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Important Terms and Agreements regarding International Taxation

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1. Advance Pricing Agreement (APA)

An Advance Pricing Agreement (APA) is a proactive and voluntary arrangement, **made between the taxpayer and at least one tax authority** for a certain period, specifying the transfer pricing methodology that the taxpayer will apply to its intragroup transactions. The objective of an APA is to avoid any potential transfer pricing disputes or problems of double taxation in advance and thus providing more certainty in the field of transfer pricing. In case a taxpayer wants to obtain an APA, he must usually file a comprehensive APA proposal to the competent tax authority(-ies) and pay the fees that arise from the application.

2. Authorized OECD Approach (AOA)

After first considerations in 2008, the Authorized OECD Approach (AOA) was adopted in 2010 under the Report of Attribution of Profits to Permanent Establishments. The objective is to implement a "Functionally Separate Entity Approach" for the profit allocation to permanent establishments under Article 7 of the Model Tax Convention. The BEPS project states the AOA as the new / **future standard** of profit allocation. While some countries already implemented the AOA (for example Germany in § 1 German Foreign Tax Act), others countries still stick to their previous regulations.

3. Anti-Tax Avoidance Directive (ATAD I and ATAD II)

The goal of the EU Anti-Tax Avoidance Directives I (EU 2016/1164 of 12 July 2016) and II (EU 2017/952 of 29 May 2017) is to set a minimum standard throughout the European Union regarding base erosion and profit shifting, especially regarding OECD Actions 2, 3, 4 and 6. The regulations are mainly consistent with the OECD's BEPS recommendations – but partly even more far-reaching, as a directive allows slightly deviating regulations by the member states. ATAD I and II contain specific regulations on deduction limitations rules, exit taxation rules, General Anti-Abuse Rules (GAAR), Controlled Foreign Companies Rules and anti-hybrid rules.

4. Base Erosion and Profit Shifting (BEPS)

The Base Erosion and Profit Shifting (BEPS) project, developed by the OECD and G20, refers to tax planning strategies that exploit gaps in various national tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The BEPS Package provides 15 actions that equip governments with the domestic and international instruments needed to tackle BEPS. Countries shall have the tools to ensure that profits are actually taxed where **economic activities generating the profits** are performed and where value is created.

These tools also give businesses greater certainty by reducing disputes over the application of international tax rules and standardizing compliance requirements.

5. Country by Country Reporting (CbC Reporting or CbCR)

The BEPS Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) provides a template for multinational enterprises (MNEs) to report, annually and for each tax jurisdiction in which they do business, the information set out therein. This report is called the Country-by-Country (CbC) Report.

Initially, 58 jurisdictions required or permitted the filing of CbC reports in 2016. As of March 2023, more than 100 jurisdictions have laws in place introducing a CbC reporting obligation. In addition, over 3300 relationships are in place for the exchange of CbC reports between jurisdictions as of October 2022. This means that substantially every MNE with consolidated group revenue of **at least EUR 750 million** is already required to file a CbC report, and the gaps that do remain are closing.

6. Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA)

The Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA) is a Competent Authority Agreements that is used to facilitate implementation of the exchange of CbC Reports. As of January 2023, 96 jurisdictions have signed the CbC MCAA. For further information on CbC Reporting see above under section 5.

7. The EU Council Directive 2011/16 in relation to cross-border tax arrangements (DAC6)

In brief, the EU Council Directive on administrative cooperation in the field of taxation EU 2011/16 of 15 February 2011, amended by EU Council Directive 2018/822 of 25 May 2018 (known as DAC6) has introduced the mandatory reporting of cross-border arrangements that are indicative of potentially aggressive tax planning models. The amendment follows BEPS Action Point 12 (disclosure of aggressive tax planning models) and builds on the Common Reporting Standard. According to the amendment, intermediaries such as tax consultants must report potentially aggressive tax planning models with a cross-border component to the national authorities. Intermediaries are persons who are responsible for the design, marketing, organization, administration, or implementation of such a model. The relevant disclosure requirements must, in some instances, also be followed by the taxpayers themselves.

8. Double Taxation Agreement (DTA) or Double Taxation Treaty (DTT)

Double taxation treaties are agreements between two states which are designed to protect against the risk of double taxation where the same income, under local laws, is taxable in both countries, to provide certainty of treatment for cross-border trade and investment and to prevent excessive foreign taxation and other forms of discrimination against business and personal interests abroad. A tax treaty may be titled a Convention, Treaty or Agreement. Compare the DTAs concluded by Germany here, by Thailand here and by Hong Kong here.

9. Foreign Account Tax Compliance Act (FATCA)

The Foreign Account Tax Compliance Act (FATCA) is a **2010 United States federal law**. The FATCA generally requires that foreign financial institutions and certain other non-financial foreign entities report on the foreign assets held by their U.S. account holders or be subject to withholding tax on certain payments such as dividends, interests, and royalties. Financial institutions and host country tax authorities can transmit and exchange FATCA data with the United States. For further information, see here.

