



27 June 2017

1. European Commission published a proposal for Directive on 'intermediaries'

The European Commission published on 21 June the [proposal for a Directive on 'intermediaries'](#) that aims to establish an obligation for mandatory disclosure to tax authorities of reportable cross-border arrangements coupled with automatic exchange of information. The proposal of the Commission comes in the form of a 5th amendment to the Directive on mandatory automatic exchange of information in the field of taxation ("DAC"). In order to become European Union law, the Commission proposal needs a unanimous support in the Council of the EU by all member states.

In respect of the scope of the directive, the proposal envisages that the intermediaries bear the burden of disclosure to the tax authorities, if they are involved in the design or promotion of an aggressive tax planning arrangement with cross-border implications. The disclosure obligation does not concern purely internal situations concerning one EU member state, due the internal market component necessary to justify a legislative action at EU level. The disclosed information to the national tax authorities shall be automatically exchangeable by tax authorities of all member states.

Where the obligation to disclose is not enforceable due to absence of intermediary, or due to legal professional privilege, the directive envisages shifting of the disclosure obligation to the taxpayer who is benefiting from the arrangement.

In respect of the timing of disclosure, intermediaries shall disclose reportable arrangements within 5 days beginning on the day after an arrangement becomes available for implementation to the taxpayer. The timing is more lenient in case of disclosure by a taxpayer, with obligation to disclose within 5 days once implementation has commenced.

In respect of the hallmarks, which are the criteria that define what constitutes a reportable cross-border arrangement, the directive places these in an Annex, that could be amended and revised by the European Commission once the directive has been implemented. The directive envisages a main benefit test alongside generic and specific hallmarks. The generic hallmarks include: confidentiality from competitors, confidentiality from the tax authorities, premium fees and off-the-shelf schemes. Specific hallmarks include hallmarks related to the main benefit test, specific hallmarks related to the cross-border transactions, to transfer-pricing and specific hallmarks concerning automatic exchange of information in the European Union.

The proposed rules could enter into force on 1 January 2019, in case of adoption by the Council as per the EU treaties.

2. OECD releases BEPS discussion drafts on attribution of profits to PEs and profit-splits

The OECD released two discussion drafts inviting comments on the following issues: attribution of profits to permanent establishments, and, revised guidance on profit splits. Comments are welcome until 15 September 2017.

The [attribution of profits discussion draft](#) concerns additional guidance that had been mandated by BEPS Action Point 7 (prevention of artificial avoidance of PE status) on how the rules of Article 7 of the OECD Model Tax Convention would apply to PEs resulting from the BEPS changes, in particular for PEs outside the financial sector. This guidance replaces the discussion draft of July 2016, and concern attribution of profits only, and not the definition of permanent establishment.

The [discussion draft on profit splits](#) concerns Action point 10 of the BEPS Action Plan in respect of application of the transfer pricing methodology, specifically the transactional profit split method, in the context of global value chains.

3. Publication of transfer-pricing toolkit for developing countries

The United Nations, World Bank, the OECD and the International Monetary Fund (IMF) published a [toolkit](#) to help developing countries to better protect their corporate tax base. The toolkit specifically addresses the lack of comparables for transfer-pricing analyses. Considering the pricing of related party transactions in the extractive industries is an issue of relevance for the developing countries, the toolkit addresses the information gap on minerals sold in an intermediary form.

4. Third meeting of the BEPS inclusive framework

Over 200 delegates from 83 countries and 12 international and regional organisations met in the Netherlands as part of the Third Meeting of the BEPS Inclusive Framework. Apart from approving the discussion drafts on attribution of profits to PEs and the profit-split transfer-pricing methodology, the BEPS Inclusive Framework welcomed new members and discussed and approved its first monitoring report, to be submitted to G20 leaders for their summit on 7-9 July 2017 in Hamburg, Germany.

5. OECD appoints new head of transfer-pricing

The OECD has appointed Mr Tomas Balco as Head of its Transfer-Pricing Unit within the Centre for Tax Policy and Administration, taking up his duties on 4 September 2017. A Czech and Slovak national, Mr Balco holds law degrees from the Masaryk University in Brno and the Vienna University of Economics and Business. Mr Balco previously worked for Deloitte and PricewaterhouseCoopers, the tax department of the Czech Government and the European Commission. Mr Balco has also been participant to the work of the UN Committee of Experts in International Taxation.

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