FISCAL COUNT DOWN

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DISCOVER THE NEWS OF THE TAX NEWSLETTER COUNTDOWN

In order to provide you with a regular insight into international tax news, our experts invite you to discover the Fiscal Count down, a concentrated report available in English and French on regulatory developments, particularly in connection with the introduction of the OECD's BEPS initiative, which could impact your tax obligations

Chief Editor :
Frédéric Barat

EDITO

The **Fiscal Countdown**, a monthly summary of international tax news, provides you with regular insights into the introduction of the OECD's BEPS initiative and the ongoing international tax reforms. This fifty-second edition deals with the new measures published in July 2020 by the OECD, the EU and in 31 countries: Angola, Argentina, Australia, Belgium, Brazil, Canada, Cyprus, Ecuador, Greece, Honduras, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Malta, Mexico, Panama, Philippines, Portugal, Romania, Russia, Rwanda, Saudi Arabia, South Africa, UK, Ukraine, USA.

Frédéric Barat, Avocat Associé
Frédéric Lubczinski, Avocat Senior Manager

Exaltis, 61, rue Henri Régnault
92 075 – La Défense – France
Tél. : 01 49 97 60 00
www.mazars.fr

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OECD

Kenya deposits its instrument of ratification of the Convention on Mutual Administrative Assistance in Tax Matters with the OECD.
OECD report forecasts falling tax revenues in Asian and Pacific economies as a result of COVID-19 pandemic.

EUROPEAN UNION

CJEU
Ruling on a Finnish data centre's on-site services has implications for tax-liability exemptions.
A Court of Justice of the EU (CJEU) judgment (2 July 2020) has found that the supply of host services by a Finnish data centre could not be considered for value-added tax (VAT) purposes as leasing of or services connected with immovable property.
Case C-215/19 Veronsaajien concerned a Finnish Oy limited company that offered data centre "hosting services" to domestic operators and in other EU Member States. Customers would pay the anonymous company, which was referred to in the case as "A Oy", to locate their own servers in its computing centre, which included the provision of an equipment cabinet, the supply of electricity and the services necessary to ensure the optimal use of the servers. The unnamed company also guaranteed the general upkeep of the cabinets and the replacement of light bulbs.
The equipment cabinets were bolted to the floor and could be uninstalled in a few minutes without damage to the equipment. The customers had no direct access to the equipment cabinet in which their servers were installed and were only able to obtain access after proving their identity with a security service.
The Supreme Administrative Court of Finland asked the CJEU two preliminary questions on how A Oy's services should be treated for VAT purposes:

- For the purposes of the VAT Directive and its implementing regulation, did the provision of a computing centre server housing service should be regarded as the leasing of immovable property for the purposes of applying the VAT exemption in Article 135(1)(l) of the Directive?
- Conversely, should this housing service in the computing centre, together with the provision of ancillary services, be considered a service linked to immovable property and, if so, should the service be located at the place where the immovable property is itself located?

The CJEU concluded that:

- Housing services in a computing centre did not constitute the leasing of immovable property, within the scope of the exemption provided for in the Directive, because the customers were not guaranteed the right of use these on an exclusive basis. In addition, the equipment cabinets were not immoveable property since they were not an integral part of the building (they were not installed there permanently).
- In response to the Finnish court's second question, the services in question cannot be considered as services connected with immovable property since the customers did not enjoy an exclusive right of use of the part of the building in which the equipment cabinets were installed.

The ruling follows another CJEU case (RR Donnelley Global Turnkey Solutions Poland, C-155/12, EU:C:2013:434) and suggests that the crucial elements needed to connect the supply to immovable property are identifying a defined area within a data centre and assigning control over the area to the customer. Where it is not connected to immovable property, the supply of services should generally be taxable at the place where the recipient has its place of business. Other factors may, however, come into play and affect the ultimate local VAT liability attached to the service – for instance, can the use and enjoyment rule apply, and can the server be deemed to amount to a taxable presence for VAT purposes.
In KrakVet Marek Batko sp.k. v Nemzeti Ado es Vamhivatal Fellebbviteli Igazgatosaga (Case C276/18), CJEU rules that the place of supply of distance sales between EU member states is the location of the customer where the role of the supplier is predominant in initiating and organizing the essential stages of the dispatch or transport of the goods.

ANGOLA

In the context of the Tax Reform and, notably, with the purpose of "stimulating the productivity of the Industrial Tax on the GDP and implementing its competitiveness considering international taxation", Law no. 26/20 was published. It amends the Industrial Tax Code.

