What’s my purpose: the practical implications of the principal purpose test

ABA Tax Section Meeting
May 11, 2019
Foreign Lawyers Forum
Introduction

• Moderator: Amanda P. Varma, Steptoe & Johnson LLP, Washington, DC

• Panelists:
  • Dèlcia Capocasale, Cuatrecasas, New York, NY
  • Kathleen Penny, Blake, Cassels & Graydon LLP, Toronto, Canada
  • Elena Rowlands, Travers Smith LLP, London, UK
  • Romain Tiffon, Atoz, Luxembourg
  • Philip Tully, Matheson, Dublin, Ireland
BEPS and the MLI

• OECD/G20 BEPS Project
  – Multi-year process to address base erosion and profit shifting ("BEPS")
  – Over 60 countries participating
  – 15 actions areas, generating reports with minimum standards and recommended actions

• Multilateral instrument ("MLI") was developed to implement the BEPS measures that require changes to tax treaties
  – Reflects treaty provisions from:
    • Action 2 (Hybrid Mismatches)
    • Action 6 (Treaty Abuse)
    • Action 7 (Permanent Establishment Avoidance)
    • Action 14 (Dispute Resolution)
  – Intended to be an efficient mechanism for amending tax treaties
Focuses on treaty abuse, and in particular treaty shopping, as an important source of BEPS concerns

To address treaty shopping, the Action 6 BEPS report recommends:

- A statement in the treaty that countries intend to avoid creating opportunities for non-taxation or reduced taxation through evasion or avoidance, including through treaty shopping;
- A limitation on benefits ("LOB") rule that limits the availability of treaty benefits;
- A more general anti-abuse rule based on the principal purposes of transactions or arrangements (the principal purposes test or "PPT" rule)

The "minimum standard" committed to by the participating countries is the express statement about the countries’ common intention and –

- The combined approach of an LOB and PPT rule;
- The PPT rule alone; or
- The LOB rule supplemented by a mechanism that would deal with conduit financing arrangements.
The report also includes new rules to be included in tax treaties to address other forms of treaty abuse:

- Certain dividend transfer transactions that are intended to lower withholding taxes payable on dividends;
- Transactions that circumvent the application of the treaty rule that allows source taxation of shares of companies that derive their value primarily from immovable property;
- Situations where an entity is resident of two Contracting States, and
- Situations where the State of residence exempts the income of permanent establishments situated in third States and where shares, debt-claims, rights or property are transferred to permanent establishments set up in countries that do not tax such income or offer preferential treatment to that income.
• Currently, nearly 90 signatories
  – Does not include the United States

• Countries have the option of adopting (opting in) or reserving (opting out) of options tied to the four action areas
  – Matching process
  – Country ratification
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The MLI contains a PPT test (Article 7)

Similar PPT language was included in the 2017 Update to the OECD Convention (revised Article 29(9)), which states:

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

– Countries may also include a provision allowing for discretionary relief where the PPT would deny benefits
The Action 6 BEPS Report and the 2017 OECD Model Convention contain commentary on the OECD principal purpose test, including the following:

- The PPT must be read in the context of the rest of the LOB article and the treaty as a whole, which is particularly important for determining the object and purpose of the relevant provisions of the treaty.
- “The provision is intended to ensure that tax conventions apply in accordance with the purpose for which they were entered into, i.e. to provide benefits in respect of bona fide exchanges of goods and services, and movements of capital and persons as opposed to arrangements whose principal objective is to secure a more favourable tax treatment.”
Includes all limitations on taxation imposed on the source country, relief from double taxation, and nondiscrimination

“[A] benefit... shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions...”

“is deliberately broad and is intended to include situations where the person who claims the application of the benefits under a tax treaty may do so with respect to a transaction that is not the one that was undertaken for one of the principal purposes of obtaining that treaty benefit”

“should be interpreted broadly and includes any agreement, understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable”
“To determine whether or not one of the principal purposes of an arrangement or transaction is to obtain benefits under the Convention, it is important to undertake an **objective analysis of the aims and objects** of **all persons involved** in putting that arrangement or transaction in place or being a party to it.”

“What are the purposes of an arrangement or transaction is a **question of fact** which can only be answered by considering **all circumstances** surrounding the arrangement or event on a case by case basis.”

