BRUSSELS I **JUNE 2018**

1. OECD Releases Guidance on Intangibles and Profit Split Method Under BEPS Actions 8 & 10

The OECD has released two reports setting out guidance on the following matters: Guidance for Tax Administration on the Application of Approach to Hard-to-Value Intangibles under BEPS Action 8, and Revised Guidance on the Application of the Transactional Profit Split Method under BEPS Action 10.

An earlier OECD guidance report released in 2015 entitled Aligning Transfer Pricing Outcomes with Value Creation listed the above issues for future follow-up work, leading to the publication of this further guidance.

The first report sets out how tax administrations should apply adjustments of hard-to-value intangibles in order to reduce the risk of double taxation. The guidance includes an analysis of hard-to-value intangibles. The second report concerns the profit split method, and the guidance set out in the report has been incorporated into the Transfer Pricing Guidelines.

Additionally, on 21 June, Vanuatu became the 123rd country to sign the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The multilateral tax treaty allows jurisdictions to update their existing double tax treaties and transpose measures agreed in the BEPS project without further need for bilateral negotiations, and aims to increase transparency and further efforts to reduce cross-border tax evasion.

2. US Supreme Court Overturns Physical Nexus Requirements for Taxing Online Retailers

In a landmark ruling in the case of South Dakota v Wayfair Inc., the US Supreme Court has overturned prior case-law concerning the physical nexus requirement for taxation of online sellers, including overseas companies selling to US-based customers.

The outcome of the ruling is that businesses making sales to US customers, including overseas retailers with no physical presence in the country, will now be required to comply with taxation filing requirements. Previously, under US law, where a seller lacked a physical presence in the US, the retailer was not required to comply with sales tax requirements.

The Court referred to revenue losses caused by the requirement for a physical presence in a jurisdiction in order to be taxed, and opined this was “removed from economy reality”, and did not take into account the manner in which digital business had “changed the dynamics” of business operation and the economy.

This ruling will likely significantly complicate taxation compliance for businesses, in particular for SMEs , who may not have the resources to easily adapt to increasingly complex reporting requirements, particularly for retailers selling remotely into US jurisdictions.

3. NZ Anti-BEPS Legislation to Enter Into Force

New Zealand’s Taxation (Neutralising Base Erosion and Profit Shifting) Bill will come into force from 1 July 2018. The legislation will restrict multinationals from benefiting from reduced taxation through preventing BEPS measures such as setting artificially high interest rates on loans, related-party transactions which shift profits to offshore group members, exploiting hybrid mismatches and artificial arrangements put in place to avoid establishing a taxable presence in New Zealand.

Finance Minister Stuart Nash stated that the legislation will “ensure that multinationals pay tax based on the actual economic activity they carry out in New Zealand”. It is estimated that the legislation will result in an increase of 200 million NZD per annum in tax revenue.

Mr Nash noted that New Zealand’s Inland Revenue will collaborate internationally with the OECD and G20 in considering whether other anti-BEPS measures ought to be implemented.

4. OECD Launches Tax Revenue Database

At the 5th plenary meeting of the Inclusive Framework on BEPS, the OECD announced the launch of a new database which will provide detailed comparable taxation revenue information concerning 80 jurisdictions, and will increase to cover 90 jurisdictions by the end of 2018.

The database will be known as the Global Revenue Statistics Database, and will include country-specific indicators concerning tax structures and tax rates with a view to enable necessary tax policy reforms to sufficiently fund public services. A working paper compiled using information from the database sets out that tax revenues have increased since 2000.

Pascal Saint-Amans, Director of the OECD stated that the Global Revenue Statistics Database “sets the global standard for robust and comparable tax revenue data” and is a “vital foundation for tax policy reform”.

5. US Imposes Duties on EU Imports

On 31 May, the US announced that it would impose duties on steel and aluminium imported from the EU, Canada and Mexico, at rates of 25% and 10% on each product respectively, as of 1 June 2018. These tariffs will affect exports from the EU which were worth over 6.4 billion Euros in 2017.

In a press release issued on the same day, the EU stated it would launch legal dispute settlement proceedings in the WTO on 1 June against the US concerning the tariff, as part of coordinated action with other affected parties. Speaking about the measures, EU President Jean-Claude Juncker stated that “the EU believes these unilateral US tariffs are unjustified and at odds with World Trade Organisation rules. This is protectionism, pure and simple”.

Following on from that announcement, the EU College of Commissioners on 6 June endorsed the decision to impose additional rebalancing duties on a selected list of US products which was notified to the WTO by the EU in May. The duties are expected to begin to apply from July 2018 onwards on products valued at 2.8 billion Euros.

EU Commissioner for Trade, Cecilia Malmström, stated “this is a measured and proportionate response to the unilateral and illegal decision taken by the United States to impose tariffs on European steel and aluminium exports. What’s more, the EU’s reaction is fully in line with international trade law. We regret that the United States left us with no other option than to safeguard EU interests.” An investigation is ongoing concerning whether safeguard measures will be necessary to protect EU steel and aluminium markets.