ARGENTINA

On 13 August 2020, Argentina's Congress approved a bill that would establish a new tax settlement plan for individuals and companies doing business in Argentina. The President is expected to sign the bill into law in the coming days. The bill will be enacted once it is published in the Official Gazette. Once the President signs the bill, taxpayers should continue to monitor the release of further regulations by the Executive Power and the tax authorities.

AUSTRALIA 1/2

The Australian Taxation Office has recently set out its position on the debt forgiveness consequences and Division 7A consequences where loans are put on hold during the COVID-19 pandemic.
On 12 August 2020, the Australian Taxation Office (ATO) released final Taxation Ruling TR 2020/4 (the Ruling) and Practical Compliance Guideline PCG 2020/7 (the PCG) reting to the use of the Arm's-Length Debt Test (ALDT) for the purposes of Australia's thin capitalization regime following its consultative draft released last year (PCG 2019/D3).

AUSTRALIA 2/2

On 12 August 2020, the Australian Taxation Office (ATO) released long awaited draft guidance on outbound interest-free financing between cross-border related parties in Practical Compliance Guideline (PCG) 2017/4DC2. The draft guidance is added within a new schedule to PCG 2017/4 (the PCG); draft Schedule 3 (the draft Schedule).

The draft Schedule outlines the ATO's views on factors that may be considered to risk score an outbound interest-free loan arrangement, that otherwise would have been applied through the existing Schedule 1 (which addresses related party financing more generally) of the PCG.

As with the ATO's overall PCG framework, taxpayers are expected to "self-assess" their position in light of the guidance. The draft Schedule retains the same "risk zones" as Schedule 1 of the PCG, guiding the ATO treatment and level of expected compliance resource allocation. Further consistent with the ATO's view, the draft Schedule's starting point for an outbound interest-free loan arrangement is a presumption that the arrangement is high risk (amber risk zone) before consideration of any other characteristics of the financing arrangement. The ATO states in the draft Schedule that such arrangements present a "high" transfer pricing risk on the basis that "generally, loans are not provided by independent parties on an interest-free basis."

The draft Schedule provides the ability for taxpayers to move away from the high-risk zones of the PCG and lower the risk rating of their outbound interest-free loan arrangements, provided a taxpayer can evidence one of the following:

- The zero-interest rate is an arm's-length condition of the loan;
- The loan is in substance an equity contribution;
- Independent entities would have not entered into the actual loan and would have entered into an equity-funded arrangement.

The draft Schedule provides a two-step approach in determining the risk scoring, considering initial "minimum required factors" that must be present to achieve any reduction in risk rating and subsequently a more detailed holistic consideration of the overall arrangements. Relevant considerations are to a large extent consistent with those historically identified for assessing "quasi-equity" type arrangements. However, taxpayers will be expected to conduct a detailed analysis within the framework of the transfer pricing legislation in Subdivision 815-B of the Income Tax Assessment Act 1997 (ITAA 1997), including appropriate evidence upon which conclusions are based.

BELGIUM

On 11 August 2020, the Commission published its decisions to investigate in depth the treatment of 39 Belgian companies that had obtained an 'excess profit ruling'. Upon publication in the EU Official Journal, interested third parties will have one month to submit comments to the Commission.

BRAZIL

COVID-19 Tax and Customs Extraordinary Measures adopted in August.

Brazil proposed a bill that would replace existing PIS and COFINS Contributions with CBS. The new tax, which is intended to function as a federal value-added tax (VAT), would apply to local sales (gross revenue) and imports of goods and services but not to exports.

CANADA

The Time Limits and Other Periods Act (COVID-19) (TLOPA), respecting timelines under the Income Tax Act (ITA) and the Tax Court of Canada Act (TCCA), came into force when Bill C-20 received Royal Asset. The legislation has not changed since it was first introduced on June 10, 2020, as part of Bill C-17.

Taxpayers need to be aware of the following important implications of this legislation:

- TLOPA suspends, for a maximum of six months, certain time limits in relation to proceedings before courts;
- TLOPA temporarily enables ministers to suspend or extend time limits and to extend other periods in relation to specified Acts and regulations for a maximum of six months; and
- TLOPA provides for the transparent exercise of the powers it confers and for Parliamentary oversight over the exercise of those powers.

COVID-19 Tax Update: CRA extends payment deadline and provides automatic relief of interest and penalties.

CYPRUS

Cyprus and Switzerland agree updated double tax treaty.