It is **not necessary to find conclusive proof of the intent** of a person concerned with an arrangement or transaction, but it must be reasonable to conclude, after an objective analysis of the relevant facts and circumstances, that one of the principal purposes of the arrangement or transaction was to obtain the benefits of the tax convention.”

“It **should not be lightly assumed**...**that obtaining a benefit under a tax treaty was one of the principal purposes** of an arrangement or transaction and **merely reviewing the effects of an arrangement will not usually enable a conclusion** to be drawn about its purposes.”

“Where, however, an arrangement **can only be reasonably explained** by a benefit that arises under a treaty, it may be concluded that one of the principal purposes of that arrangement was to obtain the benefit.”
“One of the principal purposes” means that obtaining the benefit under a tax convention need not be the sole or dominant purpose.

- It is sufficient that at least one of the principal purposes was to obtain the benefit.

“A purpose will not be a principal purpose when it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining the benefit was not a principal consideration and would not have justified entering into any arrangement or transaction that has, alone or together with other transactions, resulted in the benefit.”

“In particular, where an arrangement is inextricably linked to a core commercial activity, and its form has not been driven by considerations of obtaining a benefit, it is unlikely that its principal purpose will be considered to be to obtain that benefit.”
• Example A: TCo, a company resident in State T, owns shares of SCo, a company listed in State S. States T and S do not have a tax treaty. TCo assigns its rights to an SCo dividend payment (declared by not made) to RCo, an independent financial institution resident of State R. State R has a treaty with State S.
  – Reasonable to conclude principal purpose was to obtain the lower treaty benefit, absent other facts and circumstances, and assignment would be contrary to the object and purpose of the tax treaty given the treaty shopping
Example C: After conducting review of potential jurisdictions for a new plant and narrowing the locations to three that provide for lower manufacturing costs, RCo chooses the country (State S) with a treaty with its country of residence

- Although decision to invest in State S takes into account treaty benefits, it is clear that the principal purpose for the plant investment is related to the expansion of RCo’s business and the lower manufacturing costs
- A general purpose of tax treaties is to encourage cross-border investment, so obtaining the benefits of the State R-S treaty is in accordance with the object and purpose of the treaty
Example E: RCo owns 24% of SCo; following entry into force of a treaty between States R and S that contains a lower dividend withholding rate for 25%-owned companies, RCo increases its ownership to 25%.

- Although one of the principal purposes was clearly to obtain benefits, granting benefits is in accordance with the object and purpose of the dividend article, which uses an arbitrary threshold of 25% to determine which shareholders are entitled to a lower rate and it is consistent to grant benefits to a taxpayer who genuinely increases its investment.
UK - approach to the MLI/PPT

**BEPS**
- UK at forefront of BEPS project
- UK has already implemented domestically much BEPS based legislation (e.g. anti-hybrids rules and corporate interest restriction)

**MLI**
- UK signed MLI on 7 June 2017 and deposited its instrument of ratification and final list of reservations and notifications on 29 June 2018
- MLI entered into force for the UK on October 2018

**PPT**
- UK has chosen to apply PPT
- Little HMRC guidance on application of PPT
- Expectation is that HMRC approach will be based on the OECD commentary
- UK legislation already contains various anti-avoidance provisions based on obtaining a tax advantage being a main purpose of the relevant arrangement
- UK domestic GAAR
- Broad exemptions from UK withholding tax on interest and generally no dividend withholding tax
Luxembourg - approach to the MLI/PPT
Canada – approach to the MLI/PPT

- MLI not yet ratified in Canada, but ratification is in process

- Concern that Canada has reserved on article 7(4) of MLI, i.e. no discretionary relief from competent authority where PPT applies (Canadian domestic withholding tax rate is 25%)

- The Canada Revenue Agency has not been successful to date in Canadian tax courts in sustaining challenges to “treaty shopping” based on lack of “beneficial ownership”, or under the Canadian general anti-avoidance rule or other anti-avoidance doctrines (but important case still under appeal)

- Canadian courts have been deferential to the bargain struck by the contracting states to the treaty, and in particular entitlement to benefits under most Canadian tax treaties based on residency and beneficial ownership where relevant only (Canada-US tax treaty has a comprehensive LOB, but no others have this)
Canada – approach to the MLI/PPT

- MLI and related OECD commentary might result in significant changes in Canada, but this depends on approach that will be taken by courts to interpretation (particularly of the PPT) and to the burden and standard of proof.

