TAXAND

GLOBAL BEPS REPORT 2018:

IMPACT OF BEPS ACROSS TAXAND JURISDICTIONS

MARCH 2018

Your global tax partner

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4. Appendix 1 – BEPS action points

OBJECTIVE

- The objective of this deck is to provide a summary of the impact to date of the OECD's BEPS project on local legislation and audits / tax enquiries.

- This deck is produced as a snapshot of current views in relation to BEPS, and will be updated as impending BEPS deliverables are received and implemented globally.

EXECUTIVE SUMMARY

Country:	Argentina	Austria
Legislative Changes?	Treaties to avoid double taxation signed during 2015 and 2016 with Chile, Mexico and United Arab Emirates (the latter still undergoing internal ratification procedures prior to its enforcement) have adopted several BEPS directives (including Limitation on Benefits ("LOB") provisions, Principal Purpose Test ("PPT") clauses, and additional considerations regarding permanent establishment ("PE") assessment). Additionally, an amendment protocol to the treaty currently in force with Brazil was signed in 2017 (not yet in force) which also included many BEPS directives.	Austria implemented provisions that are applicable to fiscal years starting on or after January 1, 2016 if certain thresholds are exceeded. In 2017, Austria was the first state to ratify the Multilateral Instrument ("MLI") through which treaty-based BEPS recommendations will be directly implemented in existing DTAs. The entry into force depends on the ratification of other countries and is expected by mid 2018.
Impact on audit/tax enquiry?	As of now, there is no specific impact on audits in light of BEPS. However, prior to the BEPS initiative, Argentine tax authorities have started to harden their position regarding the alleged abuse of treaties to avoid double taxation, intra-group services and deduction of expenses, cost sharing agreements, and intangibles.	Austria's tax authorities are already applying BEPS recommendations (in particular BEPS Actions 8-10 on transfer pricing) retroactively in the course of ongoing audits. Additionally, hybrid capital instruments and substance issues are given increased scrutiny. Moreover, the Austrian tax authorities take the position that the PPT has already been applicable to existing treaties based on the OECD-Commentary to Art 1 OECD-MC.
Country-by-country reporting?	On September 20, 2017, General Resolution AFIP N° 4130-E ("GR N° 4130-E") was published in the Official Gazette, in which the Federal Administration of Public Revenue ("AFIP") set forth an annual information regime related to Country-by-Country Reporting ("CbCR"), aligned with BEPS Action 13. This obligation applies to multinational enterprise groups ("MNE Groups") whose ultimate parent's total consolidated revenue is equal to or greater than EUR 750 million, or its equivalent in the local currency converted to the exchange rate as of January 31, 2015, for the fiscal year prior to the year being reported. CbCR introduced by GR N° 4130-E comprises an annual information return through which MNE Groups must identify the jurisdictions in which they operate, the entities that are part of the group and the economic activities they perform. In addition, MNE Groups must provide information related to revenue allocation, profits, accrued and paid income tax, number of employees, etc., for each jurisdiction in which they perform activities through subsidiaries or permanent establishments.	For business years starting on or after January 1, 2016, the three-tiered standardized OECD-approach to transfer pricing documentation, including Master File, Local File and CbCR, has been implemented and is obligatory for business units of MNE Groups exceeding certain turnover thresholds. The CbCR obligation applies to multinational enterprise groups with a consolidated annual turnover of at least EUR 750 million in the preceding fiscal year.
Interest deductibility?	The recent Argentine tax reform introduced new thin capitalization rules that generally follow BEPS (Action 4) directives. Implementing regulations are still pending.	The Austrian CIT Act already provides for a provision on non-deductibility of interest payments to related parties which are subject to no or low taxation. Additionally, interest payments on debt incurred in course of acquiring shares from related parties are also treated as being non-deductible.
Taxand's Take	Argentina is rapidly shifting towards an alignment with OECD countries in international tax matters. In addition, the recent Argentine tax reform introduced many aspects in line with OECD and BEPS standards.	For business years starting on or after January 1, 2016, transfer pricing documentation in line with BEPS Action 13 has to be prepared for the first time. The increased documentation requirements might give rise to a need for adjustments of the currently applied transfer pricing system.

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Country:	Belgium	Brazil
Legislative Changes?	BEPS Action 13 has been implemented by the Program Law of July 1, 2016 and published in the Belgian Official Gazette of July 4, 2016. The legislation to introduce changes in the tax law further to BEPS Action 2 (Hybrids), 3 (Controlled Foreign Corporations), 4 (Interest deductions), 7 (Permanent Establishment) and EU Directives against tax avoidance has been voted on December 22, 2017. The transposition deadline in the legislation indicates that the provisions regarding hybrid mismatches and CFCs will apply as of the tax year 2020 (taxable period starting as of January 1, 2019 or later) and in respect with the interest deduction limitation and the PE concept tax year 2021 (taxable period starting as of January 1, 2020 or later).	A bill that was designed to align with the BEPS action plan (particularly Action plan 12 – Mandatory Disclosure Rule) was rejected by the Brazilian congress. No other legislative changes have been proposed. The Normative Instruction nº 1681/2016, which introduced the CbCR in Brazil, was updated by the Normative Instructions nº1709 and 1722 of May and July, 2017, respectively, that brought only detailed procedures to be followed by the Brazilian entities in order for then to be in compliance with the CbCR rules.
Impact on audit/tax enquiry?	The frequency of transfer pricing audits has increased significantly over the last few years. The tax authorities are already applying the new transfer pricing guidance during tax audits.	Over the years, the Brazilian tax authorities have already implemented rules that are coherent with the BEPS initiative. Because of this, tax authorities are already vigilant in their audits.
Country-by-country reporting?	CbCR is required for MNE Groups which enter into the scope of the legislation.	After a public consultation process, in early 2017 the Brazilian Tax Authorities published the Normative Instruction nº 1.681 introducing the CbCR, as provided for in Action 13 (Guidance on the Implementation of Transfer Pricing Documentation and CbCR).
Interest deductibility?	The future legislation outlines a limitation of excessive borrowing costs to 30% of EBITDA or a EUR 3 Million "safe harbour". In the case entities are part of a group these limitations are to be applied on a consolidated basis. The transposition deadline in the legislation indicates that these provisions will apply as of tax year 2021 (taxable period starting as of January 1, 2020 or later).	There was no direct reaction to Action Plan 4 as the local legislation already addresses its main points.
Taxand's Take	Belgian resident and non-resident corporate taxpayers need to consider the new requirements and take the necessary steps to comply with them. Now that the future provisions on hybrids, CFCs, interest deduction and PEs have been voted by Parliament, clients should review the impact and, if necessary, restructure.	We recommend that our clients take into consideration any consequences and risks in their tax planning with special attention given to aspects of the BEPS plan that are already in place for Brazil. Compliance is another key element in this context.

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Country:	Canada	Chile
Legislative Changes?	No new specific BEPS related legislation or proposals were introduced or announced in 2017. Legislation has been proposed in prior years to adopt certain recommendations from the BEPS initiative, including: (i) Transfer Pricing, (ii) exchange of information and (iii) multilateral instrument introduction. The Multilateral Instrument ("MLI") was released by the OECD on November 24, 2016, and Canada is still considering the approach it will take on the MLI.	Chile has recently approved a tax reform program that makes changes aligning with the BEPS initiative. These changes affect Controlled Foreign Corporation rules, general anti-avoidance rules, thin capitalisation rules, transfer pricing rules, and disclosure of bank secrecy.
Impact on audit/tax enquiry?	It has been confirmed that the Canada Revenue Agency ("CRA") is applying the revisions to the OECD TP Guidelines that arose as a consequence of the BEPS initiative.	The Chilean IRS is requiring taxpayers to update their accounting systems to new technical standards. This would allow Chile to audit taxpayers' online systems more easily after giving them notice.
Country-by-country reporting?	CbCR is now a requirement in Canada for fiscal years beginning on or after January 1, 2016.	The Multilateral Competent Authority Agreement was signed recently, calling for exchange of CbCR. Additionally, taxpayers will need to inform the Chilean IRS if they participated in an international transaction that could have tax savings.
Interest deductibility?	No official position has been stated thus far.	Interest that is paid abroad will be subject to thin capitalisation rules, as well as financial commissions and any other surcharge paid to a foreign creditor. Additionally, the concept of excess of indebtedness was expanded to include local and foreign loans granted by either related or non related entities.
Taxand's Take	Taxpayers should review existing cross-border structures from both a TP perspective and a treaty shopping perspective as Canada has endorsed, and will codify, the TP related initiatives under BEPS, as well as some form of the BEPS treaty shopping recommendations.	We recommend that clients review and asses all transactions to see if they comply with the Chilean Tax reform and substance rules. Also, we advise that clients remain informed of any additional affidavits that may be issued due to the tax reform.

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Country:	China	Colombia
Legislative Changes?	On June 29, 2016 the State Administration of Taxation ("SAT") issued new regulations, Public Notice No.42, to improve the reporting of related party transactions and contemporaneous documentation. These requirements and rules follow the BEPS initiative.	Under Law 1819 of December 2016, the Colombian Congress introduced several rules implementing some BEPS Action Plan recommendations. Measures adopted include: (i) VAT on acquisition or licensing of intangibles from non-Colombian suppliers (action 1); (ii) CFC rules (action 3); (iii) new anti-abuse rules (action 6) and (iv) CbCR for transfer pricing purposes (action 13). Additionally, Colombia subscribed the MLI released by the OECD (action 15); however, local procedures for its enforceability have not been carried out (i.e., it is not adopted as law yet and not yet in force).
Impact on audit/tax enquiry?	Chinese officials are not yet separating audits relating to BEPS issues from standard audits. However, when TP enquiries are made, it is likely that there will be reference to BEPS.	We have no knowledge of cases in which BEPS have been applied during tax audits. New rules are in force as of January 1, 2017.
Country-by-country reporting?	CbCR will be required if taxpayers meet one of the following conditions under the Public Notice No.42: (i) the taxpayer is the ultimate holding entity in the group and its group consolidated revenues in the previous fiscal year exceeds RMB 5.5 billion (approximately $814 million USD) or (ii) the ultimate holding entity of the taxpayer is outside P.R.C, but the taxpayer is assigned by the group as the reporting entity for the CbCR form.	Under Law 1819 of 2016, CbCR rules were introduced in the Colombian Tax Code for transfer pricing purposes. Colombian taxpayers carrying out operations subject to the transfer pricing regime are required to file an informative return and supporting documentation (master file report, local report, and CbCR) if thresholds are met. Broadly speaking, a Colombian entity will be required to file a CbCR before the Colombian Tax Office if (i) it is a controlling entity of a multinational group or (ii) it was designated by the controlling entity of the multinational group as responsible for its filing. The report shall include information regarding global income allocation and tax payment of the entities of the multinational group. Only those multinational groups that have income of more than USD $850 million in the previous fiscal year are compelled to comply with CbCR in Colombia.
Interest deductibility?	A Special Issue File is required for taxpayers falling under the thin capitalisation requirement under the Public Notice No.42.	Thin capitalisation rules were introduced in Colombia under the 2012 tax reform (in force as of January 1, 2013). These rules apply to any interest-producing indebtedness regardless of whether such debt is executed with foreign or local related parties.
Taxand's Take	Clients should be aware of the new requirements of Public Notice No. 42 and start the TP documentation in advance of a potential audit.	Clients should be aware of the changes introduced in Colombian tax regulation, especially the new anti-abuse and CFC rules. Additionally, we strongly recommend clients monitor future legislative reform in Colombia.

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Country:	Cyprus	Denmark
Legislative Changes?	The main legislative change in 2017 relates to the introduction of transfer pricing rules in relation to intra-group financing transactions, specifically with regards to back-to-back loan arrangements. Additionally Cyprus signed the Multilateral Instrument in June 2017 which will have an impact on the numerous tax treaties Cyprus has in place.	A Danish international anti-abuse tax rule (GAAR) has been effective since May 1, 2015 (section 3 of the Danish Tax Assessment Act). The intended purpose of the GAAR when initially introduced, was to implement the expected outcome of BEPS Action 6.
Impact on audit/tax enquiry?	The tax enquiries and audits in Cyprus have been increasingly focused on substance, specifically whether companies are tax residents in Cyprus and if they have a physical presence in the country.	The 2017 activity plan of the Danish tax authorities lists the BEPS project as a specific area of interest. As such, the Danish tax authorities will focus on identifying the applicability of BEPS within current legislation. The project will be aimed at cross-border transactions made by multinational groups with a view to exploiting loopholes or avoiding tax.
Country-by-country reporting?	In May 2017, a Revised Decree was issued which replaces the initial Decree which was issued in 2016. The Revised Decree provides clarity in relation to identifying the reporting entity for a Multinational Group and the reporting deadlines in accordance with the recommendations of Action 13.	A Danish provision relating to CbCR has been effective since January 1, 2016 (section 3B of the Danish Tax Management Act).
Interest deductibility?	Expected to be implemented as a result of the EU Anti Tax Avoidance Directive.	Denmark already has rules on interest deductibility. Thus far, no new rules regarding BEPS Action 4 have been proposed.
Taxand's Take	Clients should regularly have their structures reviewed by professional advisors so as to ensure that they are compliant with all changes, and reorganize their structures where necessary. Additionally, special attention should be given to the newly introduced transfer pricing guidelines. Even in the instances where no new legislation is expected to be introduced in Cyprus, Cyprus based groups should still ensure that they are aware of changes introduced in other countries where they operate.	We advise clients to be ready for intense scrutiny by the Danish tax authorities regarding TP and withholding tax on dividends.

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Country:	Finland	France
Legislative Changes?	In Finland the legislative initiatives or projects with respect to the OECD's BEPS project have focused on revised documentation rules and CbCR.	The CbCR was introduced into French legislation by the 2016 Finance Bill and a decree stating the content of the French CbCR form has been recently released. No significant legislative changes were expected in the 2017 Finance Bill due to the presidential election in Spring 2017.
Impact on audit/tax enquiry?	Revised chapters to the OECD Guidelines would be retrospectively applicable. However, according to the recent ruling from the Supreme Administrative Court, "non-recognition" of transactions would require the application of the general anti-avoidance rule provided in Article 28 of the Tax Assessment Act.	The French Tax Authorities expect to improve their tax audit targeting. The French government identified and published 23 tax schemes that may be presumed by Tax Authorities to be abusive.
Country-by-country reporting?	The renewed articles 14 A-E and 32 of the Act on Tax Assessment, related to transfer pricing documentation requirements and CbCR have taken effect as of the beginning of 2017.	The law introduced is in line with the Action 13 deliverables. The first CbCR filing will relate to FY 2016 and will have to be transmitted within a 12-month delay following the company's fiscal year end.
Interest deductibility?	In 2014, Finland introduced regulation which limits the deductibility of related party interest expenses in business taxation. Currently, the Finnish government has proposed adjustments to the regulation in accordance with the EU Anti Tax Avoidance Directive. The proposed adjustments should take effect in the beginning of 2019.	Limitation rules for the deductibility of interest expense were enacted in 2014.
Taxand's Take	Even though Finland has not yet implemented new legislation in relation to the BEPS project's action plan, it is expected that Finland would follow other European countries with the initiatives. Therefore, we recommend our clients closely monitor the initiatives and prepare TP structures and pricing of intra-group transactions to comply with the BEPS proposals.	Carefully managed projects are still possible – companies should prepare a defence file and gather evidence demonstrating substance, especially for entities in low-tax jurisdictions. Companies should also remain as transparent and co-operative as possible for tax audit strategy.

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Country:	Germany	Greece
Legislative Changes?	The German legislator passed a law to implement some of the OECD proposals on the BEPS project. The law implements the new TP documentation requirements as well as CbCR. Furthermore, this law provides a legal basis for the exchange of tax rulings. Besides, Sec. 4j ITA prohibits the tax deduction of license fees as business expenses in certain cases.	Greece has already implemented changes that reflect BEPS Actions 3, 4, and 8. These changes address CFCs, thin capitalisation, and TP rules.
Impact on audit/tax enquiry?	Companies are now audited much more frequently. Tax audits have increasingly become focused on TP and on whether PEs are being created.	Greek tax authorities have put more emphasis on reviewing cross border transactions that taxpayers have made, particularly focusing on TP and PE rules.
Country-by-country reporting?	The legislator has implemented CbCR, in Sec. 138a General Tax Code, in line with the OECD requirements. The first report has to be prepared for 2016 and transmitted to the Federal Central Tax Office.	Greece has not yet implemented CbCR but has signed the Multilateral Competent Authority Agreement that obligates them to introduce it for tax years 2016 and onward.
Interest deductibility?	As of 2008, interest expenses exceeding interest income (net interest expense) are deductible up to 30 percent of EBITDA. Additionally, a new rule is planned to prevent double deduction of operating expenses with regards to tax transparent entities.	According to the earnings stripping rule, the net deductible interest of Greek companies is limited to 30% of EBITDA and only applies if net interest expense exceeds 3 Million Euros ($3.33 million USD).
Taxand's Take	Clients are advised to seek detailed advice with regard to the increasing importance of TP documentation. Additionally, the creation of PEs should be avoided by means of contractual arrangements.	We recommend our clients review their current level of substance given Greek tax authorities' emphasis on substance over form.

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Country:	Indonesia	Ireland
Legislative Changes?	The Indonesian Tax Office ("ITO") is preparing several new regulations and amendments that will adopt the BEPS Action Plan, including the application of the arm's length principle (BEPS Action No. 8, 9 and 10); TP Documentation (BEPS Action No. 13 regarding CbCR); and amendments to the Mutually Agreement Procedures ("MAP") and Advance Pricing Agreements ("APA") process (BEPS Action No. 14 regarding Dispute Resolution).	Ireland has amended securitisation legislation to eliminate double non-taxation and strengthened GAAR rules. This is not a direct result of BEPS, but this follows the logic of BEPS. Further, Ireland has introduced CbCR legislation.
Impact on audit/tax enquiry?	BEPS has impacted tax auditors' methods of performing a TP Audit, especially in relation to intangibles, such as focusing on the contribution of the company to development, enhancement, maintenance, protection and exploitation of an intangible.	Audits have been influenced by BEPS, focusing increasingly on substance. TP specific audits now occur as TP becomes a key focus of legislation. Companies are also asked to self-audit prior to a formal authority audit.
Country-by-country reporting?	The ITO is still in the process of preparing new regulation on TP Documentation, which will adopt BEPS Action No. 13 regarding CbCR.	CbCR has been introduced for MNE Groups for accounting periods commencing on or after January 1, 2016.
Interest deductibility?	In 2015, the Minister of Finance issued Regulation Number 169/PMK.010/2015 regarding the Debt to Equity Ratio. Under this regulation, the acceptable Debt to Equity Ratio is 4:1 and it shall apply to all industries with certain exceptions.	Ireland already has complex interest deductibility rules and any legislative changes as a direct result of BEPS will likely be kept to a minimum.
Taxand's Take	We recommend clients review and arrange related party transactions commercially with reliable supporting evidence from third party comparables.	Clients are advised to review activities to ensure sufficient substance exists within Ireland, justifying the nature and terms of the TP arrangements in place.

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Country:	Italy	Japan
Legislative Changes?	CbCR has been introduced by the Italian 2016 Budget Law. Italy has already implemented both hybrid mismatch anti-abuse legislation and CFC regulation. The concept of abuse of law was introduced in Italian legislation in 2015. In 2019, a new tax on digital services provided to Italian enterprises and Italian PEs of foreign entities will be introduced. The domestic definition of PEs has been amended in line with the OECD's recommendations included in the 2015 Final Report on BEPS Action 7.	In an effort to reflect BEPS Action 13, the Japanese Government has introduced a reporting system based on the three-tiered approach introduced in the 2016 tax reform.
Impact on audit/tax enquiry?	Increasingly, tax authorities target large MNE Groups with tax inspectors that are trained in various tax areas including TP issues. The tax authorities also hope to challenge hidden PEs.	It is expected that tax authorities and taxpayers will come to a consensus regarding taxation. This could be achieved by balancing improved quality of the information submitted to the tax authorities and a reduction of the burden of fulfilling the corporate compliance requirements by the taxpayers through improvements in TP documentation.
Country-by-country reporting?	The Italian 2016 Budget Law introduced CbCR. The regulations are, to a great extent, in line with the BEPS Action 13 deliverable.	CbCR by certain designated MNE Groups has been adopted by the tax reform. (OECD XML SCHEMA is planned to be used). On August 10, 2017, the National Tax Agency released further guidance, translated to English, regarding electronic filing of CbCR. There were no other changes in 2017.
Interest deductibility?	The Italian tax legislation regarding interest deductibility was modified in 2007 where a 30% EBITDA passive interest limitation was introduced.	Japanese tax law contains thin capitalisation and earning stripping rules. There are no proposals to make amendments to these rules.
Taxand's Take	Clients should evaluate the level of "tax aggression" in any tax planning. Clients should carefully analyse their position to avoid criminal penalties and subsequent reputational damage.	Tax planning should provide enough support so that a challenged transaction can be proven to be sustainable and legitimate during the initial stage of an audit.

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Country:	Korea	Luxembourg
Legislative Changes?	In an effort to reflect the BEPS Action plan, the Korean Government has amended the relevant tax regulations including the Adjustment of International Taxes Act, (“AITA”), which is in line with OECD guidelines.	Increased exchange of information requirements now exist between taxpayers and the tax authority (Foreign Account Tax Compliance Act (“FATCA”) now in force and Common Reporting Standard (“CRS”) implemented). Exchange of information on tax rulings has also been implemented. Hybrid Instrument exemptions may now be challenged following the implementation of the amended EU Parent-Subsidiary Directive.
Impact on audit/tax enquiry?	The amendments require multinational corporations to submit an International Transactions Information Consolidated Report reflecting the corporate activity and transaction flow.	Audits are now less problematic in Luxembourg due to open disclosure with tax authorities. However, TP documentation is increasingly required in audits.
Country-by-country reporting?	A taxpayer engaged in an international transaction with a foreign related party must file a CbCR with the competent tax authority within 12 months from the last day of the month in which the fiscal year ends.	Luxembourg has implemented the EU Directive on CbCR.
Interest deductibility?	The thin capitalisation rule is applicable to any borrowing from a “foreign controlling shareholder” by a domestic corporation.	So far, no action has been taken and nothing has been announced with regards to interest deductibility. However, Luxembourg will have to implement the EU Anti-Tax-Avoidance Directive, which includes limitations on interest deduction, by January 1, 2019.
Taxand’s Take	In order to be compliant with the statutory requirements for filing the international transaction schedule and International Transactions Information Consolidated Report, the subject company should prepare the relevant data and documentation in advance.	Clients should thoroughly review, before implementing, any structure involving hybrid instruments as their use will be restricted. Attention should be paid to the appropriate level of substance.

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Country:	Malaysia	Malta
Legislative Changes?	In line with the BEPS Action No. 13 regarding CbCR, the Malaysian Inland Revenue Board ("IRB") introduced the Income Tax (CbCR) Rules 2016 which came into operation on January 1, 2017.	The Maltese authorities have indicated that companies incorporated in Malta may have to comply with additional requirements on substance (or value creation) to have physical and operational / effective presence in Malta. So far, changes have already been introduced with respect to the automatic exchange of information and CbCR.
Impact on audit/tax enquiry?	Malaysian tax authorities have not focused on audits relating to BEPS issues to-date. However, normal TP audits have increased substantially in the last year or so.	The Maltese tax authorities are increasingly focusing on TP issues and to a larger extent on substance, especially before issuing tax residence certificates.
Country-by-country reporting?	In line with the Income Tax (CbCR) Rules 2016, the due dates for the first CbCR submission (for reporting entities) and the CbCR notification (for reporting and non-reporting entities) are December 31, 2018 and December 31, 2017 respectively (for companies with December financial year ends).	Malta has implemented / adopted the EU Directive on CbCR.
Interest deductibility?	Malaysia has rules in place to limit the deductibility of interest. In addition, the thin capitalisation provision (which was introduced in the ITA from January 1, 2009 onwards) will be deleted with effect from January 1, 2018 onwards, and replaced with earnings stripping rules. Earnings stripping rules will come into effect on January 1, 2019.	On October 5, 2017 the Minister of Finance of Malta introduced a National Interest Deduction to equate debt with equity in terms of tax treatment. This new policy allows corporations and partnerships to claim deductions for return on equity financing.
Taxand's Take	In view of the implementation of the earnings stripping rules on January 1, 2019, clients should ensure that they review their intercompany debt arrangements. Clients also need to consider the impact of the new rules on loss making companies and highly geared companies within the group. Where their fixed ratio is expected to be exceeded, clients should endeavour to restructure debt prior to December 31, 2018.	We strongly recommend clients to review and assess their current structure and issues related to substance, commercial considerations, and value creation to ensure that they are in line with the recommendations / requirements.