Talks between Russia and Cyprus (the Parties) over the double taxation treaty have resulted in agreement to leave the current treaty in force, but to make amendments to increase withholding tax rates for dividends and interest to 15%. The Parties also have agreed maintain tax benefits for regulated entities, public companies (where they meet specific criteria) and certain kinds of bonds. The current relief for royalties is also set to be preserved. The Parties initialed a draft protocol (i.e., they agreed on the final text prior to signing). The protocol is due to be signed in September 2020 and is expected to take effect from 1 January 2021.

ECUADOR 1/2

Ecuador has issued regulations implementing the tax reform enacted on 30 December 2019. Specifically, the regulations implement:

(1) Corporate income tax rules;
(2) Income tax rules for the banana, agricultural and farming industries;
(3) Dividend withholding rules; and
(4) Value-added tax (VAT) rules for digital services.

ECUADOR 2/2

On 4 August 2020, Ecuador published Executive Decree No. 1114 with regulations on the value added tax (VAT) on digital services. The regulations take effect 16 September 2020.

GREECE

L.4714/2020 (the Law) published in the Government Gazette on 31 July 2020 (GG A'148) introduces two new tax dispute resolution mechanisms. First, it establishes an Out-of-Court Tax Dispute Resolution Committee, with limited application and time scope. The Law also transposes European Union (EU) Directive 2017/1852 on tax dispute resolution mechanisms in the EU into Greek legislation.

HONDURAS

Fiscal authority enables procedure to rectify payments on account.

The tax authority has enabled the process to rectify the generated payments on account. Due to the economic effects of the COVID 19 pandemic, the generated payments on account may not reflect the current income of the companies. Consequently, a procedure has been set up to be able to request the rectification of the generated payments on account, in order for the amounts to reflect the income actually received.

HONG KONG

Hong Kong Unveils Attractive Ship Leasing Tax Incentive.

INDIA

The Indian Government, on 13 August 2020, formally launched the "Transparent Taxation – Honouring the Honest" platform (the Platform). The Platform addresses the following three areas: (i) faceless assessments; (ii) faceless appeals; and (iii) the Taxpayers' Charter (TC). The Platform has been introduced primarily to give effect to certain statutory provisions of the Income Tax Laws (ITL), for e-assessment, e-appeals and declaration of the TC to enhance fairness and efficiency in tax administration and to protect citizens' rights.

On 7 August 2020, the CBDT published detailed guidance (the Guidance) which is intended to provide key information on several aspects relating to India's MAP program. The Guidance comprises of four sections, including: (A) introduction and basic information; (B) access and denial of access of MAP; (C) technical issues; and (D) implementation of the MAP process. In line with the amended MAP Rules, the On 7 August 2020, the CBDT published detailed guidance (the Guidance) which is intended to provide key information on several aspects relating to India's MAP program. The Guidance comprises of four sections, including: (A) introduction and basic information; (B) access and denial of access of MAP; (C) technical issues; and (D) implementation of the MAP process. In line with the amended MAP Rules, the Guidance also underscores India's commitment to resolve MAP cases within 24 months. In general, issuance of this Guidance will be useful and will benefit the taxpayers, tax authorities and competent authorities (CAs) of India and the respective foreign jurisdictions. The Guidance further reinforces India's commitment to make dispute resolution an effective and efficient process by reforming its MAP regime to comply with the key areas of the Report.

INDONESIA

COVID-19 - Latest Expansion of Tax Incentives.

IRELAND

On the 6 August 2020, Irish Revenue released an eBrief on the July Jobs Stimulus which outlined accelerated loss relief for companies. A new section 396D in the Taxes Consolidation Act 1997 (TCA) was introduced by Section 11 of the Financial Provisions (Covid-19) (No. 2) Act 2020 (Act). This legislation was signed by the president on 1 August 2020, but the official text of the Act is not yet available. Section 396D provides for temporary acceleration of corporation tax loss relief for accounting periods affected by the COVID-19 pandemic. It enables companies to estimate their trading losses and carry back up to 50% of those losses against profits of the preceding accounting period on an accelerated basis, thus accelerating a refund of tax paid or a reduction in tax payable.

ISRAEL

Publication of the Accelerated Depreciation Regulations Draft.

ITALY 1/2

On 26 August 2020, Legislative Decree no.100/2020 ('the Decree'), which implements in Italy the sixth EU directive on administrative co-operation (so-called 'DAC6'), comes into effect.
Related reporting obligations arising for intermediaries and taxpayers are, however, postponed in response to the COVID-19 pandemic. In particular, data concerning:

- reportable transactions implemented in 2020 are due within 30 days of 1 February 2021 (originally 1 July 2020); and
- reportable transactions implemented in the period 25 June 2018 to 30 June 2020 are due by 28 February 2021 (originally by 31 August 2020).

