conflict if there is a MAP underway. However, in the event that the court examines and decides on the conflict, the result of the MAP will be taken into consideration and the result will be notified to the judicial authorities by the administration.

UK

The United Kingdom's Finance Bill 2021-22, published on 4 November 2021, includes proposed legislation for the new notification of uncertain tax treatment regime.

The British tax authorities (HMRC) published a policy paper on Mutual Agreement Procedure (MAP) decisions relating to the Diverted Profits Tax. To ensure that the UK meets its commitments under its double tax treaties, domestic legislation will be introduced through Finance Bill 2021-22 to include Diverted Profits Tax as one of the covered taxes in respect of which a MAP outcome can potentially be implemented, subject to the terms of the relevant double tax treaty. The measure will have an effect on any MAP decisions involving DPT which are reached after 27 October 2021. The UK Chancellor confirmed that a consultation will be published soon related to an online sales tax.

The UK Chancellor also delivered the second UK Budget of 2021.

USA

As part of the budget reconciliation negotiations, US Senate Finance Committee Chairman Ron Wyden and Senators Elizabeth Warren and Angus King proposed a 15% corporate alternative minimum tax (CAMT) based on book income for companies that report over US$1 billion in profits to shareholders.

The CAMT has included as a primary revenue raiser in the latest version of the Build Back Better proposal, which was released on 28 October 2021. The proposal would apply to tax years beginning after 31 December 2022.

Vietnam

The Ministry of Finance in Vietnam released Circular 80/2021/TT-BTC which provides detailed guidelines on the implementation of several tax rules.

Among other items, the Circular includes a section on digital tax.

The rules apply to non-resident companies that do not have a Permanent Establishment in Vietnam and that carry on e-commerce activities, digital platform-based business, and/or other related services. The non-resident company needs to file a tax return for the digital tax and can register in Vietnam or authorize a Vietnamese party to do so on its behalf. The authorized party is defined to include an organization or a tax agent operating under the laws of Vietnam.

The Circular provides that the tax payable is calculated on revenue earned by the non-resident company and different value-added tax/corporate income tax rates will be applied depending on the nature of the activities conducted. It may be also possible to apply for a corporate income tax exemption if the non-resident company is a resident of a jurisdiction for which Vietnam has a tax treaty.

Furthermore, the Circular addresses the responsibilities of Vietnamese parties in withholding, declaring, and paying taxes on behalf of overseas suppliers should the overseas suppliers fail to do so. The Circular is effective as of 1 January 2022.

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