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Country:	Mauritius	Mexico
Legislative Changes?	Mauritius is a member of the all inclusive framework, which brings together countries and jurisdictions to collaborate on and implement the BEPS Actions, and has agreed to implement the minimum standards (BEPS Actions 5, 6, 13, and 15). Mauritius has implemented multilateral standards and has entered into 23 treaties, as covered under the PPT, to counter abuse to Action 5.	Regarding Action 12, Mexico has implemented a disclosure return that has to be filed several times during the year, in which taxpayers must disclose a number of listed transactions that are considered “relevant”. This return is expected to provide additional information for tax planning being carried out by taxpayers.
Impact on audit/tax enquiry?	There has been an increase in audits regarding the arm’s length standards under Section 75 of the Mauritius Income Tax Act.	Tax audits are beginning to be more substantive than formal. Therefore, requests for information are more and more detailed, allowing authorities to analyze the economics of the payments rather than the formalities.
Country-by-country reporting?	To ensure adherence to the minimum standards, the Mauritius Revenue Authority has now issued regulations on CbCR. These regulations are issued by the Minister as amendment to the Income Tax Act. The regulations are in line with Action point 13 and will be effective as from July 1, 2018. Non compliance with the regulations will result in a penalty of Mur 5,000 and an imprisonment of 6 months upon conviction.	A CbCR disclosure return, for Mexican multinationals with consolidated revenue that exceeds approximately US $615 million, will be required.
Interest deductibility?	In the Mauritius Income Tax Act, interest is deductible if it is wholly and exclusively incurred in the production of income. Thus, sums payable by a person by way of interest upon any money borrowed is deductible where the tax authorities are satisfied that the interest is payable on capital employed in acquiring the income.	Mexico has included restrictions for the deduction of interest payments to non-Mexican related parties when such interest is received by a transparent entity, when the payment is considered “non-existent” for tax purposes by the recipient, or the recipient does not consider such income as taxable according to the laws of its country of residence.
Taxand’s Take	We advise clients to ensure adequate commercial substance in their structures to withstand any challenges under the PPT.	Clients should adequately document related party transactions to avoid penalties and rejection of deductions. Clients should also analyze the international impact of payments to assess if changes in supply chain are necessary.

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Country:	Netherlands	Norway
Legislative Changes?	CbCR requirements entered into force as of January 2016. Furthermore, information on rulings is automatically exchanged with EU Member States and third countries. The Netherlands has signed the MLI to implement the BEPS minimum standards. The Netherlands opted-in for almost all non-minimum standards. Following ATAD 1, a legislative proposal introduces CFC-regulations and an earnings stripping rule from January 2019. The measures under ATAD2 should enter into force from January 2020, but there is no legislative proposal yet. Finally, the Dutch innovation box regime has been brought in line with BEPS Action 5 (modified nexus approach) from January 2017. The effective tax rate under the innovation box regime will be increased to 7% from January 2018.	Norway has already implemented FATCA, CRS, CFC-rules (including black and white lists), interest limitation rules, OECD TP guidelines and OECD TP documentation rules. It is proposed to implement CbCR, TP documentation (in accordance with BEPS Actions No. 8-10) and to enact a new written GAAR (currently case law).
Impact on audit/tax enquiry?	It is expected that more audits will be started under BEPS principles. These audits will mostly find their origin in other jurisdictions due to increased transparency measures. The Dutch Tax Authorities take a strict application of the BEPS initiatives.	BEPS will likely have implications in terms of increased control, especially in relation to intangible assets and TP documentation. It should also be expected that tax audits will focus on MNCs and assumed aggressive tax planning.
Country-by-country reporting?	CbCR was introduced on January 1, 2016. CbCR requirements apply for MNE Groups with an annual consolidated turnover of at least EUR 750 million. MNE Groups with an annual consolidated turnover of EUR 50 million or more must have a Master File and Local File on file. Not meeting CbCR requirements can result in significant penalties.	Norway has proposed that with effect for income years starting January 1, 2016, Norwegian multinationals with consolidated revenues exceeding BNOK 6.5 ($793 million USD) must comply with CbCR. The reporting time limit is Dec.31 the year after the income year (i.e. for 2016 the filing time limit is Dec. 31, 2017). The proposal to a large degree follows recommendations from the BEPS project. Norwegian subsidiaries of foreign multinationals and Norwegian PE are also required in the CbCR.
Interest deductibility?	In line with ATAD1, there is a legislative proposal to introduce an earnings stripping rule. This will become effective from January 1, 2019.	Interest limitation rules are already imposed in the form of an EBITDA rule. Moreover, the Government has stated that additional restrictions on the deductibility of interest will be imposed and that the rules likely will apply also to loans granted by unrelated lenders, in which case a Group exception may be introduced in line with the rules proposed within the EU.
Taxand's Take	Clients should critically review existing structures to assess whether action is required to mitigate risks and to ascertain compliance under the new measures.	We advise clients to seek detailed advice with regard to their TP policies and to make sure the increased documentation requirements are met. We also recommend that clients prepare for new interest limitation rules and CbCR, if applicable.

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Country:	Philippines	Poland
Legislative Changes?	There is an on-going tax reform program in the Philippines called "Tax Reform for Acceleration and Inclusion" or "TRAIN" that aims to amend the current tax legislation (National Internal Revenue Code or "NIRC"). Pursuant to the TRAIN, a draft bill is now pending in Congress that aims to amend, among others, Section 50 of the NIRC which is the basis of the current transfer pricing regulations (RR 2-2013). The Philippine tax authority ("BIR") has informally stated that once this bill becomes a law, transfer-pricing guidelines related to documentation, advance pricing agreement and transfer pricing audit are expected to be released.	The following changes have been made or proposed: (i) CFC rules (in place), (ii) CbCR rules (in place), (iii) TP documentation rules (in place), (iv) TP guidelines on low-value adding services (in place), (v) limitation on deductibility of interests (in place), and (vi) changes in tax treatment of hybrid mismatch arrangements (in the legislative process, on hold).
Impact on audit/tax enquiry?	At this time, the BEPS initiatives have no clearly defined impact on actual tax audits in the Philippines. However, the BIR has been building capacity by forming a team within the Large Taxpayers Service ("LTS") to lead/initiate test cases for transfer pricing audits and by organising TP trainings for this team, in coordination with the US IRS in some of the trainings.	The tax administration is more focused on TP issues than in the past, specifically challenging the arm's length character and the business substance of various transactions. Tax audits also focus on large multinational corporations and are identifying harmful tax schemes that could be used by taxpayers.
Country-by-country reporting?	There are no proposals to introduce CbCR at the moment, although the BIR has recently mentioned in a TRAIN forum that they will push for the adoption of the three-tiered documentation. More clarity around this is expected in the coming months once the draft bill mentioned above becomes a law.	CbCR obligations, introduced by the amendment to the corporate income tax bill, are in force as of January 1, 2016.
Interest deductibility?	There are no current proposals to introduce interest deductibility amendments.	There are new interest deductibility rules in the legislative process. All interest payments are tax deductible up to PLN 3M and up to 30% of tax EBITDA (the limitation applies only to the surplus of interest expense over interest income). Grandfathering rules are valid only in 2018, and starting in 2019 all interest expense will be subject to the new limitation.
Taxand's Take	We recommend that our clients review and monitor the on-going tax reform program in the Philippines and prepare/maintain appropriate TP documentation. Additionally, clients should prepare for a strict enforcement of transfer pricing rules in the Philippines, given the government's on-going effort to incorporate key BEPS developments into the current tax legislation and the expected lowering of the corporate income tax rates under the current tax reform.	Clients should review their transfer pricing policies and existing tax structures to see if there is any action required to mitigate tax risk since tax audits will be more frequent and thorough in challenging structures with no business substance.

EXECUTIVE SUMMARY

Country:	Portugal	Romania
Legislative Changes?	In the past few years, Portugal has implemented several measures such as: (i) an anti-hybrid clause for inbound dividends, (ii) interest barrier rules, (iii) a GAAR complemented with Specific Anti-Avoidance Rules ("SAAR's), and (iv) reinforcing of CFC and disclosure rules that may be BEPS aligned. CbCR and an authorisation to adjust the patent box to the modified nexus approach were also introduced. Portugal also signed the Multilateral Convention and transposed the Directive concerning the automatic exchange of information.	No significant legislative changes applicable for 2017. In June 2017, Romania, along with 67 other countries and jurisdictions, signed the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting.
Impact on audit/tax enquiry?	The BEPS initiative has not yet specifically affected tax audits. However, we do see transfer pricing issues, restructuring operations, interest deductibility, and principal purpose tests likely becoming target points under tax audits.	The number of tax audits increased following the BEPS initiative with a focus on TP; several audits have already been completed with significant TP adjustments. We expect that the number of tax audits (focusing on TP) will increase in the future.
Country-by-country reporting?	CbCR implementation has been completed in 2016 is in line with the Action 13 deliverables with enforcement of the CbCR from the end of 2017.	CbCR requirements were implemented.
Interest deductibility?	Since 2013, interest expense exceeding interest income (net interest expense) above €1m is only deductible up to 30 percent of EBITDA. Budget Law 2018 proposes an automatic renovation for a period of a year, when the parent company elects for the application of the threshold at the group level. No expected further changes.	No changes regarding interest deductibility for 2017. The EU ATAD directive was transposed in local legislation – amendments have been approved by the Government via an Emergency Ordinance published in the Official Gazette with applicability starting January 1, 2018.
Taxand's Take	Clients should critically review existing structures and critical areas of risk such as transfer pricing, PE, and intra-group financing to determine whether action is required to mitigate risk and prepare for possible BEPS oriented reviews or audits.	We recommend clients carefully review their current TP policies and tax structures to ensure that appropriate substance is given to transactions.

EXECUTIVE SUMMARY

Country:	Russia	Singapore
Legislative Changes?	New legislation has been implemented, including new CFC rules, residency criteria, the definition of beneficial ownership with regards to double tax treaties, CbCR rules, modified thin cap rules, and VAT on digital services provided by foreign companies.	Singapore supports the key principle underlying the BEPS project, i.e. profits should be taxed where the real economic activities generating the profits are performed and where value is created. In October 2016, the Singapore tax authority published a CbCR guide providing guidelines on the obligations, the format of CbCRs and how the reports are to be submitted to the tax authority, with the first CbCR expected to be due by December 31, 2018. Legislative changes are expected.
Impact on audit/tax enquiry?	The BEPS initiative has already impacted tax audits. The status of the beneficial owner of foreign companies is examined by tax authorities within distribution of the passive income.	There is a continued focus on the deductibility of expenses.
Country-by-country reporting?	CbCR rules become effective in 2018 and are effective from FY 2017 onwards.	Based on the published guidelines, Singapore will implement CbCR for Singapore MNE groups from FY2017 onwards where the consolidated group revenue is at least S$1,125 million (approx. $791 million USD); and the Singapore MNE group has subsidiaries and operations in at least one foreign jurisdiction.
Interest deductibility?	The new rules have increased the sphere of application of the thin capitalisation rules, including loans made from sister companies.	The Singapore tax authority has issued an updated set of guidelines on January 4, 2016 concerning transfer pricing setting out how arm's length interest is to be determined or approximated.
Taxand's Take	We advise our clients to review intra-group payments regarding the compliance with beneficial ownership rules and review whether CbCR is applicable to the group.	New transfer pricing guidelines issued by the tax authority indicate that the prevention of price distortion is still in focus; at the same time, tax authorities are cognizant of taxpayers' concern with compliance costs and has clarified situations in which transfer pricing documentation is not required.

EXECUTIVE SUMMARY

Country:	South Africa	Spain
Legislative Changes?	South Africa has published draft legislation in response to the implementation of the Action 13. This Public Notice, which sets out the additional record-keeping requirements for "potentially affected transactions" (cross border related party transactions), was published on July 28, 2016. Regulations to implement the CbCR were published on April 11, 2016.	The Corporate Income Tax Law ("CITL") and the Corporate Income Tax Regulation ("CITR") have developed several actions proposed by the BEPS project: (i) limitation on deductibility of interest, (ii) changes in tax treatment of hybrid instruments, (iii) amendment of the CFC regime, (iv) intangible assets, (v) TP rules amended, (vi) new TP documentation requirements, and (vii) CbCR.
Impact on audit/tax enquiry?	The South African Revenue Service's ("SARS") enforcement processes are in line with the action points under the BEPS Action Plan. In particular, SARS has increased its focus on cross-border transactions, with particular attention being paid to TP, CFCs and leveraged funding arrangements.	Tax administration has focused mainly on: (i) international fiscal plans, (ii) correct application of the TP rules, (iii) digital economy, and (iv) low-value adding services.
Country-by-country reporting?	South Africa will introduce CbCR for financial year ends commencing on or after January 1, 2016 and the first CbCRs will be required to be filed with SARS from December 31, 2017. The CbCR threshold of ZAR10bn ($744 million USD) is lower than the OECD recommended threshold, but the information required does not go beyond what the OECD guidance recommends. CbCR filings and notifications must be completed no later than 12 months after the last day of the MNE Group's tax year. This aligns with deadlines for annual tax returns.	CbCR obligations introduced by the CITR enter into force as of 2016.
Interest deductibility?	The tax review committee, appointed to make recommendations for possible tax reforms in South Africa, has not yet released any comments relating to the 2015 BEPS Action Plan deliverables, including Action 4. Notwithstanding the above, effective January 1, 2015, South Africa introduced legislation which limits the amount of the interest deduction claimed on loans from a non-resident lender that is in a "controlling relationship" with the borrower where the interest amount is not subject to South African tax in the hands of the non-resident lender.	Limitations on the deductibility of financial expenses have been introduced regarding both related and non-related party debt and with regard to hybrid instruments.
Taxand's Take	Taxpayers should carefully consider their long-term tax strategies and decisions regarding tax planning to ensure that they are sufficiently resilient to withstand scrutiny in a country with increased socio-economic sensitivity. It is also important to ensure that all business structures and restructures have commercial substance.	Evaluation of the activities' substance in Spain in light of BEPS emphasis, is needed as well as a thorough analysis of functions performed, assets used and risks assumed. Companies should remain as helpful and cooperative as possible with the Tax Administration in order to achieve tax efficient projects.

EXECUTIVE SUMMARY

Country:	Sweden	Switzerland
Legislative Changes?	New documentation requirements were implemented on April 1, 2017. The new requirements are in line with Action 13. The first year covered by the CbCR will be 2016. The rules for Master file and Local file will cover financial years starting on or after April 1, 2017. Sweden has further signed the multilateral agreement but with several reservations (e.g. the new PE definition). New interest deductibility rules were presented in June 2017.	A Memorandum of Understanding with the EU exists but no deadline has been set. Corporate Tax Reform III bill aims to improve competitiveness of Switzerland whilst bringing privileged tax regimes in line with OECD standards. The Swiss Federal Council confirmed that Switzerland will endorse the OECD BEPS project. The Federal Finance Department is analyzing and elaborating on proposals to implement the results of the BEPS project. Draft legislation for CbCR and the automatic exchange of rulings has been published.
Impact on audit/tax enquiry?	The Swedish Tax Agency ("STA") applies the updated OECD Guidelines (July 2017) retroactively. The STA has, however, commenced a rather legalistic view on intra group agreements contrary to the economic substance view of the OECD.	The initiatives bring little impact since profits are typically moved into, not out of, Switzerland.
Country-by-country reporting?	The CbCR has been implemented for financial years commencing on or after January 1, 2016. MNE Groups with a minimum turnover of seven billion SEK (approximately $784 million USD) will be covered. Further, rules on notification to the STA about the CbCR have been implemented requiring the notification to be submitted to the STA by the last day of the financial year at the latest.	Switzerland will endorse the OECD BEPS project, which includes the introduction of the CbCR in 2018. First automatic exchange will take place in 2020.
Interest deductibility?	Limitation rules for interest deductibility were introduced in 2013 and have been criticized for being subjective and difficult to apply. A legislative proposal for new interest deductibility rules was presented in June 2017. The proposed new rules suggest an EBIT / EBITDA rule and for current rules to be adjusted but not removed. The new rules further lower the corporate income tax rate from 22% to 20%.	The currently applicable thin capitalization and interest deductibility rules may be amended based on the BEPS results in the future.
Taxand's Take	Taxpayers should review current TP structures to ensure that they are in line with the updated guidelines. MNE Groups with revenue exceeding 750 Million Euros (approximately $833 million USD) should prepare for the CbCR (including submission of notifications). As current court cases underline the importance of intra group agreements, MNE Groups should make sure that current pricing is in line with the wording of the agreements. If not, the agreements should be adjusted in order to correctly reflect the pricing of the MNE Group.	Clients should do a thorough analysis of functions performed, assets used and risks assumed within their structure. Clients should also evaluate substance of activities in Switzerland in light of BEPS emphasis and also get prepared for potential inquiry in view of the CbCR as well as the expected automatic exchange of tax rulings.

EXECUTIVE SUMMARY

Country:	Turkey	UK
Legislative Changes?	There are several changes regarding the BEPS Action Plan in Turkey: (i) Interest deduction limitation rules, (ii) CFC rules, (iii) transfer pricing documentation (i.e. master file, local file and CbCR), and (iv) Other changes regarding transfer pricing (v) Digital Economy	The UK continues to be a key supporter of the BEPS initiative, driving many of the proposals through the committees, many reflecting current UK legislation. The UK has also been proactive in introducing BEPS initiatives into UK legislation; transfer pricing Action 8-10, CbCR and notifications, diverted profits tax, corporate interest restrictions, anti-hybrid rules, publishing UK tax strategy and royalties withholding tax.
Impact on audit/tax enquiry?	The Turkish Tax Authority (TTA) has not initiated any audits relating to BEPS as of the time of writing.	The UK claims to be BEPS compliant – as such, little change has been initiated due to BEPS. The general environment has grown hostile towards profit shifting, and companies considered to have not paid their fair share of tax are facing increased exposure.
Country-by-country reporting?	According to the draft communique a Turkish resident parent company of a multinational enterprise group whose consolidated revenues are 2,037,000,000 TL (approximately USD 540,000,000) and above for 2016 are required to submit a CbCR electronically by the end of the 12th month of the following fiscal year.	CbCR and notification requirements were published under Statutory Instrument 2016/237 and subsequently amended by Statutory Instrument 2017/497. CbCR applies to multinational companies with a UK parent if consolidated revenue exceeds EUR 750 million. UK subsidiaries of foreign-parented groups will be required to file a CbC report for the UK sub-group if the foreign parent is not required to file in its own territory (or HMRC does not expect to receive the report from that tax authority). There is an annual notification requirement for a UK entity in a multinational group to notify HMRC about which entity will file the CbC report.
Interest deductibility?	Effective from January 1, 2013, certain limitations have been introduced with Article 41/9 of Income Tax Code and the Article 11/i of the Corporate Income Tax Code regarding the deductibility of expenses and cost items relating to foreign resources being used by companies.	In addition to existing measures, the UK has implemented the recommendations from BEPS Action 4 – restricting interest deductibility, effective from April 1, 2017. When a de minimis threshold of £2 million is exceeded, deductions for net interest expense for the UK group will be restricted.
Taxand's Take	We recommend our clients review and assess their transfer pricing policies and prepare their annual transfer pricing report, transfer pricing documentation and benchmarking studies.	Many of the new rules come with elections that can be made by the taxpayer to modify the rules. Clients should determine if any of the elections are beneficial and if so, make them before the deadlines.

EXECUTIVE SUMMARY

Country:	Ukraine	USA
Legislative Changes?	In 2017, Ukraine joined the “inclusive framework” on BEPS and committed to implement four BEPS minimum standards: Actions 5,6,13 and 14 (harmful practices, prevention of treaty abuse, CbCR, and treaty dispute resolution). The government announced plans to sign the MLI by the end of 2017 and to launch exchange of information under CRS starting in 2020 for information related to 2019. The government presented a roadmap for implementation of the four plans, but no specific draft laws were submitted to Parliament so far. During 2016-2017 Ukraine has signed several protocols to existing tax treaties (the UK, Cyprus, Austria, Turkey) increasing tax rates and implementing new provisions for exchange of information.	Final regulations regarding CbCR were issued on June 29, 2016 and apply to taxable years of parents of U.S. MNE groups that begin on or after June 30, 2016. Additionally, on December 22, 2017 the Tax Cuts and Jobs Act was signed with the following significant initiatives for U.S. corporate taxpayers: (i) Base Erosion and Anti-Abuse Tax, (ii) interest deduction limitations, (iii) Participation Exemption and Transition Tax, and (iv) Global Intangible Low-Taxed Income.
Impact on audit/tax enquiry?	There has been no impact at this time on tax audits as a result of BEPS, as the relevant laws have not yet been approved.	An increased exchange of financial and tax information as a result of BEPS will likely lead to increased scrutiny from tax authorities. The IRS has released specific audit targets regarding key transfer pricing-related issues, including; cost-sharing and stock-based compensation, reasonably anticipated benefits in cost sharing agreements, best method selection, Section 6662 penalty application, and issuance of information document requests (“IDR’).
Country-by-country reporting?	There is a proposal to introduce CbCR and a Group Master file. There is currently no obligation in local law to file these two documents, however in practice master files are sometimes filed as part of TP documentation.	Effective June 30, 2016, CbCR applies to multinational companies with a U.S. parent if consolidated revenue exceeds $850 million. This report is to be submitted on or before the due date (including extensions) of the annual tax return.
Interest deductibility?	There is a proposal to limit interest deductions to 10-30% of a taxpayer’s EBITDA with the possibility to carry forward the excess to future periods.	The new tax legislation limits net interest expense (both third and related party party) to 30% of earnings before interest, tax, depreciation, and amortization (with a transition to 30% of earnings before interest and tax in 2022).
Taxand’s Take	Clients should continue to monitor Ukrainian legislative developments.	We recommend our clients review and monitor the U.S. situation regarding regulatory updates and maintain adequate TP documentation. Additionally, clients should review and consider the impact that the recently signed tax legislation has on its U.S. and global operations.

EXECUTIVE SUMMARY

Country:	Venezuela
Legislative Changes?	No specific legislative changes have been made or proposed based on BEPS. Certain matters addressed by BEPS are already regulated by Venezuelan income tax law and/or case law (substance requirements, thin capitalization rules, restrictions to interest deduction, among others).
Impact on audit/tax enquiry?	As of now, there is no specific impact on audits in light of BEPS. However, starting prior to the BEPS initiative, Venezuelan tax authorities have started to harden their position regarding TP matters.
Country-by-country reporting?	No commitment yet to introduce CbCR.
Interest deductibility?	No modification to interest deducibility regulations have been made. Some pre-BEPS restrictions to interest deductions are still in force (such as thin capitalisation rules, among others).
Taxand's Take	We do not expect that the Venezuelan tax authorities will shift towards an alignment with OECD countries in international tax matters. Despite that no amendments to the existing legislation have been proposed, tax authorities have an increased focus on TP matters. Clients should assess TP policies, corporate investment structures and cross border operations to ensure compliance with current views of the Venezuelan tax authorities.

SUMMARY OF BEPS RESPONSE: ARGENTINA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Treaties to avoid double taxation were signed in 2015 and 2016 with Chile, Mexico and the United Arab Emirates (the latter still undergoing internal ratification procedures prior to its enforcement). Argentine tax authorities have adopted several BEPS directives (including LOB provisions, PPT clauses, and additional considerations regarding "permanent establishment" assessment). Additionally, an amendment protocol to the treaty currently in force with Brazil was signed in 2017 concerning many BEPS directives.

On June 7, 2017, Argentina signed the "*Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting"* to update most of its treaties to avoid double taxation in line with BEPS. Although there is no Congressional approval yet, changes would be expected to be in force by 2019 or 2020.

On December 29, 2017, the Argentine tax reform was approved (effective as of January 1st, 2018) and many of the changes introduced are in line with OECD and BEPS standards (mainly regarding thin capitalisation rules, permanent establishment assessment rules, "sixth method" regarding transfer pricing rules, etc.). Implementing regulations are still pending and are expected to be enacted in the forthcoming months.

- How has the initiative impacted tax enquiries/audits in your territory?

BEPS has not yet impacted audits or tax enquiries performed by Argentine tax authorities. However, prior to the BEPS release, Argentine tax authorities had started to harden their position regarding the abuse of treaties to avoid double taxation, intra group services and the deduction of expenses, cost sharing agreements, and intangibles.

- Is your territory proposing to introduce country-by-country reporting?

Yes, on September 20, 2017, GR N° 4130-E was published in the Official Gazette setting forth an annual information regime related to the submission of the CbCR, aligned with BEPS Action 13. This obligation applies to MNE Groups whose ultimate parent's total consolidated revenue is equal to or greater than EUR 750 million, or its equivalent in the local currency, converted to the exchange rate as of January 31, 2015, for the fiscal year prior to the year being reported.

SUMMARY OF BEPS RESPONSE: ARGENTINA

The regime will be applicable for tax periods of the ultimate parent companies of MNE Groups beginning after January 1, 2017.
Note that GR 4130-E also provides an additional reporting regime applicable to Argentine entities belonging to MNE Groups, such entities shall report to AFIP the ultimate parent company of the MNE Group or the entity that actually filed the CbCR in its respective jurisdiction, should it differ from the ultimate parent company. The CbCR deadline is the last business day of the twelfth month following the end of the ultimate parent's reporting year. The regime will be applicable for tax periods of the ultimate parent company beginning after January 1, 2017. Failure to comply with the obligations set forth by GR 4130-E will result in the penalties established in the Procedural Tax Law. Moreover, taxpayers will be subject to inclusion in a higher tax audit category, the suspension or exclusion from Special Tax Regimes in which they might be registered, and/or the suspension of the Certificates of Exclusion or Non-Withholding proceedings that may have been requested by the taxpayer.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The recent Argentine tax reform (effective as of January 1st, 2018) introduced new thin capitalization rules that generally follow BEPS (Action 4) directives. Previous thin capitalization rules only contemplated their application to indebtedness between an Argentine borrower and a foreign related party. Newly enacted rules extend their application to Argentine and foreign related parties. Implementing regulations are still pending. Treaties to avoid double taxation (with Spain, Switzerland, Chile and Mexico, among others) expressly provide that their provisions do not preclude the application of thin capitalisation rules existing under domestic legislations.