- Canadian domestic tax law was amended over the course of the last 5 years to address “back-to-back” loans and royalty arrangements, defined by complex (and sometimes broader than expected) technical rules, and this regime does effectively counter some types of “treaty shopping”.

- Prior Canadian tax proposals to introduce a broader anti-treaty shopping rule into Canadian domestic tax law have been abandoned in favour of the MLI approach.
Ireland – approach to the MLI/PPT

– When will the PPT take effect in Ireland?
  – Ireland has completed ratification of the MLI which entered into force in Ireland on 1 May 2019
  – The MLI will begin to take effect to update Ireland’s double tax treaties from 1 January 2020 for withholding tax provisions and, for all other purposes, for accounting periods beginning on or after 1 November 2019

– How will the PPT apply?
  – Ireland has not made any reservations in respect of the PPT (Article 7 of the MLI)
  – Broad domestic exemptions from withholding in respect of interest and dividends apply
  – As such, generally limited reliance on treaty reliefs or relief under EU Directives and PPT unlikely to result in significant changes to Irish payors of interest and dividends in short term
  – Irish recipients of interest and royalties may be impacted by application of PPT in source jurisdictions

– Irish domestic GAAR
  – Ireland has implemented a domestic GAAR
  – There has been limited case law on this GAAR - only one significant Supreme court decision in 2011 but to date no cases in relation to beneficial ownership / treaty shopping scenarios
  – It remains to be seen how this domestic GAAR will be applied in the future

– Competent Authority Agreement between Ireland and Malta
  – The purpose of the DTC is the avoidance of double taxation and the prevention of fiscal evasion
  – The MLI will further clarify the purpose of the DTC as being to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax avoidance
  – From the coming into effect of the MLI, this agreement will apply where there is no double taxation to be avoided and it is reasonable to conclude that an opportunity for double non-taxation would otherwise arise
SPAIN – approach to the MLI/PPT

Background

- Spain signed the MLI on 7 June 2017 - it has not been ratified by the Spanish Parliament yet
- 54 DTAs covered - not all the final positions already disclosed
- Consolidated versions of the Tax Treaties?
- Everything is already implemented (domestically)
  - Spanish tax authorities and Spanish Courts have a large track record applying GAAR and OECD MTC concepts and developing other concepts considered in BEPS
  - BEPS before BEPS
Section 7 - Prevention of Treaty Abuse

- Reservation on clause 7 §1 (PPT) for the DTT with Andorra and Mexico
- No option for clause 7 §4
- No option for a simplified LOB
- Matching:
  - Substitution: Chile, United Kingdom
  - Incorporation: Germany, Argentina, Colombia, France, Luxembourg, Ireland
Case study 1 – Credit Fund with Lux holding stack

- Manager (UKCo) establishes a Lux Credit Fund – its investment policy is to invest in loans and other debt instruments.
- One of the Fund terms is that the Manager must use reasonable endeavours to minimize withholding in respect of investment returns.
- Fund establishes Holdco 1 and Holdco 2 to minimize withholding and repatriate investment returns tax efficiently.
- Manager has no real substance in Luxembourg (no office space and no people on the ground) – the Lux GP, Holdco 1 and Holdco 2 each have 5 directors – 2 are UK resident and are also directors of the UK Manager and 3 are Luxembourg resident directors but are provided by a service provider.
- UK Manager provides investment management services to the Fund.
- Holdco 1 and Holdco 2 are holding entities – quarterly board meetings are held in Luxembourg to monitor the performance of the UK Manager, to review investments made by the Fund and to repatriate profits to the Fund.
Case study 1 continued

1. Investors invest in the Fund
2. The Fund makes a profit participating loan to Holdco 1
3. Holdco 1 makes an interest free loan to Holdco 2
4. Holdco 2 makes loans to UKCo, IrishCo, SpainCo and CanadaCo
5. UKCo, IrishCo, SpainCo and CanadaCo make interest payments to Holdco 2
6. Holdco 2 uses the interest payments to pay principal on the interest free loan and dividends to Holdco 1
7. Holdco 1 uses the amounts from Holdco 2 to make payments to the Fund
8. The Fund makes payments to investors
Case study 1 continued