Additional implementing legislation will be issued in respect of:

ITALY 2/2

- The application and definition of the relevant hallmarks and the criteria to be used for the main benefit test; and
- the submission of relevant information.

JAPAN

Japanese tax authorities reorganize tax audit teams into single unit to cover domestic, international and transfer pricing issues.

KENYA

In the context of Covid-19, Kenya implemented a number of immediate relief measures geared at individual taxpayers, businesses, investments and with a view to increasing disposable income for the people of Kenya in general.

MALTA

The registration process for the new Consolidated Group (Income Tax) Rules has opened and applications can be submitted until the end of September 2020 for the year of assessment 2020.

MEXICO

Mexico has introduced new provisions into its domestic tax law that may be considered as the Latin American version of the Council Directive ("EU") 2018/288 of 25 May 2018 ("DAC 6"). Deriving from the Mandatory Disclosure Rules under Action 12 of the OECD BEPS Project in an attempt by the Mexican Treasury to know what taxpayers are doing in terms of tax planning and tackle aggressive transactions having a tax avoidance or abuse component. Consequently, the Mexican Federal Tax Code ("FTC") now sets forth the obligation (starting 1 January 2021) for tax advisors or, alternatively, taxpayers to disclose information about "reportable schemes" (defined) to the Tax Administration Service ("SAT") in cases where such schemes, when entered into by taxpayers, directly or indirectly, result in a tax benefit in Mexico.

PANAMA

On 6 August 2020, the National Assembly of Panama approved Bill No. 355 of 2020 on its third and final debate. The bill establishes the Special Regime for the Establishment and Operation of Multinational Enterprises that Render Manufacturing Services ("EMMA"). Entities under the EMMA regime will have various tax, customs, labor and immigration benefits.

PORTUGAL

It has been published in the official website of the Portuguese Tax Authority, the new postponement of the deadline to comply with the obligation to prepare and submit the transfer pricing file, to which large taxpayers are subject, under article 130, no. 3, of the Corporate Income Tax ("IRC") Code, to September 15th, 2020.
The below comment describe the exceptional measures which have successively been adopted to mitigate the effects of the Covid-19 pandemic in Portugal on payments on account and additional payments on account.

Extension of the deadline
The deadline for the first payment on account and for the first additional payment on account had been postponed from July 31 (which would end today) to August 31.

Extraordinary limitation regime applicable to the first and second payments
Supplementary State Budget Law for 2020, published by Law no. 27-A/2020, of 24 July, which became effective in the following day, maintained the extraordinary regime set forth in the Draft of this Bill allowing ailing Portuguese companies to waive in 50% or totally of the 1st and 2nd CIT payment on account when reveal a decrease of, at least, 20% or 40%, respectively, in the monthly average invoicing communicated through the E-invoice website in the first semester of 2020 compared to the same period in 2019 or, for those who started activity on or after January 1, 2019, in relation to the average of the previously period of activity.
Taxpayers whose main activity falls under the classification of economic activity of accommodation, restaurants and similar are also exempt from first and second payments.
Special rules are also provided for CIT payments on account for ailing companies in tax grouping.
These measures are not applicable to additional payments on account, which may be paid until August 31 due to the extension given by Order 104/2020.XXII.

Exemption applicable to small and medium companies
Law 29/2020 was published approving tax measures to support micro, small and medium-sized enterprises (SMEs), which includes the possibility of waiving payments on account.
This law enters into force will last until the end of the year in which these exceptional measures cease.

ROMANIA

Romania introduces tax incentives for acquisition of electronic cash registers.

RUSSIA

Federal Law No. 265-FZ of 31 July 2020 (the “Law”) limits the VAT exemption for granting use rights for certain IP assets and introduces a special tax regime for companies in the IT industry.

On 6 August 2020, the Russian Federal Tax Service published Letter No. SHU-4-13/12599@ "On certain issues regarding taxation of intra-group services" (the "Letter") addressed to local tax authorities. The Letter sets out key principles to guide tax audits of intercompany services acquired by Russian entities from foreign group companies.

RWANDA

The Rwandan Minister of Trade and Industry issued an announcement listing specific requirements that should be met by industries and manufacturers when filing an application for a VAT exemption on imported machinery, capital goods and raw materials. This exemption is not applicable to importers who intend to resell the imported machinery, capital goods and raw materials.