- What do we recommend clients do to face the impending changes in your territory?

Argentina is rapidly shifting towards an alignment with OECD countries in international tax matters. The Argentine government publicly announced it intends to incorporate Argentina as an OECD member country in the short term. In addition, the recent Argentine tax reform introduced many aspects in line with OECD and BEPS standards. Therefore, we recommend investors perform a detailed analysis of their TP policies, corporate investment structures, and cross border operations. This will ensure that they comply with the current views of the Argentine tax authorities in matters related to supporting documentation and substance requirements. Key changes introduced by the Argentine tax reform are still subject to implementing regulations that would be enacted in the forthcoming months. Changes are also expected in existing treaties to avoid double taxation (as a result of the execution of the MLI.)

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SUMMARY OF BEPS RESPONSE: AUSTRIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Action 1 – Digital Economy

According to the legislative program adopted by the new government, a new PE concept applying to the Digital Economy shall be introduced into legislation. However, further details on the legal implementation are not yet published.

Action 2 – Hybrid mismatches

As an EU member state, Austria is obliged to implement anti-hybrid rules stipulated by the EU-Anti Tax Avoidance Directive into domestic legislation by December 31, 2019 (acc. to ATAD in connection with ATAD No. 2).

Under the current provision to counter hybrid mismatch arrangements dividends distributed by a foreign subsidiary to the Austrian shareholder are not tax exempt, if they are tax deductible at the level of the subsidiary (Sec. 10/7 of the Corporate Income Tax Act). This currently applicable provision is not sufficient to cover the anti-hybrid rules of the EU-Anti Tax Avoidance Directive.

Action 3 – CFC rules

Austria is obliged to implement CFC rules stipulated in the EU-Anti Tax Avoidance Directive into domestic legislation by December 31, 2018 (ATAD No. 1).

Currently, Austrian law does not provide for any CFC rules. The international participation exemption regime contains, however, some anti-abuse rules with respect to the repatriation of profits from foreign subsidiaries. According to these provisions a switch-over from the exemption to the credit method applies to certain dividends distributed by foreign subsidiaries if either of the following applies:

- In case of qualified international participations (>10% participation, holding period > 1 year), if the foreign subsidiary generates mainly passive income and the effective tax rate of the foreign subsidiary is 15% or lower.
- In case of portfolio dividends (≤ 10% participation), if the foreign distributing company is not subject to tax or exempted from taxation in its country of residence or if the foreign tax rate is lower than 15%.

Apart from this specific anti-abuse provision, the general anti-abuse provision stipulated in Sec 22 of the Federal Fiscal Code shall be mentioned according to which the tax liability cannot be reduced or avoided by abusing the instruments of civil law. A legal structure shall therefore be assumed as being abusive if it is unusual and inappropriate with regard to the economic objective and if it can only be understood on account of the related tax savings. In case of abuse, taxes shall be collected as if the transaction was structured in line with the true economic realities.

The Provisions of the EU-Anti Tax Avoidance Directive regarding CFC rules have to be implemented in Austrian legislation by December 31, 2018, while the provisions regarding Hybrid mismatches must be implemented by December 31, 2019. With regard to the interest limitation rule, an extended implementation period until the beginning of 2024 may apply.

SUMMARY OF BEPS RESPONSE: AUSTRIA

Action 4 - Limitation on interest deductions

Austria´s current rules on the limitation on interest deductions are likely to be amended once the EU-Anti Tax Avoidance Directive is transposed into domestic law. However, countries already providing for equally effective provisions may postpone the implementation of Article 4 EU-Anti Tax Avoidance Directive (Interest limitation rule) until January 1, 2024. It is expected that the EU commission will regard Austria´s current provision to be equally effective as the interest limitation rule set out in Article 4 EU-Anti Tax Avoidance Directive. In this case, Austria will most likely take use of the extended implementation period.

According to the current provision interest on debt financing is, in general, not tax deductible, if the interest receiving corporation directly or indirectly belongs to a corporate group, and the received interest is not taxed at all on the basis of a personal or objective tax exemption, is taxed at a nominal tax rate lower than 10% or is taxed at an effective tax rate lower than 10% (even if due to an envisaged tax relief granted to the shareholder upon distribution). If the receiving company is not the beneficial owner of the interest payment, the above criteria apply to the beneficial owner.

Apart from this, the Austrian CIT Act provides for a provision allowing the deduction of interest payments on debt used to acquire participations which in turn generate tax-exempt dividend income (of capital gain). However, interest deduction is not granted for debt-financed acquisition of shares from related parties or (directly or indirectly) controlling shareholders. Other financing related expenses (e.g. legal advice, fees) connected to tax-exempt international participations are not tax deductible.

Action 5 - Transparency and substance; Action 6 - Treaty abuse

Preferential tax regimes currently do not exist in Austria. The Austrian law however provides for favorable R&D related tax incentives.

The EU-Directive on the automatic exchange of advance rulings and advance pricing agreements between tax authorities was implemented into Austrian legislation on August 1, 2016. Austria also implemented the mandatory spontaneous exchange of information with non EU countries under Action 5.

In the MLI, Austria opted for the Principle Purpose Test. Moreover, the preambles of the covered DTAs have to state that the treaty must not create the possibility of non-taxation (not yet in force – please refer to Action 15).

Action 7 - Preventing Permanent Establishment status

In course of the MLI, Austria did not opt for the implementation of the new PE definition regarding commissionaire arrangements and similar strategies. However, Austrian tax authorities take the view that commissionaires already constitute a PE based on the pre-BEPS definition of PEs. Furthermore, Austria did not opt in the MLI for the provision regarding the splitting up of contracts. Austria did, however, opt in for Article 10 of the MLI (Anti-Abuse Rule for PEs situated in third countries) and for Option A of Article 13 MLI (triggering a PE also for activities in the meaning of Art 5 Para 4 OECD-Model Convention, if these activities are not of a preparatory or auxiliary character). Regarding MLI please also refer to Action 15.

Actions 8 - 10 - Aligning transfer pricing to value creation

It is expected that the Austrian Transfer Pricing Guidelines (issued by the Austrian Ministry of Finance) will be amended to reflect the BEPS Actions 8-10. Although respective changes have not yet been made, the Austrian tax authorities already apply a BEPS compliant approach retroactively to existing structures in the course of tax audits.

SUMMARY OF BEPS RESPONSE: AUSTRIA

Action 13 - CbCR

On August 1, 2016 the Austrian Transfer Pricing Documentation Act was published in Federal Law Gazette which implemented the three-tiered standardized OECD-approach to transfer pricing documentation, comprising a Master File, Local File and CbCR. The new provision applies to Austrian constituent entities of a MNE group as of fiscal years starting on or after January 1, 2016 if certain thresholds are exceeded.

- CbCR is applicable if the annual consolidated group revenue has been equal to or exceeded EUR 750 million in the previous year. The report has to be filed electronically within 12 months after the end of the relevant fiscal year. For intentional late or incorrect filing, a penalty of up to EUR 50,000 may be imposed. For late or incorrect filing in the case of gross negligence penalties of up to EUR 25,000 might apply.

CbCR-notification requirements: Each Austrian constituent entity which is part of a MNE group subject to CbCR must report to the competent tax office until the last day of the relevant financial year, whether it is the ultimate or surrogate parent entity. In the case the Austrian entity is neither ultimate nor surrogate parent entity, it must report the identity and residence of the ultimate or surrogate parent entity and the reporting entity to the Austrian tax authorities.

Austria signed the multilateral competent authority agreement for the automatic exchange of CbCR.

- Master and Local File have to be prepared by Austrian constituent entities of a MNE Group with an annual turnover of more than EUR 50 million in the two preceding fiscal years based on individual financial statements.

The content of the Master and Local File is in line with BEPS Action 13.

After filing of the corporate income tax return for the respective fiscal year, Master and Local File need to be submitted within 30 days upon request of the competent Austrian tax authority.

Action 14 - Dispute Resolution

Austria is a member of the EU Arbitration Convention. On course with the MLI, Austria opted in for Article 5 (taxation right of residence state in case of certain qualification conflicts in order to avoid double non taxation), Article 17 (Corresponding Adjustment regarding Transfer Pricing) and Article 18 (Mandatory Binding Arbitration if no agreement has been reached in a mutual agreement procedure after three years). Regarding MLI please also refer to Action 15.

Action 15 – Developing a multilateral instrument to modify bilateral tax treaties

In June 2017, Austria signed the MLI through which treaty-based BEPS recommendations will be directly implemented in existing DTAs. In September 2017 the MLI was ratified. The entry into force depends on the ratification of other countries and is expected by mid 2018.

- How has the initiative impacted tax enquiries/audits?

Austria's tax authorities are applying BEPS recommendations (in particular BEPS Actions 8-10) in course of ongoing audits to already implemented structures. Additionally, hybrid capital instruments and substance issues are given increased scrutiny. Moreover, the Austrian tax authorities take the position that the PPT already applied to existing treaties based on the OECD Commentary to Art 1 OECD-MC.

SUMMARY OF BEPS RESPONSE: AUSTRIA

- Is your territory proposing to introduce country-by-country reporting?

Please see our comments on Action 13.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Please see our comments on Action 4. If Austria´s currently applicable provision relating to the non-deductibility of interest payments is regarded as being equally effective as the Interest limitation rule stipulated by Article 4 of the EU-Anti Tax Avoidance Directive, it is expected that Austria will invoke the extended implementation period until January 1, 2024.

- What do we recommend clients do to face the impending changes in your territory?

For business years starting on or after January 1, 2016, transfer pricing documentation in line with BEPS Action 13 was prepared for the first time. The increased documentation requirements may give rise to a need for adjustment of the currently applied transfer pricing system.

Moreover, it should be noted, that transfer pricing related BEPS measures are applied retrospectively. Thus, it should be assessed whether existing structures are set up in a BEPS-compliant way.

Last but not least, potential impacts on existing DTAs triggered by the MLI shall be assessed and observed.

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SUMMARY OF BEPS RESPONSE: BELGIUM

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

BEPS Action 13 has been introduced by the Program Law of July 1, 2016 in the Belgian Income Tax Code.

The new TP documentation (CbCR, Master and Local file rules) are applicable for tax year 2017 (i.e. accounting years ending on December 31, 2016 or later). As a result of this, Belgian resident and non-resident corporate taxpayers falling within the scope of these provisions need to comply per the proposed deadlines with these TP documentation requirements.

<u>Master file and Local file</u>

A Belgian entity (company or permanent establishment) of a multinational group has only to file a Master file and a Local file if the entity exceeded one of the following criteria of its stand-alone statutory accounts in the preceding financial year:

- Total operating and financial revenue of at least 50 million EUR (excluding non-recurring revenue); or
- A balance sheet total of 1 billion EUR; or
- An annual average payroll of 100 full-time employees

<u>BEPS Action 13</u>

The Master file should provide an overview of the structure of the multinational group, including a description of the type of operational activities, the intangible fixed assets, the intra-group financial activities and the consolidated financial and tax position of the multinational group, the overall group TP policy and the worldwide allocation of income and economic activities.

The Local file should consist of two parts. The first part provides general information on the operations of the Belgian group entity and an overview of the intra-group transactions. The second part includes additional information on the intra-group transactions between related entities per business unit, including a detailed economic analysis. This second part is only required under Belgian legislation if a threshold of a total of 1 million EUR in intra-group transactions is exceeded. The latter threshold is to be considered per separate business unit.

The Master file should be filed no later than 12 months after the closing of the accounting year of the multinational group. The Local file should be filed with the corporate tax return of the Belgian entity (company or permanent establishment).

SUMMARY OF BEPS RESPONSE: BELGIUM

CbCR

These new TP rules also introduce a CbCR requirement which is compliant with OECD guidelines and EU legislation.

The CbCR should include the effective identification of each entity that is part of the multinational group, including the jurisdiction in which the entity is resident and a description of the main activities of that entity. The report should also provide quantitative information, including the overall income generated, the precise profit/loss position before tax, the paid corporate income taxes, the paid-in capital, the number of employees, etc.

This specific CbCR requirement only applies to a Belgian ultimate parent entity of a multinational group with a gross consolidated group turnover exceeding 750 million EUR, including non-recurring revenue. However, in some cases this CbCR requirement also applies to a Belgian resident group entity which is not the ultimate parent entity, if at least one of the following conditions applies:

- The ultimate parent entity qualifies as a tax-resident company in a jurisdiction which does not impose CbCR filing;
- There is an absence of a qualifying agreement on the automatic exchange of CbCR between the tax jurisdiction of the ultimate parent and a competent authority to which Belgium is a party; or
- There is a notification by the Belgian tax authorities to the Belgian group entity that the tax jurisdiction of the ultimate parent company remains in systematic breach of its reporting obligations.

CbCR should be filed no later than 12 months after the closing of the accounting year of the multinational group.

These filings are to be made by the taxpayer or his proxyholder electronically in a format issued by tax services.

BEPS Action 2 (Hybrids), 3 (CFC), and 4 (Interest deductions)

As an EU member state, Belgium is subject to the EU anti-avoidance directives (ATAD and ATAD2). These directives include anti-hybrid, CFC, and interest limitation rules and must be implemented by the member states into their domestic legislation by December 31, 2018.

These items are part of the corporate tax reform that has been voted in Parliament on December 22, 2017.

The transposition deadlines in the new tax legislation indicate that the new provisions with regard to hybrids and CFC will only apply as of tax year 2020 (accounting year starting as of January 1, 2019 or later) and regarding the new interest limitations as of tax year 2021 (accounting year starting as of January 1, 2020 or later).

SUMMARY OF BEPS RESPONSE: BELGIUM

<u>BEPS Action 7 (PE)</u>

This item is also part of the corporate tax reform voted on December 22, 2017.

Changes are made to the definition of an Agency PE, in particular the notion of an independent agent is revisited and the order taker exception is abolished.

The transposition deadline in the final legislation indicates that on this item the changes will apply as of tax year 2021 (accounting year starting as of January 1, 2020 or later).

- Is your territory proposing to introduce country-by-country reporting?

The new Belgian rules are based on international TP documentation guidelines, more specifically on Action 13 of the OECD's set of BEPS rules.

The new articles 321/1-7 of the Income Tax Code comply to a large extent with the three-tier TP documentation requirements imposed on multinational enterprises by the OECD guidelines: Master file, Local file, and CbCR.

- How has the initiative impacted tax enquiries/audits?

The number of transfer pricing audits has increased significantly over the last few years. Tax authorities are already applying the new transfer pricing guidance. In addition, we have noticed that there have been substantially more requests for information regarding the presence of permanent establishments of foreign entities conducting business in Belgium.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As an EU member state, Belgium is subject to the ATAD directive which includes an interest limitation provision to discourage artificial debt arrangements to minimise taxes.

The future new legislation provides a limitation of borrowing costs to 30% of EBITDA or a EUR 3 Million " safe harbour". The loans covered are all non-tax haven loans, with exceptions for financial undertakings, stand-alone companies, and EU PPP loans.

The transposition deadline in the new legislation indicates that this change will apply as of tax year 2020 (accounting year starting as of January 1, 2019 or later).

SUMMARY OF BEPS RESPONSE: BELGIUM

- What do we recommend clients do to face the impending changes in your territory?

Companies that are part of international groups which fall within the scope of the new TP documentation requirements should comply with the new rules in order to avoid penalties for non or non timely filing.

In addition, we advise foreign clients to be especially careful when setting up business in other states, especially with regards to commissionaire arrangements, in light of the new permanent establishment guidelines.

In view of new future rules on hybrids, CFC, interest deduction limitations, and PE we advise clients to check the impact of these provision on their taxable base and taxable presence and, if needed, make the relevant changes.

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SUMMARY OF BEPS RESPONSE: BRAZIL

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

A set of rules involving disclosure of tax planning transactions was debated in the Brazilian Congress during 2015. The stated intention of the rules were to align Brazil with the OECD Action Plan on BEPS, particularly Action 12 – Mandatory Disclosure Rules. However, the original bill that aimed to create such rules was rejected by the Brazilian Congress. During 2016, Brazil ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. There was also an update on the Normative Instruction nº 1.681/16, by the Normative Instructions nº 1.709 and 1.722, adding some procedures and details that must be followed by the Brazilian companies in relation to the CbCR filling.

- How has the initiative impacted tax enquiries/audits?

Over the last couple of decades, Brazil has enhanced its tax system in order to prevent base erosion and profit shifting arising in a cross-border scenario (e.g. by means of CFC, TP, and thin cap rules). Although Brazil has not taken action directly resulting from the BEPS initiatives in the context of tax audits, tax authorities have been vigilant to most of the concerns and distortions that the BEPS initiatives aim to tackle.

- Is your territory proposing to introduce country-by-country reporting?

After a public consultation process, in early 2017 the Brazilian Tax Authorities have recently published the Normative Instruction nº 1.681 introducing CbCR, as provided for in Action 13 (Guidance on the Implementation of Transfer Pricing Documentation and CbCR). It is important to mention that the Normative Instruction nº 1.681 was updated by the Normative Instructions nº 1.709 and 1.722 of May and July 2017, respectively.

Additionally, the Brazilian tax authorities and the United States tax authorities have signed the arrangement on the exchange of CbCR reports on July 20, 2017. With this agreement it is possible to automatically exchange information regarding the CbCR between these two countries starting in 2016.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Brazilian legislation regarding interest deductibility has historically adopted traditional unilateral anti-avoidance measures, especially the imposition of withholding tax upon the interest accrued or paid as well as the application of transfer pricing and thin capitalisation rules. Although there has not been yet a direct reaction regarding BEPS Action 4 in Brazil, the domestic legislation already addresses its main concerns.

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SUMMARY OF BEPS RESPONSE: BRAZIL

- What do we recommend clients do to face the impending changes in your territory?

We recommend clients carefully assess the consequences and potential risks prior to the implementation of any form of tax planning in Brazil, with special attention paid to the issues addressed in the BEPS initiatives that have been already part of the Brazilian tax system and practice. Local compliance is another key element in this process.

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SUMMARY OF BEPS RESPONSE: CANADA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Since the Canadian government's suspension of its efforts to craft a domestic treaty shopping rule due to the BEPS initiative, there has not been any significant indication that the Canadian government will resurrect the project for a domestic treaty shopping rule.

On March 22, 2016 the Canadian government released its budget for 2016 ("Budget 2016") in which it declared its intention to act on certain recommendations from the BEPS initiative. The Canadian government passed legislation on December 15, 2016 that formally introduced CbCR requirements for large multinational enterprises in Canada that are consistent with Action 13 of the BEPS Action Plan.

Budget 2016 also announced that the CRA is applying revised guidance arising from the BEPS initiative on transfer pricing by multinational enterprises, which provides an improved interpretation of the arm's-length principle. Effective April 1, 2016, the CRA began the exchange process with other tax administrations of tax rulings that could potentially give rise to BEPS concerns.

Finally, Budget 2016 announced Canada's participation in efforts to develop a multilateral instrument to streamline the implementation of treaty-related BEPS measures, which includes measures addressing treaty abuse. The MLI was released by the OECD on November 24, 2016. To date, Canada is still considering the approach it will take on the MLI. The MLI will enter into force three months after Canada ratifies the MLI and informs the OECD of such ratification.

Budget 2016 reiterated that the revisions to the Transfer Pricing Guidelines arising from BEPS will be "clarifying in nature." This means that any changes brought forth from the BEPS initiative will be applied on a retroactive basis. The CRA can therefore use the revised guidance when conducting transfer pricing audits in Canada for past years. This may put many Canadian taxpayers in a difficult situation. If past years involve structures that seem to conflict with guidance proposed under BEPS, this creates confusion regarding what years and what mechanisms and strategies can be drawn upon to minimise audit risks and any potential for transfer pricing adjustments.

The Canadian budget announced on March 22, 2017 did not contain any BEPS related proposals, but it did reiterate Canada's commitment to meeting the minimum standards arising from the BEPS initiative.

SUMMARY OF BEPS RESPONSE: CANADA

- How has the initiative impacted tax enquiries/audits?

BEPS will impact the nature and scope of audits performed in Canada especially as they relate to intangibles. Budget 2016 confirmed that the CRA is applying the revisions to the OECD Transfer Pricing Guidelines that arose as a consequence of the BEPS initiative. Historically, the level of profits allocated to Canada was heavily impacted, whether rightfully or wrongfully, by who owned and funded intangible development.

Consequently, the ownership of intangibles offshore often resulted in a large share of system profits being reported outside of Canada, even though significant levels of "people functions" performed in Canada generated much of those profits.

The CRA has always put a heavy emphasis on "people functions", even before the introduction of BEPS. The CRA has always taken the view that "people functions", as opposed to strict legal ownership, should form the basis in determining how profits are allocated in a transfer pricing setting. The BEPS initiative has emphasised the need to put more weight on such "people functions". This view will only serve to give the CRA more tools in its tool kit to increase the number of audits in Canada with the likelihood of large adjustments more pronounced.

- Is your territory proposing to introduce country-by-country reporting?

CbCR is now a requirement in Canada. The Canadian government passed legislation on December 15, 2016 that formally introduced CbCR requirements in Canada. A CbCR in prescribed form must be filed for fiscal years beginning on or after January 1, 2016 by the Canadian resident ultimate parent of an MNE Group, or in certain circumstances, a Canadian resident subsidiary company. The legislation exempts an MNE Group from the CbCR requirements for a particular year if it has a total consolidated group revenue of less than €750 million during the preceding fiscal year.

The CbCR must generally be filed within 12 months after the particular fiscal year end of the relevant company. Penalties will be imposed on a failure to file the CbCR on a timely basis.

Canada has also implemented the new common reporting standard beginning on July 1, 2017.

SUMMARY OF BEPS RESPONSE: CANADA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

No specific comments related to interest deductibility have been made public by the Canadian government. As the issues regarding interest deductibility have been under constant review by the Canadian government for decades, it is not clear whether any further changes will be made in Canada as a consequence of these BEPS initiatives.

- What do we recommend clients do to face the impending changes in your territory?

We recommend that our clients be mindful of the BEPS initiative and structure transactions on a proactive basis to address the recommendations. In the context of transfer pricing and treaty shopping, special attention to every detail must be paid. In a transfer pricing context, given that the CRA interprets the BEPS initiative as clarifying in nature and, therefore, retroactive, it is important to assess the risks posed by any new legislation especially as it relates to “back” years. Tax advisors may need to provide clients with a framework for mitigating audit controversy through various means including self-initiated adjustments or using existing dispute resolution mechanisms (such as the APA program) to gain greater tax certainty for unaudited years. Failure to be proactive in this sense will increase the risks of an exhaustive audit due to BEPS.

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SUMMARY OF BEPS RESPONSE: CHILE

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The 2014 Tax Reform (Law N° 20.780) with its 2016 amendments (Law 20.899) introduced changes in line with BEPS proposal (Actions 3, 4, 8 – 10 and 13), several of which are in force from 2017 on. Additionally, there are further legislative changes being discussed in relation to Action Plans 13 and 15.

Controlled Foreign Corporations

Since 2016, regulation states that taxpayers who have obtained passive foreign income through CFC entities must include such income in their tax returns.

In line with this, and in order to control compliance, the Chilean IRS ("SII") has ordered taxpayers to inform, through an affidavit (Form N°1929), their foreign operations and the income produced by them. Moreover, Administrators of Mutual Funds, Private Funds, and Private Investment Funds were recently included in this obligation for Income Declaration Operation 2018.

General Anti-avoidance Rules

This regulation has been introduced by Tax Reform, which is based on contract simulation principles and the abuse of rights. Moreover, transactions or acts that do not produce any legal or economic result or effect but are solely executed for purposes of obtaining tax savings will be deemed to be "abusive".

During 2017, the SII has given some guidelines and further rulings as to this matter. It has been established that the use of a Private Investment Fund ("PIF") is not in itself abusive. However, the start-up of a business without having the means to carry out the company purpose, the "production" of income and debts in the same situation and wanting to dissolve said company soon after starting it, among other things, are suspicious of abusive practices.

Thin Capitalisation Rules

Even though Chile introduced thin capitalisation rules years ago, Tax Reform changed several matters. For instance, not only the interest paid abroad will be subject to thin capitalisation rules, but also financial commissions and any other surcharge paid to a foreign creditor. Moreover, the concept of excess of indebtedness was expanded including local and foreign loans granted by either related or not related entities.

SUMMARY OF BEPS RESPONSE: CHILE

In line with this and in order to control compliance, the SII ordered taxpayers to inform through an affidavit (Form N°1930) external debts, foreign deposits, creditor balance of commercial currents accounts, and any other passive income from foreign entities, including any assurance granted by a third person for said obligation. This regulation was approved before December 2016.

Disclosure of Bank Secrecy

The first regulation was enacted before Tax Reform. The rules states the Tax Authority can request the disclosure of bank secrecy not only under a tax crime investigation but also during an audit process. Moreover, the SII would be able to request disclosing bank secrecy in the case of a foreign tax authority asking for it. If the taxpayer rejects waiving his bank secrecy, the courts of justice would make the decision in this matter.