- Reliance on tax treaties is central to the structure

<table>
<thead>
<tr>
<th>Country</th>
<th>Domestic</th>
<th>Treaty with Lux</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>20%</td>
<td>0%</td>
</tr>
<tr>
<td>Ireland</td>
<td>20%/0%</td>
<td>0%</td>
</tr>
<tr>
<td>Spain</td>
<td>19%/0%</td>
<td>10%</td>
</tr>
<tr>
<td>Canada</td>
<td>25%</td>
<td>10%</td>
</tr>
</tbody>
</table>

- How will the PPT be applied by UK, Ireland, Spain and Canada?
- If treaty benefits between UK/Ireland/Spain/Canada and Lux are denied, could investors in the fund rely on any applicable treaties between UK/Ireland/Spain/Canada and their respective jurisdictions?
- How could the structure be improved to reduce the risk of the PPT applying?
Case Study 2 - Joint venture context

Two corporate investors decide to form a joint venture entity for the purpose of investing into a multi-jurisdictional asset portfolio.

The two investors are respectively resident in Canada and Ireland.

The seed assets are located in England, Ireland, Canada and Spain. Assets in other jurisdictions may be added in the future.

The jurisdiction they chose to set up their joint-venture entity is Luxembourg.

The choice of Luxembourg by the two investors was initially driven by the fact that Luxembourg has a very good tax treaty network. It was also chosen because Luxembourg law is well recognised amongst lenders when it comes to enforcing security packages.
None of the investors has any existing presence in Luxembourg but given the size of the portfolio decide that the Luxembourg entity will have the following attributes:

- The JVCo will be in charge of monitoring its participations
- It rents its own offices with phone lines and e-mail address
- It has a part-time employee hired from JVCo’s corporate service provider. The two investors agreed in the first board meeting of JVCo that additional employees may be hired depending on the actual growth of the portfolio

When the local SPVs distribute dividends and pay interest to JVCo, they intend to rely on treaty protection to mitigate the withholding tax.

Can this be denied on the basis of the PPT?
Case Study 3 – Re-domiciliation/restructuring to Advantageous Treaty Country

Notes: (1) Shares of Canadian company derive their value principally from Canadian real property, but used in business.
(2) Canada-Luxembourg treaty Article 13 excludes real property used in business, but Canada-US treaty does not.
(3) Luxembourg company subsequently sells shares of Canadian company to third party and realizes a gain.
Case Study 3 (continued)

Canadian Tax Court Cases

MIL Investments (SA) (2006 Tax Court of Canada; affirmed 2007 Federal Court of Appeal)
• Canadian shares were held by Cayman company
• Re-domiciliation of Cayman company to Luxembourg
• Canadian shares sold shortly after re-domiciliation
• Canadian courts allowed treaty protection, did not apply general anti-avoidance rule ("GAAR")

• Canadian shares were held by US LLC
• Transfer of Canadian shares to Luxembourg company
• Canadian shares sold about a year later
• Canadian court allowed treaty protection, did not apply GAAR
• Under appeal
Some quotes from the recent Alta Energy decision:

- “There is nothing in the Treaty that suggests that a single purpose holding corporation, resident in Luxembourg, cannot avail itself of the benefits of the Treaty. There is also nothing in the Treaty that suggests that a holding corporation, resident in Luxembourg, should be denied the benefit of the Treaty because its shareholders are not themselves residents of Luxembourg.”

- “The Minister argues that the Restructuration constitutes an abuse of Articles 1, 4 and 13, because, absent the Restructuration, the gain would have been taxable in Canada. I do not find this result contrary to the rationale underlying Articles 1, 4 and 13. The rationale underlying the carve-out is to exempt residents of Luxembourg from Canadian taxation where there is an investment in immovable property used in a business.”

Would the amended preamble, other MLI provisions, OECD Commentary or Canadian legislative history related to MLI change this?
Case Study 3 (continued)

- If restructuring/re-domiciliation was conducted for the principal purpose of accessing treaty benefits and results in double non-taxation, arguments against application of PPT will be limited to those based on “object and purpose of the relevant provisions”
- Economic substance in Luxembourg/a non-tax reason for using a Luxembourg company would assist with arguments that treaty benefit in accordance with the object and purpose of the treaty provisions
- Specific anti-avoidance rule (such as a holding period for the shares) that is not invoked would be helpful
- Canadian Department of Finance “hopes” that PPT would have changed the results of the MIL and Alta Energy cases (testimony at House of Commons Standing Committee on Finance, February 2019)
- Better to have Luxembourg company in structure from outset
Case study 4 – EU Danish Cases example