10. Global minimum tax (as part of the OECD two-pillar plan)

As of December 2022, 142 countries and jurisdictions have joined a new **two-pillar plan** to reform international taxation rules. The two-pillar package aims to ensure that large Multinational Enterprises (MNEs) pay tax where they operate and earn profits. **Pillar One** will ensure a fairer distribution of profits and taxation rights among countries with respect to the largest MNEs, including digital companies. Under Pillar One, taxation rights of more than USD 100 billion of profit are expected to be reallocated to market jurisdictions each year. **Pillar Two** seeks to put a floor on competition over corporate income tax, through the introduction of a global minimum corporate tax rate. Under pillar Two a **global minimum corporate income tax of at least 15%** is implemented.

11. Inclusive Framework Agreements

The OECD/G20 Inclusive Framework on BEPS brings together 142 countries (including Thailand, China and Vietnam) and jurisdictions to collaborate on the implementation of the BEPS Package as of December 2022. The Inclusive Framework on BEPS allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and review and monitor the implementation of the BEPS Package. The OECD/G20 Inclusive Framework on BEPS actively monitors the implementation of all the BEPS Actions and reports annually to the G20 on this progress. All countries and jurisdictions joining the framework participate in a peer review process, which allows members to review their own tax systems and to identify and remove elements that pose BEPS risks.

12. International Financial Reporting Standards (IFRS)

The International Financial Reporting Standards (IFRS) are accounting standards that are issued by the International Accounting Standards Board (IASB) based in London with the objective of providing a common accounting language to increase transparency in the presentation of financial information. They are particularly relevant for companies with shares or securities listed on a public stock exchange. IFRS have replaced many different national accounting standards around the world. The IFRS standards are used in 167 jurisdictions as of September 2022.

13. Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCAA)

The **Multilateral Convention on Mutual Administrative Assistance in Tax Matters** was jointly developed by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. The Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. As of March 2023, **147 jurisdictions** currently participate in the Convention, including 17 jurisdictions covered by territorial extension. This represents a wide range of countries including all G20 countries, all BRICS countries (Brazil, Russia, India, China, South Africa), all OECD countries, major financial centers, and an increasing number of developing countries. It is in force in British Virgin Islands, Cayman Islands, China, Germany, Hong Kong, Singapore. Thailand signed the amended convention in 2020, Vietnam did so in March 2023 as well.

14. Multilateral Instrument (MLI)

As of March 2023, 100 jurisdictions concluded negotiations on the **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** ("Multilateral Instrument" or "MLI") that will **implement a series of tax treaty measures to update international tax rules** and reduce the opportunity for tax avoidance by multi-national enterprises. The MLI entered into force on 1 July 2018 and covers 100 jurisdictions as of march 2023. The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide. The **MLI automatically modifies the application and changes thousands of bilateral tax treaties** concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies. The MLI is in force in Singapore, China, Germany, Hong Kong, and was signed by Vietnam.

Thailand signed the MLI on 9 February 2022 and deposited its instrument of ratification with the OECD on March 31, 2022. At the time of ratification, Thailand intended to apply the MLI to 58 of its 61 DTAs. The MLI entered into force for Thailand on July 1, 2022.

However, the MLI is neither ratified, nor signed by British Virgin Islands, Cayman Islands.

15. Subject to Tax Rule (STTR)

The Subject To Tax Rule (STTR) is an treaty-based rule under the OECD two-pillar plan (compare under section 9), which is intended to override treaty benefits in existing treaties in respect of certain payments and to prevent the exploitation of such treaty advantages. It specifically targets the risks to source countries arising from BEPS structures related to intercompany payments that take advantage of low nominal tax rates in the other treaty country (i.e., the country of the payee). STTR is intended to give countries the right to "back-tax" up to the agreed minimum rate if the other country has not exercised its primary taxing rights or the payment is otherwise subject to low effective taxation.

The STTR is based on the following: A source country that has ceded its taxing rights under a DTA should be able to impose an additional tax for top up of the agreed minimum rate if (due to BEPS structures in the case of intragroup payments) the income is not taxed in the other treaty country or is taxed at a rate below the minimum rate.
In particular, the STTR targets those cross-border structures that exploit provisions of a DTA to shift profits from source countries to countries where those payments are subject to no or low nominal taxation.

If the STTR applies, the tax relief otherwise granted may be denied, with the maximum applicable withholding tax being 7.5% to 9%.

16. Mini One Stop Shop (MOSS)

The mini One Stop Shop (MOSS) came into force on 1 January 2015 and allows taxable persons supplying telecommunication services, television and radio broadcasting services and electronically supplied services to non-taxable persons in member states in which they do not have an establishment to account for the VAT due on those supplies via a web-portal in the member state in which they are identified. This scheme allows these taxable persons to avoid registering in each member state of consumption.

The new VAT e-commerce package includes an improvement of the current MOSS by extending the scope of the MOSS, turning it into a One Stop Shop (OSS) to B2C supplies of services other than TBE services, intra-EU distance sales of goods, certain domestic supplies of goods facilitated by electronic interfaces, distance sales of goods imported from third territories and third countries in consignments of an intrinsic value of up to EUR 150.

We hope that the information provided in this newsletter was helpful for you.
If you have any further questions, please do not hesitate to contact us.

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