A second regulation was approved by the Chilean Parliament and will be enacted shortly. It will allow the SII to request the disclosure of information related to bank secrecy once a year (meeting the requirements established in the Chilean Tax Code for such purposes), in order to comply with the Multilateral Competent Authority Agreement on the exchange of Country by Country Reports.

Transfer Pricing Rules

These rules were incorporated in 2012 and are based on the arm´s length principal. This regulation was approved before December 2016.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

In 2017, Chile signed the MLI, opting for all its Tax Agreements to be covered by the Convention. Ratification of the MLI is still pending in Congress.

- How has the initiative impacted tax enquiries/audits?

According to Tax Reform, the SII is empowered to require taxpayers to modify their original accounting systems to adopt new technological methods. The Tax Authority can also now audit taxpayers' electronic accounts systems by accessing such information online. However, the online access has to be communicated taxpayers in advance.

Further, it is now mandatory for taxpayers to inform the tax authority of their investments abroad. In this sense, the Chilean IRS has issued mandatory affidavits in order to comply with this obligation. Investments in trusts or companies offshore are included in such affidavits.

Also, as mentioned above, the SII will be empowered to request the disclosure of information related to bank secrecy once a year.

SUMMARY OF BEPS RESPONSE: CHILE

- Is your territory proposing to introduce country-by-country reporting?

Tax Reform has changed the general principal regarding interests' tax deductibility with regard to foreign loans. In this sense, interest can be treated as tax deductible when such interest is effectively paid and the tax that it would be subject to has been paid as well.

Chile signed the Multilateral Competent Authority Agreement on the exchange of Country by Country Reports. In line with this, the SII issued an affidavit whereby taxpayers have to inform the SII if they were part of an international transaction that could obtain tax savings.

Also, since July 2016, there is an obligation to identify non-resident accounts that financial institutions must comply with, as part of the new international standard designed by OECD to combat tax evasion and avoidance through the exchange of relevant information automatically between the different states.

More recently, the SII instructed multinational enterprises' Head Office or Controlling Company, with tax residency in Chile and which produced a consolidated income of at least €750,000,000, to report once a year their income, results, and taxes paid, plus the companies integrating the group and the functions performed by them in each country they are located. The information collected this way will be used to evaluate transfer pricing, but also address compliance with income tax, VAT and inheritance taxes; and will be uploaded to the platform for automatic information exchange.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Tax Reform has changed the general principal regarding interest's tax deductibility in foreign loans. In this sense, interest can be treated as tax deductible when such interest is effectively paid and the tax that would be subject to has been paid as well. Moreover, thin capitalisation rules were modified previously explained.

- What do we recommend clients do to face the impending changes in your territory?

Substance evaluation should be completed for all transactions taking into account the new anti-avoidance rule. Also, clients should review and assess transactions in order to choose business alternatives that are in line with the new regulations, due to both Tax Reform and BEPS proposals. Clients should be aware of new affidavits that the SII would issue due to Tax Reform and for purposes of being in line with BEPS proposals.

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SUMMARY OF BEPS RESPONSE: CHINA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In 2014, the SAT released the Notice of Anti-Avoidance Examination on Significant Outbound Payments (Circular [2014] No.146), according to which SAT requests the local-level tax authorities launch a comprehensive tax examination on significant outbound service fee and royalty fee payments to overseas related parties of a multinational corporation, with an aim to strengthen the tax administration on intra-group charges and prevent profit shifting.

In February 2015, SAT released a Public Notice [2015] No.7 that superseded the current Chinese tax rules in relation to the offshore indirect equity transfer. Notice No.7 presents a totally different tax landscape for foreign investors holding China Taxable Properties with a foreign intermediate holding company.

An important change responding to BEPS occurred on September 17, 2015, where SAT issued a consultation draft circular “Implementation Measures for Special Tax Adjustments” (“Draft”) replacing the existing Guoshuifa [2009] No. 2 (Circular 2) (current effective China TP rule). The public was invited to provide comments on the Draft by October 16, 2015.

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In June 2016, SAT issued new regulations, Public Notice No.42 to improve the reporting of related party transactions and contemporaneous documentation. Overall the information disclosure requirement increased and the new forms required also include CbCR. Included with the contemporaneous documentation are three files: a Master file, Local file, and a Special Issue File.

In October 2016, the SAT issued Public Notice No.64 to improve the administration of Advance Pricing Arrangements. In March 2017, the SAT issued Public Notice No.6 to improve administration of Special Tax Investigation and Adjustment and Mutual Agreement Procedures. These provisions to a large extent reflect the outcome of the BEPS action plans, as well as China’s own anti-avoidance development and practice.

- How has the initiative impacted tax enquiries/audits?

Chinese tax officials are not currently separating audits relating to BEPS-specific issues; however, when a transfer pricing enquiry is raised by local officials, reference to the BEPS initiatives will likely be made.

SUMMARY OF BEPS RESPONSE: CHINA

With the Public Notice No.42, applying from 2016, the following items may become more sensitive and focused on by the Chinese tax authority:

- Review of actual control and management control of each entity under a complex group structure;
- More PE challenges, especially in digital economy and e-commerce industries;
- Business substance, supporting the validity of related party charges during foreign remittance procedures;
- Further detailed review of cross-border intercompany charges like interest, royalty, service fees, etc.;
- Attention to irregular transactions between cross-border related parties, such as the transfer of intellectual property;
- Specific functions (like R&D, brand building, market penetration) and potential local intellectual property in TP studies;
- More information disclosure requirements.

- Is your territory proposing to introduce country-by-country reporting?

Under the Public Notice No.42, transfer pricing documentation requirements would put China at the forefront of countries adopting the recommendations of BEPS Action 13. It implements Action 13's threefold approach to documentation, comprising the Master file, the Local file, and the CbCR.

Chinese-parented multinational groups that have global revenues greater than 5.5 billion RMB are required to submit a CbCR with their annual tax return (due May 31). At current exchange rates, the filing threshold is marginally lower than the EUR 750 million threshold set by BEPS.

If the ultimate holding entity of the taxpayer is outside China, but the taxpayer is assigned by the group as the reporting entity for the CbCR form, they shall also prepare a CbCR.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Under Public Notice No.42's requirement relating to transfer pricing documentation, a Special Issue File is required demonstrating that the taxpayer's related party debt levels are consistent with the arm's length principle if its debt to equity ratio exceeds specified ratios. While such documentation was previously required, it is required in more cases as the Public Notice No.42 expands the types of related party debt that are considered beyond loans to trade receivables, cash pooling balances and the like.

SUMMARY OF BEPS RESPONSE: CHINA

- What do we recommend clients do to face the impending changes in your territory?

The Public Notice No.42 is very significant in the Chinese transfer pricing context. Now is the time for multinational corporations to assess their Chinese operations in relation to their worldwide tax structure and value chains and determine if any changes are appropriate, because they will have to prepare for stringent new documentation requirements in advance of the June 30, 2017deadline.

We recommend that our clients review their pricing strategy on cross-border transactions, even if the amount of the transaction is below the threshold for transfer pricing documentation. The Chinese tax bureau is routinely reviewing outbound payments over USD 50,000; therefore, even relatively 'small' transactions may trigger attention from the authorities within China.

Considering China's increasing incorporation of the BEPS project, we suggest multinational corporations with Chinese entities adopt the following:

- Closely monitor Chinese BEPS-related updates;
- Review the rules/status of tax collection jurisdiction, tax residency and controlled foreign company regimes before setting up a new international operation;
- Review the implications of the unfinished or anticipated corporate transaction to see whether further amendment is necessary;
- Perform internal tax checks, especially on TP, functional analysis, internal controls, and foreign exchange compliance;
- Analyse potential PE risks created by the current business model in the post-BEPS environment;
- Analyse the intercompany debt structure and conditions; and
- Assess the overall supply chain profitability with reference to comparable companies' profitability in the same industry.

If well prepared, the company should be able to face the changes in a tax environment within China with a minimum increase of the cost of business operation and tax burden.

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SUMMARY OF BEPS RESPONSE: COLOMBIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Considering the Colombian government is interested in becoming a member of the OECD, under the last tax reform (Law 1819 of 2016), the Colombian Congress approved certain rules proposed by the Government that implemented several recommendations of the BEPS Action Plan. Measures adopted include: VAT on acquisition or licensing of intangibles from non-Colombian suppliers (Action 1); CFC rules (Action 3); new anti-abuse rule (Action 6) and CbCR for transfer pricing documentation purposes (Action 13). Additionally, Colombia executed the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (action 15); however, the local procedures for its enforceability have not been carried out

- How has the initiative impacted tax enquiries/audits?

As rules were recently introduced (December 2016) we have no knowledge of cases in which they have been applied during tax audits. However, the Colombian Tax Office has issued multiple official opinions regarding the above mentioned rules.

- Is your territory proposing to introduce country-by-country reporting?

Under Law 1819 of 2016, CbCR rules were introduced in the Colombian Tax Code for transfer pricing purposes. Colombian taxpayers carrying out operations subject to the transfer pricing regime are obligated to file an informative return and supporting documentation (Master file report, Local report, and CbCR) if thresholds are met.

Broadly speaking, a Colombian entity will be obligated to file a CbCR before the Colombian Tax Office if (i) it is a controlling entity of a multinational group or (ii) it was designated by the controlling entity of the multinational group as the responsible party for its filing.

The report shall include information regarding global income allocation and tax payment of the entities of the multinational group.

SUMMARY OF BEPS RESPONSE: COLOMBIA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There have not been any further amendments in this regard beyond the thin capitalisation regime introduced in 2012 and 2016. Colombia is awaiting acceptance into the OECD. Based on this acceptance, changes in tax law regarding BEPS are expected and, some of them, already adopted.

- What do we recommend clients do to face the impending changes in your territory?

Although no further changes are expected in 2018 due to the presidential election, we strongly recommend monitoring future legislative reform in Colombia. Colombia has subscribed to the MLI, however it is not yet in force.

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SUMMARY OF BEPS RESPONSE: CYPRUS

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

<u>Action Point 6</u>

As part of the MLI Cyprus ratified Article 7 (prevention of treaty abuse). This ratification means that the double tax treaties that Cyprus has entered into with countries which also ratify the instrument will be considered as automatically including LOB provisions as per the recommendations of Action Point 6.

<u>Action Point 8,9, and 10</u>

On June 30, 2017 the Cyprus tax department issued a circular revising the transfer pricing framework for companies with intra-group financing transactions and specifically back-to-back loan arrangements. The circular is in line with OECD Guidelines.

The new circular is applicable for any granting of loans or cash advances remunerated by interest (or which should be remunerated by interest) to related companies, financed by financial means and instruments, such as debentures, private loans, cash advances and bank loans.

Companies which have such activities must carry out an appropriate comparability analysis in order to determine whether transactions between independent entities are comparable to transactions between related entities.

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Simplification measures exist for companies which pursue a purely intermediary activity and which meet the substance requirements listed in the circular. Such companies will be considered to be compliant with the arm's length principle if they obtain a minimum return on assets financed after tax of 2%. Reliance on the simplified measure needs to be disclosed (when applied) in the tax return of the company and could be subject to exchange of information. This percentage will be regularly reviewed by the tax department, based on relevant market analyses.

Simplified measures were also introduced to determine the arm's length return on equity for a company having a functional profile comparable to certain regulated entities (reference is made to financial institutions). In such a case, a return on equity of 10% would be considered as compliant with the arm's length principle.

Any transfer pricing Analysis should be prepared by a transfer pricing expert.

The circular is in force as of July 1, 2017 and applies to both existing and future transactions.

SUMMARY OF BEPS RESPONSE: CYPRUS

Action Point 13

In May 2017 a revised decree was issued which replaces the initial decree issued in 2016. The revised decree provides clarity in relation to identifying the reporting entity for a multinational group and the reporting deadlines in accordance with the recommendations of Action Point 13. For further details of the revised decree see below.

Action Point 14

Cyprus ratified Article 16 (mutual agreement procedure) of the MLI thus introducing provisions which aim to introduce the minimum standards of BEPS Action 14.

Action Point 15

In June 2017, Cyprus along with 67 other countries and jurisdictions, signed the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting. This is in line with BEPS Action 15.

- How has the initiative impacted tax enquiries/audits?

The tax enquiries and audits in Cyprus have been increasingly focusing on substance recently, and in particular they are examining the following issues:

- If Cyprus resident companies are also resident elsewhere, documentation from the other jurisdiction where they also have tax residence may be requested, detailing information as to whether the majority of the board of directors' meetings take place in Cyprus and whether their minutes are prepared and kept in Cyprus. Additionally, information regarding whether the majority of the members of the board of directors are tax residents of Cyprus, as well as whether the shareholders' meetings take place in Cyprus too may be asked for. In addition, information as to whether the board of directors exercises control and makes key management and commercial decisions necessary for the company's operations and general policies may be asked for.

- Information as to whether the companies have issued any general powers of attorney, and the terms and conditions thereof, as opposed to companies only having issued special powers of attorney. Information as to whether the companies' corporate seals and all statutory books and records are maintained in Cyprus, whether filing and reporting functions are performed by representatives located in Cyprus, and whether agreements relating to the company's business or assets are executed or signed in Cyprus may also be requested. Additionally, updates are requested regarding whether all due tax returns have been filed, and all self-assessments for the tax years that are due have been paid.

SUMMARY OF BEPS RESPONSE: CYPRUS

- Moreover, recent enquiries concern whether companies have real physical presence in Cyprus, whether through an owned distinct office or via leasing space at a serviced business center, whether people are working part-time or full-time at the company's offices, and whether companies are having dedicated telephone, facsimile, and internet lines, as well as websites and e-mail addresses.

Further enquiries / audits are expected with the introduction of the new transfer pricing guidelines whereby companies which choose to apply the simplification measures could be subject to exchange of information.

- Is your territory proposing to introduce country-by-country reporting?

Following the issuance of the initial decree in late December 2016, in May 2017 a revised decree was issued which replaces the initial decree. The revised decree provides clarity in relation to identifying the reporting entity for a multinational group and the reporting deadlines in accordance with the recommendations of Action Point 13, specifically:

- The due date for submitting notifications required by the liable entities is the last day of the accounting year for submitting a country-by-country report. For accounting years commencing from January 1, 2016 to October 20, 2016, the first notification was due on October 20, 2017.
- The due date for submitting the country by country report required by the liable entities is 12 months after the last day of the accounting year for submitting a country by country report. The first year for which a country-by-country report is reportable is the accounting year commencing on or after January 1, 2016.
- For the purpose of submitting the notifications and the country by country reports entities will need to register with the government gateway portal.

SUMMARY OF BEPS RESPONSE: CYPRUS

- A Cyprus tax resident meets the below criteria has a requirement to electronically file a CbCR on behalf of the MNE group with the Cyprus tax authorities:
  - Is the ultimate parent company of an MNE group, and
  - Prepares consolidated financial statements or would be required to do so if the equity instruments were traded on a public stock exchange
- Under certain conditions in accordance with the secondary filing mechanism and/or under the surrogate parent mechanism, a Cyprus tax resident entity belonging to an MNE group with a non Cyprus tax resident ultimate parent may still be obliged to submit a CbCR in Cyprus.
- Each Cyprus tax resident constituent entity of an MNE Group should submit notification to the Cyprus tax authorities.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As per the BEPS Action 4 of limiting base erosion involving interest deductions and other financial payments, Cyprus would expect that this action will be more applicable to jurisdictions carrying relatively higher income tax rates and who will thus wish to limit the deduction of interest payable to third countries from their own taxable incomes. As such Cyprus has not yet implemented any changes in its legislation in relation to this. This is expected to be implemented by Cyprus within the deadlines imposed by the EU Anti Tax Avoidance Directive.

- What do we recommend clients do to face the impending changes in your territory?

Clients should regularly have their structures reviewed by professional advisors so as to ensure that they are compliant with all changes and reorganise their structures where necessary.

Special attention should be given to the new transfer pricing guidelines introduced which will impact a significant number of structures in Cyprus and as such companies should ensure compliance with these guidelines which are already in effect as of July 1, 2017. Further transfer pricing guidelines on other types of intra-group transactions are expected in the near future.

Even in the instances where no new legislation is expected to be introduced in Cyprus, Cyprus based groups should still ensure that they are aware of changes introduced in other countries where they operate.

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SUMMARY OF BEPS RESPONSE: DENMARK

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Denmark has been very active in incorporating the BEPS Actions into Danish law.

On May 1, 2015 a new international anti-abuse tax rule (GAAR) incorporated into section 3 of the Danish Tax Assessment Act (Ligningsloven) became effective. The intended purpose of the new GAAR was to implement BEPS Action Point 6.

- How has the initiative impacted tax enquiries/audits?

Each year the Danish tax authorities publish their activity plan for the year to come.

In the 2017 activity plan of the Danish tax authorities, the BEPS project is listed as a specific area of interest. As such, the Danish tax authorities will focus specifically on determining within which areas of existing Danish legislation, the findings and recommendations of the BEPS project can be incorporated.

Furthermore focus will be on transfer pricing compliance and payment of withholding tax on dividends, interests and royalties.

- Is your territory proposing to introduce country-by-country reporting?

CbCR was introduced by the Danish Tax Ministry on November 10, 2015 and was incorporated into section 3B of the Danish Tax Management Act (Skattekontrolloven) effective as of January 1, 2016.

The new provision is applicable to all industries and is a direct implementation of the BEPS Action 13.

As a main rule, Danish companies will only be required to submit a CbCR if (i) the Danish company is the ultimate parent of a multinational enterprise group, and (ii) the multinational enterprise group has a consolidated turnover of at least DKK 5.6bn (approx. EUR 750 million), in the 12-month period for which the report must cover.

SUMMARY OF BEPS RESPONSE: DENMARK

A Danish company which is not the ultimate parent may however still be required to submit a CbCR, if; (i) the foreign ultimate parent company is not legally obligated to completed and file a CbCR in its resident jurisdiction; (ii) there is no automatic exchange of information in place between the parent company's resident jurisdiction and Denmark, or (iii) there is a systematic error in the parent company's resident jurisdiction.

The CbCR must be submitted to the Danish tax authorities no later than 12 months following the last day of the income year covered by the report.

The CbCR requirement is applicable to fiscal years beginning on or after January 1, 2016. For Danish subsidiaries subject to reporting requirements in replacement of its parent company, the requirement should be applicable to fiscal years beginning on or after January 1, 2017.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Prior to the BEPS initiative, Denmark already had rules on interest deductibility. Thus far, no new rules regarding Action 4 have been proposed.

Deductibility of interest in Denmark is subject to three specific limitations; (a) thin capitalisation; (b) assets limitation; and (c) EBIT.

The thin capitalisation restriction applies if; (i) the Danish borrower has controlled debt; (ii) which exceeds DKK 10 million; (iii) with a debt-to-equity ratio exceeding 4:1 at the end of the tax year; and (iv) the Danish borrower is unable to prove that similar debt would be available from an unrelated third party. The restriction applies only to the portion of the controlled debt which should be converted into equity in order to avoid the limitation of deductibility.

In addition, if all (controlled and third-party) net financing expenses exceed DKK 21.3 million (approx. EUR 2.86 million), the tax deductibility of net financing expenses will be limited to (i) an amount corresponding to 3.2% (2017) of certain qualifying assets (asset limitation); and (ii) 80% of earnings before income and taxes (EBIT limitation).

SUMMARY OF BEPS RESPONSE: DENMARK

- What do we recommend clients do to face the impending changes in your territory?

Considering the increased focus especially with regard to transfer pricing and withholding tax on dividends, we advise clients to be prepared for intense scrutiny by the Danish tax authorities when carrying out business which relates to either one of those two areas.

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SUMMARY OF BEPS RESPONSE: FINLAND

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In Finland the legislative initiatives or projects with respect to the OECD's BEPS project have focused on revised documentation rules and CbCR. Additionally, EU legislation and proposed directives will have an impact on Finnish legislation.

The Finnish Tax Authority has released an updated version of its transfer pricing documentation instructions in January 2018. The updated instructions take into account the renewed legislation regarding transfer pricing documentation in accordance with BEPS.

A working group tasked with coordinating the BEPS project and monitoring its effects on a national level was set up in January 2016 and the working group presented its report in June 2017. The working group states that the BEPS project, among other things, cements the functionality and competitiveness of the Finnish tax system. As of January 1, 2017, the Finnish requirements are in line with the three-tiered documentation model introduced in the updated OECD Transfer Pricing Guidelines. The documentation requirement concerns Finnish companies and Finnish PEs of foreign companies that are a part of a group exceeding the following thresholds: the group has more than 250 employees or the group that has a turnover of more than EUR 50 million and a balance sheet exceeding EUR 43 million.

Also, in recent years, legislative changes have been implemented regarding the deductibility of interest to related parties and the tax exemption of dividends from subsidiaries (with corresponding tax deducted payments). Further, new legislation regarding the deductibility of interests has been proposed by the Finnish Government in January 2018.

- How has the initiative impacted tax enquiries/audits?

There has not been a direct impact. However, according to the Finnish Tax Administration's statement, guidance published by the BEPS project regarding transfer pricing (Actions 8-10) would be retrospectively applicable. Further, the guidance provided by the OECD Transfer Pricing Guidelines is adopted as a significant source of interpretation in the application of the arm's length principle.

- Is your territory proposing to introduce country-by-country reporting?

On September 15, 2016, the Finnish Government issued a proposal concerning TP documentation and CbCR. The proposal follows the recommendations proposed by the BEPS project (content and threshold for duty to file the CbCR).

The CbCR shall be prepared for financial years starting on or after January 1, 2016, and the report is due within 12 months after the end of the financial year concerned, meaning that CbCR for financial year 2016 would need to have been submitted by December 31, 2017. The notification of the company obligated to submit the CbCR shall be made by the end of the fiscal year for which the report is provided. However, for financial year 2016, an extension was granted, allowing the notification to be submitted by June 1, 2017.

The renewed articles 14 A-E and 32 of the Act on Tax Assessment have taken effect from the beginning of 2017.

SUMMARY OF BEPS RESPONSE: FINLAND

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

In 2014, Finland introduced a regulation generally corresponding to the BEPS recommendations which limit the deductibility of interest expenses on related party loans in business taxation.

The limitations will be applied only if the interest expenses exceed the interest income received by the company; i.e., if the company has net interest expense.

Interest may become non-deductible if the net interest expense exceeds 25 percent of the company's adjusted business profits (i.e., taxable business profits adjusted by the aggregate amount of interest costs, depreciation, losses and change in value of financial assets and group contributions received, deducted by the amount of group contributions paid).

The regulation contains a general safe haven of EUR 500,000 (approx. USD $552,000). If the net interest expense (including third-party and related-party interests) exceeds EUR 500,000, the interest limitation will be applied to the entire amount.

Interest payments for third-party loans will not be affected. However, third-party loans will be deemed intragroup loans if a related party pledges to an unrelated party a receivable as security for the loan and the unrelated party provides a loan to another related party, or the loan from an unrelated party is de-facto a back-to-back loan from a related party.

Further, the interest expense will remain fully deductible if the equity ratio of the company is equal to or higher than the consolidated equity ratio of the group. The regulation allows an indefinite carry forward of non-deductible interest expenses and deduction of such interest expenses, provided that the limitations are not exceeded.

In addition, EU's Anti-Tax-Avoidance Directive also contains amendments on the deductibility of interest. Finland has, along with other EU Member States, agreed to implement the Directive, and the Finnish government has proposed adjustments to the interest deductibility rules. The draft bill was published in January 2018 and the proposed adjustments should take effect from the beginning of 2019. Due to the Directive, and even tighter rules proposed by the Finnish government, the new regulation will most likely cover all loans, while the current regulation covers only intragroup loans. The current regulation applies only to companies taxed under the Business Tax Act, whereas the new regulation applies to all companies. Further, the new regulation applies to banks and insurance companies, and the previous equity comparison test will most likely be cut out.

SUMMARY OF BEPS RESPONSE: FINLAND

- What do we recommend clients do to face the impending changes in your territory?

Even though Finland has not yet implemented new legislation in relation to the BEPS project's action plan, it is expected that Finland would follow other European countries with the initiatives. Therefore, we recommend our customers closely monitor the initiatives and prepare the transfer pricing structures and pricing of intragroup transactions so they comply with the BEPS proposals.

The revised chapters to the OECD guidelines would underline the importance of risk taking functions in the functional analyses. The risk allocation should be based on actual behaviour of the parties where intragroup agreements would form a starting point for the analyses. This would, in our opinion, create a risk for incorrect interpretations by the tax authorities and thus, we would emphasise the importance of Advance Pricing Agreements, particularly regarding the remuneration of R&D activities in the future.

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SUMMARY OF BEPS RESPONSE: FRANCE

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

CbCR and the automatic information exchange between states were introduced in the Finance Bill 2016.

The content of the French CbCR form was clarified by a decree issued in September 2016. As expected, it is fully in line with the BEPS Action 13 final deliverables (10 quantitative items and information on main activities of group companies).

- How has the initiative impacted tax enquiries/audits in your territory?

Since 2015 the French government regularly publishes tax schemes that they presumed as abusive. To date, 23 were established. Such publication has no legislative value and constitutes a mere effort to inform taxpayers about the tax authorities' position.