Parent Subsidiary Directive:
C-116/16, C-117/16

Interest & Royalties Directive:
C-115, C-118, C-119, C-299

Offshore Entity
(Bermuda/Cayman/Jersey)

Interest

EU Entity
(Luxembourg/Cyprus/Sweden)

Dividends / Interest

Danish Company

– General principle of EU law that Member States must refuse to grant benefits of EU law where there is an ‘abusive practice’

– ‘Abusive practice’ arises where, although formal conditions are fulfilled, EU rules are relied upon to benefit from an advantage that is not consistent with the objective of those EU rules

– Proof of an abusive practice requires:
  – Objective test whether the purpose of the rules has been achieved; and
  – Subjective test whether there is an intention to obtain an advantage
Parent Subsidiary Directive:
C-116/16, C-117/16

Interest & Royalties Directive:
C-115, C-118, C-119, C-299

- Benefits denied where the transaction is purely artificial and devoid of any economic and commercial justification - indications include:
  - all or almost all dividends/interest are, very soon after receipt, passed on to entities that do not qualify for benefits
  - if dividends/interest were paid directly to ‘beneficial owners’ withholding tax would have applied
  - the recipient of dividends/interest does not ‘in substance’ have the right to use and enjoy such funds, whether as a result of contractual or legal obligation or otherwise
  - closeness in time of major new tax legislation and the establishment of complex intragroup financial transactions
  - existence of conduit companies without economic justification

- Factors to be considered include:
  - the way in which transactions are financed
  - the valuation of the intermediary company’s equity
  - inability of a conduit company to have economic use of interest/dividends received
Case study 4 – EU Danish Cases example

**Parent Subsidiary Directive:**
C-116/16, C-117/16

**Interest & Royalties Directive:**
C-115, C-118, C-119, C-299

- An intermediate company will be regarded as a conduit without economic justification where:
  - that company makes only an insignificant taxable profit from enabling the flow of funds from the debtor company to the beneficial owner of the sums paid
  - the sole activity of that company is the receipt of dividends/interest and the transmission to the ‘beneficial owner’ or other conduits
  - there is an absence of actual economic activity

- An absence of actual economic activity of a conduit can be inferred from factors such as:
  - the management of the company
  - its balance sheet
  - the structure of its costs
  - expenditure it has actually incurred
  - staff it employs
  - premises and equipment it has.
- PPT (or LOB) for LATAM
- Requirements to apply the ETVE regime – substance
- Impact of the Danish cases – substance + economic rationale
- Spanish GAAR – substance + economic rationale
- Interaction with Section 9 of DTT
- Different tiers of analysis
Substance

- Spanish ETVE regime requires a management activity of the non-resident subsidiaries through human and material means
- CIT Act also contains a definition of passive entities, excluding those holding companies with human and material means
- Spanish GAAR (section 15 LGT) also connected with human and material means (Informe de la Comisión Consultiva sobre CANT – April 1, 2018 and Spanish Supreme Court “Endrige”)
- Section 6 ATAD – “genuine” connected to commercial reasons
- Cadbury Schweppes and the Danish cases
- Dutch requirements, US doctrine, Italian case Aptar, etc.
- Action 5, pg. 41, “therefore may not in fact require much substance in order to exercise their main activity of holding and managing equity participations” [...] “no letter box and brass plate companies”
- It normally answers: how?

Economic rationale

- Is section 15 LGT implementation of section 6 of ATAD (GAAR)?
- Special anti-abuse rule for the Spanish implementation of PSD and corporate restructurings
- Section 6 ATAD
- It normally answers: why?

Cumulative concepts
Mandatory disclosure rules
DAC 6 provides for a mandatory disclosure regime that will need to be implemented into Luxembourg law.
Requires tax intermediaries to report cross-border arrangements that contain at least one of the hallmarks defined in the Directive (potentially subject to a main benefit test).
Reporting obligations limited to intermediaries that have an EU nexus based on tax residence, incorporation, etc. When no tax intermediary is involved (or a non-EU intermediary), reporting obligation rests with the taxpayer who benefits from the arrangement.
International developments - Ireland

- Changes to Irish transfer pricing rules:
  - Incorporation of the 2017 OECD Transfer Pricing Guidelines from 1 January 2020
  - Extension to non-trading income where such an extension would reduce the risk of aggressive tax planning

