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OECD publishes update to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations

The updated 2017 Transfer Pricing guidelines incorporate a consolidation of the changes made as part of the OECD BEPS project. In particular it takes account of the substantial changes made pursuant to BEPS Action 8-10, Aligning Transfer Pricing outcomes with Value Creation and Action 13, Transfer Pricing Documentation.

The updated 2017 edition consolidates the following revisions of the 2010 edition into a single publication:

- The substantial revisions introduced by the 2015 BEPS Reports on Actions 8-10 Aligning Transfer Pricing Outcomes with Value Creation and Action 13 Transfer Pricing Documentation and Country-by-Country Reporting. These changes were approved and incorporated in May 2016. Chapters I, II, V, VI, VII and VIII were amended.
- The revisions introduced by BEPS Actions 8-10 and Action 13 relating to business restructurings which amended the guidance in Chapter IX and were approved in April 2017;
- The revised guidance on safe harbours in Chapter IV. These changes were approved by the OECD Council in May 2013; and
- In order to accurately finalise the consolidated version changes were made throughout the text for consistency. These consistency changes were approved by the OECD¹ on 19 May 2017.

In addition, the 2017 edition of the Transfer Pricing Guidelines includes the revised Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises. The revised Recommendation reflects the relevance to tackle BEPS and the establishments of the Inclusive Framework on BEPS. It also strengthens the impact and relevance of the Guidelines beyond the OECD by inviting non-OECD members to adhere to the Recommendation. Finally, it includes a delegation by the OECD Council to the Committee on Fiscal Affairs of the authority to approve by consensus future amendments to the Guidelines which are essentially of a technical nature.

The updated and consolidated [2017 OECD Transfer pricing Guidelines](#) are available here.

OECD preliminary database containing modifications made by Multilateral Instrument (MLI) on bilateral tax treaties is now online

The OECD database known as the “matching database” is now live. The matching database makes projections on how the MLI modifies a specific tax treaty covered by the MLI by matching information from Signatories’ MLI Positions and highlighting elections made.

The OECD highlight that this is a preliminary version and will be improved over time. The OECD is welcoming any comments users may have on the matching database.

The [OECD MLI Matching Database](#) is accessible here.

OECD releases the draft contents of the 2017 update to the OECD Model Tax Convention

The OECD Working Part 1 has released draft contents of the 2017 update to the OECD Model Tax Convention prepared. It has not yet been approved by the OECD Committee on fiscal affairs so is not a final version. The OECD have released it to garner opinion and comments on certain proposed changes.

These changes are as follows:

- Changes to paragraph 13 of the Commentary on Article 4 related to the issue whether a house rented to an unrelated person can be considered to be a “permanent home available to” the landlord for purposes of the tie-breaker rule in Article 4(2) a).
- Changes to paragraphs 17 and 19 of, and the addition of new paragraph 19.1 to, the Commentary on Article 4. These changes are intended to clarify the meaning of “habitual abode” in the tie-breaker rule in Article 4(2) c).
- The addition of new paragraph 1.1 to the Commentary on Article 5. That paragraph indicates that registration for the purposes of a value added tax or goods and services tax is, by itself, irrelevant for the purposes of the application and interpretation of the permanent establishment definition.
- Deletion of the parenthetical reference “(other than a partnership)” from subparagraph 2 a) of Article 10, which is intended to ensure that the reduced rate of source taxation on dividends provided by that subparagraph is applicable in the case where new Article 1(2) would have the effect that a dividend paid to a transparent entity would be considered to be income of a resident of a Contracting State because it is taxed either in the hands of the entity or in the hands of the members of that entity. That deletion is accompanied by new paragraphs 11 and 11.1 of the Commentary on Article 10.

G20 Summit in Hamburg – Tax Highlights

The G20 issued its communique on July 7th. Regarding tax matters the leaders focused on the upcoming exchange of information of financial account information under the Common Reporting Standard which is due to take place for the first time in September. Countries are encouraged however to begin the process by August at the latest.

In addition the communique highlighted the commitment to business friendly tax initiatives whilst also reiterating the commitment to the OECD BEPS process. In terms of pro-business policies it highlighted the work being done in the areas of tax certainty and addressing the tax challenges raised by digitalisation. It also reaffirmed its commitment to assisting developing countries.

In regard to the topic of tax transparency the G20 refer to the next updated list of countries which have failed to reach a satisfactory level of implementation of transparency standards. It highlighted that defensive measures will be considered against jurisdictions which remain on the list.

A copy of the Communique is available at this link – [G20 Communique](#)

French Court holds that Google's European Headquarters does not have a PE in France

Google Ireland Limited has successfully won a challenge against a French tax assessment for 1.3 billion euro in relation to an alleged permanent establishment in France from 2005 to 2010. The French tax administration alleged that Google exploited loopholes in tax legislation and routed sales from France through the Dublin based EU headquarters. The French Administrative Court however held that on the basis that all decisions in France had to be approved and finalised in Ireland Google France lacked the requisite autonomy to establish a taxable base in France.

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