The French Tax Authorities have been increasingly focused on tax efficient schemes and these are being frequently reassessed the last six months. In addition to the increase in the number of reassessments, the amount of tax at stake in these audits is much higher than seen previously. This upward swing has been occurring for a number of years; therefore, while not directly related to BEPS, it is aligned with the principles BEPS is advocating.

- Is your territory proposing to introduce country-by-country reporting?

Yes, the CbCR shall be electronically filed by a legal entity satisfying the following criteria:

- The entity has a legal need to present consolidated financial statements
- The entity holds or controls, directly or indirectly, subsidiaries or has branches set up in foreign jurisdiction
- The entity achieves an annual consolidated turnover (exclusive of VAT) equal to or greater than EUR 750 million
- The entity is not held by legal entities established in France liable to the CbCR obligation themselves or by legal entities established abroad being liable to the CbCR obligation in their own jurisdictions

Information will be required from 2016 onwards and must be submitted to the French Tax Authorities 12 months after fiscal year end.

SUMMARY OF BEPS RESPONSE: FRANCE

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Limitation rules for the deductibility of interest expense have been in force since 2014. The deduction of loan interest paid by a company (subject to corporate income tax) to a related company is allowed, provided that the lender is subject to tax on profits on the interest received amounting to at least 25% of the tax, as determined under French tax rules.

- What do we recommend clients do to face the impending changes in your territory?

Tax efficient projects are still possible if carefully managed, i.e. if particular attention to substance is given. So in order to defend such a scheme against challenges from the FTA during a tax audit, our recommendations are two-fold:

- Companies should prepare a defense file and gather any evidence demonstrating substance, particularly for related entities in low-tax jurisdictions.
- Companies remain as transparent and cooperative as possible for tax audit strategy purposes.

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SUMMARY OF BEPS RESPONSE: GERMANY

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The majority of proposals suggested by the OECD have already been implemented into German tax law. Germany is a strong supporter of the BEPS initiative and has influenced numerous issues that the OECD has recommended (including CFC measures, passive income controls, detailed transfer pricing documentation requirements, and interest barrier rules). Most recently, the legislator passed a law on the implementation of several BEPS-proposals. This law came into force on January 01, 2017. It provides the following changes in domestic law:

- As regards Action 13 the German legislator adjusted Sec. 90(3) General Tax Code (GTC) in order to fulfil the new requirements for the Local File and the Master File. CbCR is implemented in Sec. 138a GTC.
- With reference to Action 5 the German legislator adjusted the Administrative Assistance Law in order to enable the exchange of tax rulings between the EU member states.

Alongside this, the Act against Harmful Tax Practices with regard to Licensing of Rights of June 2, 2017 has resulted in the introduction of a new provision, Sec. 4j Income Tax Act (ITA), that prohibits the tax deduction of license fees as business expenses if such payments are subject to a preferential tax regime and no substantial business activity is carried out at the level of the licensor. The rule does, however, not apply if the income tax regime applicable at the level of the licensor stands in line with the nexus approach under BEPS Action 5.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Germany introduced earnings stripping rules effective January 1st, 2008. The basic German rule allows an unlimited deduction of interest expense up to the amount of interest income. Interest expense exceeding the interest income (known as net interest expense) is deductible up to 30 percent of the tax EBITDA. Germany thus takes an earnings-related approach depending on the EBITDA. General changes to the existing rules are not expected. However, the OECD mentioned that upper limits for interest deductions amounting to 20 or 30 percent of the EBITDA are seen as too high and are therefore inadequate to counteract BEPS.

With a recently passed law the legislator introduced a new rule to counteract the double deduction of operating expenses with respect to tax transparent entities. According to Sec. 4i ITA, operating expenses of a tax transparent entity are only tax deductible in Germany if these expenses did not lower the tax base in another state.

SUMMARY OF BEPS RESPONSE: GERMANY

- How has the initiative impacted tax enquiries/audits?

Taxpayers that are not covered by the definition of small or medium size entities are audited frequently in Germany. The tax audit is defined as an integral part of the tax assessment procedure. In the last few years, not only the Federal Central Tax Office, but also the local tax administrations have trained special teams with detailed economic knowledge for auditing transfer prices and other cross-border transactions.

In particular, the audit of transfer prices for intangible assets and the question of whether permanent establishments are constituted may be considered a focus in tax audits. Audits are generally much more frequent in Germany than in countries such as the UK. Lastly, the German tax authorities recently published tougher rules for accounting and tax information systems.

- Is your territory proposing to introduce country-by-country reporting?

Effective starting in 2017, CbCR has already been implemented in Sec. 138a GTC in line the OECD requirements. The first report has been prepared for 2016 and will be transmitted to the Federal Central Tax Office by the end of 2017.

- What we recommend clients do to face impending changes in your territory?

Bearing in mind the growing importance of transfer pricing in a large number of German tax audits, we strongly advise clients to carefully comply with the documentation requirements. Moreover, we recommend avoiding permanent establishments by means of contractual arrangements or choosing other forms of doing business due to the uncertainties and risks related to PEs. Clients affected by the CbCR should start to take the necessary actions (data gathering etc.) in order to prepare and submit the reports in due time.

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SUMMARY OF BEPS RESPONSE: GREECE

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Greece has already implemented CFC and thin cap rules, which are in line with the BEPS reports on Actions 3 & 4, respectively. The rules in question have in fact been effective since January 1, 2014, and are part of the Greek Income Tax Code. In the field of transfer pricing, Greece has introduced, effective since January 1, 2014, an explicit provision governing intra-group business restructuring, focusing particularly on intangibles and their appropriate valuation.

This is also a provision that is in line with the BEPS report on Action 8 (TP and intangibles). Other transfer pricing rules, including transfer pricing documentation rules, make an explicit cross-reference to the OECD Transfer Pricing Guidelines. Therefore all changes introduced by the BEPS reports on Actions 8-10 are already impacting intra-group transactions performed by Greek enterprises.

- How has the initiative impacted tax enquiries/audits in your territory?

Tax authorities are now more keen to review cross-border transactions performed by Greek enterprises, focusing particularly on transfer pricing and permanent establishment issues. The contemplated interpretation of the General Anti-Abuse Rule (effective since January 1, 2014) is also a matter that remains to be seen in the near future.

- Is your territory proposing to introduce country-by-country reporting?

Greece has not yet introduced CbCR requirements. However, Greece is among the 31 countries that signed the CbCR Multilateral Competent Authority Agreement in January 2016, taking the obligation to introduce such rules effective for years 2016 and onwards (initial reporting in 2017, concerning transactions performed during fiscal year 2016).

SUMMARY OF BEPS RESPONSE: GREECE

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As noted previously, an earnings-stripping rule has been in force in Greece since fiscal year 2014 (art. 49 of Law 4172/2014-The Greek Income Tax Code). According to this rule, the net deductible interest of Greek enterprises is limited to 30% of EBITDA from January 1, 2017 (the limit was initially 60%, from January 1, 2014 and gradually dropped to 50% effective from January 1, 2015 and 40% effective from January 1, 2016).

The limit in question only applies if the net interest exceeds EUR 3 million per year (starting from January 1, 2016). This limitation applies in parallel with transfer pricing rules. Therefore, an arm's length interest expense may still be disallowed, if it falls within the earning stripping rule limitations.

- What do we recommend clients do to face the impending changes in your territory?

Review the current level of substance of their existing intra-group structures, for the purposes of proactively enhancing their structures (e.g. in terms of resources, functions, appropriate pricing) in view of the new era of tax audits moving away from form and focusing particularly on substance.

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SUMMARY OF BEPS RESPONSE: INDONESIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

As the G20 leaders endorse the BEPS action plan, the Government of Indonesia, as a member of G20, is actively involved in discussing the BEPS action plan with the OECD. Therefore, the Indonesian Tax Office ("ITO") is preparing several new regulations that will adopt the BEPS Action Plan. The incoming regulations and the amendment of the existing regulations shall specify the application of arm's length principle, which refers to the guidelines from BEPS Action Plans No. 8, 9 and 10; transfer pricing documentation, which will incorporate BEPS Action No. 13 regarding CbCR; and MAP and APA programs, which will incorporate BEPS Action Plan No. 14 regarding dispute resolution.

- How has the initiative impacted tax enquiries/audits?

BEPS has impacted tax auditors' way of performing TP audits especially in the context of intangibles. A company's contribution to the development, enhancement, maintenance, protection and exploitation of an intangible is one of the major issues during a transfer pricing audit. It is often necessary to prove that an Indonesian company imports the intangible from an overseas company and has no contribution related to it.

Furthermore, in line with the development of the BEPS initiative, exchange of information has also become more important. The importance of this process is particularly emphasised by the tax auditors' determination to have access to the financial statements of Indonesian taxpayers' overseas counterparties in order to have the complete picture of a group's supply chain.

SUMMARY OF BEPS RESPONSE: INDONESIA

- Is your territory proposing to introduce country-by-country reporting?

The ITO is still in the process of preparing new regulation on transfer pricing documentation, which will adopt BEPS Action No. 13 regarding CbCR. Currently, transfer pricing is an important issue for multinational companies in Indonesia because the ITO is requiring multinational companies to be more transparent than in prior years.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Indonesia has just issued a Minister of Finance Regulation Number 169/PMK.010/2015 regarding the appropriate debt to equity ratio. Under this regulation, the acceptable debt to equity ratio is 4:1 and it shall apply to all industries with certain exceptions.

The definition of debt under this regulation shall include the balance of long-term loans and short-term loans, including interest bearing accounts payable.

The Government of Indonesia plans to apply the Specific Anti Avoidance Rule by issuing this regulation to avoid the abuse of interest expense to reduce the corporate income tax.

- What do we recommend clients do to face the impending changes in your territory?

We recommend clients review and arrange the related party transactions with reliable supporting evidence provided with reference to third party comparables.

TP documentation is a reliable source to assess whether a company has a potential risk in the future. Therefore, clients should prepare thorough TP documentation, supported by reliable and sufficient arm's length evidence.

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SUMMARY OF BEPS RESPONSE: IRELAND

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Ireland has introduced CbCR for MNE Groups for accounting periods commencing on or after January 1, 2016.

Ireland has also amended its securitisation legislation to eliminate double non-taxation and has recently strengthened GAAR rules. While these amendments were considered and implemented prior to the recommendations from BEPS, it follows the logic BEPS is hoping to implement particularly around the effects of hybrid instruments.

- How has the initiative impacted tax enquiries/audits?

Audits within Ireland are focusing increasingly on substance, including the specific activities currently being undertaken in Ireland, and the seniority of any staff members undertaking such activity. Further, as the transfer pricing rules have been introduced in Ireland relatively recently, transfer pricing has been a more prominent feature of audits (and indeed specific transfer pricing audits now occur).

The authorities have recently strengthened and expanded their transfer pricing audit team with the recruitment of a number of experienced professionals from both practice and industry backgrounds.

Additionally the transfer pricing audit process has undergone reform recently within Ireland with the introduction of a ‘desk-audit’ approach. Under this model companies are essentially asked to self-review their transfer pricing, via a Transfer Pricing Compliance Review (“TPCR”).

Should the authorities not be satisfied by the TPCR they may then initiate a formal tax-authority led audit. TPCRs and standard taxation audits are on the increase in Ireland.

- Is your territory proposing to introduce country-by-country reporting?

Ireland has introduced CbCR for MNE Groups for accounting periods commencing on or after January 1, 2016.

SUMMARY OF BEPS RESPONSE: IRELAND

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Ireland already has complex interest deductibility rules and any legislative changes as a direct result of BEPS will likely be kept to a minimum.

The Department of Finance has previously stated that "the provisions on interest deductions are deferred until 2024 for countries like Ireland, that already have strong targeted rules (regarding interest deductibility). There are also strong grandfathering provisions to provide certainty to taxpayers."

- What do we recommend clients do to face the impending changes in your territory?

Clients are advised to review their activities to ensure that adequate substance exists within Ireland justifying substance and transfer pricing arrangements currently in place.

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SUMMARY OF BEPS RESPONSE: ITALY

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Patent Box regime

The 2015 Budget introduced a patent box regime, which grants a 50% percentage exemption on income derived from the exploitation or the direct use of a qualifying IP both for corporate income tax (“CIT”) and Italian Regional Activities of Production tax (“IRAP”).

The regime is in line with the OECD ’nexus approach’.

Hybrid mismatch anti-abuse legislation

Italy has introduced a rule to limit the effect of hybrid mismatches, where income paid by a foreign company to an Italian shareholder (on shares or any form of securities or similar hybrid instruments) may only be taxable as a 'dividend' (and therefore mostly tax exempt) if it can be demonstrated that the same payment has not been deducted from the taxable income of the foreign company.

Web tax

In 2019 a new tax on digital services provided to Italian enterprises and Italian permanent establishments of foreign entities will be introduced.

Definition of permanent establishment

The domestic definition of permanent establishment has been amended in line with the OECD’s recommendations included in the 2015 Final Report on BEPS Action 7.

Controlled Foreign Company (“CFC”) regulation

In September 2015 Italy revised the anti-avoidance provisions on CFCs:

- Limiting the applicability of CFC rules to controlled companies (and no longer for affiliated companies);
- Repealing the mandatory ruling procedure required to obtain exemption from the application of CFC rules (the ruling remains an option). “Business test” or “subject to substantial tax test” can be documented in case of tax audit.

Additional legislation

In August 2015, Italy approved rules that technically define the concept of 'abuse of law’, according to the rules on aggressive tax planning provided by Recommendation n. 2012/772/UE. Taxpayers may ask for a general ruling to determine if the transactions that they are about to carry out may constitute abuse of law. No criminal charges would be linked to the ‘abuse of law’ behaviour.

Recent changes in the law seem to exclude the concept of criminal offences for the legal representatives in TP evaluation issues.

New types of rulings were introduced in order to facilitate a common tax approach between taxpayers and tax authorities, including those for companies with considerable investments in Italy (EUR 30m) and effects on the levels of employees involved.

An optional branch exemption regime has also been introduced.

SUMMARY OF BEPS RESPONSE: ITALY

- How has the initiative impacted tax enquiries/audits?

In our experience, the audit force is continuing to target large multinational organisations within Italy.

A specific division within the tax authority has created teams in each region devoted to controls and auditing of 'large taxpayers', defined as companies with a turnover exceeding EUR 100m. The tax inspectors within this specialised division are generally high level staff who have received significant training on various tax avoidance / evasion schemes. As such, these specific regional divisions are becoming increasingly efficient and effective in targeting such schemes as part of their audits.

Specific areas of challenge are regarding the existence of hidden Permanent Establishments (PEs) (relating to Action 7 of BEPS) and treaty abuses (Action 6). Additionally, transfer pricing issues are subject to ever increasing challenges, not only through the use of TP adjustments but also on the basis of re-characterisation of intercompany loans into capital. In regards to the allocation of free capital to the branches of foreign entities, Italian tax law has expressly stated that it must be determined according to the OECD principles, bearing in mind functions performed and risks assumed.

- Is your territory proposing to introduce country-by-country reporting?

The Italian 2016 Budget Law introduced CbCR. The regulations are, to a great extent, in line with the BEPS Action 13 deliverables. An implementing decree was issued in order to specify the procedural aspects.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Italian tax legislation concerning interest deductibility was modified in 2007 when a 30% EBITDA passive interest limitation was introduced.

- What do we recommend clients do to face the impending changes in your territory?

We are advising clients to review their current corporate and tax structure to assess the level of 'tax aggression'. The concept of 'substance over the form' is taken into consideration to a greater and greater extent by tax authorities in their tax audits.

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SUMMARY OF BEPS RESPONSE: JAPAN

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Action 1

VAT rules have been reformed and the activities that are described below, conducted by overseas business operators which were not subject to the Japanese VAT before, are now subject to VAT:

- Distribution of digital books, music, images and software (including various applications such as games) via the internet
- Services for utilising software and databases via the cloud by customers
- Distribution of advertising via the internet
- Services for utilising internet shopping and auction websites by customers
- Online sales of game software
- Hotel reservation and restaurant reservation websites (services fees will be collected from hotel and restaurant companies)
- Online foreign language lessons.

Action 2

The scope of the foreign dividends tax exemption regime has been amended such that dividend distributions from a jurisdiction which allows tax deduction of the dividend distributions are now excluded.

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Certain Japanese tax regulations and practices deal with anti hybrid arrangements. For example, the DTT between the US and Japan contains a linking rule (paragraph 6 of article 4).

Action 3

Japanese tax law contains CFC regulations. Recently, there have been five court cases involving toll manufacturing arrangements between Hong Kong and mainland China concerning CFCs.

Action 6

An exit tax has been introduced that affects wealthy individuals: they will now be subject to tax on certain unrealised gains on assets upon moving their resident status overseas.

Japanese tax law does not contain a GAAR in the strict sense of its definition, but does contain a GAAR specifically applicable to cross border transactions between related parties within global multinationals. This GAAR has been applied against some global multinationals already.

Action 13

TP documentation rules have been amended to follow OECD recommendations by the 2016 tax reform.

SUMMARY OF BEPS RESPONSE: JAPAN

- How has the initiative impacted tax enquiries/audits?

In March 2015, the Tokyo High Court decided on the IBM tax litigation case, cancelling tax assessments against IBM in the years between 2002 and 2005. This settlement amounted to USD $1.2 billion in total. One aspect of the case concerned hybrid mismatch arrangements. Following the case resolution the tax authorities amended the tax regulation to ban this structure, thus it is now unfeasible to conduct any similar arrangements in Japan.

There was no concept of BEPS and the hybrid mismatch at the time the case related to in 2005. Now, it can be concluded that the Japanese tax authorities are trying to establish a new framework for preventing BEPS alongside the OECD's initiative.

- Is your territory proposing to introduce country-by-country reporting?

CbCR is now required for certain designated global corporate groups with total revenue on a consolidated basis of 100 billion Yen or more during the most recent fiscal year (use of OECD XML SCHEMA is planned.)

A domestic corporation and a foreign corporation having a permanent establishment in Japan, which is a member of the specified multinational enterprise group (i.e. multinational enterprise group whose total revenue on the consolidated basis for the preceding year was 100 billion yen or more) must file the documents described below to the tax office through the e-Tax (electronic tax) filing system.

- Ultimate Parent Company Report
- CbCR, which requires the information described below.
  - Revenues, profit (loss) before income tax, income tax paid (on cash basis), income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash and cash equivalents
  - Name of the member, tax jurisdiction of resident, tax jurisdiction of home office if tax jurisdiction of resident is different, and their main business activities
  - Any other information relevant to the above
- Master file, which requires the information described below.
  - Chart illustrating the specified multinational enterprise group's legal and ownership structure and geographical location of operating entities

SUMMARY OF BEPS RESPONSE: JAPAN

- General written description of the specified multinational enterprise group's business including:
  - Important drivers of business profits;
  - A description of the supply chain for the group's five largest products and / or service offerings by turnover;
  - A description of the supply chain for any other products and / or services amounting more than 5 percent of group turnover;
  - A list and brief description of important service arrangement between the members other than research and development services;
  - A brief written functional analysis describing the principal contributions to value creation by individual entities within the group; and
  - A description of important business restructuring transactions, acquisitions and divestitures.
  - Other items described I the article 22-10(5) paragraph 1 of Ordinance
- Additional guidance was released by the National Tax Agency of Japan on August 10, 2017 in the English language to guide taxpayers in electronic filing.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Japanese tax law contains the thin capitalisation rule and the earnings stripping rule. There is no proposal to make amendments to these rules.

- What do we recommend clients do to face the impending changes in your territory?

All planned transactions should be structured in accord with the Japanese tax laws and relevant double tax treaties.

In addition, the planning should include a persuasive support documentation of the transaction to prove its legitimacy during an initial stage of tax audit.

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SUMMARY OF BEPS RESPONSE: KOREA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In an effort to reflect the BEPS Action plan, the Korean Government has amended the relevant tax regulations including the AITA, in line with OECD Guidelines.

The relevant existing statutes provide the following provisions for taxation:

- Imposing taxes upon the actual beneficiary, not a nominal holder
- Imposing taxes associated with transfer pricing based on the arm's length price
- Interest paid to a foreign controlling shareholder will be deemed as a dividend and the relevant tax will be imposed accordingly (thin capitalisation rule)
- In cases where a local resident invests in a foreign corporation having its headquarters in a country which taxes 15% or less of the actual income generated, the amount from distributable reserve income of the foreign corporation at the end of each fiscal year belonging to the local resident will be deemed as a dividend paid to the local resident and will be taxed accordingly.
- Exchanging tax and financial information between nations.

In particular, pursuant to the amendments to the AITA, a taxpayer engaged in an international transaction with a foreign related party must file both an International Transaction Schedule and an International Transactions Information Consolidated Report (refers to Consolidated Corporate Report, Individual Corporate Report and CbCR) with the competent tax authorities. The BEPS Action Plan will be reflected continually in the relevant rules and regulations in the future.

- How has the initiative impacted tax enquiries/audits?

In brief, the amendments require multinational corporations to submit the International Transactions Information Consolidated Report reflecting the corporate activity and transaction flow. By doing so, the competent tax authorities would be able to tax foreign companies in Korea such as Google and Apple. In the past, multinational corporations in Korea like Google and Apple operated in the form of a limited liability company (yuhan-hoesa), which is free from public announcements and external audits, as such, it was quite difficult, if not impossible, to find out the precise sales volume and profit structure.

SUMMARY OF BEPS RESPONSE: KOREA

- Is your territory proposing to introduce country-by-country reporting?

A taxpayer engaged in an international transaction with a foreign related party must file the international transaction schedule with the competent tax authority within three months from the last day of the month in which the fiscal year ends. In addition, pursuant to newly established Article 11 Section 1 under the AITA, a subsidiary must also submit an International Transactions Information Consolidated Report (refers to Consolidated Corporate Report, Individual Corporate Report and CbCR) with the competent tax authorities, provided by Presidential Decree in regard to business activities and transaction details on anyone whose volume of foreign related party transaction of the subject tax year and taxpayer's sales exceed the amount prescribed by Presidential Decree.

In cases where the International Transaction Schedule and/or International Transactions Information Consolidated Report is / are submitted as described below, a profit and loss statement of a foreign related party must also be submitted together with the aforesaid schedule and/or report. If violated, a subsidiary may be subject to a fine not exceeding KRW 100 million.

<u>International Transaction Schedule</u>
In cases where the international transaction schedule is submitted, a profit and loss statement summary of a foreign related party evidencing international transactions with the foreign related party must also be submitted together with the schedule.

<u>International Transactions Information Consolidated Report</u>
The International Transactions Information Consolidated Report (Form 8-3) refers to the Consolidated Corporate Report, Individual Corporate Report, and CbCR.

- The Consolidated Corporate Report includes information on the taxpayer and all related corporate entities.
- The Individual Corporate Report includes information on the taxpayer.
- The CbCR includes information on country-by-country taxpayer and related corporate entities.

Certain reports of the International Transactions Information Consolidated Report are required if the taxpayer meets the criteria set forth below.

- If the taxpayer is a domestic corporation or foreign corporation with a domestic place of business and meets both elements below, the Consolidated Corporate Report and Individual Corporate Report must be filed.
- The total sum of transactions with foreign related parties exceed KRW 50 billion; and
- Its sales revenue for the fiscal year exceeds KRW 100 billion.

SUMMARY OF BEPS RESPONSE: KOREA

- If the taxpayer is a domestic parent company or a taxpayer with foreign controlling shareholders and meets the two elements below, the CbCR must be filed.
- Domestic parent company (ultimate parent entity of multinational enterprise group)
  - If sales exceed 100 billion Won according to its consolidated financial statements for the immediately preceding tax year
- Taxpayer with foreign controlling shareholders
  - The laws of the country where such controlling shareholders are located do not require CbCR submission; or
  - There is no tax treaty between Korea and such country etc. whereby the CbCR can be exchanged.

The domestic parent company and domestic subsidiary / branch of a multinational enterprise group must submit material related to the taxpayer obligated to submit the CbCR within six months from the end of the business year to the tax office with jurisdiction over the place of tax payment.

The Consolidated Corporate Report should contain the following information of the taxpayer and all related corporate entities:

- Organisational structure
- Business description
- List of intangible assets
- Financing activities
- Financial status

The Individual Corporate Report should contain the following information of the taxpayer:

- Organisational structure
- Business description
- Details of transactions with foreign related parties
- Price calculation information related to transactions mentioned above
- Financial status
- Other details specified in the relevant ministerial decree

The CbCR should contain the following information of the taxpayer and related corporate entities:

- Country-by-country revenue details
- Country-by-country before-tax profits and losses
- Country-by-country capital
- Country-by-country major business activities

SUMMARY OF BEPS RESPONSE: KOREA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The thin capitalisation rule is applicable to any borrowing from a “foreign controlling shareholder” by a domestic corporation. The debt / equity ratio of 6:1 applies in the case of a foreign parent (or head office) in the financial industry and the debt / equity ratio of 2:1 applies in all other cases.

- What do we recommend clients do to face the impending changes in your territory?

In order to be compliant with the statutory requirements for filing the international transaction schedule and International Transactions Information Consolidated Report, the subject company should prepare the relevant data and documentation in advance. In other words, an objective and fair transfer pricing method should be used, in cases of multinational corporations, a rational tax policy should be adopted by analyzing taxation details of each country and comprehensively analyzing the entire taxation details of all countries involved simultaneously.

