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OECD Inclusive Framework Makes Important Progress on Digital Taxation

On 23-24 January, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) met, bringing together 264 delegates from 95 member jurisdictions and 12 observer organisations. The jurisdictions agreed to step up efforts toward reaching a global solution on how to best tax multinational enterprises in a rapidly digitalising economy.

It was further agreed at the meeting that future discussions to reach a solution will be based around two pillars, identified in a new Policy Note released after the Inclusive Framework's meeting. The first pillar will focus on how the existing rules that divide the right to tax the income of multinational enterprises among jurisdictions could be modified to take into account the changes that digitalisation has brought to the world economy. The second pillar aims to resolve remaining BEPS issues and will explore two sets of interlocking rules designed to give jurisdictions a remedy in cases where income is subject to no or only very low taxation.

Given the significance of the new proposals for the international tax system, the Inclusive Framework will issue a consultation document that describes the two pillars in more detail, and a public consultation will be held on 13 and 14 March 2019 in Paris as part of the meeting of the Task Force on the Digital Economy.

US Treasury Deputy Assistant Secretary for International Tax Affairs, Lafayette G. "Chip" Harter III, said of the developments *"I was encouraged by the pragmatism that I was seeing around the room…There simply is no mechanism that offers the capabilities of the OECD to try to broker a new multilateral agreement on allocating taxing jurisdiction. I think there is some hope that we can push this through successfully."*

EU Council's Code of Conduct Group Publish Letters Seeking Commitments on Tax Regimes

On 1 February, the Code of Conduct Group (Business Taxation) of the Council of the European Union for transparency reasons published letters seeking commitments from the jurisdictions of Barbados, Belize, Curaçao, Mauritius, Saint Lucia and Seychelles to replace harmful preferential tax regimes with alternative measures.

The letters identify preferential tax regimes which have been introduced in the jurisdictions which exempt foreign income from taxation, and ask that the jurisdictions abolish the regimes by the end of 2019 without any grandfathering mechanisms being introduced.

The letters indicate that should the regimes not be abolished, the Code of Conduct Group will revisit its recommendations to the Council of the EU as to whether the jurisdictions ought to be included on the List of Non-cooperative Jurisdictions for Tax Purposes.

3. ECOFIN Ministers to Address Commission's Qualified Majority Voting Roadmap

Ministers attending the ECOFIN meeting scheduled to take place on 12 February 2019 will discuss in detail the European Commission Roadmap which sets out a 4-step plan as to how decision making on tax matters could be modified to take place by way of qualified majority voting. It proposes to utilise the passerelle clauses contained in Article 48(7) and Article 192(2) of the Treaty on European Union to produce initiatives changing the scope of decision-making procedures.

The Commission has called for the European Council, European Parliament and all stakeholders to launch an open debate on QMV in EU tax policy, and has invited leaders to endorse its Roadmap, particularly as concerns the use of the passerelle clause for Step 1 and 2 of its Roadmap, and consider the use of the passerelle clause in Step 3 and Step 4.

4. OECD Publishes 2018 Harmful Tax Practice Progress Report

The OECD has released a new publication, called Harmful Tax Practices - 2018 Progress Report on Preferential Regimes, with results demonstrating that jurisdictions have delivered on their commitment to comply with the standard on harmful tax practices, including ensuring that preferential regimes align taxation with substance.

The report also delivers on the Action 5 mandate for considering revisions or additions to the FHTP framework, including updating the criteria and guidance used in assessing preferential regimes and the resumption of application of the substantial activities factor to no or only nominal tax jurisdictions. The report concludes in setting out the next key steps for the FHTP in continuing to address harmful tax practices.

5. Ireland Ratifies OECD's MLI

Ireland has now ratified the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. 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.

The MLI entered into force on 1 July 2018 following on from 5 countries having ratified the instrument, namely Austria, the Isle of Man, Jersey, Poland and Slovenia. There are now 87 jurisdictions that are signatories to the treaty.

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