- Updated Revenue guidance on Irish IP amortization regime (s291A)
  - Additional guidance on information and documentation required to support value attributed to an intangible asset
  - Expectation that an independent valuation report will be available
  - Revenue may engage services of an external expert to provide assistance on valuations

- Implementation of EU ATAD
  - Public consultation on hybrid and interest limitation rules closed January 2019
  - Interest limitation rules likely to be implemented with accelerated timeline (pre 1 January 2024)
  - Draft implementing legislation yet to be published

- Potential introduction of participation exemption
  - Public consultation expected in H1 2019
  - Unlikely to be introduced in Finance Bill 2019
International Developments - Canada

- Proposed changes to “foreign affiliate dumping” rules
  - May affect Canadian corporation with downstream foreign affiliates, where the Canadian corporation is controlled by any type of non-Canadian person or entity or a group of non-Canadian persons or entities
- Proposed changes to cross-border securities lending rules
- Change in Canada Revenue Agency practice related to vertical amalgamation or wind-up of Canadian subsidiary into Canadian parent company
International Developments - Spain

Digital Service Tax

- A Draft law was approved on January 18, 2019
- OBJECT: certain digital services in which there is strong value creation by users
- NATURE: (i) indirect tax; (ii) compatible with VAT; (iii) not included in the scope of the tax treaties
- TAX RATE: 3% tax on gross revenues (net of VAT) stemming from the supply of certain digital services
- TAXABLE EVENT:
  - Placing of advertisements on a digital interface
  - Making available multisided digital interfaces –intermediation- (exclusions: financial, crowdfunding, e-commerce, etc.).
  - Transmission of user’s data.
- TAXPAYER:
  - Worldwide revenues: 750 MM EUR (strong market position)
  - Taxable revenues in Spain over 3 MM EUR (significant digital footprint in Spain)
  - Consolidated computation
NEXUS: Spanish users

- On line publicity: when the user’s device in which the publicity is shown is located in Spain.
- On line intermediation: (i) when the underlying transaction takes place through a digital interface in a device located in Spain; (ii) when the user’s account has been opened with a device located in Spain.
- Data transmission: when the data transferred has been generated by an user through a digital interface of a device located in Spain.

For this purpose, it is irrelevant: (i) where payments are made; (ii) where the underlying transaction takes place.

TAX BASE

- On line publicity: proportion number of times the publicity is shown in Spanish located devices over total number of devices in which it is shown.
- On line intermediation: (i) proportion Spanish users over total users; (ii) income deriving from user’s accounts opened in Spain.
- Data transmission: proportion of Spanish users generating the data over total users.
International developments - UK

- **Taxation of non-UK residents on property gains**
  - New rules which represent a significant change to UK policy in the taxation of non-residents
  - From April 2019, gains made by non-UK residents on the disposal of UK commercial property are taxable (gains on disposals of UK residential property are already taxable subject to certain exceptions)
  - Non-resident companies are charged to UK corporation tax and non-resident individuals and trusts are charged to UK capital gains tax on any such gains
  - Gains made by non-residents on indirect disposals of UK property are also taxable from April 2019. The charge catches disposals by non-residents of 25% or greater holdings in “property rich” entities, i.e. an entity in which 75% or more of the value of the interest derives from UK land
  - There are special rules for investment funds so that it is the investors in the fund who are subject to the tax (when they dispose of their interest in the fund) rather than the fund vehicle(s) itself – these rules are highly complex and require elections to be made

- **Digital services tax**
  - UK government consulting on the introduction of a new digital services tax
  - Proposal – from April 2020, a 2% tax would be charged on the gross revenue of digital services businesses which are attributable to an “in-scope activity” and are linked to “UK users” (UK resident persons).
  - The tax will not be chargeable unless the business has more than £500 million of global revenue from in-scope activities and more than £25 million of revenue from in-scope activities linked to UK users in the relevant year.
  - 3 types of in-scope activities proposed – social media platforms, search engines and online marketplaces.

- Brexit [TO FOLLOW]
Implementation of ATAD in Luxembourg

• Deductibility of interest payments;
• General anti-abuse rule (GAAR);
• Controlled foreign companies (CFCs);
• Hybrid mismatches; and
• Exit taxation

Other measures:

• Amendment of the permanent establishment definition
• Amendment of roll-over relief rules

Applicable as from 1 January 2019 (the rules around exit tax should apply as from 1 January 2020)