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SUMMARY OF BEPS RESPONSE: LUXEMBOURG

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Transfer Pricing

In 2015, the Luxembourg tax legislator formalised the application of the arm's length principle and introduced certain transfer pricing documentation requirements into Luxembourg tax law. Notably, the new transfer pricing rules allow upward and downward adjustments when advantages are shifted between associated enterprises. The 2017 budget law introduced a new provision which provides fundamental guidance on the application of the arm's length principle under Luxembourg tax law and reinforces the authoritative nature of the OECD TP Guidelines for Luxembourg tax purposes. Finally, on December 27, 2016 the Luxembourg tax authorities released a new circular on the tax treatment of intra-group financing activities which provides guidance on the practical application of the arm's length principle to intra-group financing activities, ensuring consistency with all international transfer pricing standards.

Countering harmful tax practices (Action 5)

Luxembourg has repealed its intellectual property ("IP") 80% income tax exemption regime effective as of July 1, 2016 as well as its IP net wealth tax exemption regime as of January 1, 2017. At the same time, it introduced some transitional rules which will apply until 2021.

In August 2017, a draft law was presented to Parliament which introduces a replacement regime in line with the so-called OECD nexus approach, which would enter into force in 2018.

Exchange of information / ruling process

Luxembourg has confirmed its support for the increased ease of exchange of information and belongs to the group of "early adopters" of the OECD CRS. CRS has now been implemented into Luxembourg law and financial information in relation to calendar year 2016 has been exchanged in 2017. Luxembourg has implemented the EU Directive 2015/2376 on automatic exchange of information on tax rulings. The 2014 EU administrative cooperation directive has also been implemented into Luxembourg Law. The mutual assistance convention and the FATCA agreement with the US have been implemented/ratified.

Additionally, the ruling process has been formalised and the filing of rulings is now subject to a fee ranging between EUR 3,000 and EUR 10,000. Moreover, a ruling commission is in charge of confirming the tax treatment rather than a single tax inspector. The introduction of this commission will make sure that the positions of the tax authorities are harmonised and it could render the process more efficient in the long run. Still, considering the recent changes that have made transfer pricing rules and documentation requirements become clearer, it may in certain cases be advisable for clients to rely on a tax opinion and solid transfer pricing documentation.

SUMMARY OF BEPS RESPONSE: LUXEMBOURG

Hybrid instrument changes (Action 2)

Changes have already occurred at the EU level, with the amendment to the EU Parent-Subsidiary Directive to stop double non-taxation created by the use of certain hybrid instruments, which Luxembourg has implemented into its domestic tax law. Additional changes may be introduced in accordance with the EU Anti-Avoidance Directive. Finally, Luxembourg will have to implement the Directive on hybrid mismatches with third countries (ATAD 2).

Other changes

The 2017 tax reform law has reinforced Luxembourg's appeal for international investors.

As part of this reform, a progressive reduction of the corporate income tax rate has been introduced, bringing the global corporate tax rate applicable in Luxembourg-city from 29.22% in 2016 down to 27.08% in 2017 and 26.01% in 2018. From 2019, a further decrease of the rate may be expected.

- How has the initiative impacted tax enquiries/audits?

Audits, even though their number has increased in recent years, are generally less problematic in Luxembourg at present, as the majority of large corporations are used to clarifying the tax implications of their investments upfront with the tax authorities (ruling), requiring open disclosure with the tax authorities regarding the functions and structuring to be undertaken locally. However, the Luxembourg authorities are increasingly focusing on detailed transfer pricing studies and documentation, when considering the tax treatment of a Luxembourg company, and will look to ensure any functions that are anticipated to be based in Luxembourg are treated appropriately.

- Is your territory proposing to introduce country-by-country reporting?

Luxembourg has already implemented into Luxembourg law EU Directive 2016/881 on CbCR.

SUMMARY OF BEPS RESPONSE: LUXEMBOURG

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

So far, no action has been taken and nothing has been announced in this respect. However, Luxembourg will have to implement the EU Anti-Tax-Avoidance Directives (ATAD 1 and ATAD 2) which includes, among other regulations, limitations on interest deductibility.

- What do we recommend clients do to face the impending changes in your territory?

The impact of BEPS measures on Luxembourg investment structures has to be analysed on a case-by-case basis with a view to identify potential BEPS pressure areas and to determine structure alignments so as to respond to the requirements in the other jurisdictions involved. In general, Luxembourg companies should be equipped with an appropriate substance for the activities performed. This may range from an outsourcing model whereby the services rendered by external service providers are monitored by the directors of the company to a model with significant substance (e.g. at the level of a master holding company or a management company). In terms of structuring, investors need to consider developments in Luxembourg and foreign tax law alike. Moreover, Luxembourg companies should substantiate the arm's length character of conditions agreed upon in material controlled transactions.

Transfer pricing documentation is a useful risk management tool. When investment structures involve hybrid mismatch arrangements, the impact of ATAD 2 has to be carefully analysed and structure alignments be considered in order to manage the overall tax position. Ultimately, the efficient structuring of investments and business activities via Luxembourg requires a tailor-made approach giving regard to developments in Luxembourg and abroad as well as changes of the international tax environment.

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SUMMARY OF BEPS RESPONSE: MALAYSIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Although Malaysia is not a member of the OECD, it has been actively participating in the discussions on the BEPS Action Plan.

Malaysia is a signatory to the Multilateral Competent Authority Agreement on CbCR and Multilateral Competent Authorities Agreement on Common Reporting Standards, and is also involved in other BEPS initiatives. There has also been legislative changes to the exchange of information in order to facilitate the automatic exchange of information with other tax administrations.

In line with the BEPS Action 13 regarding CbCR, the Malaysian IRB introduced the Income Tax (CbCR) Rules 2016. The Rules were announced on December 23, 2016 and came into operation on January 1, 2017.

These Rules set out the requirements for filing a CbCR and other related requirements and apply to a multinational corporation group where:

- Any of its constituent entities have cross border transactions with its other constituent entities
- Total consolidated group revenue in the financial year preceding the reporting financial year is at least RM3 billion
- The ultimate holding company is incorporated under the Companies Act 1965 or under any written law and resident in Malaysia
- Constituent entities are incorporated or registered under the Companies Act 1965 or under any written law or the under the laws of a territory outside Malaysia and resident in Malaysia

The IRB has also revised the 2012 Malaysian TP Guidelines in July 2017, in line with the 2017 OECD TP Guidelines and BEPS Action Plans.

SUMMARY OF BEPS RESPONSE: MALAYSIA

- How has the initiative impacted tax enquiries/audits?

In terms of audits carried out on taxpayers, Malaysian tax authorities have not focused on audits relating to BEPS issues to-date as the first CbCR would only be submitted by December 31, 2018. However, the number of normal transfer pricing audit cases have increased substantially in the last one year or so.

- Is your territory proposing to introduce country-by-country reporting?

In line with the Income Tax (CbCR) Rules 2016 which came into operation on January 1, 2017, the due date for the first CbCR submission (for reporting entities) and the CbCR notification (for reporting and non-reporting entities) are December 31, 2018 and December 31, 2017 respectively (for companies with December financial year ends).

In addition, notification to the IRB is required to be made by the following companies in a prescribed form (for reporting and non-reporting entities).

Reporting entity is defined as:

- A Malaysian ultimate holding company which is required to file a CbCR in Malaysia; or
- A Malaysian company appointed by a foreign multinational corporation as a surrogate holding company.

Non-reporting entity is defined as:

- A company which is a tax resident in Malaysia; and
- Part of a foreign multinational corporation of which the foreign ultimate holding company is required to file a CbCR in its country of tax residence.

SUMMARY OF BEPS RESPONSE: MALAYSIA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

In addition to the rules in place in Malaysia to limit the deductibility of interest, the thin capitalisation provision was introduced within the ITA [Section 140A(4)] from January 1, 2009 onwards. However, the thin capitalisation provision will be deleted with effect from January 1, 2018 onwards.

Instead, earnings stripping rules will come into effect from January 1, 2019 and will involve the application of a fixed ratio (ranging from 10% to 30% of either EBIT or EBITDA).

- What do we recommend clients do to face the impending changes in your territory?

Transfer pricing documentation and CbCR will be used by the IRB in assessing whether a company has a potential risk in the future. Therefore, clients should prepare robust TP documentation to demonstrate that there is real substance to their transactions.

In view of the implementation of the earnings stripping rules from January 1, 2019, clients are encouraged to perform a thorough review of their intercompany debt arrangements as soon as possible. Clients also need to consider the impact of the new rules on loss making companies and highly geared companies within the group. Where a fixed ratio is expected to be exceeded, clients should endeavour to restructure debts prior to December 31, 2018.

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SUMMARY OF BEPS RESPONSE: MALTA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Maltese authorities have indicated that companies incorporated in Malta may have to comply with additional requirements on substance (or value creation) to have physical and operational / effective presence in Malta. Even though the full scope of such a requirement are currently unclear, Maltese tax law currently only requires that companies have either their registered seat or their place of effective management in Malta. In practice however, the Maltese tax authorities are already paying a lot of attention to substance before issuing tax residence certificates.

Further, Malta has confirmed its support for the increased ease of exchange of information with respect to the OECD CRS and several tax transparency initiatives. Indeed, legislation has been amended to cater for the automatic exchange of information as provided for in the EU Directive.

- How has the initiative impacted tax enquiries/audits?

Tax enquiries and audits are not a significant Maltese issue since in Malta there is a culture of discussing and obtaining written tax confirmation or advance revenue rulings from the tax authorities. However, the Maltese tax authorities are increasingly focusing on transfer pricing issues and to a larger extent on substance, especially before issuing tax residence certificates.

- Is your territory proposing to introduce country-by-country reporting?

Malta has already implemented / adopted the EU Directive with respect to CbCR. Relevant forms which must be completed and submitted to the tax authorities have also been implemented.

SUMMARY OF BEPS RESPONSE: MALTA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Maltese tax legislation provides that interest is deductible for income tax purposes if it is wholly and exclusively incurred in the production of the income. Thus, sums payable by a person by way of interest upon any money borrowed, is deductible where the tax authorities are satisfied that the interest is payable on capital employed in acquiring the income.

The Minister for Finance for Malta recently introduced a notional interest deduction, which allows corporations and partnerships to deduct returns on equity financing up to 90% of chargeable income. Any residual may be carried forward to the next year.

- What do we recommend clients do to face the impending changes in your territory?

We strongly recommend clients review and assess their current structure and issues related to substance, commercial considerations, value creation to ensure that they are in line with the recommendations/requirements.

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SUMMARY OF BEPS RESPONSE: MAURITIUS

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Mauritius is a member of the all inclusive framework, which brings together countries and jurisdictions to collaborate on and implement the BEPS Actions, and has agreed to implement the minimum standards (BEPS Actions 5, 6, 13, and 15). In terms of implementation it has signed up to the multilateral standards and has 23 treaties, as covered treaties with the PPT, as a measure to counter abuse under Action 5. As far as the remaining 19 treaties, Mauritius has moved to bilateral renegotiations and the measure to counter treaty abuse is subject to PPT. Regarding harmful tax practices, based on the review carried out, there were certain regimes, such as regional headquarters and treasury companies, which were cleared as not harmful. For regimes that were deemed to be harmful, the Mauritius government intends to review these regimes in 2018.

- How has the initiative impacted tax enquiries/audits?

We have seen an increased number of audits surrounding the arm's length provision under section 75 of the Mauritius Income Tax Act. Mauritius does not have any transfer pricing legislation, but relies on the OECD transfer pricing Guidelines to support their challenges. There are also tax assessments regarding interest free loans as these are deemed to be not at arm's length, hence imputing interest in the assessment to the taxpayers.

- Is your territory proposing to introduce country-by-country reporting?

On February 19, 2018, the Mauritius Government enacted The Income Tax (CbCR) Regulations 2018 (the "Regulation"), requiring the ultimate parent or surrogate entity (nominated as being the ultimate parent company for CbCR purposes) of a MNE Group, that is resident for tax purposes in Mauritius, to file a country-by-country report with the Director General of the Mauritius Revenue Authority.

SUMMARY OF BEPS RESPONSE: MAURITIUS

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

In the Mauritius Income Tax Act, interest is deductible if it is wholly and exclusively incurred in the production of income. Thus, sums payable by a person by way of interest upon any money borrowed is deductible where the tax authorities are satisfied that the interest is payable on capital employed in acquiring that income.

As mentioned above in the case of excessive interest deduction, where it is considered that these are not at arm's length, the MRA may make adjustments. The MRA has also issued rulings in the treatment of hybrid instruments whereby it is stated that it will be inclined to follow the international accounting standards by looking at the substance of the instrument rather than the form.

- What do we recommend clients do to face the impending changes in your territory?

We advise clients to move to have adequate commercial substance in the structure to withstand any challenges under the PPT. We strongly recommend clients review and assess their current structure and issues related to substance, commercial considerations and value creation to ensure that they are in line with the world order.

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SUMMARY OF BEPS RESPONSE: MEXICO

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

See below regarding transfer pricing, interest, royalties and technical assistance. Also, the negotiation of treaties with limitation of benefits clauses occurs very frequently (including in renegotiations of treaties). Regarding Action 12, Mexico has implemented a disclosure return in which taxpayers must disclose a number of listed transactions that are considered "relevant", which will provide additional information of tax planning being carried out by taxpayers. Finally, following Action 15, Mexico is signatory of the MLI and has included all the treaties signed with other countries as eligible treaties for the MLI.

- How has the initiative impacted tax enquiries/audits?

Tax audits are beginning to be more substantive than formal and therefore requirements of information are more and more detailed so that they can analyze the economics of the payments rather than the formalities.

- Is your territory proposing to introduce country-by-country reporting?

Yes, in line with the recommendations issued by the OECD with respect to the BEPS action plan, several changes were introduced to the Mexican income tax law and federal tax code. Specifically, the obligation to file different transfer pricing disclosure returns connected to the transactions performed by multinational enterprise groups with non-Mexican related parties was mandated. The disclosure returns that have to be filed are the following:

  - Master file disclosure return (must include organisational structure, description of activity, intangibles and financial activities with related parties, as well as financial and tax position).
  - Local file disclosure return which must include description of the organisational structure, strategic and business activities, as well as financial information of the taxpayer and of the operations or entities used as comparable for the transfer pricing analysis.

SUMMARY OF BEPS RESPONSE: MEXICO

- CbCR disclosure return, for Mexican multinationals with consolidated revenue that exceeds approximately US $628 million. CbCR to include information of worldwide distribution of turnover and taxes paid; indicators of localisation of economic activities in the different countries in which the group operates detailing total turnover separated in related and unrelated, pre-tax earnings or losses, income tax effectively paid, income tax determined during the year, equity accounts, retained earnings or losses, number of employees, fixed assets and inventory. The information must also include a list of all the entities belonging to the multinational group and their permanent establishments, identifying for each, the main economic activities, jurisdiction of incorporation, as well as any other information that may be relevant to facilitate the understanding of this information.

These returns must be filed no later than December 31 of the year following the one which is being reported, so the disclosure return corresponding to 2016 will have to be filed no later than December 31, 2017. A penalty for not filing these returns or for incomplete filings or with errors and inconsistencies consists of a fine that may go from MXN $140,540 to MXN $200,090 (between approximately US $7,400 and US $10,500). Additionally, taxpayers that fall under any of these situations would not be able to be hired by the federal government or any of its departments.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Mexico has included restrictions for deduction of interest payments to non-Mexican related parties when such interest is received by a transparent entity, when the payment is considered “non-existent” for tax purposes by the recipient, or the recipient does not consider such income as taxable according to the laws of its country of residence. (This rule also applies to royalties and technical assistance.)

- What do we recommend clients do to face the impending changes in your territory?

Adequately document related party transactions to avoid penalties and rejection of deductions. Analyze the international impact of payments to assess if changes in supply chain are necessary. We also recommend monitoring international structures, given the potential treaty changes due to the MLI, in order to determine whether changes or adjustments are necessary.

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SUMMARY OF BEPS RESPONSE: NETHERLANDS

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Transfer Pricing

The Netherlands has implemented new TP documentation rules as per January 1, 2016. The new rules consist of a three-tier approach being (i) a Master File, (ii) a Local File and (iii) a CbCR. Please find below more details on the CbCR requirements under Dutch law.

Exchange of information on rulings

The Netherlands will furthermore actively participate in the exchange of information on tax rulings. This follows from the EU Directive 2015/2376/EU concerning the exchange of information on rulings in EU context. The rules require basic information on the rulings to be automatically exchanged with EU Member States and has become effective as from January 1, 2017. The exchange of information under BEPS takes place under tax treaties, tax information exchange agreements or the Convention on Mutual Administrative Assistance in Tax Matters. The scope of the exchange of information under the EU Directive is much broader because the definition of a “ruling” under the Directive covers a wide range of agreements with tax authorities whereas the BEPS initiative is limited to a defined set of rulings. Also the Dutch view on what is considered a ruling is comparatively broad.

Multilateral Instrument

The Netherlands has signed the MLI to implement the BEPS minimum standards. As regards the minimum standard concerning treaty abuse, the Netherlands has opted for the PPT.
The Netherlands has opted-in for almost all non-minimum standards under the MLI. These include measures on dual resident entities, capital gains on interests in immovable property companies, commissionaire arrangements and splitting up of contracts.

The EU Anti Tax Avoidance Directives implement the BEPS measures on an EU level.

Under ATAD1 (EU Directive 2016/1164/EU), the Netherlands has proposed measures on CFC-regulations and an earnings stripping rule. The measures will become effective as per January 1, 2019.

CFC-regulations

Under the current proposal, the Dutch government expressed a preference for “Model A” under which passive income (such as interest, royalties and dividend income) of a CFC is to be included in the taxable income of a domestic company, unless the CFC is involved in substantial economic activities.

SUMMARY OF BEPS RESPONSE: NETHERLANDS

Earnings stripping rule

Under the earnings stripping rule, the taxpayer's net interest expenses will be deductible up to 30% of its EBITDA. A threshold of EUR 1 million applies up to which interest expenses will be fully deductible. The Netherlands will not introduce group ratio escapes. Any non-deductible interest may be carried forward to subsequent years, but will again be subject to the limitation of 30% of the taxpayer's EBITDA in that year. The earnings stripping rule will also be applicable on existing loans. Under ATAD2 (EU Directive 2017/952/EU), countermeasures will be introduced regarding hybrid structures. These measures will become effective as per January 1, 2020.

Innovation box regime

As from January 1, 2017, the Dutch innovation box regime has been brought in line with BEPS Action Plan 5 (modified nexus approach). Under the modified nexus approach, the innovation box regime only applies to self-developed IP and hence is no longer fully available to taxpayers that outsource part of the R&D activities to affiliates.

Small and medium enterprises (global turnover less than EUR 50m per year and expected gross revenue from IP less than EUR 7.5m per year) are eligible for the innovation box regime provided that they have obtained an R&D certificate. In addition, large companies should also have patents or breeders rights in order to become eligible for the innovation box regime.

- How has the initiative impacted tax enquiries/audits?

It is expected that more audits will be started under BEPS. These audits will mostly find their origin in other jurisdictions due to increased transparency measures. The Dutch Tax Authorities take a serious approach as regards the measures under BEPS and apply these in a strict manner.

Currently, the effective tax rate under the innovation box regime is 5%. It is proposed to increase the effective tax rate to 7% as of January 1, 2018.

- Is your territory proposing to introduce country-by-country reporting?

The Netherlands has implemented the TP-documentation and CbCR requirements fully in line with the implementation package included in Action 13. The new legislation entered into force on January 1, 2016.

CbCR

The obligation to prepare and file a CbCR report applies for (in principle) ultimate parent companies of an international group that are established in the Netherlands. The group's annual consolidated turnover must be at least EUR 750 million. The CbCR report should be filed within 12 months after the end of the companies' financial year. Under CbCR, a notification obligation applies to inform the tax inspector which company within the group will file the report and in what country. This should be done before the end of the financial year concerned.

SUMMARY OF BEPS RESPONSE: NETHERLANDS

Master File and Local File

Each company in the Netherlands that is part of an international group with a consolidated annual turnover exceeding EUR 50 million should have a Master File and Local File prepared.

Penalties

The penalties for not meeting CbCR obligations in the Netherlands have recently been raised to the highest bracket with a maximum of EUR 820,000. The penalties for not having a Master File and/or Local File available are much lower.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Following ATAD1, the Dutch government published a legislative proposal to introduce an earnings stripping rule. We refer to our comments on the previous slides in this respect. The earnings stripping rule would be a general interest deduction limitation rule. As Dutch tax law currently contains various (specific) interest deduction limitation rules, some of these rules will likely be abolished.

- What do we recommend clients do to face the impending changes in your territory?

We recommend our clients critically review their existing corporate and tax structure to assess whether the (proposed) measures impact the current structure. This includes the impact of the earnings stripping rule, CFC legislation, the PE concept, the innovation box regime, etc. Based on that assessment modifications to the structure may be required.

We also recommend that our clients are compliant with e.g. CbCR and Local File/Master File documentation requirements.

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SUMMARY OF BEPS RESPONSE: NORWAY

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Norway has already implemented FATCA, CRS, CFC rules (including black and white lists), interest limitation rules, OECD TP guidelines and OECD TP documentation rules. Norway has started its intention to implement CbCR, and TP documentation in accordance with BEPS Actions No. 8-10 and to enact a new written GAAR (currently only existing in case law).

- How has the initiative impacted tax enquiries/audits?

BEPS will likely have implications in terms of increased control, especially in relation to intangibles assets and transfer pricing documentation. It should also be expected that tax audits will be focused on MNCs and assumed aggressive tax planning.

- Is your territory proposing to introduce country-by-country reporting?

As of the income year 2016 (subject to approval by the Parliament during spring 2016) Norwegian based multinationals with consolidated revenues exceeding BNOK 6.5b must comply with the CbCR, which to a large degree follows recommendations from the BEPS project. Norwegian subsidiaries of foreign multinationals and Norwegian permanent establishments would also be required to provide their CbCR.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Interest limitation rules are already imposed in the form of an EBITDA rule. Moreover, the government has stated that additional restrictions on the deductibility of interest will be imposed and that the rules likely will apply also to loans granted by unrelated lenders, in which case a group exception may be introduced in line with the rules proposed within the EU.

SUMMARY OF BEPS RESPONSE: NORWAY

- What do we recommend clients do to face the impending changes in your territory?

Review the current level of substance of their existing intra-group structures, for purposes of proactively enhancing their structures (e.g. in terms of resources, functions, appropriate pricing) in view of the new era of tax audits moving away from form and focusing particularly on substance.

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SUMMARY OF BEPS RESPONSE: PHILIPPINES

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Pursuant to the on-going tax reform program of the Philippine Government called "Tax Reform for Acceleration and Inclusion" or "TRAIN", a draft bill is now pending in Congress that aims to amend, among others, Section 50 the National Internal Revenue Code (NIRC) which is the basis of the current transfer pricing regulations (RR 2-2013). Under the draft bill, there is an attempt to strengthen and broaden the current power of the Commissioner of Internal Revenue to make transfer pricing adjustments. This is part of the government's effort to incorporate recent developments in BEPS and general anti-avoidance rules. The bill is expected to be passed into law within the year (2018) and more clarity around this matter is expected in the next few months. The Philippine tax authority (the "BIR") has informally stated that once this bill becomes a law, transfer pricing guidelines related to documentation, APA and transfer pricing audits will be released.

In 2016, the BIR announced through an issuance (Revenue Memorandum Order 6-2016) that it will roll out programs aimed at establishing a BIR approach to transfer pricing in its BIR Strategic Plan for 2016-2020. This would include, among others, programs that would address BEPS and the challenges of digital economy and global business structures.

- How has the initiative impacted tax enquiries/audits?

At this time, the initiative has no defined impact on actual tax audits in the Philippines. However, the BIR has been building capacity by forming a team within the Large Taxpayers Service ("LTS") to lead/initiate test cases for transfer pricing audits and by organising TP trainings for this team, in coordination with the US IRS. In 2015, the BIR formally included "transfer pricing issues" as one of the criteria for Priority Taxpayers/Industries in the BIR audit program outlined in Revenue Memorandum Order (RMO) 19-2015 dated September 15, 2015. In that issuance, the BIR included "issue-oriented audits such as transfer pricing, BEPS, industry issues, etc." in the criteria for priority taxpayers/industries for audit. It also included other criteria, such as persistent losses and targeted certain industries which are considered "red flags" for risk-based TP audits in other jurisdictions. As to whether these criteria are actually applied by tax officers during audit is not clear. However, with the on-going amendment of the tax legislation in the Philippines, which includes amendment of Section 50 of the NIRC, the provision on which the current transfer pricing regulations (RR 2-2013) is based, and the lowering of the corporate income tax rate in the coming years, a strict enforcement of transfer pricing rules is likely to be expected. This could mean transfer pricing audits in the near future, either as a supplement to a general tax audit or on a stand-alone basis.

SUMMARY OF BEPS RESPONSE: PHILIPPINES

- Is your territory proposing to introduce country-by-country reporting?