The following requirements must be met:

- The applicant must be registered in Rwanda as a company, a cooperative, or an individual enterprise;
- The applicant must indicate its full address with a recognized head office;
- The applicant must be processing raw materials or assembling parts to produce goods for sale or mining and quarry exploitation activity;
- The application must indicate the direct link between the goods for which the exemption is sought, and the industrial activity carried out or that will be carried out;
- For the assembling industry, parts to be assembled must be completely separate upon importation;
- Proof must be provided that the added value to raw materials is equal to at least 30%;

The exemption is only applicable to machinery, capital goods, or raw materials appearing on the list established by the Ministry of Trade and Industry and approved by the Ministry of Finance and Economic Planning.

The VAT exemption application must be accompanied by:

- An application letter addressed to the Minister of Trade and Industry;
- A list of raw materials, machinery, capital goods with their respective Harmonized Schedule codes;
- The company’s or cooperative’s registration certificate.

The application should be submitted to the Minister of Trade and Industry before the machinery, capital goods and raw materials are imported into Rwanda.

Within two weeks from the receipt of a valid application:

- The Ministry of Trade and Industry will analyze the respective application;
- The Ministry of Finance and Economic Planning will conduct a physical verification and send the approved list to the Rwanda Revenue Authority.

Applications for renewals will only be permitted twice a year, i.e., in January and June. However, new applicants will not be subject to these time restrictions.

SAUDI ARABIA

Saudi Arabia’s General Authority of Zakat and Tax (GAZT) originally extended the 2020 tax filing and payment deadlines by three months on 20 March 2020. The Ministry of Finance issued Ministerial Resolution (MR) No. 3430, on 29 March 2020, providing relief from tax penalties and allowing tax due to be paid by installments. The GAZT issued a supporting circular on the same day. The relief initially covered the period from 18 March to 30 June 2020. The GAZT has now extended initiatives up to 30 September 2020, by issuing a notification on its website

SOUTH AFRICA

National Treasury and the South African Revenue Service (“SARS”) published the 2020 Draft Taxation Laws Amendment Bill (“Draft TLAB”) and the 2020 Draft Tax Administration Laws Amendment Bill (“Draft TALAB”), for public comment due by 31 August 2020. The Draft TLAB includes additional requirement in order for mining companies to qualify for accelerated capital expenditure deductions on expenditure.

UK 1/2

The vast number of lease renegotiations in recent months have tended to involve either a rent reduction or rent free period in exchange for either the removal of a tenant’s break right or some form of extension to the term of the lease. On 29 July HMRC published Revenue and Customs Brief 11 (2020) (RCB11) setting out the VAT and SDLT consequences of these types of deals. The brief notes that it has been issued in response to the current rise in lease renegotiations and that it does not reflect any change in HMRC’s policy or interpretation of the law.

The UK Treasury Committee (the Committee) relaunched its inquiry into decarbonization of the UK economy and green finance.

In Lindsay Hackett v HMRC [2020] UKUT 0212 (TCC), the Upper Tribunal was asked to consider a rather unusual position taken by the taxpayer: that HMRC should have initiated criminal proceedings against him rather than pursue civil penalties.

Treasury makes the Value Added Tax (Reduced Rate) (Hospitality and Tourism) (Coronavirus) Order 2020 reducing the rate of VAT for supplies in the hospitality and tourism sector.

UK 2/2

The UK government has denied reports that it is to drop a recently introduced levy on global technology companies such as Facebook, Google and Amazon due to fears the so-called “Facebook tax” could jeopardize a post-Brexit trade deal.

UKRAINE

Ukraine establishes tax incentives for foreign and local film producers.

USA

President Signs Four COVID-19 Relief Orders, Including Deferral of Certain Payroll Tax Obligations.
On 12 August 2020, the United States Trade Representative (USTR) announced a determination of modifications regarding punitive tariffs taken against the United Kingdom and European Union under Section 301 of the Trade Act of 1974 (Section 301), following a review that had commenced in July of this year. The modifications are scheduled to go into effect 1 September 2020.
On 6 August 2020, United States President Donald Trump announced in a Presidential Proclamation that the US would again be imposing a 10% punitive tariff on non-alloyed unwrought aluminum articles of Canadian origin. The tariffs, levied under Section 232 of the Trade Expansion Act of 1962 (Section 232), will go into effect on 16 August 2020. Canada immediately responded to the tariff action by announcing dollar-for-dollar countermeasures.

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We are committed to pragmatic, effective solutions and tailor-made to enable you to ensure that you get the most out of your
rapid reporting of these new measures, in accordance with the requirements of the various tax administrations involved.