Luxembourg
Tax Department

Luxembourg Tax Alert.

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International tax changes recommended by the OECD halfway through the race?

On 16 September 2014, the OECD[1] published 7 papers as a first tranche of deliverables under the Base Erosion and Profit Shifting (‘BEPS’) project[2] . The OECD will be continuing its work on the remainder of the 15 BEPS actions.

Current OECD 7 proposals

The 7 papers cover the following areas:

- addressing the tax challenges of the digital economy (action 1);
- neutralising the effects of hybrid mismatch arrangements (action 2),
- countering harmful practices (action 5),
- preventing treaty abuse (action 6),
- transfer pricing aspects on intangibles (action 8),
- transfer pricing documentation and country-by country reporting (action 13)
- and development of a multilateral instrument (action 15).

The 7 deliverables focus on designing new international standards to ensure the coherence of corporate income taxation at an international level. The spotlight is also on realigning and relevant substance to restore the intended benefits of international standards, both in area of the tax treaties and the transfer pricing.

Following the release of such papers, the Luxembourg Minister of Finance shows himself as optimistic. Indeed, in his answer to a parliamentary question[3], Pierre Gramegna analysed the OECD recommendations as an opportunity for the growth of Luxembourg’s economy and its financial market. Indeed, some recommendations will ask for an adaptation of the fiscal framework, for instance in terms of substance or physical and operational presence of companies based in

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the Grand-Duchy, which were already mentioned in the December 2013 governmental programme.

What's next?

The OECD's first 7 BEPS papers are a significant step forward in modernising the international tax system. However, there is still no clarification on how the different actions will be implemented. A deadline on December 2015 was communicated. By that date, the 15 areas shall be addressed on a multinational basis. The BEPS agenda is overly ambitious and the timetable is too accelerated to allow careful consideration and input.

The main factor of the implementation of BEPS outputs is a multilateral instrument to modify the current bilateral tax treaties network. If there is an assessment on the feasibility of implementing BEPS measures through a multilateral instrument, there are still questions about the practicalities of achieving a written consensus and developing such an instrument. Also, it is recognised that the BEPS actions must be completed before the substantive components of the multilateral instrument can be finalised. However, on the basis of the current OECD recommendation, negotiations of such an instrument could start early 2015.

Another key OECD project - the single common global standard automatic exchange of information ("AEOI Standard") - seems to achieve more consensus among countries. The AEOI Standard could have a good chance to be implemented swiftly.
The AEOI Standard provides for the regular automatic exchange between governments of all financial relevant information from accounts held by individuals and entities (including trusts and other arrangements) in foreign financial institutions. Many countries pledged to start the first exchange of information automatically by 2017 or the end of 2018.

The discussions on the BEPS project and the AEOI Standard will continue during the next months. Deloitte Luxembourg will keep you updated on future developments in connection with those matters.

1 Organisation for Economic Cooperation and Development
2 In February 2013, the OECD released its widely anticipated BEPS project making an assessment of the international tax systems of the 21st century. In July 2013, the OECD published its BEPS Action Plan identifying 15 actions to avoid double non taxation and to ensure companies pay taxes where they make their profits
3 Parliamentary question with answer n°470 dated 16 September 2014

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