There is no requirement at the moment to submit a CbCR although the BIR has been monitoring all the BEPS developments, including Action 13 (TP Reporting and CbCR) carefully. Recently, a high-ranking BIR official mentioned that they are keen to implement the three-tiered documentation in the Philippines but guidelines need to be in place prior to implementation. More clarity around this is expected in the upcoming months.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There are no proposed changes in this area.

- What do we recommend clients do to face the impending changes in your territory?

We recommend that our clients review and monitor the on-going tax reform program in the Philippines and prepare/maintain the appropriate TP documentation. Additionally, clients should prepare for a strict enforcement of transfer pricing rules in the Philippines, given the government's on-going effort to incorporate key BEPS developments into the current tax legislation and the expected lowering of the corporate income tax rates under the current tax reform program of the Philippine government.

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SUMMARY OF BEPS RESPONSE: POLAND

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The following changes were made or proposed:

- CFC rules (in place) - companies resident in 'black listed' countries (tax havens) if the following criteria are satisfied:
  - 50% or more of the revenue in any given tax year is from passive income, (e.g. dividends)
  - at least one type of passive income is taxed at a rate lower than 14.25%, or tax-exempted
  - the Polish parent company has held at least 25% of the shares directly or indirectly for at least 30 days
- CbCR rules (in place) - the largest Polish multinational enterprises (with consolidated revenues exceeding EUR 750m) will be subject to CbCR requirements.
- TP documentation rules (in place) – depending on the scale of operations the taxpayers will be obliged to prepare Local File, Master File and CbCRs. Additionally, the taxpayer whose revenues or costs exceed EUR 10m will be obliged to include a benchmarking study in the TP files (local comparables to be included).

TP guidelines on low value adding services have already been introduced. The intention of this regulation was to reduce the administrative burden of documenting these services; however, the taxpayers are still obliged to prepare detailed TP documentation accompanied by source documents proving the business substance and rationale of the purchased services.

More restrictive rules on tax deductibility of interest expense are currently in the legislative process and are expected to be introduced in 2018. The rules concern both related and unrelated interest expense. The planned rules limit the tax deductibility of interest expense (only in the surplus over the interest income). The tax deductibility of interest expense is limited to the amount exceeding 30% of tax EBITDA (up to PLN 3M the interest deductibility is unlimited). The new limitation rules will be effective for all loans starting in 2019. In 2018, grandfathering rules are in force for loans granted no later than in 2017.

The planned rules also limit the debt push down structure, i.e. all interest from financing used to acquire a new entity that is further transferred into the acquired entity will not be tax deductible.

Changes in tax treatment of hybrid arrangements are planned and first drafts of the general anti-abusive rules are on hold in the legislative process.

SUMMARY OF BEPS RESPONSE: POLAND

- How has the initiative impacted tax enquiries/audits?

We observe a constantly growing number of tax audits that focus on detailed transfer pricing analyses of international structures involving Polish companies, as well as tax optimisation structures.

Tax inspectors focus their audit efforts on multinationals, and specifically on restructurings, loss-making companies, group charges, transactions with low-rate tax jurisdictions, transfers of intangibles, financial transactions and other potentially tax optimising structures.

The tax audits are supported by a new competent body created within the Polish Ministry of Finance, which specialises in transfer pricing and is responsible for training the tax inspectors, investigating areas where effective transfer pricing/tax optimisation structures are implemented, and selecting taxpayers for control.

The questions asked during the tax audits are more thorough and it is becoming more difficult to defend the level of charges in inter-company transactions, especially without benchmarking studies or defense files presenting the business substance of the transactions.

- Is your territory proposing to introduce country-by-country reporting?

Yes, Poland introduced CbCR in 2016.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Tax authorities in Poland are introducing new regulations that limit tax optimisation structures and other tax schemes that were allowed in the previous years, but now are recognised as harmful and tax evasive.

Introduction of tax anti-avoidance rules, limitation on interest expense tax deductibility and limitation in intragroup service charges deductibility shows the overall strategy of the Polish tax authorities that aims at closing the gaps in the state budget by tightening the tax system.

SUMMARY OF BEPS RESPONSE: POLAND

- What do we recommend clients do to face the impending changes in your territory?

We recommend clients review and assess their current transfer pricing policies and group tax structures to:

- Identify if they have subsidiaries which may be recognised as CFCs under the new rules.
- Assess their transfer pricing model to check if there are any risks of tax authorities challenging them.
- Prepare sufficient transfer pricing documentation and benchmarking analyses meeting the new requirements.

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SUMMARY OF BEPS RESPONSE: PORTUGAL

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In recent years, Portugal has adopted some legislation that may be said to be aligned with specific action points of the BEPS Action Plan.

Portugal had already implemented measures, including: (i) an anti-hybrid clause for inbound dividends, (ii) interest barrier rules (iii) General Anti-Avoidance Rule (GAAR) complemented with Specific Anti-Avoidance Rule (SAARs) in areas of dividends and reorganisations (iv) strengthening of CFC rules; and (v) disclosure rules for aggressive tax planning arrangements that may be considered as BEPS aligned measures. On these areas no further rules are expected in the short term.

With effects as of July 1, 2016, the Portuguese Patent Box regime was also modified to include the nexus approach. These changes to the Patent Box were designed to ensure that the benefits of the Portuguese tax regime are only available where the R&D expenditure required to develop the IP also took place in Portugal and to the extent that the expenditures are closely related to the IP income. A transitory regime was also put in place to safeguard prior IP assets.

Portugal has also implemented EU Directive 2015/121 that establishes an anti-abuse rule under the Parent Subsidiary Directive.

Portugal also transposed the Directives DAC3 and DAC4 that provide for the exchange of tax rulings, CbCR reports and other tax information.

As an EU Member State, Portugal will still have to transpose the two anti-avoidance Directives (ATAD and ATAD 2) to domestic law.

Portugal also signed the Multilateral Convention on June 7, 2017 which will have an impact on the covered tax treaties. Under the options made by Portugal, this will be particularly relevant for: (i) PPT; (ii) rules related to the dividend transfer transactions – introduction of the condition of the minimum holding period for those that still do not have such a condition; (iii) capital gains from alienation of shares or real estate rich entities subject to the condition of the 50% value threshold at any time during the preceding 365 days; (iv) mandatory binding arbitration for cases where there is no agreement under MAP. There is no information yet on the timeline for the internal ratification procedures of the Multilateral Convention.

SUMMARY OF BEPS RESPONSE: PORTUGAL

- How has the initiative impacted tax enquiries/audits?

The BEPS initiative has not yet specifically affected tax audits, but is likely to be raised as international exposure of BEPS action points increases.

In practice, we see growing concern in tax audits towards specific cross-border issues such as transfer pricing, restructuring operations and interest deductibility.

Another concern that we may expect in the future to be raised in tax audits will be points related to the definition of PE (particularly in more decentralised models) as well as of economic substance (i.e. when does a company have sufficient local substance to manage its assets, operations and associated risks). It is expected that the principal purpose test introduced by the MLI will also be a point of concern.

- Is your territory proposing to introduce country-by-country reporting?

Yes, Portugal has already implemented CbCR. The CbCR obligations are effective for fiscal years starting January 1, 2016 and generally apply to Portuguese tax resident entities which are the parent entity of a group, to the extent the consolidated group's net turnover in the immediately preceding fiscal year exceeds EUR 750m. Depending on whether the Portuguese resident parent of a group is not at the same time a dependent of any other entity, and whether it is a Portuguese resident or not, the Portuguese entity is obliged to submit a CbCR.

In addition, the CbCR rules also apply to Portuguese entities which are, directly or indirectly, held by a non-Portuguese resident parent entity when any of the following circumstances is met: (i) the Portuguese resident entity has been appointed by its non-resident parent entity to prepare the CbCR; (ii) the country in which the entity is resident has not established CbCR obligations in similar terms to Portugal; (iii) the country in which the parent entity is resident has not signed an automatic exchange of information agreement with Portugal.

The CbCR will be filed within 12-months from the close of the financial and tax year – i.e. for FY2016, companies will need to file the CbCR by December 31, 2017 (extension period). An electronic tax form is being finalised by the tax authorities.

SUMMARY OF BEPS RESPONSE: PORTUGAL

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The 2013 Budget Law already replaced the old thin capitalisation rules (a 2:1 debt-to-equity ratio applicable only to non-EU-resident lenders) with an interest barrier rule which limits the deductibility of net financial expenses (regardless of type of lender) to the higher of EUR 1m or 30% of adjusted EBITDA. The interest barrier rules also provide for a denied interest deduction and unused EBITDA carryforward clauses.

For groups of companies, the parent company may elect for the application of the threshold at the group level that must be maintained for 3 years. Budget Law 2018 proposes an automatic renovation for a period of a year, unless there is a request not to renew it.

As this measure included a phase-in provision according to which the EBITDA limit would be 70% in 2013 and would decrease 10 basis points per year until reaching 30% from 2017, there has been a gradual increase of the number of companies covered by this regime.

No further rules are announced or expected to include other aspects covered in Action 4 of BEPS.

- What do we recommend clients do to face the impending changes in your territory?

Critically review existing structures and areas of risk such as transfer pricing, PE and intra-group financing to determine whether action is required to mitigate risk and prepare for BEPS oriented reviews and tax audits.

On the specific area of treaty benefits and abuse (BEPS Action 6) the fact that the MLI may take some period to become effective does not mean that entities should remain uncritical regarding principal structures, holding companies or finance companies and therefore we recommend revising the economic and business rational of those structures to align those (if necessary) with the tax treatment.

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SUMMARY OF BEPS RESPONSE: ROMANIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

On November 8, 2017, the Romanian Government approved, via an Emergency Ordinance, the transposition of EU Directive 1164/2016 ("ATAD") in Romanian legislation.

The Government Emergency Ordinance was published in the Official Gazette and it's provisions have become applicable starting January 1, 2018.

The transposition relates to measures impacting:

- Interest deductibility;
- Exit taxation;
- General anti avoidance provisions;
- CFC rules.

- How has the initiative impacted tax enquiries/ audits in your territory?

In 2017 we noticed an increasing numbers of tax audits, and that transfer pricing remains a relevant topic. Significant transfer pricing adjustments were performed upon conclusion of tax audits carried out during 2017. Most of these cases are currently under the administrative appeal or court phases.

Tax inspectors continue to focus their interest on multinationals, more specifically, on loss-making companies, business restructuring, transfers of intangibles and group charges (with special attention on substance of the transactions and the supporting documentation available at the level of the local affiliate). In addition, specific industries (such as retailers and financing institutions), are targeted more frequently. The inspection teams are well trained and we have noticed an increased level of specialisation in transfer pricing. Additionally, special audits (carried out by the antifraud division) are increasingly pursued, specifically intra-group transactions being in their area of interest.

We expect that the number of tax audits focusing on transfer pricing will increase in future periods. Attention has to be paid to the criminal charges that may be brought to the representatives of the companies, if tax evasion is considered to have occurred (this seems to be the latest trend in this area).

- Is your territory proposing to introduce country-by-country reporting, or has it already introduced country-by-country reporting (if yes, please provide details)?

CbCR rules were implemented in the local legislation in 2017.

SUMMARY OF BEPS RESPONSE: ROMANIA

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

No special measures regarding interest deductibility were introduced in local legislation following approval of BEPS with impact in 2017. Romania already retains a number of interest deduction limitations for financing obtained from entities other than financial institutions as follows:

- Interest on foreign currency loans is limited, as of January 2016, to 4% (previously 6%); any excess above the threshold is permanently non-deductible;
- Interest on local currency loans is limited to the National Bank of Romania reference interest rate; any excess above this threshold is also permanently non-deductible;
- Interest on long term loans taken from other entities other than financing institutions is temporarily non-deductible (provided the above thresholds are observed) if the debt-to-equity ratio is higher than 3 or negative.

EU ATAD Directive transposition in local legislation was approved in November 2017 via a Government Emergency Ordinance and subsequently published in the Official Gazette by the end of November. The provisions will become applicable starting January 1, 2018.

- What do we recommend clients do to face the impending changes in your territory?

TP documentation and CbCR will be used by the RTA in assessing whether a company has a potential risk in the future. Therefore, clients should prepare robust TP documentation to demonstrate that there is real substance to their transactions.

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SUMMARY OF BEPS RESPONSE: RUSSIA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Legislation related to the BEPS Action Plan introduced new CFC and residency rules for legal entities, defined beneficial ownership with regard to double tax treaties, established new thin capitalization rules and made amendments to the regulations regarding the digital economy. Russia has introduced new transfer pricing documentation requirements, including CbCR.

CFC Rules

The new law introduces CFC rules for Russian tax residents. The rules state that a foreign company may constitute a CFC if an individual or legal entity owns (directly and/or indirectly) more than 25% of a foreign organisation and/or an individual or legal entity owns (directly and/or indirectly) more than 10% of a foreign organisation and if the combined participation of all Russian tax residents in the organisation is greater than 50%. The law also contains a grace period during which the threshold is set at 50%, until January 1, 2016. If the Russian owner does not receive dividends from the foreign company, they should recognise the portion of the profit of such legal entity as their income taxable in Russia. There is a list of certain cases when the income of the CFC is not taxed in Russia; for instance, if the CFC is an operational company.

Residency

The new law also introduces new residency criteria for Russian tax residents. Under these rules, a "Russian tax resident" will include Russian organisations, foreign organisations recognised as Russian tax residents by a double tax treaty and foreign organisations whose place of management is in Russia.

Beneficial Owners

Finally, the new law defines who is recognised as a beneficial owner with regards to double tax treaties. Specifically, a beneficial owner is defined as a person who by virtue of having participation interest (directly and/or indirectly) in an organization, control over an organisation or by virtue of other circumstances has the right to independently use and/or dispose of such income. Failure to meet such requirements may prevent a recipient of foreign income from receiving treaty benefits from a Russian perspective.

VAT and Digital economy.

The Russian approach on digital economy and indirect taxation corresponds to the OECD guidelines and is based on addressing the problem when an inappropriately low VAT is levied on e-services rendered by foreign suppliers.

For this reason, Russian legislation has been updated with several provisions regarding the regulation of the provision of electronic services. New rules have come into force as of January 1, 2017. According to the amendments, the place of supply of electronic services is where the consumer is located. Thus, electronic services provided by a foreign company to Russian customers are subject to VAT in Russia. The new rules establish a different procedure for the withholding and payment of tax depending on the legal status of the customer. If the customers of the services are Russian individuals, the foreign service provider has to obtain a Russian tax registration and pay the tax itself. If the customer is a Russian legal entity, VAT would be withheld from the service fee and transferred by the Russian company-consumer of services.

SUMMARY OF BEPS RESPONSE: RUSSIA

CbCR rules

In 2017, new rules regarding the three-tiered approach to international group documentation were implemented. The requirements are applicable to the 2017 tax year. These rules are applied if the revenue of the multinational enterprises group for the previous fiscal year was at least RUB 50 billion (approximately EUR 717 million) if the parent company is the resident of Russia (or the applicable amount established in country of residence of the parent company). Documentation consists of the following: notification of the participation in a MNE Group, master file, local file and CbCR. Notification of the participation must be filed by all Russian taxpayers belonging to the multinational group. In some cases, one member of the group (generally the parent company or an authorized member) can present the notification on behalf of other members - Russian tax residents. The official form of this notification is specified by the Federal tax authority.

Master file and Local file

These files are presented by a Russian taxpayer belonging to a multinational group at request of the competent tax authority.
No specific forms for these documents are established in law.
The master file should contain information about: the structure of participation within the MNE Group including the description of the market where this MNE Group carries out its main business activity (in the form of schemes), business activity of the MNE Group, intangible assets, financial activity and other information (description of advanced pricing agreements concluded, consolidated financial reports, etc.)

The local file should provide information with regard to specific controlled intercompany transactions taking place between a local country affiliate (in Russia) and an associated enterprise(s) in foreign country(-ies).

Country-by-Country Report

CbCR must contain information relating to the allocation of income, the taxes paid, and indicators of economic activity (e.g. the number of people employed). The report also requires a listing of all the Constituent Entities, including the tax jurisdiction of incorporation, tax jurisdiction of residence and the main business activities carried out by that Constituent Entity. Based on the law, the CbCR should be filed electronically within 12 months after the end of the relevant period according in the form established by the competent authority. Under general rules, the report is presented by the parent company or by an authorized member of the group, if they are Russian tax residents. Alternatively, the CbCR could be presented by a member of the group (Russian taxpayer) at request of the competent tax authority. CbCR should be prepared in the Russian language, but in some cases (e.g. if the parent company is not a Russian tax resident) the report is allowed to be prepared in a foreign language.

Penalties for not presenting the CbCR, Master and Local files are also established in law, but implementation of this law begins in 2020 and is not applicable during the transition period (years 2017-2019).

- How has the initiative impacted tax enquiries/ audits?

The new law has already affected tax audits. In practice, tax authorities apply beneficial ownership tests and review substance of the foreign recipient of the Russian source incomes.

SUMMARY OF BEPS RESPONSE: RUSSIA

Tax authorities also apply the new beneficial ownership rules by rejecting the appliance of lower beneficial rates under the DDT to transactions with “conduit” companies. For this reason the tax authority examines the substance of the foreign recipients. According to the relevant practice the new beneficial ownership rules could be applied to years preceding the year when rules came into force. This could be explained by the fact that this rule had already existed in the OECD guidelines.

- Is your territory proposing to introduce country by country reporting?

Please, see our comments on CbCR described previously.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

New rules on thin capitalization were established in 2016. Under previous legislation, thin capitalization rules were only applicable to loans from direct and indirect parents to their Russian subsidiaries. However, in case law, thin capitalization rules were also applied to loans from foreign “sister” companies. New amendments to the law formalized this practice making them applicable also to loans from foreign “sister” companies.

- What do we recommend clients do to face the impending changes in your territory?

We recommend, in light of the new legislation, that clients review intercompany transactions regarding compliance with the beneficial ownership rules.

We also advise that clients should determine whether they fall under CbCR requirements and companies which supply e-services to Russian consumers be aware of the recent amendments that have implemented VAT on digital services.

As Russia’s response to BEPS continues to develop, we recommend that clients consider pending legislation when planning business activities.

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SUMMARY OF BEPS RESPONSE: SINGAPORE

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Singapore tax authority (IRAS) has published a CbCR guide on October 10, 2016 providing guidelines on: a) the purpose of a CbCR; b) the obligation to provide a CbCR; c) how to complete a CbCR d) how to submit a CbCR to the IRAS. The CbCR supplements the transfer pricing documentation to be maintained by MNEs. Broadly, CbCR will be required for a MNE group in relation to a financial year (starting from January 1, 2017) where:

- The MNE group is one in which the ultimate parent entity is tax resident in Singapore for the financial year in which the CbCR is prepared;
- The consolidated group revenue in the preceding financial year is at least S$1,125 million (approx. $791 million USD); and
- The MNE group has subsidiaries or operations in at least one foreign jurisdiction.

The CbCR must be filed with the IRAS within 12 months from the last day of their financial year.

The IRAS will also provide the CbCR to the tax authorities of jurisdictions identified in a CbCR pursuant to any applicable bilateral treaty for automatic exchange of CbCR information.

- How has the initiative impacted tax enquiries/audits?

Separate from CbCR requirements set to be introduced through legislation in the near future, there has always been a keen focus on deductibility of expenses. Interest-restriction, one of the OECD's focus areas, is embedded both in domestic legislation and tax administration practice. This emphasis will also remain.

- Is your territory proposing to introduce country-by-country reporting?

CbCR is the key BEPS initiative to have been announced for administrative implementation, with the first filing of a CbCR to be due by December 31, 2018.

The IRAS is currently developing electronic services for receiving and sending CbCRs with sufficient level of encryption.

SUMMARY OF BEPS RESPONSE: SINGAPORE

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Cross-border related party credit facilities and loans have been and still are closely scrutinised by the Singapore tax authority. On January 4, 2016, the Singapore tax authority issued an updated guideline on transfer pricing which sets out, among others, how arm's length interest is to be determined or approximated. The Singapore tax authority is expected to continue to counter the effect of what is perceived to be non-arm's length transaction between related parties.

- What do we recommend clients do to face the impending changes in your territory?

Although subsidiary legislation for CbCR is in the pipeline, the primary legislative framework with penalty and enforcement provisions have already been introduced. With the IRAS' announcement of its adoption of CbCR, large multinationals should prepare themselves for the first filing of CbCRs by December 31, 2018.

With a more liberal exchange of information leading to an expected greater transparency between jurisdictions, it is expected that companies who set up in Singapore with very little substance will increasingly be scrutinised by other tax authorities. Depending on the circumstances, it may be worthwhile to assess whether active engagement with tax authorities would be an effective tax management strategy in addition to that of continued proper benchmarking practices.

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SUMMARY OF BEPS RESPONSE: SOUTH AFRICA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

South Africa has published draft legislation in response to the BEPS Action Plan 13. A Public Notice which sets out the additional record-keeping requirements for “potentially affected transactions” (cross border related party transactions) was published on July 28, 2016 and Regulations to implement the CbCR were published on April 11, 2016.

The effect of this Notice is that, once issued as final, it will become compulsory for large MNE’s with potentially affected transactions that exceed or are reasonably expected to exceed the higher of:

- 5% of the person’s gross income or
- R50 million

to keep specified records, books of account or documents on hand.

Records need to be kept in respect of any potentially affected transaction that exceeds or is reasonably expected to exceed R1 million in value.

In accordance with the Draft Regulations, it is proposed that where the ultimate parent entity of a multinational enterprise is a South African tax resident and has a consolidated group turnover of more than ZAR 10 billion, it must file a CbCR.

Legislation adopted:

- Additional record keeping requirements for transfer pricing transactions proposed
- CbCR proposed for financial years commencing on or after January 1, 2016
- Extensive CFC legislation
- Debt / equity arbitrage:
  - Deductibility of interest on acquisition of shares
  - Hybrid debt instruments – equity coupon treated as interest
  - Third party backed shares – dividends treated as income
  - Hybrid equity instruments – debt coupon treated as a dividend
  - Hybrid interest deemed to be dividends
- Leveraged buy-outs, debt push-down transactions, limitation on interest deductions
- General anti-avoidance rules
- Reportable arrangements rules dealing with the disclosure of certain transactions to SARS

SUMMARY OF BEPS RESPONSE: SOUTH AFRICA

Davis Committee Proposals

The tax review committee, headed by Judge Dennis Davis (the "Davis Committee"), which was appointed to make recommendations for possible tax reforms in South Africa, released comments relating to the 2014 BEPS Action Plan deliverables, including:

- South Africa must adopt new source rules to deal with the taxation of the digital economy in respect of non-residents;
- South Africa must consider introducing or revising specific and targeted rules to deny benefits arising from certain hybrid mismatch arrangements; and
- South Africa must introduce legislation to ensure spontaneous exchange of information regarding tax rulings with other countries.

The recommendations of the Davis Committee on the 2014 BEPS Action Plan deliverables, regarding the additional record-keeping requirements for transfer pricing and the implementation of CbCR were recently adopted in South Africa.

- How has the initiative impacted tax enquiries/ audits?

Overall, SARS has become more aggressive in its audit processes and interactions with multinational companies in respect to their cross border transactions, both inbound and outbound. In particular, SARS is focussing on issues of transfer pricing, CFCs, leveraged funding and permanent establishment matters around centralised group functions/services.

- Is your territory proposing to introduce country-by-country reporting?

South Africa has publicly committed itself to CbCR and is one of 31 countries that has signed the tax co-operation agreement to enable the automatic sharing of CbCR information.

The implementation of the CbCR standard by SARS will be effected through regulations issued by the Minister of Finance. A draft version of these regulations was published on April 11, 2016.

The draft regulations, which are proposed to come into effect for financial years commencing on or after January 1, 2016, apply to all multinational group enterprises with a consolidated group turnover of ZAR10 billion and do not require information that goes beyond what the OECD guidance recommends.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The Davis Committee has not yet released any comments relating to the 2015 BEPS Action Plan deliverables, including Action Plan 4, but has commented in general that the rules governing the deductibility of interest in South Africa must be more holistic, without a proliferation of too many sections within the Act.

SUMMARY OF BEPS RESPONSE: SOUTH AFRICA

The focus of these deductibility rules should be based on a principle rule and whether or not interest is deductible, as well as on mismatches rather than merely attacking a particular type of instrument.

In effect from January 1, 2015, South Africa introduced legislation that will limit the amount of interest that may be deducted by a South African borrower on loans from a non-resident controlling company or a non-resident company that obtained the funds from such controlling company where the interest amount is not subject to South African tax in the hands of the non-resident lender.

- What do we recommend clients do to face the impending changes in your territory?

We recommend that clients should set tax strategies and approach tax planning in a manner that is sufficiently resilient to withstand scrutiny in the long term in a country with high levels of political and socio-economic sensitivity in this regard.

The non-tax, commercial considerations in setting strategies and policies are as important as the short term financial efficiency thereof and we recommend that clients keep this in mind when considering their tax strategies.

High risk areas that require particular focus are transfer pricing, leveraged funding, permanent establishments and CFCs. In particular, any structures or transactions that are considered "high-risk" transactions in terms of the BEPS actions, such as offshore distribution or procurement companies or offshore IP structures, should be reconsidered in light of the latest OECD guidance in the BEPS reports to ensure that the transfer pricing treatment is in line with the commercial value creation.

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SUMMARY OF BEPS RESPONSE: SPAIN

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Amendment of the Controlled Foreign Company (CFC) regime

- Entities that are resident in Spain are required to include (in their taxable base) income that has been derived by a CFC from the transfer of assets and rights, or where the CFC earns service income and there are no material and personal resources at the level of the CFC.

Limitation on deductibility of interest paid

- Limitation on deductibility of financial expenses to 30% of operating profit (already in place before BEPS)
- Non deductibility of intragroup profit participating loans' interests

Changes in the tax treatment of hybrid instruments

Non deductibility of expenses incurred in related-party transactions when, with regards to different tax treatments:

- Income would not be subject to tax.
- No income would be generated
- The income would be subject to a nominal tax rate of less than 10%

Transfer pricing rules amended

Several changes in the regulation of related-party transactions:

- Relatedness threshold (direct participation): 5% to 25%
- Remuneration satisfied by an entity to its administrators in the performance of their duties is no longer considered as a related-party transaction
- "Best Method Approach" to value related-party transactions
- Simplified TP documentation regime for companies with a turnover of less than EUR 45m
- Secondary adjustment: refund of the difference to avoid it
- Less onerous penalty regime
- Additional TP documentation requirements beyond those existing before
- Re-characterisation: implicit authorisation to the STA to re-characterise controlled transactions based on the real nature of the transactions and the conduct of the parties

SUMMARY OF BEPS RESPONSE: SPAIN

- How has the initiative impacted tax enquiries/audits?

<u>International fiscal transparency (CFC rules)</u>

- Increased scrutiny of transactions performed:
  - By taxpayers that use hybrid instruments to reduce or eliminate tax burden in Spain
  - With companies that are residents in advantageous tax territories
- Detection of permanent establishments based in Spain for those taxpayers who are taxed as non-residents without a permanent establishment

<u>Transfer pricing</u>

- Increased scrutiny of:
  - Complex corporate restructuring transactions
  - Intra-group services provided or received
  - Operations with relevant intangibles

<u>Digital economy</u>

- Analysis of the available information in order to detect hidden activities or illicit traffic of goods
- Ensure adequate taxation in Spain of the income generated by manufacturers or service providers who distribute their products through the internet

<u>Low-value adding services</u>

- Assessment of declared expenses and of undeclared income

- Is your territory proposing to introduce country-by-country reporting?

New Spanish Corporate Income Tax Regulations have already introduced CbCR:

- Applicable to Spanish resident entities considered parent companies of a group, which are not the subsidiary of another company
- Information must be filed within the 12 months that follow the end of the tax period
- Only mandatory when the combined net revenues of all the persons or entities belonging to a group, during the 12 months preceding the start of the tax period, amount, at least, to EUR 750m
- Information will be required from 2016 onwards and must be submitted within the following 12 months
- CbC information must also be reported by entities that are residents in Spain who are subsidiaries of a nonresident entity in Spain, where any of the following conditions are satisfied:
  - They have been appointed by their nonresident parent company to prepare that report
  - There is no CbCR obligation on similar terms that is set out in the Spanish legislation in the country where such a nonresident enterprise has its tax residence

SUMMARY OF BEPS RESPONSE: SPAIN

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Focus on leveraged acquisition of shares has increased considerably, mainly when the main purpose of the operation is to generate financial expenses.

- What do we recommend clients do to face the impending changes in your territory?

  - Substance evaluation of activities in Spain in light of BEPS initiative
  - Thorough analysis of functions performed, assets used and risks assumed
  - Review of the documentary evidence prepared by multinational groups in order to support their transfer pricing policies
  - Increase “ex ante” certainty by means of fluent relationship with the Tax Administrations (e.g. APAs).

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SUMMARY OF BEPS RESPONSE: SWEDEN

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Amendment of the Documentation rules

New documentation rules were implemented on April 1, 2017. The new requirements are in line with Action 13.

The first year covered by the CbCR will be financial years starting on or after January 1, 2016. MNE Groups with a minimum turnover of seven billion SEK will be covered by the rules. Sweden has also implemented notification rules related to the CbCR. The notification must be submitted, by all Swedish entities of an MNE Group, to the STA by the last day of the financial year at the latest. Companies in Sweden that belong to an MNE Group that are covered by the CbC rules should report which company in the group is the reporting entity to the STA.

The rules for the Master file and Local file will cover financial years starting on or after April 1, 2017. Enterprises are exempt from the documentation requirement if, during the preceding financial year, they belonged to a MNE having less than 250 employees, and either have revenues not exceeding SEK 450 million or total assets of not more than SEK 400 million. Transactions of minor value are those less than SEK 5 million for one financial year. However, the threshold does not apply to intangibles. Hence, the previous rules concerning simplified documentation for transactions of low value have been removed. Partnerships and PEs will be included (previously exempted).

Sweden has also signed the MLI, however with several reservations, e.g. the new PE definition.

New transfer pricing rules

The adjusted transfer pricing guidelines are, according to the STA, only clarifications of the existing guidelines and are therefore applicable now and retroactively.

- How has the initiative impacted tax enquiries/ audits in your territory?

Transfer pricing

Increased scrutiny of:

- Intra group agreements
- Operations with intangibles
- Characterisation of transactions

Income tax

Increased scrutiny of:

- Interest deductions
- Permanent establishments
- Carried interest

SUMMARY OF BEPS RESPONSE: SWEDEN

- Is your territory proposing to introduce country-by-country reporting?

Yes, new legislation was implemented April 1, 2017. The CbCR rules covers financial years starting on or after January 1, 2016.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

A legislative proposal for new interest deduction rules was presented in June 2017. Current rules were introduced in 2013 and have been actively debated. Sweden has received a formal notification from the EU Commission concerning the current rules. The proposed rules include a general limitation of interest deductibility by only permitting either 35% of EBIT or 25% of EBITDA and that current rules will be adjusted but not removed. The new rules further lower the corporate income tax rate from 22% to 20%.

- What do we recommend clients do to face the impending changes in your territory?

We recommend our clients take the following steps:

- Prepare a capital structure report in order to assess the effects of the proposed new interest deduction limitation rules.
- Evaluate activities in different entities and determine how these activities link to the value chain of the group.
- Perform a thorough analysis of functions performed, assets used and risks assumed.
- Consider APAs, as due to increased uncertainty in how different countries will apply the new rules related to BEPS, there will be an increased need for ex ante certainty through APAs.
- Perform a test-run of CbCR for risk management.

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SUMMARY OF BEPS RESPONSE: SWITZERLAND

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The Swiss Federal Council confirmed that Switzerland will endorse the OECD BEPS project. The Federal Finance Department is analyzing and elaborating on proposals to implement the results of the BEPS project. CbCR legislation has been passed and mandatory filing of CbCR will occur with respect to the 2018 financial year onwards. Voluntary filing for the financial years of 2016 and 2017 is possible for Swiss-headquartered groups. Draft legislation with regard to the automatic exchange of tax rulings has been published and entry into force is expected for 2017 (automatic exchange of tax rulings).

Tax Proposal TP 17

Tax Proposal 17 is a Swiss tax reform proposal aiming to further strengthen Swiss tax competitiveness. In discussing its implementation the Swiss Federation will have to consider how it can formulate policies which are acceptable under international tax principles but also provide an attractive tax environment.

Specifically, under this proposal, privileged tax regimes will be abolished but an IP box taxation regime and R&D deductions, as well as tax effective step-up regulations, will be introduced in addition to other improvements to the tax regime. All measures shall be compatible with OECD standards.

Furthermore, and of key importance, corporate tax rates applicable to ordinary taxed entities (no special tax status) shall be lowered substantially to a range of 12 - 18%.

It is expected that the new legal provisions will enter into force in 2020.

- How has the initiative impacted tax enquiries/audits in your territory?

There has been little impact on tax audits and enquiries. Traditionally, profits have been moved into, not out of, Switzerland and therefore BEPS is not a top priority to Swiss tax authorities.

SUMMARY OF BEPS RESPONSE: SWITZERLAND

- Is your territory proposing to introduce country-by-country reporting?

The Swiss Federal Council has implemented legislation for CbCR. It follows the OECD BEPS recommendations. CbCR obligations shall apply to Swiss headquartered multinational groups with annual consolidated group revenue of at least CHF 900m and in certain cases, also to Swiss group entities of non-Swiss multinational groups. The CbCR legislation entered into force on December 1, 2017 and requires CbCR to be prepared for the 2018 financial year onwards. The first automatic exchange of CbCRs will take place in 2020. Swiss-headquartered groups will be allowed to file a CbCR for fiscal years 2016 and 2017 for exchange purposes on a voluntary basis.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Since the Swiss Federal Council has confirmed that Switzerland will endorse the OECD BEPS project, the currently applicable thin capitalization and interest deductibility rules may be amended. Other than that, no particular steps have been undertaken so far in this regard.

- What do we recommend clients do to face the impending changes in your territory?

We recommend our clients take the following steps:

- Perform a thorough analysis of functions performed, assets used and risks assumed
- Evaluate substance requirements for activities in Switzerland in light of BEPS emphasis
- Prepare for additional enquiry in view of the CbCR as well as the expected automatic exchange of tax rulings

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SUMMARY OF BEPS RESPONSE: TURKEY

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

There are several legislative changes regarding the BEPS Action plan in Turkey including; interest deduction limitation rules, CFC rules, transfer pricing documentation (i.e. master file, local file and CbCR) requirements, and other changes regarding transfer pricing and the digital economy.

The Turkish Revenue Administration released "Draft General Communiqué no. 3 - Disguised Profit Distribution through Transfer Pricing" to implement new transfer pricing reporting requirements for multinational enterprises in line with BEPS Action 13.

According to Article 11/i of the Corporate Income Tax Code, companies whose external borrowings exceed their equity, up to 10% of the interest, commissions, delayed interest, foreign currency losses and costs and expenses other than the ones added to the cost of investments shall not be deducted from the corporate income tax base. In order to apply this regulation, Council of Ministers should determine and announce the non-deductible financing expense ratio related to external borrowings exceeding equity. As of today the Council of Ministers has not determined the content nor the rate, accordingly this article is not applicable at the moment.

Effective January 1, 2006, per the Article 7 of the Corporate Income Tax Code, non-resident subsidiaries are considered controlled foreign entities provided that at least 50% of their capital, dividend income or the voting rights are held directly or indirectly by resident real persons or entities, and these should be subjected to corporate tax in Turkey under certain conditions, regardless of whether such profits are distributed.

The Law on the Amendment of Certain Laws for the Improvement of the Investment Landscape (no. 6728) was published in the Official Gazette on August 9, 2016. Below are the changes regarding transfer piricing in regards to Law No. 6728:

- Related party definition: It is decreed that to assess the concept of "related party" in practice part of transfer pricing as "partnership relation", partnership, vote or profit share right should be 10% at least.
- Transfer pricing methods: With the amendments of Law No. 6728, Transactional Profit Methods have been included in Law No. 5520. Along with this regulation, Transactional Net Profit Margin Method and Profit Split Method can also be used as transfer pricing methods.

SUMMARY OF BEPS RESPONSE: TURKEY

- Roll-back for APAs: Taxpayers may apply the APA (roll-back) retroactively
- Penalty protection: For taxes not accrued or accrued deficiently, loss of tax penalty shall be applied with a 50% discount provided that documentation obligations related to transfer pricing are completed in time.

According to General Communiqué No: 464 of Turkish Procedures Code, internet service providers, banks, internet advertising agencies and cargo and logistics service companies operating in Turkey should submit information on digital sales of goods and services, as well as payments for internet advertising and logistics services, to the Data Collections Centre of the Tax Administration on a monthly basis.

As per The Draft Law that had been approved in the Planning and Budget Commision, VAT related to the services provided electronically by those who do not have any residence, workplace, legal centre or business centre in Turkey to the real persons who are not taxpayers in Turkey should be declared and paid by the service provider.

- How has the initiative impacted tax enquiries/audits?

Taxpayers subjected to a tax audit will be determined by performing a risk analysis by the Revenue Administration. The TTA has not initiated any audits relating to BEPS as of today. The below issues are the main topics that TTA has been focusing on during tax inspections:

- Cross-border intercompany charges such as service fees, management fees, royalties, etc.
- Activities in free trade zones
- Transactions exempt from CIT and VAT
- Doubtful trade receivables
- Sector specified audits (banking, pharmaceutical, chemistry etc.)
- Loss-making companies for the last 3 years

- Is your territory proposing to introduce country-by-country reporting?

On March 16, 2016, the Turkish Revenue Administration released Draft General Communiqué no. 3 - Disguised Profit Distribution through Transfer Pricing to implement new transfer pricing reporting requirements for multinational enterprises in line with recommendations of the OECD and the G20.

SUMMARY OF BEPS RESPONSE: TURKEY

The Draft Communiqué implements the three-tier documentation approach to transfer pricing documentation under Action 13. These three documents are a master file, a local file and CbCR.

- Master File: Turkish corporate taxpayers, members of a multinational group whose assets and net revenues are 250m Turkish Lira or more in the previous year should prepare a "master file" by the end of the second month following the filing deadline of the corporate income tax return, ready for the TTA or those authorised for tax inspection if requested.
- Local File: Local files should be prepared by the time the corporate income tax returns are filed. A local file should consist of three different components; Appendix 2 Transfer Pricing Form, Appendix 4 Transfer Pricing Form and the annual Transfer Pricing report.
- CbCR: Turkish resident parent companies of a multinational enterprise group whose consolidated revenues are 2,037 billion Turkish Lira and above for 2016 are required to submit CbCR electronically by the end of the 12th month following the fiscal year. For 2017 and beyond the revenue threshold shall be determined according to the Turkish Lira equivalent of EUR 750m.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Effective from January 1, 2013, certain limitations have been introduced with the Article 41/9 of Income Tax Code and the Article 11/i of the Corporate Income Tax Code regarding the deductibility of expenses and cost items relating to foreign resources utilized by companies such as interests, commissions, delayed interests, foreign currency losses and other costs and expenses, other than the ones added to the cost of investments.

According to this regulation, if the amount of foreign resources exceeds the equity of the company, financial expense restrictions will apply.

The ratio of restriction for the concerned type of expenses shall be determined by the Council of Ministers, but this ratio will not exceed 10%.

As of today the Council of Ministers has not determined the content nor the rate and accordingly this article is not applicable at the moment.

SUMMARY OF BEPS RESPONSE: TURKEY

- What do we recommend clients do to face the impending changes in your territory?

We recommend clients review and assess their transfer pricing policies and prepare their annual transfer pricing report, transfer pricing documentation, and benchmarking studies. It is also important for Turkish taxpayers to fulfill the documentation requirements relating to international tax issues such as intragroup transactions, PE issues, and services received from abroad.

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SUMMARY OF BEPS RESPONSE: UK

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

The UK continues to be a key supporter of the BEPS initiative, driving many of the proposals through the committees, many reflecting current UK legislation. The UK has also been proactive in introducing BEPS initiatives into UK legislation in advance of the outcome of BEPS action plan.

The UK has introduced the following legislation:

- Transfer Pricing: Update of the definition of "transfer pricing guidelines" to include Action 8-10, Part 4, TIOPA10 (s.164)
- CbC Reporting and Notification Requirements: Statutory Instrument 2016/237 and subsequently amended by Statutory Instrument 2017/497
- Diverted Profits Tax ("DPT"): Part 3, Finance Act 2015
- Corporate Interest Restriction: Part 10, TIOPA 2010
- Anti-Hybrid Rules: Part 6A, TIOPA 2010
- Tax Strategy: Schedule 19, Finance Act 2016
- Royalties Withholding Tax: Consultation document published by HMRC on December 1, 2017
- VAT Mini One Stop Shop ("MOSS"): Change in the place of supply for digital services from business to consumers. Council Directive 2008/8/EC – place of supply of services (Article 5), Council Implementing Regulation (EU) No 1042/2013 – place of supply of services and Council Implementing Regulation (EU) No 967/2012 – obligations under the one-time registration scheme (MOSS).

- How has the initiative impacted tax enquiries/audits?

Due to the significant pre-existing BEPS compliant legislation, BEPS itself has not had a significant impact on the current UK audit activity. However, disclosures made through CbC reporting and the impact of notifications made by companies in respect to DPT has increased enquires/audits in respect of large multinational enterprises.

SUMMARY OF BEPS RESPONSE: UK

- Is your territory proposing to introduce country-by-country reporting?

CbC reporting requirements were introduced by Statutory Instrument 2016/237 published on February 26, 2016. These regulations came into force on March 18, 2016 and apply to accounting periods commencing on or after January 1, 2016. CbC reporting applies to multinational enterprises with the ultimate parent company in the UK. Groups with annual consolidated turnover in excess of the sterling equivalent of EUR 750 million for the preceding fiscal year (translated at the average rate) will be required to file a CbC report to HMRC. CbC reports must be filed within 12 months of the period end.

If the ultimate parent has not filed a report with a jurisdiction that exchanges information with the UK, the top UK entity must file the CbC report and cover all entities within the sub-group of the UK tax resident entity or UK permanent establishment.

The 2016 regulations were updated by Statutory Instrument 2017/497. The 2017 amended regulations came into force on April 20, 2017. The amendments include:

- Extension of the CbC reporting scope to include partnerships;
    - Requiring a UK entity with a local obligation to file a UK CbC report and ask for the information necessary to complete a full CbC report (for the whole group), and aligning the local filing requirement with the OECD model; and
- Introduction of an annual notification requirement for a UK entity in a multinational group to notify HMRC about which entity will file the CbC report and in which jurisdiction they will file, together with names and unique taxpayer references for all the multinational group's UK entities (due by September 1, 2017 in the first year and by the end of the relevant reporting period thereafter).

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

The newly enacted corporate interest restriction legislation in line with the OECD's BEPS Action 4 is effective from April 1, 2017. Under the new rules, where a de minimis threshold of £2m is exceeded, deductions for net interest expense for the UK group will be restricted to the higher of the following:

- A 'fixed ratio rule' limiting deductions for net interest expense to 30% of a group's UK taxable earnings before interest, tax, depreciation and amortization ("tax EBITDA"); or
- A 'group ratio rule', based on the actual net third party interest to EBITDA ratio for the worldwide group.

SUMMARY OF BEPS RESPONSE: UK

These rules apply to all debt (third party and related party) and apply after considering other measures such as unallowable purpose and thin capitalisation. The rules also contain a rewrite of the debt cap rules which further limit UK interest to the group figure, but also contain an exemption for public benefit infrastructure. The rules are complicated and contain a number of choices that a taxpayer must make by certain deadlines.

- What do we recommend clients do to face the impending changes in your territory?
  - CbC Reporting / Tax Strategy: We recommend taxpayers assess how a tax authority might interpret the results of the CbC report, as there is increased transparency between taxpayers and tax authorities.
  - DPT / Royalties Withholding Tax / Anti-Hybrids: We recommend taxpayers gather relevant information and consider whether further advice on existing structures should be sought.
  - Permanent Establishments: As the PE definition has been revised, companies are recommended to consider their existing and potential new PE exposures i.e. commissionaires structures. What constitutes "preparatory and auxiliary" activities should be clearly understood and properly documented going forward.
  - IP and the Nexus Approach: We recommend companies analyse IP structures to ensure value creation, i.e. development, enhancement, maintenance, protection and exploitation ("DEMPE"), aligns with substance.

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SUMMARY OF BEPS RESPONSE: UKRAINE

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

In June 2016, a task force established by Presidential Decree presented a “de-offshorisation concept” with a summary of key provisions to be included in the draft of Ukrainian anti-BEPS laws. Draft laws have also been prepared but are not yet publicly available.

- How has the initiative impacted tax enquiries/ audits in your territory?

There has been no impact at this time on tax audits as a result of BEPS as the relevant laws have not yet been approved.

- Is your territory proposing to introduce country-by-country reporting?

With effect from 2017 CbCR has already been implemented in Sec. 138a GTC in line with the OECD requirements. The first report has been prepared for 2016 and was intended to be transmitted to the Federal Central Tax Office by the end of 2017.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

There is a proposal to limit interest deductions to 10-30% of a taxpayer’s EBITDA with the possibility to carry forward excess interest to future periods.

- What do we recommend clients do to face the impending changes in your territory?

As no specific changes have been introduced in Ukraine, we advise clients to continue to monitor the legislative position in Ukraine.

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SUMMARY OF BEPS RESPONSE: USA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

Final regulations regarding CbCR were issued on June 29, 2016 and apply to taxable years of parents of US MNE groups that begin on or after June 30, 2016. Additionally, on December 22, 2017 the Tax Cuts and Jobs Act was signed with the following significant changes for U.S. corporate taxpayers:

- Base Erosion and Anti-Abuse Tax: This tax applies to U.S. corporations with gross receipts greater than $500 million and is akin to an alternative minimum tax (10%) computed on "modified taxable income", adding back base erosion payments (amounts paid or accrued to related foreign persons, excluding payments classified as cost of goods sold).
- Interest Deduction Limitations: Net interest expense (both third and related party party) is limited to 30% of earnings before interest, tax, depreciation, and amortisation (with a transition to earnings before interest and tax in 2022).
- Participation Exemption and Transition Tax: Future cash distributions to the U.S. parent of a multinational corporation will be exempt from taxation. To facilitate this, the transition tax is a one-time charge on a U.S. corporations deferred offshore earnings (15.5% tax on liquid assets and 8% tax on non-liquid assets). This transition tax includes an installment payment option (8 years). Foreign tax credits may be utilised as a partial offset to this transition tax.
- Global Intangible Low-Taxed Income: A new tax on non-U.S. earnings in excess of 10% of tangible assets. This tax allows for a 50% deduction on these earnings and allows for a 80% foreign tax credit.

In addition to these changes, the U.S. corporate tax rate is reduced to 21% (from 35%), effective for tax years beginning after December 31, 2017.

- How has the initiative impacted tax enquiries/audits in your territory?

So far there has been no specific impact on tax audits by the IRS in light of BEPS. The activity of the IRS in respect of tax audits remains unchanged, as it remains focused on large-ticket audits as well as transfer pricing, supply chain, and IP disputes.

SUMMARY OF BEPS RESPONSE: USA

- Is your territory proposing to introduce country-by-country reporting?

Effective June 30, 2016 CbCR applies to multinational companies with a U.S. parent if consolidated revenues exceed $850 million. This report is to be submitted on or before the due date (including extensions) of the annual tax return.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

As discussed previously, the new tax legislation limits net interest expense (both third and related party party) to 30% of earnings before interest, tax, depreciation, and amortisation (with a transition to earnings before interest and tax in 2022).

- What do we recommend clients do to face the impending changes in your territory?

We recommend clients undertake a detailed review and assessment of their current transfer pricing policies and ensure sufficient documentation and other support is in place with the BEPS initiative in mind. Additionally, clients should consider the impact that the recently signed tax legislation has on their U.S. and global operations.

Clients who are considering undertaking large business changes / reorganisations may also want to consider applying for an Advance Pricing Agreement ("APA") with the IRS to manage uncertainty in the current tax environment.

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SUMMARY OF BEPS RESPONSE: VENEZUELA

- What legislative changes have already been made/proposed relating to the BEPS Action Plan?

No legislative changes have been proposed or made in Venezuela related to BEPS. However, certain matters addressed by BEPS were already regulated by Venezuelan Income tax law (such as the so called "substance-over-form" rules, principle for substance matters, thin capitalisation rules, restrictions to interest deduction, among others).

- How has the initiative impacted tax enquiries/audits in your territory?

BEPS has not yet directly impacted the audits or tax enquiries performed by Venezuelan tax authorities. However, prior to the BEPS release, Venezuelan tax authorities had started to harden their position regarding transfer pricing matters.

- Is your territory proposing to introduce country-by-country reporting?

Venezuela has not yet introduced CbCR.

- How has your territory reacted to the proposed BEPS initiatives regarding interest deductibility?

Venezuela has not yet reacted to the proposed BEPS initiatives regarding interest deducibility. However, certain regulations on matters addressed by this specific BEPS action have already been implemented into Venezuela income tax law (e.g., thin capitalisation rules, direct link between interest and taxable income, among others).

SUMMARY OF BEPS RESPONSE: VENEZUELA

- What do we recommend clients do to face the impending changes in your territory?

We do not expect that Venezuelan tax authorities will shift towards an alignment with OECD countries in international tax matters. Despite the fact that no amendments to the existing legislation have been proposed, tax authorities have an increased focus on transfer pricing matters. Therefore, we recommend investors perform a detailed analysis of their transfer pricing policies, corporate investment structures and cross border operations to ensure that they comply with the current views of the Venezuelan tax authorities in matters related to supporting documentation and substance requirements.

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APPENDIX 1 – BEPS ACTION POINTS

Action point	Description
1	Address the tax challenges of the digital economy
2	Neutralise the effects of hybrid mismatch arrangements
3	Strengthen CFC rules
4	Limit base erosion via interest deductions and other financial payments
5	Counter harmful tax practices more effectively, taking into account transparency and substance
6	Prevent treaty abuse
7	Prevent the artificial avoidance of PE status
8, 9, 10	Ensure that transfer pricing outcomes are in line with value creation
11	Establish methodologies to collect and analyse data on BEPS and the actions to address it
12	Require taxpayers to disclose their aggressive tax planning arrangements
13	Re-examine transfer pricing documentation
14	Make dispute resolution mechanisms more effective
15	Develop a multilateral instrument

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